COMPANIES ACT 28 OF 2004

[ASSENTED TO 19 DECEMBER 2004] [DATE OF COMMENCEMENT: 1 NOVEMBER 2010 *]

(Signed by the President)
as amended by

Companies Amendment Act 9 of 2007
ACT

To provide for the incorporation, management and liquidation of companies; and to provide for incidental matters.

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BE IT ENACTED by the Parliament of the Republic of Namibia as follows:-

[*] GN 172 in *GG* 4536 of 10 August 2010

CHAPTER 1
INTERPRETATION AND APPLICATION OF ACT (ss 1-3)

1 Definitions

(1) In this Act, unless the context otherwise indicates-

"accounting records", in relation to a company, includes accounts, deeds, writings and other documents;

"annual duty" means the annual duty referred to in section 182;

"annual return" means the annual return referred to in section 181;

"articles", in relation to a company, means the articles of association of that company for the time being in force, and includes any provision, in so far as it applies in respect of that company, set out in Table A or Table B in Schedule 1;

"auditor" means a person who is, under section 23 of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951), registered as an accountant and auditor and who has been appointed as an auditor under this Act;

"books or papers" and **"books and papers"** include accounts, deeds, writings and other documents;

"certified" means certified in the manner prescribed by the Minister to be a true copy or a correct translation;

"close corporation" means a corporation as defined in section 1 of the Close Corporations Act, 1988, (Act 26 of 1988);

"Companies Act, 1926," means the Companies Act, 1926 (Act 46 of 1926), referred to in section 442 of the repealed Act";

"company" means a company incorporated under Chapter 4 of this Act and includes any body which, immediately before the commencement of this Act, was a company in terms of the repealed Act;

"Court", in relation to any company or other body corporate, means the High Court and, in relation to any offence under this Act, includes a magistrate's court having jurisdiction in respect of that offence;

"debenture" includes debenture stock, debenture 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 or alternate director of a company, by whatever name that person may be designated;

"equity share capital" and **"equity shares"**, in relation to a company, means its issued share capital and shares, excluding any part which, neither with

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regard to dividends nor with regard to capital, carries any right to participate beyond a specified amount in a distribution;

"existing company" means any body which, before the commencement of this Act, was a company in terms of the repealed Act;

"external company" means a company or other association of persons, incorporated outside Namibia, which has a place of business in Namibia, or which was an external company in terms of the repealed Act;

"foreign country" means any state, country or territory other than Namibia;

"holding company" means a holding company as defined in subsection (4);

"judicial manager" means the final judicial manager referred to in section 438;

"liquidator", in relation to a company, means the person appointed under Chapter 14 as liquidator of that company, and includes any co-liquidator and any provisional liquidator so appointed;

"manager", in relation to a company, means any person who is a principal executive officer of the company for the time being, by whatever name designated and whether or not that person is a director;

"Master" means the Master of the High Court;

"memorandum", in relation to a company, means the memorandum of association of that company for the time being in force, and in relation to an external company, means the charter, statutes, memorandum of association and articles, or other instrument constituting or defining the constitution of the company;

"Minister", in relation to any matter to be dealt with in the office of the Master in connection with the winding-up or judicial management of companies, means the Minister responsible for Justice and, in relation to any other matter, means the Minister responsible for Trade and Industry;

"officer", in relation to a company, includes any managing director, manager or secretary but excludes a secretary which is a body corporate;

"official language" means the official language of Namibia referred to in Article 3 of the Namibian Constitution;

"place of business" means any place where the company transacts or holds itself out as transacting business and includes a share transfer or share registration office;

"prescribed" means prescribed by regulation made under this Act;

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

"provisional judicial manager" means a provisional judicial manager appointed by the Master under section 435;

"Registrar" means the Registrar of Companies appointed under section 6;

"regulations" means the regulations made under this Act;

"SAC" means the Standing Advisory Committee established by section 16;

"secretary" includes any official of a company by whatever name designated, including a body corporate, performing the duties normally performed by a secretary of a company;

"share", in relation to a company, means a share in the share capital of that company and includes stock, and in relation to an offer of shares for subscription or sale, includes a share and a debenture of a company, whether a company within the meaning of this Act or not, and any rights or interests, by whatever name called, in a company or in or to that share or debenture;

"share warrant" means the warrant referred to in section 107(1);

"special resolution", in relation to a company, means a resolution passed at a general meeting of that company in the manner provided for by section 207;

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"staff member" means a staff member as defined in section 1(1) of the Public Service Act, 1995 (Act 13 of 1995);

"subsidiary company" or **"subsidiary"** means a subsidiary company as defined in subsection (3);

"the repealed Act" means the Companies Act, 1973 (Act 61 of 1973);

"this Act" includes the regulations;

"wholly owned subsidiary" means a wholly owned subsidiary as defined in subsection (5); and

"winding-up order" means any order of court whereby a company is wound up and includes any order of court whereby a company is placed under provisional winding-up for so long as that order is in force.

(2) A person is not deemed to be, within the meaning 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 or her in a professional capacity.

(3) For the purposes of this Act, a company is deemed to be a subsidiary of another company if-

(a) that other company is a member of it and-

(i) holds a majority of the voting rights in it; or

(ii) has the right to appoint or remove directors holding a majority of the voting rights at meetings of the board; or

(iii) has the sole control of a majority of the voting rights in it, whether pursuant to an agreement with other members or otherwise; or

(b) it is a subsidiary of any company which is a subsidiary of that other company; or

(c) subsidiaries of that other company or that other company and its subsidiaries together hold the rights referred to in paragraph *(a)*.

(4) In determining whether a company holds the majority of the voting rights as contemplated in subsection (3)*(a)*(i)-

(a) voting rights which are exercisable only in certain circumstances must be taken into account only-

(i) when those circumstances have arisen, and for so long as they continue; or

(ii) when those circumstances are under the control of the person holding the voting rights;

(b) voting rights held by a person in a fiduciary capacity must be treated as not held by him or her but by the beneficiary of those voting rights;

(c) voting rights held by a person as nominee for another person must be treated as not held by him or her but by that other person, and voting rights are deemed to be held by a nominee for another person if they are exercisable only on the instructions or with the consent or concurrence of that other person.

(5) A body corporate or other undertaking which would have been a subsidiary of a company had the body corporate or other undertaking been a company is deemed to be a subsidiary of that company.

(6) For the purposes of this Act, a company is deemed to be a holding company of another company if that other company is its subsidiary.

(7) For the purposes of this Act, a subsidiary is deemed to be a wholly owned subsidiary of another company if it has no members except that other company and a wholly owned subsidiary of that other company and its or their nominees.

(8) Where in this Act, reference is made to days within which anything is to be done, Saturdays, Sundays and public holidays must be excluded in calculating the days.

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2 General application of Act

This Act applies to every company incorporated under this Act, every external company and, save as is otherwise provided in this Act, to every existing company.

3 Application of Act restricted

This Act does not apply to-

(a) any company the formation, registration and management of which is governed by any law relating to building societies, friendly societies, including pension funds, within the meaning of the Pension Funds Act, 1956 (Act 24 of 1956), trade unions and employers' organisations, or co-operative societies or companies, save in so far as may be otherwise provided in that law;

(b) any company or external company or society which is subject to any law relating to banks or insurance companies or societies in so far as that law is inconsistent with this Act.

CHAPTER 2
ADMINISTRATION OF ACT (ss 4-19)

PART 1
COMPANIES REGISTRATION OFFICE AND REGISTRAR (ss 4-10)

4 Companies Registration Office and register

(1) The Companies Registration Office established in Windhoek under section 5 of the repealed Act continues to exist and is the Companies Registration Office for the purposes of this Act.

(2) Notwithstanding subsection (1), the Minister may by notice in the *Gazette*, declare any other place to be a Companies Registration Office for the purposes of this Act.

(3) The Registrar must, in the Companies Registration Office, keep a register of companies in which must be recorded the registration of any company and any other matter for which provision is made in this Act.

(4) The register of companies kept by the Registrar under the repealed Act is deemed to be and to form part of the register of companies to be kept in the Companies Registration Office.

5 Seal of the Companies Registration Office

There is a seal of the Companies Registration Office and the impression of that seal must be judicially noticed in evidence.

6 Appointment of Registrar, Deputy Registrar and delegation of power

(1) The Minister must, subject to the laws governing the public service, appoint a Registrar of Companies, who must-

(a) exercise the powers and perform the duties assigned to the Registrar by this Act;

(b) subject to the directions of the Minister, be responsible for the administration of the Companies Registration Office; and

(c) if authorised by the Minister in writing and subject to any conditions which the Minister may determine, exercise any power and perform any duty assigned to the Minister by sections 14, 266(1), 267, 269, 271(1)*(b)*, 280 and 335(7).

(2) The Minister may, subject to the law governing the public service, appoint a Deputy Registrar, who must, subject to the control of the Registrar, exercise any

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power or carry out any duty granted or assigned to the Registrar by this Act, and, when the office of Registrar is vacant or when the Registrar is absent or is for any other reason unable to perform his or her functions, the Deputy Registrar must act temporarily in his or her place.

(3) The person holding office as Registrar of Companies under the repealed Act, is deemed to have been appointed as the Registrar of Companies under this Act.

(4) The Registrar may in writing delegate any of the powers and entrust any of the duties assigned to him or her by this Act, to any staff member, except for the powers and duties entrusted or assigned to him or her by section 10 and, in so far as they relate to giving notice in the *Gazette*, sections 30(3), 33(6), 49(5), 50(3)*(b)*(iii), 74(2) and (3), 98, 149(2) and 425(2).

7 Exemption from liability

(1) No act or omission by the Registrar or any staff member or other person in the employment of the State, having duties to perform under this Act, subjects the State, or the Registrar, or that staff member or person to any liability for any loss or damage sustained by any person in consequence of that act or omission unless that act or omission was done in bad faith or was due to a lack of reasonable care or diligence.

(2) An auditor, a liquidator, a judicial manager or a provisional judicial manager is not liable in respect of any opinion expressed or certificate given or report or statement made or statement, account or document certified by him or her in good faith in the ordinary course of his or her duties under this Act, unless it is proved that that opinion was expressed or that certificate was given or that report or statement was made or that statement, account or document was certified maliciously or negligently.

8 Inspection and copies of documents in Companies Registration Office

(1) Subject to subsection (4), any person may, on payment of the prescribed fee-

(a) inspect the documents lodged under this Act with the Registrar;

(b) obtain a certificate from the Registrar as to the contents or part of the contents of any document kept by him or her under this Act in respect of any company and which is open to inspection; or

(c) obtain a copy of or extract from that document.

(2) If the Registrar is satisfied-

(a) that an inspection, certificate, copy or extract is required on behalf of any foreign government; and

(b) that no fees are payable in the foreign country concerned in respect of that inspection, certificate, copy or extract required on behalf of the Government of Namibia,

no fee referred to in subsection (1) is payable.

(3) If the Registrar is satisfied that any inspection, certificate, copy or extract is required for purposes of research by or under the control of an institution for higher education, the Registrar may permit that inspection, or furnish that certificate or copy or an extract, without payment of those fees.

(4) No person may inspect a document referred to in subsection (1) or obtain a certificate as to the contents or part of the contents or obtain a copy of the document or an extract from the document, if the Registrar is satisfied that that document contains particular information or a particular fact concerning the affairs or business of a company, or of any of its subsidiaries, which information or fact the company has been prohibited under section 14(1) from disclosing or from stating on

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or in any document, or which information or fact the company has been exempted under that section from any obligation so to disclose or state.

(5) Subsection (4) does not apply to those portions of that document which do not contain or refer to or give any indication of the particular information or particular fact which the company has been prohibited or exempted from disclosing or stating.

9 Manner of payment of fees to Companies Registration Office

(1) The payment of all fees, additional fees, annual duty or other moneys payable to the Registrar as laid down by this Act must be effected in the prescribed manner.

(2) No document, form, return or notice in respect of which any fee or payment is determined under this Act, is complete unless proof of payment of the prescribed fee, additional fees, annual duty or other moneys has been delivered to the Registrar.

(3) Any fees, additional fees, annual duty and any other moneys payable under this Act to the Registrar are debts due to the State recoverable by the Minister in any competent court, and do, unless otherwise provided, accrue to the State Revenue Fund.

10 Annual report by Registrar

The Registrar must, in every calendar year, submit to the Minister a report containing information concerning the registration of companies of each type, their authorised capitals or numbers of shares, increases in and reductions of capital, prospectuses, windings-up, judicial managements, deregistrations and dissolutions of companies, additional fees collected, prosecutions and convictions under this Act and other matters which the Minister may direct.

PART 2
POWERS OF COURT AND PROCEDURE (ss 11-12)

11 Security for costs in legal proceedings by companies and bodies corporate

Where a company or other body corporate is the plaintiff or applicant in any legal proceedings, the Court may at any stage, if it appears by credible testimony that there is reason to believe that the company or body corporate or, if it is being wound up, the liquidator of the company, will be unable to pay the costs of the defendant or respondent if the defence of the latter is successful, require sufficient security to be given for those costs and may stay all proceedings until the security is given.

12 Copies of Court orders to be transmitted to Registrar and Master

Where any Court makes any order under this Act in relation to any company, the Registrar of the Court must, without delay, send a copy of the order to the Registrar and if that order relates to the winding-up or judicial management of any company, also a copy to the Master.

PART 3
REGULATIONS AND NOTICES (ss 13-15)

13 Regulations

(1) The Minister may, after consultation with the Minister responsible for Justice where appropriate, make regulations-

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(a) providing for the conduct and administration of the Companies Registration Office and prescribing the practice and procedure to be observed in that office;

(b) prescribing the practice and procedure to be observed in the office of the Master in connection with the winding-up and judicial management of companies;

(c) providing for the reproduction of any records in the Companies Registration Office or the office of the Master by microfilm, microcard, miniature photographic process or any other process deemed suitable by the Minister;

(d) providing for the use for official purposes and the admissibility in evidence in any proceedings, whether in a court of law or otherwise, of any reproduction contemplated in paragraph *(c)*;

(e) providing for the keeping and preservation of any records, or any reproduction contemplated in paragraph *(c)*, in the Companies Registration Office or the office of the Master, the removal from those offices and preservation in any other place of those records or reproductions and prescribing the circumstances under which those records or reproductions may be destroyed;

(f) prescribing how records required under this Act to be kept by a company may be kept, and prescribing the circumstances under which those records may be destroyed;

(g) prescribing the procedure to be followed with respect to any matter in connection with the winding-up and judicial management of companies;

(h) prescribing the form and the contents of any return, notice or form provided for by this Act;

(i) prescribing when an additional copy or copies of documents to be lodged under the Act are to be lodged and whether the additional copy or copies are to be in the form of a copy or copies certified in the manner prescribed or are to be in duplicate original form;

(j) prescribing the matters in respect of which fees are payable and the tariff of those fees;

(k) prescribing the rate of the annual duty payable by companies and the additional fees payable for late payment of annual duty or payment of an amount less than the prescribed annual duty;

(l) providing for a table of fees, subject to taxation by the Master, which are payable to a liquidator as remuneration;

(m) prescribing a tariff of remuneration payable to any person performing on behalf of a liquidator any act relating to the winding-up of a company, and prohibiting the charging or recovery of remuneration at a higher tariff than the tariff so prescribed;

(n) as to any matter required or permitted by this Act to be prescribed by regulation; and

(o) generally, as to any matter which the Minister considers necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

(2) Any regulations made under subsection (1) may prescribe penalties for any contravention thereof or failure to comply therewith not exceeding a fine of N$2 000 or imprisonment for a period not exceeding six months or both that fine and imprisonment.

14 Prohibition of disclosure of, and exemption from obligation to disclose, certain information

(1) The Minister may-

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(a) by notice in writing prohibit any company from disclosing, or from stating on or in any document of the company;

(b) on the written application of a company to the Registrar, exempt it, subject to any conditions or restrictions which the Minister may impose, from the obligation to disclose, or to state on or in any of its documents,

particular information or a particular fact concerning the affairs or business of the company, or that of any of its subsidiaries, which the company would otherwise be required under this Act to disclose or to state on or in any document.

(2) Notwithstanding subsection (1) any company must, if the Registrar in a particular case in writing requires the company to do so, submit to the Registrar information which the company would otherwise have been required to submit to the Registrar in terms of this Act.

(3) The Minister must, when considering whether to impose a prohibition or grant an exemption under subsection (1), have regard to the right of the members of the company and of other persons to be informed of the state of affairs and the business and of the profit or loss of the company or of the company and its subsidiaries.

(4) Any company which contravenes a prohibition imposed under subsection (1)*(a)* and any director or officer of a company who contravenes that prohibition, commits an offence and is liable to a fine which does not exceed N$4 000 or to be imprisoned for a period which does not exceed one year or to both the fine and imprisonment.

(5) For the purposes of this section a company includes an external company.

15 Notices amending or adding to Schedules

(1) The Minister may by notice in the *Gazette* amend or add to the Schedules to this Act.

(2) Any notice referred to in subsection (1) may prescribe different provisions in respect of different types of companies.

(3) A notice referred to in subsection (1) amending or adding to-

(a) Table A or B contained in Schedule 1 does not apply in relation to any company in respect of which the Table in question applied immediately before the date on which the notice took effect;

(b) Schedule 4 does not apply in respect of any financial year of any company which ended before that date.

PART 4
STANDING ADVISORY COMMITTEE (ss 16-19)

16 Establishment of Standing Advisory Committee

(1) There is established a committee, to be known as the Standing Advisory Committee which consists of five members, appointed by the Minister, of whom-

(a) one must be a judge, retired judge or legal practitioner with specialised knowledge of corporate law and nominated by the Law Society of Namibia;

(b) one must be an academic involved in corporate law at a tertiary institution appointed by the Minister in consultation with the Minister responsible for Higher Education;

(c) one must be a chartered accountant nominated by an association which represents chartered accountants in Namibia; and

(d) two must be persons whom the Minister reasonably believes will be useful to the SAC.

(2) Notwithstanding subsection (1), a person is not eligible for appointment to the SAC if he or she-

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(a) is an unrehabilitated insolvent;
(b) has been convicted of an offence of which dishonesty is an element and sentenced to imprisonment without the option of a fine; or
(c) is considered a mentally ill person under the Mental Health Act, 1973 (Act 18 of 1973).

17 Functions and powers of SAC

(1) The functions of the SAC are to-
(a) make recommendations to the Minister with regard to any amendments to this Act which appears to it to be appropriate;
(b) advise the Minister on any matter referred to it by the Minister;
(c) consult or cooperate with any similar body or institution involved in corporate law development with a view to developing corporate law in Namibia; and
(d) make recommendations to the Minister responsible for Higher Education with regard to the establishment of a research component at a tertiary institution in Namibia.

(2) The SAC has power to-
(a) call to its assistance any persons whom or bodies which it considers necessary to investigate matters relating to corporate law;
(b) enter into an agreement with any person, including the State, a university, a research institution or any other person or body for the performance of any specific act or function or the rendering of specific services;
(c) enter into any other contract and agreement for a legitimate purpose.

(3) The SAC may establish subcommittees consisting of its members or other persons to assist the SAC in the performance of its functions and exercise of its powers under this Act.

[Editorial Note: In original *Gazette* subsec (3) was numbered as (2). It is assumed that (3) was intended.]

18 Tenure of office

(1) Subject to subsection (2), a member of the SAC holds office for a period of three years, but a member is eligible for re-appointment at the end of his or her term of office.

(2) A member of the SAC vacates office if he or she-
(a) ceases to hold the office by virtue of which he or she became a member or is no longer a member of the association or institution by virtue of which he or she became a member;
(b) has, without reasonable excuse, absented himself or herself from three consecutive meetings of the SAC;
(c) in writing, resigns from office; or
(d) becomes subject to a disqualification referred to in section 16(2).

(3) Notwithstanding subsection (1), the Minister may, after affording a member an opportunity to make representations on the matter, remove a member from office if the Minister has reasonable cause to believe that the member is no longer fit or able to discharge the functions of his or her office.

(4) If a member of the SAC vacates office under the circumstances referred to in subsection (2) or (3) or dies, the vacancy must be filled by the Minister in accordance with section 16(1).

(5) A member who is appointed under subsection (4) holds office for the remainder of the period for which his or her predecessor was entitled to hold office.

19 Administration, finance and procedures of the SAC

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(1) The Registrar is the secretary of the SAC and the administrative work of the SAC must be done by staff members of the Ministry who are made available for that purpose by the Permanent Secretary of the Ministry responsible for Trade and Industry.

(2) A member of the SAC or a person who has done work which is required to be done under this Act is entitled to be paid allowances or to be reimbursed for expenses incurred whilst doing that work, but no allowances are payable and no expenses will be reimbursed to a member or person who is entitled to be or has been compensated for doing that work by the State or by any other person or institution.

(3) The allowances or expenses payable or reimbursable under subsection (2) must be determined by the Minister after consulting the Minister responsible for Finance and those allowances or expenses must be paid out from money appropriated for that purpose by Parliament.

(4) The Minister must appoint one of the members of the SAC to be the first chairperson of the SAC and the members must elect a vice-chairperson from amongst themselves.

(5) Subsequent chairpersons of the SAC must be elected by members of the SAC from amongst themselves.

(6) The chairperson or in his or her absence, the vice-chairperson, must, in consultation with the other members of the SAC, determine the times and places at which meetings of the SAC are to be held but at least one meeting of the SAC must be held during each calendar year.

(7) Two members of the SAC may, in writing, request the chairperson to convene a meeting of the SAC and if a meeting is not convened within 30 days after that request, at least one member of the SAC may, in writing, request the Minister to convene a meeting of the SAC.

(8) The quorum for a meeting of the SAC is three members.

(9) The chairperson of the SAC must preside at meetings of the SAC and if he or she is absent from a meeting, the vice-chairperson must preside and if both are absent, the members who are present must elect one of those present to preside over the meeting.

(10) The decision of the majority of the members present at a meeting of the SAC is the decision of the SAC, and in the event of an equality of votes, the person presiding at the meeting has a casting vote in addition to his or her ordinary vote.

(11) Where a member of the SAC or a spouse, partner or business associate of the member has a direct or indirect financial interest in a matter which involves the SAC, the member must, at or before the meeting where the matter is to be discussed, advise the SAC of the nature and extent of the financial interest, and thereafter the SAC must determine whether or not the member can participate in discussions relating to that particular matter.

(12) The SAC must cause minutes of its proceedings to be recorded.

(13) The SAC or a committee appointed under section 16(2) may invite any person who is not a member of the SAC to participate in proceedings of the SAC or a committee of the SAC but that person has no right to vote at the proceedings.

(14) The Registrar may attend meetings of the SAC by virtue of his or her office but he or she is not entitled to vote on any matter which is before the SAC.

(15) The SAC may make rules governing the manner in which meetings are to be held and the procedure to be followed at a meeting.

(16) The SAC must, within three months after the end of each calendar year, submit to the Minister, an annual report on its activities and any matter which it has dealt with during that year.

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CHAPTER 3
TYPES AND FORMS OF COMPANIES, CONVERSIONS AND LIMITATIONS ON PARTNERSHIPS AND ASSOCIATIONS (ss 20-36)

PART 1
TYPES OF COMPANIES (ss 20-23)

20 Companies having share capital and companies not having share capital

(1) Two types of companies may be formed and incorporated under this Act, namely-

(a) a company having a share capital; or

(b) a company not having a share capital and having the liability of its members limited by the memorandum (in this Act called "a company limited by guarantee").

(2) A company having a share capital may be either a public company or a private company having shares of par value or shares of no par value.

(3) All companies limited by guarantee, including existing companies, are deemed to be public companies for the purposes of this Act.

21 Non-profit associations

(1) Any association-

(a) formed or to be formed for any lawful purpose;

(b) having as its object the promotion of religion, arts, sciences, education, charity, recreation, or any other cultural or social activity or communal or group interests;

(c) which intends to apply its profits, if any, or other income in promoting its object;

(d) which prohibits the payment of any dividend to its members; and

(e) which complies with the requirements of this section in respect to its formation and registration,

may be incorporated as a company limited by guarantee.

(2) The memorandum of an association referred to in subsection (1) must comply with the requirements of this Act and must, in addition, contain the following provisions-

(a) the income and property of the association however derived must be applied solely towards the promotion of its object, and no portion must be paid or transferred, directly or indirectly, by way of dividend, bonus, or otherwise, to the members of the association or to its holding company or subsidiary, but nothing contained in the memorandum prevents the payment in good faith of reasonable remuneration to any officer or employee of the association or to any member in return for any services actually rendered to the association;

(b) on its winding-up, deregistration or dissolution the assets of the association remaining after the satisfaction of all its liabilities must be given or transferred to some other association or institution or associations or institutions having objects similar to its object, to be determined by the members of the association at or before the time of its dissolution or, failing that determination, by the Court.

(3) Sections 55(1)*(c)* and 182 do not apply to an association referred to in subsection (1).

(4) Existing associations incorporated under section 21 of the repealed Act are deemed to have been formed and incorporated under this section.

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22 Meaning of "private company" and cessation of its privileges

(1) In this Act the expression "private company" means a company having a share capital and which by its articles-

(a) restricts the right to transfer its shares;

(b) limits the number of its members, other than 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 that employment, and have continued after the termination of that employment to be, members of the company, to 50; and

(c) prohibits any offer to the public for the subscription of any shares or debentures of the company.

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

(3) A private company must not alter its articles in such manner that they no longer include all of the provisions referred to in subsection (1) unless it is at the same time converted into a public company.

(4) If a private company fails to comply with its articles referred to in subsection (1), it immediately becomes subject to sections 306(5), 310 and 311(1) as if it were a public company, but, the Court, on being satisfied that the failure to comply with the articles was unintentional or due 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 appropriate terms and conditions, order that the company be relieved of those obligations which apply to a public company.

23 Incorporation of certain branches of foreign companies and non-profit associations

(1) Notwithstanding anything to the contrary contained in this Act, a branch, established in Namibia, of a company or other association of persons, incorporated outside Namibia, or an association of persons which is not incorporated and has its head office in a foreign country may be incorporated under section 21 if-

(a) the object in Namibia of that branch corresponds with the object of the company or association concerned;

(b) that branch complies with the requirements of section 21; and

(c) the whole of the business and all the property, rights and obligations in Namibia of the company or association concerned will, on incorporation under section 25, be transferred in due form to vest in and be binding on the company so incorporated.

(2) Notwithstanding anything to the contrary in any law-

(a) no transfer or stamp duty is payable in respect of the transfer of property contemplated in subsection (1)*(c)*; and

(b) any licence, exemption, permit, certificate or authority held in terms of any law by the company or association concerned in respect of its business or property in Namibia will, with effect from the date of incorporation of the branch concerned as a company because of subsection (1), for the purposes of that law be deemed to be held by the company so incorporated in respect of that business or property.

(3) This Act in so far as it relates to external companies does not apply in the case of an external company a branch of which has been incorporated as a company by virtue of subsection (1).

PART 2
CONVERSION OF COMPANIES (ss 24-31)

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24 Conversion of public company, having share capital into private company, and *vice versa*

(1) With the sanction of a special resolution and on compliance with the requirements of sections 22 and 28 and with the other requirements of this Act in respect of private companies, a public company having a share capital may convert itself into a private company having a share capital.

(2) With the sanction of a special resolution and on compliance with the other requirements of this Act in respect of public companies, a private company having a share capital may convert itself into a public company having a share capital.

25 Conversion of company into incorporated non-profit association or company limited by guarantee

With the sanction of a special resolution and on compliance with the requirements of section 28 and the other requirements of this Act in respect of non-profit associations and companies limited by guarantee, any company may convert itself into a non-profit association under section 21 or into a company limited by guarantee, except that a company having a share capital may only so convert itself if its share capital is cancelled.

26 Conversion of company limited by guarantee into company having share capital

With the sanction of a special resolution and on compliance with the requirements of section 28 and the other requirements of this Act in respect of companies having a share capital, a company limited by guarantee, excluding a non-profit association under section 21, but including an existing company limited by guarantee having a share capital, may convert itself into a company having a share capital.

27 Conversion of unlimited company

(1) An unlimited company referred to in section 25(1) of the repealed Act, which still exists at the commencement of this section and which has not been converted as contemplated in section 25(1) of that Act, may with the sanction of a special resolution and on compliance with section 28 and the other requirements of this Act, convert itself into any type or form of company provided for by this Act, but, that conversion does not affect the liability of its members in respect of any debts, liabilities or obligations incurred or contracts entered into by, with or on behalf of the company before the conversion.

(2) Until the conversion referred to in subsection (1) takes place-

(a) section 25(2) of the repealed Act continues to apply to that unlimited company as if that section has not been repealed; and

(b) the obligation imposed in terms of section 25(3) of that Act, in the case of an unlimited company which is a private company, continues to bind that company as from the date of commencement of this section.

28 Notice of intended conversion of company

(1) Any company intending to convert itself into another type or form of company must, not less than 15 days before the date of the meeting convened for the purpose of passing the required special resolution, give notice in the *Gazette* of that intention, specifying the particulars of the proposed conversion and the date and place of the meeting.

(2) Subsection (1) does not apply to any private company having a share capital intending to convert itself into a public company having a share capital.

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(3) If any company intending to convert itself into another type or form of company is a public company having a share capital, it must, in addition, send the notice referred to in subsection (1) to every creditor of the company by registered post not less than 15 days before the date of the meeting.

29 Contents and form of articles on conversion

When the articles of any company are to be altered for the purpose of converting the company into another type or form of company under section 24, 26 or 27, sections 64(2) and 65 in so far as they relate to the contents and form of articles, do, with the necessary changes, apply to the articles of that company.

30 Registration of conversion

(1) The Registrar must, on the registration of the special resolution made under this Part and on payment of the prescribed fee and on being satisfied that the requirements of this Act have been complied with, register any conversion in the register of companies and must issue an amended certificate of incorporation, stating the date of the first registration of the company, its former name, the name as altered and the nature of the conversion.

(2) Any conversion referred to in subsection (1) takes effect as from the date of the issue of the amended certificate of incorporation as contemplated in subsection (1).

(3) The Registrar must give notice in the *Gazette* of the conversion of a company into another type or form of company.

31 Effect of conversion and alteration of other registers

(1) The conversion of a company into another type or form of company under this Act does not affect the corporate existence of the company as from the date of its first registration, nor any of its rights, debts, liabilities, obligations incurred or contracts entered into by, with, or on its behalf at any time nor render defective any legal proceedings by or against the company, and any legal proceedings that could have been continued or commenced by or against it before the conversion, may, notwithstanding the conversion, be continued or commenced against the company as converted.

(2) If as a result of the conversion of a company into another type or form of company, any alteration in its name pursuant to the requirements of this Act is necessary, the alteration must not be regarded as a change of name for the purposes of section 50(1).

(3) On the production by a company of an amended certificate of incorporation or a certified copy to any registrar or other officer charged with the maintenance of a register under any law, and on compliance with the requirements of that registrar or officer as to the form of application, if any, and the payment of any fee prescribed by that law, if any, that registrar or other officer must make in his or her register all those alterations which are necessary because of the conversion of the company into another type or form of company.

PART 3
CONVERSION OF COMPANIES AND CLOSE CORPORATIONS (ss 32-34)

32 Conversion of company into close corporation

When a company is converted into a close corporation in terms of the Close Corporations Act, 1988 (Act 26 of 1988), the Registrar must, simultaneously with the registration of the founding statement of the close corporation by the Registrar of Close Corporations in terms of that Act, cancel the registration of the memorandum and articles of association of the company concerned.

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33 Conversion of close corporation into company

(1) A close corporation may, with the written consent of all its members, be converted into a company, as long as every member of the close corporation becomes a member of that company.

(2) A close corporation to be converted into a company as contemplated in subsection (1) may, subject to this section, apply to be incorporated as a company under Chapter 4 of this Act.

(3) If an application referred to in subsection (2) complies with Chapter 4 and subsection (4)-

(a) the Registrar must register the memorandum and articles in accordance with section 68; and

(b) the Registrar must satisfy himself or herself that simultaneously with that registration, the registration of the founding statement of the close corporation concerned is cancelled in accordance with the Close Corporations Act, 1988 (Act 26 of 1988).

(4) An application referred to in subsection (2) must be accompanied by-

(a) a statement of the paid-up share capital, if any, for an amount not greater than the excess of the fair value of the assets to be acquired by the company, over the liabilities to be assumed by the company because of the conversion, but, the company may treat any portion of that excess not reflected as paid-up share capital, as distributable reserves; and

(b) a statement by the close corporation's accounting officer, based on the performance of his or her duties under the Close Corporations Act, 1988, that he or she is not aware of any contravention of the said Act by the close corporation or its members or of any circumstances which may render the members of the close corporation together with the close corporation jointly and severally liable for the corporation's debts.

(5) Where a conversion under this section takes place, the shares or the nominal value of the shares to be held in the company by the members individually, need not necessarily be in proportion to the members' interests as stated in the founding statement of the close corporation concerned.

(6) The Registrar must give notice in the *Gazette* of the conversion of a close corporation into a company.

34 Effect of conversion of close corporation into a company

(1) On the registration of a company converted from a close corporation, all the assets, liabilities, rights and obligations of the corporation vest in the company.

(2) Any legal proceedings instituted before the registration by or against the close corporation, may be continued by or against the company, and any other thing done by or in respect of the corporation, is deemed to have been done by or in respect of the company.

(3) The juristic person which existed as a close corporation before the conversion must, notwithstanding the conversion, continue to exist as a juristic person but in the form of a company.

(4) On the production by a company which has been converted from a close corporation of a certificate of incorporation referred to in section 70 to any registrar or other officer charged with the maintenance of a register under any law, and on compliance with the requirements of that registrar or officer as to the form of application and the payment of any required fee, that registrar or other officer must make in his or her register all those alterations as are necessary because of the change effected by the conversion of the close corporation into a company.

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(5) No transfer or stamp duty is payable in respect of alterations made in a register under subsection (4).

PART 4
LIMITATIONS ON PARTNERSHIPS AND ASSOCIATIONS FOR GAIN (ss 35-36)

35 Prohibition of associations or partnerships exceeding 20 members and exemption

(1) A company, association, syndicate or partnership consisting of more than 20 persons must not be permitted or formed in Namibia for the purpose of carrying on any business that has as its object the acquisition of gain by the company, association, syndicate or partnership, or by its individual members, unless it is registered as a company under this Act, or was formed in terms of the repealed Act or any law which was in existence before the repealed Act.

(2) The Minister may by notice in the *Gazette*-

(a) exclude any association, syndicate or partnership, formed-

(i) by persons qualified to carry on any organised professions designated by the Minister in that notice;

(ii) for the purpose of carrying on any profession or any combinations of any professions designated by the Minister,

from subsection (1);

(b) include or exclude any other company, association, syndicate or partnership in or from subsection (1).

36 Unregistered associations carrying on business for gain not corporate bodies

No association of persons formed after the commencement of this Act for the purpose of carrying on any business that has for its object the acquisition of gain by the association or by the individual members, is a body corporate, unless it is registered as a company under this Act, or was formed in terms of the repealed Act or any law which was in existence before the repealed Act.

CHAPTER 4
FORMATION, OBJECTS, CAPACITY, POWERS, NAMES, REGISTRATION AND INCORPORATION OF COMPANIES, INCIDENTAL MATTERS AND DEREGISTRATION (ss 37-79)

PART 1
FORMATION, CAPACITY, POWERS AND OBJECTS (ss 37-46)

37 Mode of forming company

Any seven or more persons, where the company to be formed is a public company, or any two or more persons, where the company to be formed is a private company, or any one person, where the company to be formed is a private company with a single member, may, for any lawful purpose, form a company having a share capital or a company limited by guarantee and secure its incorporation by complying with the requirements of this Act in respect of the registration of the memorandum and articles.

38 Capacity, powers and objects

(1) Subject to this section a company has the capacity and powers of a natural person of full capacity in so far as a juristic person is capable of having that capacity or of exercising those powers.

(2) The memorandum of a company-

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(a) may state the objects of a company;

(b) must state the objects of the company where it is so required by this Act or any other law,

but, where the objects of a company, or where any exclusion or qualification in terms of section 39 with regard to the objects or powers of the company, including an existing company, is stated, it only serves to restrict the capacity and powers of the company internally as between the company, its directors and its members, unless a person dealing with the company had actual knowledge or ought reasonably to have known of that statement of the objects of the company or of any exclusion or qualification in terms of section 39 with regard to the objects or powers of the company stated in the company's memorandum.

(3) A non-profit association incorporated under section 21 must state its object in its memorandum as provided in subsection (1)*(b)* of that section.

(4) Subject to subsections (2)*(b)* and (3), any existing company may at any time after the commencement of this Act, in accordance with section 62(4), by resolution alter its memorandum in order to remove any objects stated in its memorandum and that alteration becomes effective on the date of registration of the resolution.

(5) Subsection (2) must not be construed as in any way limiting the right of a company to-

(a) claim damages from a director, officer or agent of the company for a transaction concluded; or

(b) obtain a restraining order against a director, officer or agent from entering into a proposed transaction,

where that transaction falls outside the objects or the powers of the company.

39 Ancillary objects and powers of company

(1) Where the objects of a company are stated in its memorandum, there must be included in those objects unlimited objects ancillary to those stated objects except those specific ancillary objects which are expressly excluded in its memorandum.

(2) Subject to any limitation imposed by this Act, a company referred to in subsection (1) has plenary powers, including the common powers stated in Schedule 2 to this Act, to enable it to realise its objects and ancillary objects, except those specific powers which are expressly excluded or qualified in its memorandum.

40 Dealings between company and other persons

A company or a guarantor of an obligation of a company may not assert against a person dealing with the company or with a person who has acquired any property, rights or interests from the company that-

(a) a person named as a director of the company in the most recent return lodged with the Registrar under section 224-

(i) is not a director of the company;

(ii) has not been duly appointed; or

(iii) does not have authority to exercise a power which a director of a company carrying on business of the kind carried on by the company customarily has authority to exercise;

(b) a person held out by the company as a director, officer or agent of the company-

(i) has not been duly appointed; or

(ii) does not have authority to exercise a power which a director, officer or agent of a company carrying on business of the kind carried on by the company customarily has authority to exercise;

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(c) a person held out by the company as a director, officer or agent of the company with authority to exercise a power which a director, officer or agent of a company carrying on business of the kind carried on by the company does not customarily have authority to exercise, does not have authority to exercise that power;

(d) a document issued on behalf of a company by a director, an officer or agent of the company with actual or usual authority to issue the document is not valid or genuine,

unless that person has, or ought reasonably to have, by virtue of his or her position with or relationship to the company, knowledge of the matters referred to in paragraphs *(a)*, *(b)*, *(c)* or *(d)*, as the case may be.

41 No constructive knowledge

A person is not affected by, or deemed to have notice or knowledge of the contents of, the memorandum or articles of, or any other document relating to a company, merely because the memorandum, articles or other document-

(a) is registered by, or lodged with, the Registrar; or

(b) is available for inspection or kept at the registered office of a company in accordance with this Act.

42 Power as to pre-incorporation contracts

Any contract made in writing by a person professing to act as agent or trustee for a company not yet incorporated is capable of being ratified or adopted by or otherwise made binding upon and enforceable by that company after it has been duly incorporated as if it had been duly incorporated at the time when the contract was made and that contract had been made without its authority, but, the memorandum on its registration, must contain a statement with regard to the ratification or adoption of or the acquisition of rights and obligations in respect of that contract, and that two copies of that contract, one of which must be certified by a notary public, have been lodged with the Registrar together with the lodgement for registration of the memorandum and articles of the company.

43 Loans made and security provided by subsidiary

(1) For the purposes of this section-

(a) "funds" include money, shares, debentures or any other property;

(b) "loan" includes any credit extended by a company, if the debt concerned is not payable or being paid in accordance with the normal business practice of the company in respect of the payment to it of other debts of the same kind;

(c) "security" includes a guarantee.

(2) If-

(a) any funds of a company were employed directly or indirectly, whether through the instrumentality of its subsidiary or otherwise, in a loan to any company which is its holding company or which is a subsidiary of that holding company but not a subsidiary of itself; or

(b) a company directly or indirectly, whether through the instrumentality of its subsidiary or otherwise, provided any security to another person in connection with an obligation of any company which is its holding company or which is a subsidiary of that holding company but not a subsidiary of itself,

particulars of that loan or security, as the case may be, must be stated in the annual financial statements of the company for every year during which that loan or security was in operation.

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(3) Subsection (2) does not apply in respect of loans made or security provided in good faith in the ordinary course of the business of a company actually and regularly carrying on a business a substantial part of which is the making of loans or the provision of security, as the case may be.

(4) Any director or officer of a company who fails to take all reasonable steps to secure compliance with subsection (2) commits an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment.

(5) In any prosecution against any director or officer of a company under subsection (4), the defence referred to in section 292(5) is, with the necessary changes, available to him or her.

(6) Any director or officer of a company who authorises or permits or is a party to the making of any loan or the provision of any security contemplated in subsection (2)*(a)*, is liable to the company for any damage directly arising from the making of that loan or the provision of that security on terms or conditions which, at the time of the making of that loan or the provision of that security, were not fair to the company or failed to provide reasonable protection for its business interests.

(7) A director or officer who has paid any amount as damages by virtue of subsection (6) may recover that part of that amount as the Court considers equitable, from any other director or officer who is in terms of that subsection also liable to the company for the same damage.

(8) For the purposes of subsections (6) and (7), "director or officer" of a company includes any director or officer of a holding company of that company, and for the purposes of recovery of the damages as are contemplated in subsection (6) sections 274, 275 and 276 do, with the necessary changes, apply as if a director or officer or past director or officer of that holding company was a director or officer or past director or officer of that company, respectively.

(9) In enquiring, for the purposes of subsection (6), whether or not any terms or conditions were fair to the company or failed to provide reasonable protection for its business interests, regard must be had, without prejudice to the generality of the enquiry, to-

(a) whether, in view of the financial position of the parties, the loan should have been made or the security should have been provided at all;

(b) in the case of a loan, whether security has been or should in the circumstances have been provided, and whether any security provided is adequate;

(c) the consideration for the loan or security, including any interest or other benefit received;

(d) the term of the loan or security; and

(e) the manner of repayment of the loan or discharge of the security.

(10) This section does not derogate from any other rule of law relating to the liability of a director or officer of a company.

(11) This section does not apply to anything done by a company with the consent of all its members.

44 No financial assistance to purchase shares of company or holding company

(1) A company must 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 of the company, or where the company is a subsidiary company, of its holding company.

(2) Subsection (1) must not be construed as prohibiting-

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(a) the lending of money in the ordinary course of its business by a company whose main business is the lending of money;

(b) the provision by a company, in accordance with any scheme for the time being in force, of money for the subscription for or purchase of shares of the company or its holding company by trustees 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; or

(c) the making by a company of loans to persons, other than directors, in the employment of the company with a view to enabling those persons to purchase or subscribe for shares of the company or its holding company to be held by themselves as owners; or

(d) the provision of financial assistance for the acquisition of shares in a company or its holding company-

(i) with the prior approval of the particular transaction given by special resolution at a general meeting; and

(ii) if there are reasonable grounds for believing that-

(aa) the company is, or would after payment be, able to pay its debts as they become due in the ordinary course of business; or

(bb) the consolidated assets of the company fairly valued would after the payment be more than the consolidated liabilities of the company.

(3) Any company which and every director or officer of that company who contravenes subsection (1), commits an offence and is liable to a fine which does not exceed N$4 000 or to be imprisoned for a period which does not exceed one year or to both the fine and imprisonment.

(4) For the purpose of subsection (3) "director", in relation to a company, includes any person who at the time of the alleged contravention was a director of the company.

(5) It is a defence in any proceedings under this section against any director or officer of a company if it is proved that the accused was not a party to the contravention.

45 Company not to be member of its holding company

(1) Save as is provided in subsection (2), if shares in a company are acquired in accordance with section 95 by its subsidiary, for so long as those shares are held by the subsidiary-

(a) no voting rights attaching to those shares may be exercised; and

(b) the votes able to be cast at any meeting of shareholders must be reduced by the votes in respect of shares held by the subsidiary,

but this subsection does not apply where the shares are acquired in a subsidiary of the holding company which is also a subsidiary of the acquiring company.

(2) Subsection (1) does not apply in relation to a subsidiary acting in a representative capacity or as a trustee, unless the holding company or its subsidiary 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 a business which includes the lending of money.

(3) In relation to a company limited by guarantee which is a holding company, the reference in this section to shares of a company, must be construed as including a reference to the interest of its members as such, whatever the form of that interest.

(4) For the purposes of this section "acquire" includes any shares that the subsidiary becomes entitled to in any other manner.

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46 No division into interests, rights to profits or shares in guarantee companies

(1) In the case of a company limited by guarantee, every provision in the memorandum or articles or in 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 is void.

(2) Any provision in the memorandum or articles or in any resolution of a company limited by guarantee, purporting to divide the undertaking of the company into shares or interests is void.

PART 2
NAMES OF COMPANIES (ss 47-58)

47 Names of companies not to be undesirable

The Registrar must not register a memorandum containing a name for a company to be incorporated if the Registrar reasonably believes that the name is undesirable.

48 Reservation of name

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

(2) If the name of a company or a shortened form thereof is in a language other than the official language, a translation of the name in the official language, in so far as it is possible, must be submitted to the Registrar together with the application referred to in subsection (1).

(3) A reservation referred to in subsection (1) is for a period not exceeding two months or any extended period, not exceeding in all three months, which the Registrar, on payment of the prescribed fee, may in the special circumstances of any case allow.

49 Registration of shortened form of name or defensive name

(1) The memorandum of any company to be incorporated may contain one shortened form of the company's name, and any company may, on the prescribed form and on payment of the prescribed fee, apply to the Registrar for the registration of that shortened form of its name, if the shortened form of the name is not undesirable.

(2) Any person may on application on the prescribed form and on payment of the prescribed fee apply to the Registrar-

(a) to register any name as a defensive name; or

(b) to renew the registration of a name as a defensive name,

which the Registrar reasonably believes is not undesirable and in respect of which that person has furnished proof, to the satisfaction of the Registrar, that he or she has a direct and material interest.

(3) If the defensive name referred to in subsection (2) is in a language other than the official language, a translation in the official language, in so far as it is possible, must be submitted to the Registrar together with the application referred to in that subsection.

(4) If the Registrar grants any application referred to in subsection (2), he or she must register the name in question as a defensive name for a period not exceeding two years or renew the registration of the name in question as a defensive name for a period not exceeding two years, as the case may be.

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(5) The Registrar must register a shortened form of the name of the company concerned or a defensive name, and where a registration is effected pursuant to an application under subsection (1) or (2), the Registrar must give notice of the registration in the *Gazette*.

50 Change of name and effect

(1) Any company may by special resolution change its name to a name which the Registrar reasonably believes not to be undesirable.

(2) Where a company changes its name, it must at the same time, if a shortened form of the name of the company has been registered under section 49(5), and that shortened form is no longer applicable to the name of the company as changed, apply on the prescribed form and on payment of the prescribed fee-

(a) to change that shortened form of the name to a new shortened form of the name approved by the Registrar; or

(b) to deregister that former shortened form of the name of the company.

(3) Where the name or shortened form of the name of a company is changed-

(a) the company must, if that changed name is not in the official language, submit to the Registrar, in so far as it is possible, a translation of the name in the official language; and

(b) the Registrar must-

(i) enter the new name or shortened form of the name in the register in place of the former name or shortened form of the name;

(ii) issue a certificate of incorporation altered to meet the circumstances of the case or a certificate that the new name or shortened form of the name, has been entered in the register in place of the former name or shortened form of the name; and

(iii) give notice of the change of name or shortened form of the name in the *Gazette*.

(4) A change of name of a company does not affect any rights, debts, liabilities or obligations of the company, nor render defective any legal proceedings by or against the company, and any legal proceedings that could have been continued or commenced by or against it prior to that change of name, may, notwithstanding that change of name, be continued or commence by or against the company under its new name.

(5) On the production by a company of an amended certificate of incorporation or a certificate of the change of the name of that company or a certified copy to any registrar or other officer charged with the maintenance of a register under any law, and on compliance with the requirements of that registrar or officer as to the form of application, if any, and the payment of any fee prescribed by that law, if any, that registrar or other officer must make in his or her register all alterations which are necessitated by the change of the name of the company.

51 Order to change name

(1) If within a period of one year after the registration of any memorandum or shortened form of a name of a company or after the registration or the renewal of the registration of a name referred to in section 49(2) or after the date of an amended certificate of incorporation or a certificate of change of name or shortened form of a name referred to in section 50(2), it appears that the name contained in the memorandum or shortened form of that name or the name referred to in section 49(2) or the changed name or the shortened form of that changed name referred to in the last-mentioned certificate is undesirable, the Registrar must within that period order the company concerned or the person referred to in section 49(2) to change the name or shortened form of the name.

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(2) If within a period of one year after the registration of any memorandum or shortened form of a name of a company or a name referred to in section 49(2) or after the date of an amended certificate of incorporation or a certificate of change of name or shortened form of a name referred to in section 50(2), any person lodges an objection in writing with the Registrar against the name contained in the memorandum or shortened form of that name or the name referred to in section 49(2) or the changed name or the shortened form of that changed name referred to in the last-mentioned certificate, on the grounds that that name or shortened form of a name is calculated to cause damage to the objector or is undesirable, the Registrar may, if he or she is satisfied that the objection is sound, order the company concerned or the person referred to in section 49(2) to change the said name or shortened form of a name.

(3) Within a period of two years after the registration of any memorandum or shortened form of a name of a company or a name referred to in section 49(2) or after the date of an amended certificate of incorporation or a certificate of change of name or shortened form of a name referred to in section 50(2), a person who has not lodged any relevant objection in terms of subsection (2) may apply to the Court for an order directing the company concerned or the person referred to in section 49(2) to change the said name or shortened form on the grounds that the said name or shortened form is undesirable or is calculated to cause damage to the applicant, and the Court may on that application make an appropriate order.

(4) If, at any time, the Registrar reasonably believes that the name of a company, or the shortened form of a name of a company, gives so misleading an indication of the nature of its activities as to be calculated to deceive the public, the Registrar may order the company concerned to change its name or the shortened form of its name, as the case may be.

52 Provisions as to order to change name

(1) The order issued by the Registrar under section 51, including the reasons for that an order, for the change of a name of a company or a shortened form of a name of a company or a name referred to in section 49(2) must be issued by the Registrar in writing and sent by registered post to the company at its registered office, or to the person referred to in section 49(2) at that person's last-known address, and must require that company or person-

(a) to comply with the order within two months from the date of its issue; or

(b) to give reasons within two months from the date of its issue to the Registrar as to why that name or shortened form of a name of a company should not be changed.

(2) The Registrar may, on good cause shown, extend the period of two months referred to in subsection (1) for any further period not exceeding two months.

(3) If a company or a person has submitted reasons as to why the name or shortened form of a name of a company should not be changed, the Registrar may, after consideration of those reasons, either withdraw that order or make a final order and subsections (1)*(a)* and (2) do, with the necessary changes, apply with regard to that final order.

(4) If a company or person referred to in subsection (1), as the case may be, fails to comply with any order issued by the Registrar under subsection (1) or (3) within the period or extended period referred to in subsection (1) or (2), as the case may be, or if that company or person has applied to Court for relief under section 54 and the Court has upheld the Registrar's order and that company or person fails to comply with that order within two months from the date of the final decision by the

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Court, that company or person commits an offence and is liable to a fine which does not exceed N$40 for every day during which the contravention continues.

53 Registrar may call for affidavits and shall give reasons for decisions as to names

(1) The Registrar may for the purposes of any decision as to any name or shortened form of a name referred to in section 47, 48, 49, 50 or 51 call for any evidence on affidavit or otherwise which is necessary.

(2) The Registrar must with regard to any decision or order of the Registrar under section 47, 48, 49 or 50 furnish written reasons for that decision or order.

54 Recourse to Court in matters as to names

Any company or person aggrieved by any decision or order of the Registrar under section 47, 48, 49, 50 or 51 may, within one month after the date of that decision or order, apply to the Court for relief, and the Court has power to consider the merits of that matter, to receive further evidence and to make any appropriate order.

55 Formal requirements as to names of companies

(1) Subject to this section-

(a) the name of a public company having a share capital must include, as its last word, the word "Limited";

(b) the name of a private company having a share capital must include as its last two words, the words "(Proprietary) Limited";

(c) the name of a company limited by guarantee must include-

(i) the word "Limited" as its last word; and

(ii) the statement "(Limited by Guarantee)" subjoined to that name.

(2) There must be included in the name of any external company, the memorandum of which has been registered under this Act, the statement "Incorporated in ... (stating the name of the foreign country concerned)" subjoined to that name.

(3) The name of a non-profit association incorporated under this Act must not include the word and statement referred to in subsection (1)*(c)*, but the statement "Non-profit association incorporated under section 21" must be included in and be subjoined to that name, but an association incorporated not for gain under the repealed Act may instead of that statement include in and subjoin to its name the statement "Incorporated Association not for Gain".

(4) The name of a private company having a share capital and the memorandum of which contains the provision referred to in section 60*(b)*, must not include the words referred to in subsection (1)*(b)*, but must include the word "Incorporated", as its last word, in its name.

(5) If a company is being wound up by the Court or voluntarily or is placed under judicial management, the statement "In Liquidation", "In Voluntary Liquidation" or "Under Judicial Management", as the case may be, must be included in and be subjoined to the name of the company concerned and if the winding-up order or judicial management order is discharged, or the voluntary winding-up ceases, that statement must be omitted from the name of that company.

(6) The addition to or omission from the name of any company of the words or statements provided for by this section as a result of-

(a) the conversion of a company into another type or form of company;

(b) the insertion in or deletion from the memorandum of a private company of the provision referred to in section 60*(b)*; or

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(c) the discharge of a winding-up order or judicial management order or the cessation of voluntary winding-up,

must not be taken to be a change of name for the purposes of section 50(1), except that subsections (2), (3) and (4) of that section apply in the case of that addition or omission as if it were a change of name.

(7) If a company is being wound up by the Court, or voluntarily, or is placed under judicial management, the Registrar must, on receipt of a copy of the relevant order of Court or on registration of a special resolution for the voluntary winding-up of the company in terms of section 354, alter the register to include in and subjoin to the name of the company concerned the statement "In Liquidation", "In Voluntary Liquidation" or "Under Judicial Management", as the case may be, and if the winding-up order or judicial management order is discharged, or the winding-up ceases, the Registrar must likewise on receipt of a copy of the relevant order of Court, alter the register to omit that statement from the name of the company concerned.

(8) If any company fails to comply with subsection (1), (2), (3), (4), (5) or (6) or in any way uses a name in contravention of any of those provisions, it commits an offence and is liable to a fine which does not exceed N$400.

56 Use and publication of name by company

(1) Every company must-

(a) display its name on the outside of its registered office and every office or place in which its business is carried on, in a conspicuous position and in characters easily legible;

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

(c) have its name and registration number mentioned in legible characters 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 letters, delivery notes, invoices, receipts, and letters of credit of the company.

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

(a) the abbreviations "Ltd", "Pty", "Inc", "Co" and "&" may be used for the words "Limited", "Proprietary", "Incorporated", "Company" and "and" in a company's name; and

(b) a company must not use the shortened form of its name unless it is used in conjunction with its name.

(3) A director or officer of a company or a person acting on its behalf must not-

(a) use or authorise the use of any seal purporting to be a seal of the company whereon its name is not so engraved as contemplated in subsection (1)*(b)*;

(b) issue or authorise the issue of any notice or other official publication of the company, or sign or authorise 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 the manner contemplated in subsection (1)*(c)*; or

(c) issue or authorise the issue of any letter, delivery note, invoice, receipt or letter of credit of the company wherein its name is not mentioned in the manner contemplated in subsection (1)*(c)*.

(4) Any director, officer or person referred to in subsection (3) who contravenes that subsection commits an offence and is liable to a fine which does not exceed N$400.

(5) A director, officer or person referred to in subsection (3) who contravenes that subsection is further liable to the holder of the bill of exchange, promissory

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note, cheque or order for money or goods for the amount stated on the document if non-compliance with subsection (3) results in default of payment by the company.

(6) A company which contravenes or fails to comply with subsection (1) commits an offence and is liable to a fine which does not exceed N$400.

57 Improper use of word "Limited" or "Incorporated" an offence

Any person trading or carrying on business under a name or title of which the word "Limited" or "Incorporated" is the last word, commits, unless the entity is incorporated under this Act or any other law, an offence and is liable to a fine which does not exceed N$40 for every day during which the contravention continues.

58 Savings provisions regarding certain existing name registrations

Any registration before the date of coming into operation of this Part in terms of a provision of the repealed Act of a name, or a translated name, of an existing company, or any shortened form of the name, in a language other than the official language, or of any name, translated name, or shortened form, of a company, containing a word or expression in the other language, is for the purposes of this Act-

(a) deemed to be proper registration under the corresponding provisions of this Act; and

(b) the use of that name, translated name or shortened form or any word or expression contained in that name, translated name or shortened form is deemed to be sufficient compliance with the requirements of sections 55 and 56(2)*(a)*.

PART 3
MEMORANDUM OF ASSOCIATION (ss 59-61)

59 Requirements for memorandum of association

(1) The memorandum of a company must state the purpose, referred to in section 37, for which it is to be formed and incorporated, describing the business which the company is to carry on, or, in the case of a non-profit association, the object it is to promote, and in addition-

(a) the name of the company;

(b) where the company in terms of section 38 elected to state or must state its objects-

(i) the objects of the company, stating the general nature of the business which it is contemplated the company will be entitled to carry on;

(ii) the specific ancillary objects, referred to in section 39(1), if any, which are excluded from the unlimited ancillary objects of the company;

(iii) the specific powers or part of any powers of the company, referred to in section 39(2), if any, which are excluded from the plenary powers or the powers set out in Schedule 2.

(2) If the company is to have a share capital, the memorandum must state-

(a) the amount of the share capital with which it is proposed to be registered and the division of the share capital into shares of a fixed amount;

(b) the number of shares if the company is to have shares of no par value; and

(c) the number of shares which each subscriber undertakes to take up, stated in words opposite his or her name, subject to the requirement that no subscriber may take less than one share.

(3) If the company is to be a company limited by guarantee, the memorandum must state-

(a) that the liability of the members is limited to the amount referred to in paragraph *(b)*; and

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(b) that each member undertakes to contribute to the assets of the company in the event of its being wound up while a member or within one year afterwards, for payment of the debts and liabilities of the company contracted before he or she ceases to be a member, and of the costs, charges and expenses of the winding-up, and for adjustment of the rights of the contributories among themselves, any amount which may be required, not exceeding a specified amount but not less than one Namibian dollar.

60 Memorandum may contain special conditions and provide for unlimited liability of directors

The memorandum of a company may, in addition to the requirements of section 59-

(a) contain any special conditions which apply to the company, and the requirements, if any, additional to those provided for in this Act for the alteration of those conditions;

(b) in the case of a private company, provide that the directors and past directors are liable jointly and severally, together with the company, for debts and liabilities of the company which are or were contracted during their periods of office, in which case those directors and past directors are so liable.

61 Form and signing of memorandum

(1) The memorandum must be and be completed in the form prescribed.

(2) The memorandum of a public company must be signed by not less than seven subscribers and of a private company by one or more subscribers, stating their full names, occupations and residential, business and postal addresses, and each subscriber must sign the memorandum in the presence of at least one witness who must attest the signature and state his or her residential, business and postal address.

PART 4
ALTERATION OF MEMORANDUM (ss 62-63)

62 Alteration of memorandum as to special conditions and other provisions

(1) Subject to subsection (3) and unless prohibited by the condition itself, a special condition contained in the memorandum may be altered by special resolution or in the manner specified in that special condition.

(2) Any private company may at any time by special resolution and with the written consent of each person being then a director of the company, incorporate in its memorandum the provision referred to in section 60*(b)*.

(3) A private company may by special resolution alter or remove the provision referred to in section 60*(b)* and contained in its memorandum provided the alteration or removal is confirmed by the Court if it is satisfied that that alteration or removal would be just and equitable.

(4) Any other provision of the memorandum of a company may be altered by special resolution.

(5) Nothing in this section authorises any alteration of a memorandum constituting a variation or abrogation of the special rights of any class of members, except that those rights may be altered or abrogated in the manner provided for in the memorandum for that variation or abrogation.

63 Lodgment of altered memorandum

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(1) The Registrar may, in writing, request any company which has lodged a special resolution altering its memorandum, to lodge, within 14 days after the date of the request, a copy of the memorandum as so altered.

(2) Any company which fails to comply with any request under subsection (1) commits an offence and is liable to a fine which does not exceed N$40 for every day during which the contravention continues.

PART 5
ARTICLES OF ASSOCIATION (ss 64-67)

64 Companies to have articles

(1) There must be registered with the memorandum of a company, articles of association, prescribing articles for the company.

(2) The articles of a company having a share capital-

(a) if a public company, may consist of the articles contained in Table A of Schedule 1; and

(b) if a private company, may consist of the articles contained in Table B of Schedule 1,

subject to any additions, omissions and modifications which are stated in the articles, and the articles contained in the said Schedule do, so far as applicable and not excluded or modified, apply to that company, but, any condition contained in the articles of a company for compulsory loans to be made by members of the company to the company is invalid.

65 Form and signing of articles

(1) The articles must be and be completed in the form prescribed.

(2) The articles must be signed by each subscriber of the memorandum stating his or her full name, occupation and residential, business and postal address, in the presence of at least one witness who must attest the signature and state his or her residential, business and postal address.

66 Consolidation of articles

A company may at any time after the registration of its articles, submit to the Registrar a document in the prescribed form, containing a consolidated and full statement of all the articles applying to the company and, on payment of the prescribed fee, the Registrar must, if satisfied that the articles of the company have been truly stated in the consolidated document, endorse on that document a certificate to the effect that the articles stated therein constitute the articles of the company as at the date of the certificate.

67 Alteration of articles

(1) Subject to the conditions contained in its memorandum, a company may, by special resolution, alter or add to its articles and any alteration or addition so made is as valid as if originally contained therein, and is subject in like manner to alteration by special resolution.

(2) Section 63 which relates to the lodgment of a copy of an altered memorandum does, with the necessary changes, apply to the lodgment of altered articles.

PART 6
REGISTRATION, INCORPORATION AND DEREGISTRATION (ss 68-74)

68 Registration of memorandum and articles

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(1) If a memorandum and articles complying with the requirements of this Act together with two certified copies are lodged with the Registrar in the manner prescribed, the Registrar must, on payment of the prescribed fee and any other additional prescribed fee, register that memorandum and articles, impress his or her seal on one copy and endorse the date of registration and the certificate provided for in section 70.

(2) Any memorandum and articles lodged for registration must be delivered and uplifted at the Companies Registration Office personally by a subscriber or by a person authorised by the subscriber in writing.

(3) On the registration of the memorandum and articles of a company the Registrar must allocate a registration number to the company concerned.

69 Memorandum and articles to be in official language

(1) The memorandum and articles of a company must be in the official language.

(2) If the memorandum or articles of an existing company is in any language other than the official language, the company must, within two years after the commencement of this Act, by special resolution, substitute that existing memorandum or those articles with a translation in the official language and no fee is payable with regard to that substitution.

70 Certificate of incorporation and its evidential value

(1) On the registration of the memorandum and articles of a company the Registrar must endorse on the memorandum and articles, a certificate signed and sealed by him or her that the company is incorporated.

(2) A certificate of incorporation given by the Registrar in respect of any company is on its mere production, in the absence of proof of fraud, conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental to the registration, have been complied with, and that the company is a company duly incorporated under this Act.

71 Effect of incorporation on company and members

(1) From the date of incorporation stated in the certificate of incorporation, the subscribers of the memorandum together with other persons who may become members of the company, become a body corporate with the name stated in the memorandum, capable of exercising all the functions of an incorporated company, and having perpetual succession, but with liability, if any, on the part of the members to contribute to the assets of the company in the event of its being wound up as provided by this Act.

(2) The memorandum and articles bind the company and its members to the same extent as if they respectively had been signed by each member, to observe all the provisions of the memorandum and of the articles, subject to this Act.

72 Liability of members where membership reduced below minimum

If any public company other than a wholly owned subsidiary carries on business for more than six months while it has less than seven members, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is so carrying on business, is liable for the payment of the whole of the debts of the company contracted during that time and may be sued for the same without any other member being joined in the action.

73 Rights of members to copies of memorandum and articles

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(1) A company must send to every member at that member's request, at cost or any lesser amount which the company may determine, a copy of its memorandum and of its articles, or must, if so requested, afford to a member or the duly authorised agent of a member adequate facilities for making a copy of that memorandum and articles.

(2) Any company which fails to comply with any request under subsection (1), commits an offence and is liable to a fine which does not exceed N$400.

74 Cancellation of registration of memorandum and articles

(1) If a company has failed, for a period of more than two years, to lodge with the Registrar an annual return in compliance with section 181, or when the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he or she must, in accordance with subsection (10), send to the company by certified post a letter enquiring whether it is carrying on business or is in operation.

(2) If the Registrar does not within one month after sending the letter receive any answer or receives an answer to the effect that the company is not carrying on business or is not in operation, the Registrar may publish in the *Gazette* and send to the company by certified post a notice that at the expiry of two months from the date of that notice that company will, unless good cause is shown to the contrary, be deregistered.

(3) At the expiry of the period mentioned in any notice referred to in subsection (2) or on receipt from any company of a written statement signed by every director to the effect that the company has ceased to carry on business and has no assets or liabilities, the Registrar may, unless good cause to the contrary has been shown by the company, deregister the company concerned, and must give notice to that effect in the *Gazette* and the date of the publication of that notice in the *Gazette* is deemed to be the date of deregistration.

(4) Notwithstanding the deregistration contemplated in subsection (3), the liability of every director, officer and member of the company continues and may be enforced as if the company had not been deregistered.

(5) The Registrar must cancel the registration of the memorandum and articles of a company which is deregistered under this section.

(6) When any company has been deregistered the books and papers of the company may be disposed of in any way which the Registrar may direct.

(7) After five years from the deregistration of a company, no responsibility rests on any person to whom the custody of the books and papers has been committed, because of the same not being forthcoming to a person claiming to be interested therein.

(8) The Court may, on application by any interested person or the Registrar, if it is satisfied that a company was at the time of its deregistration carrying on business or was in operation, or otherwise that it is just that the registration of the company be restored, make an order that the registration be restored accordingly, and after which the company is deemed to have continued in existence as if it had not been deregistered.

(9) An order referred to in subsection (8) may contain directions and make provision which the Court considers just for placing the company and all other persons in the position, as nearly as may be, as if the company had not been deregistered.

(10) A letter or notice under this section must be addressed to the company at its registered office, its postal address and to the care of the directors or officers and the auditor of the company or may, if there is no director, officer or auditor of the company whose name and address is known to the Registrar, be sent to each of

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the persons who signed the memorandum of the company, at the address mentioned in the memorandum.

PART 7
INCIDENTAL MATTERS (ss 75-79)

75 Issued copies of memorandum or articles to embody alterations

(1) Every copy of the memorandum or articles of a company issued after the date on which any alteration has been made, must include the alteration.

(2) A company which, after the date of any alteration, issues a copy of its memorandum or articles which does not include an alteration commits an offence and is liable to a fine which does not exceed N$400.

76 Contracts by companies

(1) Contracts on behalf of a company may be made as follows-

(a) any contract which if made between individual persons would by law be required to be in writing signed by the parties liable to be sued on that contract may be made on behalf of the company in writing signed by any person acting under its authority, expressed or implied, and may in the same manner be varied or discharged;

(b) any contract which if made between individual persons would by law be valid though made orally only and not reduced to writing, may be made orally on behalf of the company by any person acting under its authority, expressed or implied, and may in the same manner be varied or discharged.

(2) All contracts made in accordance with this section are valid and bind the company and its successors and all other parties.

77 Promissory notes and bills of exchange

A bill of exchange or promissory note is 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 or on account of, the company by any person acting under its authority.

78 Service of documents on companies

Any notice, order or other document which by this Act may be or is required to be served on any company, including any external company, may be served by delivering it at or sending it by registered post to the registered office or postal address of the company.

79 Arbitration between companies and others

(1) A company may agree to refer and may refer to arbitration any existing or future difference between itself and any other company or person.

(2) Companies which are parties to an arbitration may delegate to the arbitrator power to settle or determine any matter capable of being lawfully settled or determined by the companies themselves or by their directors or other managing body.

CHAPTER 5
SHARE CAPITAL, ACQUISITION BY COMPANIES OF OWN SHARES, SHARES, ALLOTMENT AND ISSUE OF SHARES, MEMBERS AND REGISTER OF MEMBERS, DEBENTURES, TRANSFER AND RESTRICTIONS ON OFFERING SHARES FOR SALE (ss 80-147)

PART 1
SHARE CAPITAL (ss 80-88)

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80 Division of share capital into shares having par value or having no par value

The share capital of a company may be divided into shares having a par value or may be constituted by shares having no par value, but, all the ordinary shares or all the preference shares must consist of either the one or the other.

81 Company may alter share capital and shares

(1) Subject to sections 62 and 108 a company having a share capital, if so authorised by its articles, may by special resolution-

(a) increase its share capital by new shares of any amount, or increase the number of its shares having no par value;

(b) increase its share capital constituted by shares of no par value by transferring reserves or profits to the stated capital, with or without a distribution of shares;

(c) consolidate and divide all or any part of its share capital into shares of larger amount than its existing shares or consolidate and reduce the number of the issued no par value shares;

(d) increase the number of its issued no par value shares without an increase of its stated capital;

(e) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum;

(f) subject to this Act, convert all of its ordinary or preference share capital consisting of shares having a par value into stated capital constituted by shares of no par value, but an existing company must not convert any share capital which is not fully paid up;

(g) subject to this Act, convert its stated capital constituted either by ordinary or preference shares of no par value into share capital consisting of shares having a par value;

(h) cancel shares which at the time of the passing of the resolution in that regard, have not been taken or agreed to be taken by any person and diminish the amount of its authorised share capital by the amount of the shares so cancelled or may cancel shares of no par value which have not been taken or agreed to be taken; or

(i) convert any of its shares, whether issued or not, into shares of another class.

(2) Where under subsection (1) a company-

(a) increases its share capital by shares of a fixed amount, it must pay to the Registrar the prescribed amount for each N$1 000, or part of it, by which the share capital is increased;

(b) increases the number of its shares of no par value, it must-

(i) lodge with the Registrar, in the prescribed manner, a certificate given by the auditor of the company showing the value of each issued share arrived at by dividing the number of issued shares into the stated capital; and

(ii) pay to the Registrar the prescribed amount for each N$1 000 or part of it calculated by multiplying the number by which the number of the shares has been increased by the value of each share as certified under subparagraph (i).

(3) If, in the case of a company which has converted its share capital under subsection (1)*(f)* and thereafter passed a special resolution to convert its stated capital as contemplated in subsection (1)*(g)*, shares which at the time of the passing of that special resolution have not been taken or agreed to be taken by any person-

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(a) are converted as so contemplated, subsection (2)*(a)* does, with the necessary changes, apply in respect of any amount by which the share capital of the company is increased, which amount is the amount by which the nominal share capital after the conversion under subsection (1)*(g)* exceeds the nominal share capital before the conversion under subsection (1)*(f)*;

(b) are not converted as so contemplated, those shares must be cancelled, with the necessary changes, in accordance with subsection (1)*(h)*.

82 Premiums received on issue of shares to be share capital, and limitation on application thereof

(1) Where a company which is not a banking institution in terms of the Banking Institutions Act, 1998 (Act 2 of 1998), 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 must be transferred to an account to be called the "share premium account".

(2) Where assets are acquired by the issue of shares of a company and no consideration is recorded, the assets so acquired must be valued and if the value of the assets is more than the par value of those shares, the difference between the par value of the shares and the value of the assets so acquired must be transferred to the share premium account.

(3) The share premium account may, notwithstanding anything contained in subsection (1), be applied by the company-

(a) in paying up unissued shares of the company to be issued to members of the company as fully paid capitalisation shares;

(b) in writing off-

(i) the preliminary expenses of the company;

(ii) the expenses of, or the commission paid or discount allowed on, the creation or issue of any shares of the company;

(c) subject to subsections (4) and (5), in providing for the premium payable on redemption of any redeemable preference shares of the company; and

[Para *(c)* substituted by sec 1 *(a)* of Act 9 of 2007.]

(d) for the payment of a premium in the case of any acquisition of shares in accordance with sections 89 to 91, inclusive.

(4) The premium contemplated in subsection (3)*(c)* may not be so provided unless it is payable according to the terms of issue of the shares concerned and those terms have been embodied in the articles of the company as from a date prior to the date on which those shares were allotted and issued or on a later date allowed by the Court on application to it.

[Subsec (4) substituted by sec 1*(b)* of Act 9 of 2007.]

(5) In the case of ordinary shares which are converted into redeemable preference shares redeemable at a premium, only that portion of the amount standing to the credit of the share premium account which arose on the original issue of those shares may be applied in providing for the premium payable on redemption.

[Subsec (5) added by sec 1*(b)* of Act 9 of 2007.]

(6) Subsections (4) and (5) do not apply in respect of redeemable preference shares issued before the commencement of this Act.

[Subsec (6) added by sec 1*(b)* of Act 9 of 2007.]

83 Proceeds of issue of shares of no par value to be stated capital

(1) The whole of the proceeds of an issue of shares having no par value is paid-up share capital of a company and must be transferred to an account to be called the "stated capital account".

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(2) If shares having no par value are issued by a company for a consideration other than cash, a sum equal to the value of the consideration as determined by the directors must be transferred to the stated capital account.

(3) The stated capital account may, notwithstanding anything contained in subsection (1) or (2), be applied by a company in writing off-

(a) the preliminary expenses of the company; or

(b) the expenses of, or the commission paid on, the creation or issue of those shares.

84 Effect of conversion of par value share capital into no par value share capital and *vice versa*

(1) Where a company converts all its ordinary or preference shares having a par value, or both the ordinary and preference shares, into shares without par value, there must be transferred to the stated capital account of the company-

(a) the whole of the ordinary or preference share capital, as the case may be; and

(b) the whole of the share premium account or that part contributed to it by the shares so converted.

(2) Where a company converts all its ordinary or preference shares of no par value or both those ordinary and preference shares into shares having a par value, there must be transferred to the share capital account of the company the whole of the stated capital account or that part contributed to it by the shares so converted.

(3) Fractions, fractional surpluses or amounts arising in respect of the nominal share capital or the stated capital may be rounded off but material reductions must be placed to non-distributable reserves.

85 Payment of interest out of capital in certain cases

(1) Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of works or buildings or for the provision of plant, which cannot be made profitable for a lengthy period, the company may pay interest on the share capital for the period and subject to the conditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the works or buildings or the provision of plant.

(2) Payment must not be made under subsection (1) unless it is authorised by the articles or by special resolution of the company, and the approval of the Minister has first been had and obtained.

(3) The Minister may, before approving payment under subsection (2), at the expense of the company, appoint a person to enquire into and report to him or her on the circumstances of the case, and may before making the appointment require the company to give sufficient security for the payment of the costs of the enquiry.

(4) Any payment contemplated in this section must be made only for a period which may be determined by the Minister and that period must 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.

(5) The rate of any interest payable under subsection (1) must not exceed 10 percent per annum or any other rate which may be determined by the Minister.

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

(7) For the purposes of subsection (4) the expression "half-year" in relation to a company, means the period of six months commencing on the first or ending on the last day of the financial year of that company.

86 Restriction of power to pay commission and discounts

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(1) A company may pay commission to any person in consideration of that person subscribing or agreeing to subscribe, whether absolute or conditional, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares of the company if-

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

(b) the commission paid or agreed to be paid does not exceed 10 percent of the price at which shares are issued or any lesser rate fixed by the articles;

(c) the amount or rate percent of the commission paid or agreed to be paid is-

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

(ii) in the case of shares not offered to the public, disclosed in a statement in the prescribed form and where any circular or notice, not being a prospectus, inviting subscription for shares is issued, also disclosed in that circular or notice; and

(d) the number of shares for which persons have agreed, for a commission, to subscribe absolutely, is disclosed in the manner specified in paragraph *(c)*.

(2) The statement referred to in subsection (1)*(c)*(ii) must be lodged with the Registrar for registration before the payment of the commission to which the statement relates.

(3) Save as otherwise provided in subsection (1) and subject to section 87, a company must not 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 that person subscribing or agreeing to subscribe, whether absolute or conditional, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares of the company, whether the shares or money be so applied by being added to the purchase price 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 price or contract price, or otherwise.

(4) Nothing in this section affects the power of any company to pay any brokerage which it has before this Act been lawful for a company to pay.

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

(6) A company which fails to comply with the requirements of subsection (2) relating to the lodging of the statement referred to in that subsection with the Registrar, and every director and officer of the company who knowingly is a party to that failure, commits an offence and is liable to a fine which does not exceed N$40 for every day during which the contravention continues.

87 Issue of shares of par value at discount

(1) A company may issue at a discount shares having a par value of a class already issued if the following conditions have been complied with-

(a) the issue must be authorised by special resolution of the company specifying the maximum rate of discount at which the shares are to be issued;

(b) not less than one year must, at the date of issue, have elapsed since the date on which the company became entitled to commence business or the date of the first issue of the class of shares;

(c) the issue must be sanctioned by the Court; and

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(d) the shares to be issued at a discount must be issued within one month after the date on which the issue is sanctioned by the Court or within any extended time which the Court may allow.

(2) The Court may, on application for an order sanctioning the issue of shares contemplated in subsection (1), having regard to all the circumstances of the case, make an order on appropriate terms and conditions.

(3) Every prospectus relating to the issue of shares by the company after the issue of the shares at a discount under this section must contain particulars of the discount allowed on the issue of those shares or of so much of that discount as has not been written off at the date of the issue of the prospectus.

(4) A company which fails to comply with subsection (3), and every director and officer of the company who knowingly is a party to that failure, commits an offence and is liable to a fine which does not exceed N$2 000.

88 Issue price of shares of no par value requiring special resolution

(1) A company must not issue shares having no par value of a class already issued at a price lower than an amount arrived at by dividing that part of the stated capital contributed by already issued shares of that class, by the number of issued shares of that class, unless the issue price of those shares is authorised by a special resolution of the company.

(2) The notice convening the meeting for the purpose of passing the special resolution referred to in subsection (1) must be accompanied by a report by the directors setting out the reasons for the proposed lower issue price.

(3) A special resolution under subsection (1) must not be registered in the Companies Registration Office unless the copy lodged with the Registrar is accompanied by a copy of the report by the directors referred to in subsection (2).

(4) This section does not apply where the issue of shares is in pursuance of an offer for subscription to all existing members in proportion to their shareholdings, whether with or without the right to renounce in favour of other persons.

PART 2
ACQUISITION BY COMPANIES OF OWN SHARES (ss 89-96)

89 Approval of acquisition of own shares by special resolution

(1) Subject to this section, sections 90 and 91 and any other applicable law, a company may by special resolution, if authorised by its articles, approve the acquisition of shares issued by that company.

(2) The approval by special resolution may be a general approval or a specific approval for a particular acquisition.

(3) If the approval is a general approval, it is valid only until the next annual general meeting of the company, but it may be varied or revoked by special resolution by any general meeting of the company at any time before that annual general meeting.

90 Company to be solvent

A company must not make any payment in whatever form to acquire any share issued by the company if there are reasonable grounds for believing that-

(a) the company is, or would after the payment be, unable to pay its debts as they become due in the ordinary course of business; or

(b) the consolidated assets of the company fairly valued would, after the payment, be less than the consolidated liabilities of the company.

91 Consequences of acquisition with regard to shares

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(1) In the case of the acquisition of par value shares issued by the company, the issued capital must be decreased by an amount equal to the par value of the shares so acquired.

(2) In the case of the acquisition of no par value shares issued by the company, the stated capital of the class of shares so acquired must be decreased by an amount derived by multiplying the number of shares of that class so acquired with the amount arrived at by dividing the stated capital contributed by issued shares of that class by the number of issued shares of that class.

(3) If par value shares are acquired at a premium over the par value, the premium may be paid out of reserves, including statutory non-distributable reserves.

(4) Shares issued by a company and acquired under this section must be cancelled as issued shares and restored to the status of authorised shares forthwith.

(5) Shares in the capital of a company may not be acquired under this section if, as a result of that acquisition, there would no longer be any shares in issue other than convertible or redeemable shares.

92 Liability of directors and shareholders under certain circumstances

(1) The directors of a company who, contrary to section 90, allow the company to acquire any share issued by it, are jointly and severally liable to restore to the company any amount so paid and not otherwise recovered by the company, subject to any relief granted by the Court under section 256.

(2) A director who is liable under subsection (1) may apply to the Court for an order compelling a shareholder or former shareholder to pay to the company any consideration that was paid to that shareholder contrary to section 90.

(3) Where the acquisition by the company of shares issued by it is in contravention of section 90, any creditor who was a creditor at the time of the acquisition, or who is a creditor because of a cause of debt which arose before that acquisition, or any shareholder, may apply to the Court for an order, and the Court may, if it finds it equitable to do so-

(a) order a shareholder or former shareholder to pay to the company any money or return any consideration that was paid or given by the company to acquire the shares;

(b) order the company to issue an equivalent number of shares to the shareholder or former shareholder; or

(c) make any other appropriate order.

(4) An action to enforce a liability imposed by this section must be instituted within three years after the date of the acquisition.

(5) Nothing contained in this section limits or diminishes any liability which any person may incur under this Act or any other law, or the common law.

(6) For the purposes of this section and section 95, "director of a company" includes any director of a holding company of that company.

93 Procedure of acquisition of certain shares by company

(1) Save as is provided in subsection (2), a company that proposes to acquire shares issued by it must-

(a) deliver or mail a copy of the written offering circular in the prescribed form, to each registered shareholder on record as at the date of the offer in any manner which is provided in the articles of the company for the sending of any notice of a meeting of shareholders, stating the number and the class or kind of its issued shares which the company proposes to acquire, and specifying the terms and reasons for the offer;

(b) lodge a copy of the offering circular with the Registrar within 15 days of the date that it is delivered or mailed to the shareholders of the company.

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(2) Subsection (1) does not apply-

(a) to the extent that it is dispensed with in terms of the special resolution passed in terms of section 89;

(b) in the case of a company whose shares are listed on a stock exchange within Namibia, to the acquisition by that company of shares in terms of transactions effected on that stock exchange in accordance with the rules and listing requirements of that exchange.

(3) Sections 168 to 171 relating to the civil liability of directors or promoters of a company for untrue statements in prospectuses, the civil liability of experts for untrue statements, criminal liability for untrue statements in prospectuses and the retention of liability for untrue statements under the common law respectively, do, with the necessary changes, apply to all documents issued in terms of subsection (1).

(4) Where in response to any offer to acquire shares, the shareholders propose to dispose of a greater number of shares than the company offered to acquire, the company must acquire from all of the shareholders who offered to sell, on a proportional basis as nearly as possible disregarding fractions, except that this subsection does not apply to the acquisition of shares in terms of transactions effected on a stock exchange within Namibia.

(5) A company that acquires shares issued by it must, within 30 days and in the prescribed form, notify the Registrar of the date of the acquisition, the date, number and class of shares that it has acquired.

(6) A stock exchange within Namibia may, in addition to any requirements contained in this Act, determine further requirements with which a company whose shares are listed on that exchange must comply with prior to that company acquiring its own shares.

94 Enforceability of contracts for acquisition by company of certain shares

(1) A contract with a company providing for the acquisition of shares issued by it is enforceable against the company, except if the company cannot execute the contract without being in breach of section 90.

(2) In an action brought on a contract referred to in subsection (1), the company has the burden of proving that execution of the contract is or will be in breach of section 90.

(3) Until the company has fully performed its obligations in terms of a contract referred to in subsection (1), shareholders who dispose of their share retain the status of claimants entitled to be paid as soon as the company is lawfully able to do so or, on liquidation, to be ranked subordinate to creditors and shareholders whose claims are in priority to the claims of the class of shares which they disposed of to the company, but in priority to the claims of the other shareholders.

95 Subsidiaries may acquire certain shares in holding company

(1) A subsidiary company may, if authorised by its articles, with the necessary changes, in accordance with sections 89 to 94, inclusive, acquire shares in its holding company to a maximum of 10 percent in the aggregate of the number of issued shares of the holding company.

(2) Sections 89 and 93(1) to (4) do not apply if the subsidiary is a wholly owned subsidiary of the holding company.

96 Payments to shareholders

(1) A company may make payments to its shareholders subject to this section and if authorised by its articles.

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(2) A company must not make any payment in whatever form to its shareholders if there are reasonable grounds for believing that-

(a) the company is, or would after the payment be, unable to pay its debts as they become due in the ordinary course of business; or

(b) the consolidated assets of the company fairly valued would after the payment be less than the consolidated liabilities of the company.

(3) For the purposes of this section "payment" includes any direct or indirect payment or transfer of money or other property to a shareholder of the company by virtue of the shareholder's shareholding in the company, but excludes an acquisition of shares in terms of sections 89 to 91, inclusive, a redemption of redeemable preference shares in terms of section 104, any acquisition of shares in terms of an order of Court and the issue of capitalisation shares in the company.

(4) Section 92 in so far as it relates to the liability of the directors of a company to compensate the company where shares are acquired by the company contrary to section 90 applies, with the necessary changes, to any payment made contrary to this section.

(5) If payment to a holding company by a subsidiary is in the form of shares of the holding company, the shares so received by the holding company and for as long as those shares are held by the holding company-

(a) no voting rights attaching to those shares may be exercised; and

(b) the votes able to be cast at any meeting of the holding company must be reduced by the votes in respect of shares held by the holding company itself.

PART 3
SHARES AND ALLOTMENT AND ISSUE (ss 97-109)

97 Nature of shares and payment for shares

(1) The shares or other interest which any member has in a company are movable property, transferable in the manner provided by this Act and the articles of the company.

(2) A company must not allot or issue any shares unless the full issue price of or other consideration for those shares has been paid to and received by the company.

(3) Notwithstanding subsection (2), a company may allot or agree to allot shares not fully paid-up for the purpose of their being offered for sale to the public as fully paid-up shares, but-

(a) if that offer is not made within one month from the date of the allotment or agreement, that allotment or agreement is void; or

(b) if the offer to the public is made but not accepted in full within two months from the date of the allotment or agreement to allot, the allotment of, or the agreement to allot, the shares in respect of which the full issue price is not paid within that period, is void.

98 Uncertificated securities

(1) In this section-

(a) "central securities depositor" means a public company incorporated in terms of this Act and registered as central securities depository in terms of any law relating to the custody and administration of securities;

(b) "participant" means a depositary institution accepted by a central securities depository as a participant in terms of any law relating to the custody and administration of securities;

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(c) "subregister" means the record of uncertificated securities administered and maintained by a participant, which forms part of the relevant company's register of members as referred to in this Act; and

(d) "uncertificated securities" means securities as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act 1 of 1985), which are by virtue of this section transferable without a written instrument and are not evidenced by a certificate, and includes options on indices of information as issued by a stock exchange on prices of any of the instruments mentioned in that definition, as well as any other instruments declared by the Registrar by notice in the *Gazette* to be securities.

(2) This section applies to uncertificated securities, notwithstanding any provision to the contrary contained in this Act or in any other law, the common law, an agreement or any articles.

(3) Where any provision of this Act is not expressly or impliedly amended by this section, this Act applies in respect of uncertificated securities in the same manner as it applies to securities in certificated form.

(4) A company must enter in its register of members, in respect of every class of securities, the total number of securities held in uncertificated form.

(5) A subregister which must form part of the relevant company's register of members must, notwithstanding subsection (15), contain the details referred to in sections 112 and 140, but, the name of any person for whom a participant holds uncertificated securities as nominee must not form part of the subregister.

(6) A participant is responsible for entering the information referred to in sections 112 and 140 in a subregister and for ensuring the correctness of all transfers of uncertificated securities effected by the participant.

(7) A participant must, at the request of a company and against payment of such fee as may be prescribed by the Minister from time to time, furnish that company with such details of uncertificated securities in the company as are reflected in the subregister maintained by the participant.

(8) A person who wishes to inspect a subregister may do so only through the relevant company in terms of section 120.

(9) A company is, within seven days of the date of a request for inspection, required to produce a subregister which reflects at least the details referred to in subsection (6) at the close of business on the day on which the request for inspection was made.

(10) A participant must send out, to every person for whom the participant holds uncertificated securities, a regular statement setting out the number and identity of the uncertificated securities held on that person's behalf.

(11) The cost and frequency of the statement referred to in subsection (10) will be prescribed but the cost must not be borne by the person for whom the uncertificated securities are held.

(12) Transfer of ownership in an uncertificated security is effected on the debiting and crediting, respectively, of both the account in the subregister from which the transfer is effected and the account in the subregister to which transfer is to be made, in accordance with the rules of a central securities depository.

(13) A transferee does, on the entry of the transferee's name in a subregister, become a member of and must be recognised as a member by the company in respect of the uncertificated securities registered in the transferee's name.

(14) Transfer of ownership and membership in accordance with subsections (12) and (13) occurs notwithstanding any fraud or illegality which may affect the uncertificated securities in respect of which the transfer was effected or which may

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have resulted in the transfer being effected, but, a transferee who was a party to or had notice of the fraud or illegality may not rely on this subsection.

(15) Section 140 does not apply to the transfer of ownership of uncertificated securities and also not to the acquisition of membership of a company as a result of such transfer.

(16) A company is liable to a participant for such fee as may be prescribed by the Minister from time to time in respect of the transfer of ownership of uncertificated securities in the company.

(17) Only a participant may effect the transfer of uncertificated securities in a subregister maintained by it.

(18) A participant may transfer uncertificated securities in a subregister administered and maintained by it, only on receipt of an instruction to transfer sent and properly authenticated in terms of the rules of a central securities depository or by order of the Court.

(19) Nothing in this section prejudices any power of a participant to effect transfer to a person to whom the right to any uncertificated securities of a company has been transmitted by operation of law or agreement.

(20) Section 121 does not apply to a subregister.

(21) Subject to subsection (22), a company must not issue certificates evidencing, or purporting to evidence, title to uncertificated securities of the company, and sections 102 and 147 do not apply to uncertificated securities.

(22) Any person who wishes to withdraw uncertificated securities held by a participant on that person's behalf and to obtain a certificate in respect of all or part of those securities, must notify the participant, in which case-

(a) the participant must, within seven days, notify the relevant company to provide such a certificate and remove the details of the uncertificated securities so withdrawn from the subregister maintained by that participant;

(b) the company must, immediately on receipt of a notice from a participant, enter the relevant person's name and details in respect of that person's holding in the company's register of members and indicate on that register that the securities so withdrawn are no longer held in uncertificated form;

(c) the company must, within 14 days of receipt of the notice referred to in paragraph *(a)*, prepare and deliver to the relevant person a certificate in respect of the securities so withdrawn, and notify the central securities depository that the securities are no longer held in uncertificated form; and

(d) transfer of ownership or acquisition of membership in respect of the securities so withdrawn is not capable of being effected through a central securities depository while they remain in certificated form.

(23) A person who takes any unlawful action in consequence of which any of the following events occur in a register or subregister, namely-

(a) the name of any person remains in, is entered in, or is removed or omitted;

(b) the number of uncertificated securities is increased, reduced, or remains unaltered; or

(c) the description of any uncertificated security is changed,

is liable to any person who has suffered any direct loss or damage arising out of that action.

(24) A person who gives an instruction to transfer uncertificated securities must warrant the legality and correctness of any such instruction.

(25) The person referred to in subsection (24), must indemnify the company and the participant effecting the transfer against any claim and against any direct loss or damage suffered by them arising out of that transfer by virtue of an instruction referred to subsection (24).

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(26) A participant who transfers uncertificated securities other than pursuant to an instruction to transfer that was sent and properly authenticated in terms of the rules of a central securities depository, must indemnify the company against any claim made on it and against any direct loss or damage suffered by it arising out of the transfer and that participant must, in addition, indemnify any person who suffers any direct loss or damage arising out of the transfer, against the loss or damage.

(27) Subject to subsection (28), when any new offer of securities is made by a company, the offeree may elect whether all or any part of the securities offered to the offeree must be issued in certificated or uncertificated form.

(28) A company must only issue or allot uncertificated securities to a person who is already a client of a participant or for whom a participant has agreed to act.

(29) The Minister may make regulations regarding matters which are supplementary and ancillary to this section and which are not inconsistent with another provision of this Act.

(30) Any person-

(a) other than a participant, who effects the transfer of uncertificated securities in contravention of subsection (17);

(b) who takes any unlawful action contemplated in subsection (23); or

(c) who, without proper authority, accesses any computer system or record maintained by a participant or a central securities depository,

commits an offence and is liable to a fine not exceeding N$500 000 or to imprisonment for a period which does not exceed two years or to both the fine and imprisonment.

99 Register and return as to allotments

(1) Every company having a share capital must keep, at its registered office or at the office where it is made up, a register of allotments of shares.

(2) Every company must, as soon as is reasonably possible after the allotment of any shares, enter in the register of allotments the names and addresses of the allottees, the number of shares allotted to each of them, the amount paid for those shares and in the case of shares allotted as fully paid-up otherwise than for cash, full particulars of the consideration in respect of which the allotment was made and of the transaction or contract concerned.

(3) Whenever a company makes any allotment of its shares, the company must within one month thereafter lodge with the Registrar-

(a) a return in the form prescribed stating full particulars of the nominal and previously issued share capital or stated capital and the number and description of the shares comprised in the allotment;

(b) in the case of shares allotted otherwise than for cash, a copy of the contract in writing constituting the title of the allottee to the allotment, together with any contract of sale, or for service or other consideration in respect of which that allotment was made or, if that contract is not in writing, a memorandum containing full particulars of the contract, and a return in the prescribed form stating the number and description of the shares so allotted, the name and address of that allottee and the consideration for which they have been allotted.

(4) If any allotment of shares becomes void as a result of any provision of this Act, the company must, within one month after the date on which that allotment becomes void, lodge a notice in the prescribed form to that effect with the Registrar.

(5) If default is made in complying with any of the requirements of this section, the company, and every director or officer of the company who knowingly is a party to the default, commits an offence and is liable to a fine which does not exceed N$2 000.

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(6) Section 120 which relates to the inspection of the company's register of members by any person does, with the necessary changes, apply to the inspection of and the furnishing of copies of or extracts from the register of allotments.

100 Certificate of shares or stock

(1) A certificate signed-

(a) by two directors of a company;

(b) by one director and one officer duly authorised by the directors; or

(c) in the case of a company having only one director and no officer, by that director,

and specifying any shares or stock of that company held by any member, is sufficient evidence of the title of the member to those shares or that stock.

(2) A signature referred to in subsection (1) may be affixed to the certificate by autographic or mechanical means.

101 Numbering of shares and share certificates

(1) The shares of a company having a share capital must, except in the case of shares or any particular class of shares which rank equally for all purposes, be distinguished by appropriate numbers.

(2) No provision in the articles of a company registered before the coming into operation of this Act requiring shares of that company to be numbered, applies in respect of shares which in terms of subsection (1) are not required to have distinguishing numbers.

(3) Where shares are not distinguished by appropriate numbers, the certificates of those shares must be so distinguished, and on the registration of transfer of those shares the certificate relating to those shares must, in addition to the distinguishing number, bear on its face an endorsement, in the form of a reference number or otherwise, so as to enable the immediately preceding holder of the shares to be identified.

102 Limitation of time for issue of share certificates

(1) Every company must, within two months or within any extended time, not exceeding one month which the Registrar on good grounds shown and on payment of the prescribed fee may grant, after the allotment of any of its shares, debentures or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures or the certificates of all debenture stock allotted.

(2) If a company fails to comply with subsection (1), any person entitled to the certificates of shares, the debentures or the certificates of debenture stock in question may, by notice in writing, call on the company to comply, and if the company fails to comply with the notice within 10 days after service of the notice, the Court may on the application of that person make an order directing the company to comply within the time specified in the order, and, where appropriate, it may direct that any costs of or incidental to the application be borne by the company or by any director or officer of the company responsible for the failure to comply.

(3) A company which, and a director or officer of a company who intentionally fails to comply with subsection (1), commits an offence and is liable to a fine which does not exceed N$40 for every day during which the contravention continues.

103 Validation of irregular creation, allotment or issue of shares

(1) If a company has purported to create, allot or issue shares and the creation, allotment or issue of those shares was invalid because of this Act or any other law or of the memorandum or articles of the company or otherwise, or the terms of the creation, allotment or issue were inconsistent with or not authorised by this Act, any law or the memorandum or articles of the company, the Court may on

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application made by the company or by any interested person and on being satisfied that in all the circumstances it is just and equitable to do so, make an order validating the creation, allotment or issue of those shares or confirming the terms of the creation, allotment or issue thereof, subject to any conditions which the Court may impose.

(2) The Court must, when making an order under subsection (1), direct that a copy of the order be lodged with the Registrar.

(3) On the registration of the copy of the order referred to in subsection (1) by the Registrar and after the payment of all prescribed fees, the shares are deemed to have been validly created, allotted or issued on the terms of the creation, allotment or issue and subject to any conditions imposed by the Court.

104 Redeemable preference shares

(1) Subject to this section, a company having a share capital, if so authorised by its articles, may issue preference shares which are, or at the option of the company, liable to be redeemed, except that-

(a) the shares must not be redeemed except out of profits of the company which would otherwise be available for dividends or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;

(b) where the shares are redeemed otherwise than out of the proceeds of a fresh issue, there must, out of profits which would otherwise have been available for dividends, 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, or if shares of no par value, to the book value of the shares redeemed;

(c) the shares must not be redeemed unless and until the premium, if any, payable on redemption, has been provided for out of the profits of the company or out of the company's share premium account;

(d) the redemption of the shares must be effected on the terms and in the manner provided for in the articles of the company.

(2) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it has the power to issue shares, including, if the company so decides by special resolution, shares other than redeemable preference shares, up to the nominal amount of the shares redeemed or to be redeemed or in the case of preference shares of no par value, up to the book value of the shares redeemed or to be redeemed, as if those shares had never been issued, and the share capital of the company or the number of shares of no par value must, not for the purposes of section 81(2), be deemed to be increased by the issue of shares in pursuance of this subsection.

(3) Where new shares are issued before the redemption of the old shares, the new shares are not, for the purposes of any law relating to stamp duty, deemed to have been issued in pursuance of subsection (2), unless the old shares are redeemed within 30 days after the issue of the new shares.

(4) The capital redemption reserve fund may, notwithstanding 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-up capitalisation shares or for the payment of the premium over the par value in the case of an acquisition of shares in terms of sections 89 to 91, inclusive.

(5) If a company has redeemed any redeemable preference shares, it must, within one month, give notice to that effect in the prescribed form to the Registrar specifying the shares so redeemed.

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(6) A company which fails to comply with subsection (5) commits an offence and is liable to a fine which does not exceed N$40 for every day during which the contravention continues.

(7) For the purposes of subsections (1) and (2) "book value" in respect of preference shares of no par value, means that part of the stated capital contributed by the preference shares redeemed or to be redeemed.

(8) This section also applies in respect of any balance of any capital redemption reserve fund created by a company prior to 1 January 1974.

105 Conversion of shares into certain preference shares

If a company has converted any of its shares into preference shares which are, or at the option of the company are liable, to be redeemed, section 104 applies to those preference shares.

106 Conversion of shares into stock

(1) A company having a share capital, if so authorised by its articles, may by special resolution convert all or any of its paid-up shares into stock and reconvert that stock into any number of paid-up shares.

(2) Where a company has converted any of its shares into stock, the provisions of this Act which apply exclusively in respect of shares, cease to apply to so much of the share capital as has been so converted.

107 Share warrants to bearer

(1) A public company having a share capital, if so authorised by its articles, may, with respect to any paid-up shares, or to stock, issue a warrant stating that the bearer of the warrant is entitled to the shares or stock specified in the warrant, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares or stock included in the warrant.

(2) A share warrant entitles its bearer to the shares or stock specified in it, and any shares or stock which may be transferred by the delivery of the share warrant.

108 Variation of rights in respect of shares

(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 authorising the variation of the rights attached to any class of shares of 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 if in pursuance of that provision the rights attached to that class of shares are at any time varied, the holder of a share of that class, being a person who did not consent to or vote in favour of the resolution for the variation, may apply to the Court for an order under section 260.

(2) The expression "variation" in this section includes abrogation and the expression "varied" must be construed accordingly.

(3) The company must, within one month from the date of the consent or resolution referred to in subsection (1), lodge with the Registrar in the prescribed form the particulars of the consent or resolution, and where a company fails to comply with this provision, the company, and every director and officer of the company who knowingly is a party to that failure, commits an offence and is liable to a fine which does not exceed N$40 for every day during which the contravention continues.

109 No offer of shares for sale to public without statement

(1) In this section, unless the context otherwise indicates, the word-

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(a) "offer" includes an invitation to make an offer to purchase;

(b) "shares" means the shares of a company, whether a company within the meaning of this Act or not, and includes debentures and units;

(c) "unit" means any right or interest, by whatever name called, in a share,

and for the purposes of this section a person must not, in relation to a company, be regarded as not being a member of the public because that person is a holder of shares of the company or a purchaser of goods from the company.

(2) A person must not, either orally or in writing, make an offer of shares for sale to the public or issue, distribute or publish any material which in its form and context is calculated to be understood as an offer for sale to the public, unless it is accompanied by a written statement (in this section referred to as the "written statement") containing the particulars required by this section to be included in the offer.

(3) Subsection (1) does not apply-

(a) if the shares to which the offer or material relates are shares which are listed by, or in respect of which permission to deal in them has been granted by, any stock exchange in Namibia recognised by the Minister by notice in the *Gazette* for the purposes of this section, and the person making the offer or publishing the material so states in writing, specifying the name of the stock exchange;

(b) if the offer is made or the material is published only to persons-

(i) whose ordinary business or part of whose ordinary business it is to deal in shares, whether as principals or agents; or

(ii) who are at the time of the offer the holders of shares of the same company;

(c) in the case of an offer in that capacity, by an executor or administrator of a deceased estate or a trustee of an insolvent estate;

(d) if the offer is made or the material is published for the purpose of a sale in execution or by public auction or by public tender; or

(e) if the offer is accompanied by a prospectus registered under Chapter 6 of this Act.

(4) The written statement must be dated and signed by the person or persons making the offer or issuing, distributing or publishing the material, and if that person is a company, by every director of the company.

(5) The written statement must not contain any matter other than the particulars required by this section to be included, and must not be in characters less large or less legible than any characters used in the offer or in any document accompanying that statement.

(6) The written statement must contain particulars with respect to the following matters-

(a) whether the person making the offer is acting as principal or agent and, if as agent, the name of that person's principal and an address in Namibia where that principal can be served with process, and the nature and extent of the remuneration received or receivable by the agent for his or her services;

(b) the date on which and the country in which the company was incorporated and the address of its registered office in Namibia or, if there is no such address, the address of its principal office abroad;

(c) the share capital of the company and the number of shares which have been issued, the classes into which it is divided and the rights of each class of shareholders in respect of capital, dividends and voting and the number and amount of shares issued for cash and the number and amount issued for a consideration other than cash, and the dates on which and the prices at which or the consideration for which those shares were issued;

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(d) the dividends, if any, paid by the company on each class of shares during each of the five financial years immediately preceding the offer, and if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;

(e) the total amount of any debentures issued by the company and outstanding at the date of the statement, together with the rate of interest payable;

(f) the names and addresses of the directors of the company;

(g) whether or not the shares are listed or permission to deal therein has been granted by any stock exchange other than that referred to in subsection (3), and, if so, which, and, if not, a statement that they are not so listed or that no permission has been granted;

(h) if the offer relates to units, particulars of the names and addresses of the persons in whom the shares represented by the units are vested, the date and the parties to any document defining the terms on which those shares are held, and an address in Namibia where that document or a copy can be inspected;

(i) the dates on which and the prices at which the shares offered were originally issued by the company, and were acquired by the person making the offer or by that person's principal, giving the reasons for any difference between those prices and the prices at which the shares are being offered;

(j) if the shares were issued as partly paid-up shares under the repealed Act, to what extent they are paid-up; and

(k) the date of registration of the written statement by the Registrar.

(7) For the purposes of subsection (6) the word "company" means the company by which the shares to which the statement relates were issued.

(8) There must be annexed to the written statement a copy of the last annual financial statements of the company and subsequent interim report and provisional annual financial statements, if any.

(9) Where the offer referred to in subsection (2) is in respect of shares of a public company, a copy of the written statement must be lodged with the Registrar for registration before it is issued, distributed or published, and that statement must not be issued, distributed or published more than three months after the date of that registration.

(10) Any person who contravenes this section commits an offence, and if that person is a body corporate, every director and officer of that body corporate commits the same offence and is liable to a fine which does not exceed N$4 000 or to be imprisoned for a period which does not exceed one year or to both the fine and imprisonment.

(11) If any person is convicted of having made an offer in contravention of this section, the Court by which that person is convicted, may order that any contract made as a result of the offer is void, and where it makes that order, may give any consequential directions which are proper for the repayment of any money or the retransfer of any shares.

PART 4
MEMBERS AND REGISTER OF MEMBERS (ss 110-122)

110 Members of a company

(1) The subscribers of the memorandum of a company are deemed to have agreed to become members of a company on its incorporation, and must, as soon as reasonably possible after incorporation, 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, becomes a member of that company.

(3) A company must, subject to its articles, enter in the register as a member of the company by virtue of his or her office, the name of any person who submits proof of his or her appointment as the executor, administrator, trustee, curator or guardian in respect of the estate of a deceased member of the company or of a member whose estate has been sequestrated or of a member who is otherwise under disability or as the liquidator of any body corporate in the course of being wound up which is a member of the company, and any person whose name has been so entered in the register is for the purposes of this Act deemed to be a member of the company.

(4) Subject to section 221(2), 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 for all purposes or for the purposes which are specified in the articles.

111 Trusts in respect of shares

A company is not bound to see to the execution of any trust, whether express, implied or constructive, in respect of any share.

112 Register of members

(1) Every company must, in the official language, keep a register of its members, and must, in that register, enter-

(a) the names and addresses of the members and, in the case of a company having a share capital, a statement of the shares issued to each member, distinguishing each share by its number, if any, and by its class or kind, and of the amount paid or agreed to be considered as paid on the shares of each member; and

(b) in respect of each member-

(i) the date on which his or her name was entered in the register as a member; and

(ii) the date on which he or she ceased to be a member.

(2) Where a company has converted any of its shares into stock, the register of members must show the amount of stock held by each member instead of the number of shares and the particulars relating to shares specified in subsection (1).

(3) Where a company has issued share warrants it must, on the issue of a share warrant, strike out of its register of members the name of the member then entered as holding the shares or stock specified in the warrant as if that member had ceased to be a member and must enter in the register-

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

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

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

(4) Until a share warrant is surrendered, the particulars must be the particulars required by this Act to be entered in the register of members, and on the surrender of the warrant, the date of the surrender must be entered as if it were the date on which a person ceased to be a member.

(5) The bearer of a share warrant is, subject to the articles of the company, entitled, on surrendering it for cancellation, to have his or her name entered as a member in the register of members, and the company is liable for any loss incurred by any person because of the company's entering in its register the name of a bearer

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of a share warrant in respect of the shares or stock therein specified without the share warrant being surrendered and cancelled.

(6) The register of members may be kept either by making entries in bound books or by recording the particulars required in any other manner and, in the case of a person who has ceased to be a member, also by microfilm or microcard or by miniature photographic or other process which accurately reproduces and forms a durable medium for recording and reproducing those particulars.

(7) If the register of members is not kept by making entries in bound books, adequate precautions must be taken for guarding against falsification and facilitating its discovery.

(8) The register of members of an existing company kept under the repealed Act and continued under this Act in a language other than the official language is deemed to be sufficient compliance with subsection (1).

113 Index to register of members

(1) Every company having more than 50 members must, unless the register of members is in such form as to constitute in itself an index, keep an index of the names of the members of the company, and must, within 14 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-

(a) may be in the form of a card index;

(b) is deemed to be a part of the register of members;

(c) must in respect of each member, contain a sufficient indication to enable the account of that member in the register to be readily found.

114 Branch registers in foreign countries

(1) A company having a share capital may, if so authorised by its articles, cause to be kept in any foreign country a register of members resident in any foreign country (in this Part called a "branch register").

(2) The company referred to subsection (1) must give to the Registrar notice on the prescribed form of the situation of the office where any branch register is kept, and of any change in that situation, and of the discontinuance of the office in the event of its being discontinued.

115 Provisions as to branch register

(1) A branch register is deemed to be part of the company's register of members.

(2) A branch register must be kept in the same manner in which the register of members is by this Act required to be kept except that the notice referred to in section 121, must, for a reasonable period of time before the closing of the branch register, also be inserted in a newspaper circulating in the district where the branch register is kept.

(3) The company must 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 must cause to be kept at its registered office, duly entered up from time to time, a duplicate of its branch register, and the duplicate is, for the purposes of this Act, deemed to be part of the register of members.

(4) The company may discontinue to keep any branch register, and must, thereafter, transfer all entries in that register to some other branch register kept by the company or to the register of members.

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(5) Subject to this Act and to any law relating to stamp duty or estate duty, any company may by its articles make any provision in relation to the keeping of its branch registers.

116 Register of members to be evidence

The register of members of a company sufficient evidence of any matters directed or authorised to be entered therein by this Act.

117 Where register of members to be kept

(1) Subject to this section, the register of members of a company must be kept at its registered office.

(2) A company's register of members may be kept at any office of the company in Namibia where the work of making it up is done, instead of at the company's registered office, and where a company arranges with some other person (in this section called "agent") for the making up of its register of members to be undertaken on behalf of the company by the agent, the register may be kept at the office of the agent in Namibia at which the work is done instead of at an office of the company.

(3) Any index of the names of the members of a company required to be kept in terms of section 113 must at all times be kept at the same place where the register of members is kept, and where the company keeps a branch register under section 114 the duplicate of the branch register required by section 115(3) to be kept at the company's registered office must, notwithstanding anything to the contrary contained in section 115(3), at all times be kept at the same place where the company's register of members is kept.

(4) Any company the register of members of which is not kept at its registered office must notify the Registrar in the prescribed form of the place where that register is kept and of any change in that place.

(5) The provisions of this section relating to the register of members of a company and the provisions of this Act relating to the inspection or production of that register or to the furnishing of copies of that register or any part of that register, do apply to any agent by whom that register is kept on behalf of a company in the same manner as they apply to the company.

118 Disposal of closed accounts in register

The parts of the register of members of a company pertaining to persons who have ceased to be members, in whatever manner kept under section 112, may be disposed of after the end of a period of 15 years after those persons have ceased to be members.

119 Offences in respect of register of members

Any company which or an agent referred to in section 117 who fails to comply with section 112, 113, 114, 115 or 117, commits an offence and is liable to a fine which does not exceed N$800.

120 Inspection of register of members

(1) The register of members of a company must, except when closed under this Act and subject to any reasonable restrictions which the company in a general meeting may impose, so that not less than two hours in each day be allowed for inspection during business hours, be open to inspection by any member or that member's authorised agent free of charge and by any other person upon payment for each inspection of the prescribed amount or any lesser amount which the company may determine.

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(2) Any person may apply to a company for a copy of or an extract from the register of members and the company must either furnish that copy or extract to the applicant at cost or any lesser amount which the company may determine for every page of the required copy or extract, or afford that person adequate facilities for making a copy or extract.

(3) If access to the register of members for the purposes contemplated in subsection (1) or (2) is refused or not granted or furnished within 14 days after a written request to that effect has been delivered to the company, the company, and every director or officer of the company who knowingly is a party to the refusal or failure, commits an offence and is liable to a fine which does not exceed N$800.

(4) In the case of refusal or failure as contemplated in subsection (3) the Court may, on application, by order compel an immediate inspection of the register and index concerned or direct that the copy or extract required be sent to the applicant requiring it and may direct that any costs of or incidental to the application be borne by the company or by any director or officer of the company responsible for the refusal or failure.

(5) This section does, with the necessary changes, apply also in respect of any register of transfers kept by a company.

121 Power to close register of members

A public company may, after giving notice of its intention to do so in the *Gazette* and in a newspaper circulating in the district in which its registered office is situated, close its register of members, or any part of it relating to holders of any class of shares, for a period or periods not exceeding in the aggregate 60 days in any year.

122 Rectification of register of members

(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 in the register the fact of any person having ceased to be a member,

the person concerned or the company or any member of the company, may apply to the Court for rectification of the register.

(2) The application referred to in subsection (1) must be made in accordance with the rules of Court or in any other manner which the Court may direct, and the Court may either refuse it or may order rectification of the register concerned and payment by the company, or by any director or officer of the company, of any damages sustained by any person concerned.

(3) On any 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 or her name entered in or omitted from the register concerned, 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 the rectification of the register.

PART 5
DEBENTURES (ss 123-138)

123 Creation and issue of debentures

A company, if so authorised by its memorandum or by its articles, may create and issue secured or unsecured debentures.

124 Security for debentures

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(1) The binding of movable property as security for any debenture or debentures may be effected by-

(a) a deed of pledge and the delivery of the movable property concerned to one or more debenture holders or to a trustee for debenture holders;

(b) a notarial bond, collateral notarial bond or notarial surety bond executed in favour of one or more debenture holders or of a trustee for debenture holders; or

(c) the pledging of incorporeal rights by means of cession of those rights, whether present or future, in due and proper form.

(2) The binding of a ship may be effected by a deed of mortgage in the form prescribed by the Merchant Shipping Act, 1951 (Act 57 of 1951), recorded in the register by the proper officer at the ship's port of registry.

(3) The binding of immovable property as security for any debenture may be effected by a mortgage bond, collateral mortgage bond or surety bond executed in favour of one or more debenture holders or of a trustee for debenture holders.

(4) A wholly owned subsidiary is deemed to have and always to have had the power to mortgage any of its property as collateral security for the issue of debentures by its holding company.

125 Registration of bonds and annexure to bonds and deeds of pledge

(1) Any mortgage bond or notarial bond in pursuance of section 124 and any related subsequent transactions must, subject to the laws governing the registration of mortgage bonds and notarial bonds, be registered in a deeds registry.

(2) If a bond is in favour of one or more debenture holders, a certified copy of the debenture concerned must be annexed to that bond.

(3) If a bond is in favour of a trustee for debenture holders, certified copies of the debenture concerned and of the trust deed by which the trustee is appointed and in which the rights and duties of that trustee are defined, must be annexed to that bond.

(4) Certified copies of the debenture concerned and of any trust deed, if any, must be annexed to any deed of pledge where the debentures are secured by a pledge of movable property.

126 Debenture itself may be registered

If any debenture is executed before a notary public, it may, subject to section 125(1), be registered in a deeds registry in the same manner as if it were a notarial bond.

127 Issue of debentures at different dates and ranking of preference

In any bond or deed of pledge executed in favour of a trustee for debenture holders generally, provision may be made that the debentures thereby secured or to be secured may be issued from time to time and at different dates, as the company may determine, but all those debentures, whenever issued, must rank in preference concurrently with one another as from the date on which the pledge was constituted or the bond was registered.

128 Rights of debenture holders

(1) Every holder of a debenture secured by a pledge or a bond executed in favour of a trustee for debenture holders generally is, unless it is otherwise provided by the deed of pledge, bond or trust deed and copy of the debenture annexed to it, entitled to enforce his or her rights under that debenture as soon as it has been issued to him or her in the same manner as if he or she were himself or herself the pledgee or the holder of that bond.

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(2) No notice of the cession of any debenture referred to in subsection (1) is necessary in order to confer on any cessionary the rights of the cedent.

129 Director or officer not to be trustee for debenture holders

A director or officer of a company cannot be a trustee for the holders of debentures of that company.

130 Liability of trustee for debenture holders

(1) Subject to 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, is void in so far as it would have the effect of exempting a trustee from or indemnifying a trustee against liability for breach of trust where the trustee fails to show the degree of care and diligence required of him or her as trustee, having regard to the trust deed conferring on the trustee any powers, authorities or discretions.

(2) Subsection (1) does not have the effect of:

(a) invalidating 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 any provision enabling that release to be given-

(i) with the consent of a majority of not less than three-fourths in value of the debenture holders present and voting in person or by proxy at a meeting summoned for the purpose; and

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

(b) invalidating any provision in force on 1 January 1953 so long as any person then entitled to the benefit of that provision or who is afterwards given the benefit thereof under subsection (3) remains a trustee under the relevant deed; or

(c) depriving any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by that person while any provision referred to in paragraph *(b)* was in force.

(3) So long as any trustee under a trust deed remains entitled to the benefit of a provision saved by subsection (2)*(b)* or *(c)* the benefit of that provision may be given either-

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

(b) to any named trustee or proposed trustee,

by a resolution passed by a majority of not less than three-fourths in value of the debenture holders present in person or 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, at a meeting summoned for the purpose in any manner approved by the Court.

131 Power to re-issue redeemed debentures in certain cases

(1) Where a company has redeemed any debentures previously issued, not being debentures convertible into shares of the company, it, unless-

(a) its articles or the conditions of issue of those debentures expressly otherwise provide; or

(b) the debentures have been redeemed in pursuance of any obligation on the part of the company to redeem them, not being an obligation enforceable only by the person to whom the redeemed debentures were issued or that person's successors in title,

has and is deemed at all times to have had power to keep the debentures alive for the purpose of re-issue.

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(2) Where a company has purported to exercise the power referred to in subsection (1), it has and is deemed at all times to have had power to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place, and on that re-issue the person entitled to the debentures has and is deemed at all times to have had the same rights and priorities as if the debentures had not previously been issued.

(3) Where with the object of keeping debentures alive for the purpose of re-issue, they have been transferred to a nominee of the company, a transfer from that nominee is deemed to be a re-issue for the purposes of this section.

(4) Where a company had deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures are not deemed to have been redeemed because the account of the company has ceased to be in debit whilst the debentures remained so deposited.

(5) Nothing in this section prejudices any power reserved to a company by its debentures or securities, to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished.

132 Debenture to be described as secured or unsecured

A company must not issue a debenture, debenture certificate or prospectus relating to debentures unless the term "debenture" or some other term denoting a debenture used is qualified by the word "secured" or "unsecured", as the case may be.

133 Form of debentures or debenture certificates

(1) A company must not issues a debenture or debenture certificate unless the conditions of the debenture concerned are stated on the debenture or on the debenture certificate.

(2) Any debenture or debenture certificate must be signed by one director of the company and an officer of the company duly authorised by the directors and must, in the case where the debenture concerned is not a bearer debenture and in the case of a debenture certificate, specify the debentures, other than bearer debentures, of that company held by the person named in that debenture or debenture certificate.

(3) Any signature referred to in subsection (2) may be affixed to a debenture or debenture certificate by autographic or mechanical means.

(4) Any debenture or debenture certificate issued in terms of this section is sufficient evidence of the title of the person named in that debenture or certificate or, in the case of a bearer debenture, of the bearer of the debenture.

134 Register of pledges and bonds

Subject to section 136, every company must keep at its registered office a register of pledges, cessions, notarial bonds, mortgage bonds and notarial debentures and enter in that register all pledges, cessions, notarial bonds, mortgage bonds and notarial debentures affecting property of the company, giving in each case a short description of the property pledged, ceded or bound, the amount of the pledge, cession or bond and the names and addresses of the persons in whose favour any pledge, cession, bond or debenture was executed or to whom any pledge has been delivered.

135 Register of debenture holders

Subject to section 136, every company must keep at its registered office a register of debenture holders showing the number of debentures issued and outstanding and whether or not they are payable to bearer and specifying the names and addresses of the holders, other than bearers.

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136 Registers may be kept where made up

Section 117(2) and (4) relating to the keeping of a register of members and access to that register does, with the necessary changes, apply to the registers required to be kept under sections 134 and 135.

137 Inspection of registers and copies and extracts

(1) Section 120 in so far as it relates to the inspection of the register of members does, with the necessary changes, apply to the registers to be kept under sections 134 and 135 and section 120(3) does, with the necessary changes, apply to the furnishing of a copy of a trust deed referred to in subsection (2).

(2) A copy of any trust deed for securing any issue of debentures must be transmitted to every holder of those debentures at that holder's request on payment of an amount equal to the cost of making that copy or a lesser amount as the company may determine.

138 Failure to keep registers

Any company which or any agent referred to in section 117(2), as applied by section 136, who fails to comply with section 134, 135 or 136, commits an offence and is liable to a fine which does not exceed N$800.

PART 6
FORGERY OF CERTIFICATES AS TO SHARES, DEBENTURES AND OTHER SECURITIES (s 139)

139 Forgery, impersonation and unlawful engravings

Any person who-

(a) with intent to defraud, forges, offers, utters or disposes of, knowing it to be forged or altered, any certificate as to shares, debentures or other securities as defined in section 141, any broker's transfer form, certified broker's form, share warrant or coupon issued in pursuance of this Act;

(b) by means of any forged certificate, form, share warrant, coupon or other document, knowing it to be forged or altered, obtains or receives or endeavours to obtain or to receive any interest in any company or obtains or receives or endeavours to obtain or to receive any benefit, dividend or money payable in that respect;

(c) by impersonating any owner of any interest in any company, including any share warrant or coupon issued in pursuance of this Act, obtains or endeavours to obtain any interest or share warrant or coupon or receives or endeavours to receive any benefit or money due to that owner, as if he or she were the true and lawful owner; or

(d) without lawful authority or excuse-

(i) engraves or makes on any plate, wood, stone, or other material any certificate as to any interest in a company or any share warrant or coupon or document purporting to be any interest, share warrant or coupon issued or made by any particular company in pursuance of this Act or to be a blank certificate, share warrant or coupon so issued or made or to be a part of that certificate, share warrant or coupon;

(ii) uses plate, wood, stone or other material referred to in subparagraph (i) for the making or printing of any certificate, share warrant or coupon or document or of any blank certificate, share warrant or coupon or any part of it; or

(iii) knowingly has in his or her custody or possession any plate, wood, stone or other material referred to in subparagraph (i),

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commits an offence and is liable to a fine which does not exceed N$40 000 or to be imprisoned for a period which does not exceed 10 years or to both the fine and imprisonment.

PART 7
TRANSFER OF SHARES AND DEBENTURES (ss 140-147)

140 Registration of transfer of shares or interests

(1) Any transfer of shares of or interest in a company must be registered by the company by entering in its register of members the name and address of the transferee, the description of the shares, or interest transferred and the date of the registration of that transfer and, if it is a transfer of partly paid-up shares of or interest in an existing company, the amount outstanding on each share or interest, must be entered in that register.

(2) Notwithstanding anything in the articles of a company, it is not lawful for the company to register a transfer of shares of or interest in the company unless a proper instrument of transfer has been delivered to the company, but nothing in this section prejudices any power of the company to register as a member any person to whom the right to any share of the company has been transmitted by operation of law.

(3) On the application of the transfer of any share of or interest in a company, the company must enter in its register of members the matters specified in subsection (1) in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

(4) The registration of any transfer of shares of or interest in a company is subject to the law relating to stamp duty and estate duty.

141 Definitions for purpose of transfer of listed shares or interests

In sections 142, 143, 144, 145 and 146, unless the context otherwise indicates-

"broker's transfer form" means the form prescribed and any substantially similar form which is recognised by the law of the country in which the relevant transfer is registered;

"company" includes any issuer of a security;

"security" means any listed security as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act 1 of 1985);

"securities transfer form" means the form prescribed and any substantially similar form which is recognised by the law of the country in which the relevant transfer is registered.

142 Manner in which securities may be transferred

(1) Notwithstanding any law to the contrary or the memorandum or articles of any company or any contract relating to the transfer of any security-

(a) a security may be transferred by means of a securities transfer form; or

(b) a security may be transferred by means of a securities transfer form and a broker's transfer form, but-

(i) the broker's transfer form must be prepared-

(aa) by a stock-broker as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act 1 of 1985);

(bb) by a banking institution registered, otherwise than provisionally, under the Banking Institutions Act, 1998 (Act 2 of 1998), and authorised in writing by the Registrar, at a branch designated by the Registrar;

(cc) by a stock exchange in Namibia; or

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(dd) by a company authorised in writing by the Registrar and carrying on the business of a clearing-house for securities on that stock exchange,

and must bear the signature of the stock-broker concerned or of a person in the service of the banking institution, stock exchange or company concerned or an authorised facsimile of that signature;

(ii) the securities transfer form need not be completed with reference to the particulars relating to the transferee and the consideration passing;

(iii) a separate broker's transfer form may be used in respect of each person to whom transfer is passed.

(2) The execution of a securities transfer form or a broker's transfer form need not be attested.

(3) Nothing in this section contained is to be construed as-

(a) preventing the transfer of a security by means of any form authorised to be used under the repealed Act or any form prescribed at any time under this Act;

(b) entitling the issuer of any security to refuse the registration of any person as the holder of that security on the ground that the transfer purports to be effected by means of a securities transfer form or a broker's transfer form;

(c) affecting the provisions of any law or of any memorandum or articles of any company or other body corporate or of any contract which deals with the manner in which any document is to be signed or sealed by or on behalf of any company or other body corporate; or

(d) affecting the liability for the payment of any duty payable in respect of the registration of the transfer of any security.

143 Certification by company that security has been lodged for transfer

(1) If a company, by the signature of any person duly authorised to certify transfers of securities on behalf of the company, or of any officer or employee of a body corporate so authorised, endorses on any instrument of transfer referred to in section 142 and executed by or on behalf of the transferor, that the certificate relating to the security in question has been lodged with the company, the company is, for the purposes of this section, deemed to have certified that instrument.

(2) A certification is, for the purposes of this section, deemed to be signed if it purports to be authenticated by the signature or initials of any person whether by autographic or mechanical means, unless it is shown that the signature or initial is not that of a person authorised to certify transfer of securities on behalf of the company.

(3) The certification by a company in terms of subsection (1) must be taken as a representation by the company to any person acting on the faith of the certification that there have been lodged with the company the necessary documents relating to the securities mentioned in the instrument of transfer and that it appears from those documents that the title to the securities is held by the transferor named in the instrument of transfer.

(4) The representation referred to in subsection (3) must not be taken as a representation that the transferor named in the instrument of transfer in question has in fact any title to the security in question.

(5) Where any person acts on the faith of an incorrect certification negligently made by a company, that person is in the same position with reference to the company as if the certification had been fraudulently made.

(6) Subject to subsection (3), the delivery to any person of any instrument of transfer certified in terms of subsection (1) confers on that person the same rights as that person would have acquired before 1 January 1974 on the delivery to him or her

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of a certificate for the securities in question, and an instrument of transfer signed by the transferor in blank.

(7) The certificates of any securities in respect of which a company has certified any instrument of transfer as provided in this section, must on certification be cancelled by the company.

144 Duty of company with reference to person under contractual disability

(1) When a company records in its registers the transfer of any security, it is not be under any duty to satisfy itself that that transfer is within the contractual power of the transferor or transferee or that any legal requisite which obtains with reference to the ability of the transferor or transferee to transfer or to take transfer has been complied with or that any person signing any document relevant to the transfer on behalf of any person or company has been duly authorised to sign that document.

(2) Subsection (1) does not absolve any company from liability arising from any fraudulent act to which it is knowingly a party.

145 Warranty and indemnity by persons lodging documents of transfer

Any person who, for the purposes of the transfer of any security of any company, as principal or agent, lodges with that company any document relating to that transfer, is considered to have warranted that that document is genuine and that he or she, or when he or she is acting as agent, his or her principal jointly and severally with him or her, indemnifies that company against any claim made on it and against any loss or damage suffered by it arising out of a transfer registered by the company of the security referred to in that document.

146 Notice of refusal to register transfer and limitation of time for issue of certificates on transfer

(1) If a company refuses to register a transfer of any shares or debentures it must, within 30 days after the date on which the instrument of transfer was lodged with it, send to the transferor and the transferee notice of the refusal.

(2) Any company which fails to comply with subsection (1) commits an offence and is liable to a fine which does not exceed N$40 for every day during which the contravention continues.

(3) Every company must, unless it is entitled for any reason to refuse to register a transfer and does not register it, within 30 days after the date on which an instrument of transfer of any shares, debentures, debenture stock or securities is lodged with it, complete and have ready for delivery the certificates in respect of the shares, debentures, debenture stock or securities of which the transfer is to be registered.

(4) If default is made in complying with subsection (3), section 102(2) and (3) insofar as it relates to the issue and delivery of certificates for shares, debentures and debenture stock, does, with the necessary changes, apply.

147 Disclosure of beneficial interest in securities

(1) In this section, unless the context otherwise indicates-

"beneficial interest", in relation to a security, means-

(a) the right or entitlement to receive any dividend or interest payable in respect of that security; or

(b) the right to exercise or cause to be exercised, in the ordinary course, any or all of the voting, conversion, redemption or other rights attaching to that security,

but does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Unit Trusts Control Act, 1981 (Act 54 of 1981);

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"exchange" means a stock exchange in Namibia licensed in terms of the Stock Exchanges Control Act, 1985 (Act 1 of 1985);

"security" means-

(a) any listed security as defined in section 1 of the Stock Exchanges Control Act, 1985; and

(b) any financial instrument which confers the right to convert that instrument into a listed security referred to in paragraph *(a)*.

(2) A person is deemed to have a beneficial interest in a security if-

(a) the spouse of the person married in community of property or the minor children of that person have a beneficial interest in that security;

(b) that person acts in terms of an agreement with another person holding a beneficial interest and the agreement is in respect of the co-operation between them for the acquisition, disposal or any other matter relating to a beneficial interest in that security;

(c) it is the holding company of a company that has a beneficial interest in that security;

(d) a body corporate or trust has a beneficial interest in that security and-

(i) the body corporate or its directors or the trustees are accustomed to act in accordance with the directions or instructions of that person; or

(ii) that person is entitled to exercise or control the exercise of the majority of the voting rights at general meetings of the body corporate or trust; or

(e) the security is held by virtue of any office by another person on that person's behalf.

(3) Where securities of an issuer are registered in the name of a person, and that person ("the registered shareholder") is not the holder of the beneficial interest in all of the securities held by the registered shareholder, the registered shareholder must, at the end of every three month period after the commencement of this Act, disclose to the issuer the identity of each person on whose behalf the registered shareholder holds securities and the number and class of securities issued by that issuer held on behalf of each of those persons.

(4) The information required in terms of subsection (3) must be furnished in writing within seven days of the end of the three month period referred to in that subsection.

(5) An issuer may by notice in writing require a person who is a registered shareholder of, or whom the issuer knows or has reasonable cause to believe to have a beneficial interest in, securities issued by that issuer, to confirm or deny whether or not that person holds a beneficial interest in those securities, and if the security is held for another person, the person to whom the request is made must disclose to the issuer the identity of the person on whose behalf that security is held.

(6) The registered shareholder may levy a fee for the furnishing of information requested which has been prescribed by the Minister.

(7) A notice under subsection (5) may, in addition, require the addressee to give particulars of the extent of the beneficial interest held during the three years preceding the date of the notice.

(8) The information required in terms of subsections (5) and (7) must be furnished within a reasonable time specified in the notice, but not later than 14 days from the date of receipt of the notice.

(9) All issuers of securities must establish and maintain a register of the disclosures made in terms of this section and must publish in their annual financial statements a list of the persons who hold beneficial interests equal to or in excess of five percent of the total number of securities of that class issued by the issuer together with the extent of those beneficial interests.

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(10) The register referred to in subsection (9) must be open to inspection as if it were a register contemplated in section 120.

(11) A person who fails to comply with this section or to make a disclosure as required by this section or who makes a false disclosure, commits an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment.

CHAPTER 6
OFFERING OF SHARES AND PROSPECTUS (ss 148-177)

PART 1
INTERPRETATION (s 148)

148 Definitions for purposes of offering of shares and prospectus

(1) In this Chapter, unless the context otherwise indicates-

"company" includes an external company;

"expert" means a geologist, engineer, architect, quantity surveyor, valuer, accountant, auditor, or any person holding himself or herself out to be such and any other person who professes to have extensive knowledge or experience or to exercise special skill which gives or implies authority to a statement made by him or her;

"letter of allocation" means any document conferring a right to subscribe for shares in terms of a rights offer;

"offer", in relation to shares, means an offer made in any way, including by provisional allotment or allocation, for the subscription for or sale of any shares, and includes an invitation to subscribe for or purchase any shares;

"offer to the public" and any reference to offering shares to the public means any offer to the public and includes an offer of shares 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 concerned or in any other manner;

"promoter", in relation to civil and criminal liability in respect of an untrue statement in a prospectus, means a person who was a party to the preparation of the prospectus or of the portion of it, containing the untrue statement but does not include any person by reason of that person acting in a professional capacity for persons engaged in procuring the formation of the company or preparing that prospectus;

"rights offer" means an offer for subscription, with a right to renounce in favour of other persons, to those members or debenture holders of a company who are not excluded from that offer under subsection (2), for any shares of that company or any other company, where a stock exchange within Namibia or a stock exchange recognised by the Minister for the purposes of this definition by notice in the *Gazette*, has granted or has agreed to grant a listing for the shares which are the subject of the offer;

"untrue statement", in relation to a prospectus or portion of it, includes-

(a) a statement which is misleading in the form and context in which it is included and a statement is deemed to be included in a prospectus if it is contained in any report or memorandum which appears on the face of the prospectus or which is by reference incorporated or is attached to or accompanies the prospectus on registration; and

(b) an omission from a prospectus of any matter, whether that matter is required to be included by this Act or not, where that omission is calculated to mislead, and that prospectus is deemed, in respect of that omission, to be a prospectus in which an untrue statement is included.

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(2) Notwithstanding anything contained in the articles of a company, the company may, with the written approval of the Registrar and subject to any conditions which the Registrar may determine, exclude any category of members or debenture holders of the company not resident within Namibia from any rights offer.

(3) An application for a written approval referred to in subsection (2) must be accompanied by the prescribed fee.

PART 2
OFFERS TO PUBLIC (ss 149-155)

149 Restrictions on offers to public

(1) A person must not offer any shares to the public otherwise than in accordance with this Act.

(2) A person must not offer to the public any shares of any company or body corporate which is not a company or which has not been exempted from this subsection by the Registrar by notice in the *Gazette*.

(3) Any person who contravenes this section, and, if that person is a company, any director or officer of that company who knowingly is a party to the contravention, commits an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment.

150 Offers not being offers to public

An offer of shares must not be construed as an offer to the public-

(a) if it can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the shares becoming available to persons other than those to whom the offer was made;

(b) if it is an offer for subscription to the members or debenture holders of the company without the right to renounce any right to take up those shares in favour of other persons;

(c) if that offer can properly be regarded, in all the circumstances, as being a domestic concern of the persons making and receiving it; or

(d) if it is a rights offer.

151 No offer for subscription to public without prospectus

(1) A person must not make any offer to the public for the subscription for shares unless the offer is accompanied by a prospectus complying with the requirements of this Act and registered in the Companies Registration Office, and a person must not issue a prospectus which has not been so registered.

(2) Any person who contravenes this section and, if that person is a company, any director or officer of that company who knowingly is a party to the contravention, commits an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment.

152 Approval by stock exchange requirement for letters of allocation

(1) A person must not issue, distribute or deliver or cause to be issued, distributed or delivered a letter of allocation unless it is accompanied by documents which are required and have been approved by the stock exchange concerned.

(2) Any person who contravenes this section and, if that person is a company, any director or officer of that company who knowingly is a party to the contravention, commits an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment.

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153 Rights offers

(1) A company desiring to issue a letter of allocation must lodge, with the Registrar for registration, a copy of that letter together with the prescribed fee and a copy of every document referred to in section 152 and every copy must be certified, by not less than two directors of the company, as a true copy of the original approved by the stock exchange concerned.

(2) Every copy referred to in subsection (1) must be accompanied by a copy of any contract referred to in that subsection and, if that contract is not in the official language, by a translation into the official language.

(3) As soon as the Registrar has registered the documents referred to in subsection (1), he or she must give notice of the registration to the company concerned or the person who lodged them on behalf of the company.

(4) Every letter of allocation which is issued must-

(a) state on the face of it that a copy, together with copies of all other documents referred to in subsections (1) and (2), have been registered as required by this section; and

(b) be accompanied by a copy of every document lodged in terms of subsection (1).

(5) Subsection (4) does not apply to any letter of allocation issued in connection with a renunciation of part of the rights to subscribe in terms of the rights offer.

(6) Sections 159, relating to the inclusion of a statement in a prospectus by an expert with the consent of the expert, 161(1), and (4), relating to the inclusion in a prospectus of a statement that issued shares are being underwritten and criminal liability relating to that statement, 162(1), (4) and (5), relating to the signing of prospectuses, 166, relating to the invalidity of conditions waiving the application of this Act to any transaction, 168, relating to the civil liability of directors for untrue statements contained in a prospectus, 169, relating to the civil liability of experts for untrue statements in prospectus, 170, relating to the criminal liability for untrue statements in prospectus and 171, relating to the retention of common law liability for untrue statements do, with the necessary changes, apply to a rights offer and all documents issued in connection therewith.

(7) Any person who contravenes this section, and if that person is a company, any director and officer of that company who knowingly is a party to that contravention, commits an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment.

154 No offer for sale to public without prospectus

(1) A person must not make any offer to the public for the sale of any shares-

(a) which have been, or have been agreed to be, allotted by the company concerned with a view to all or any of them being offered to the public; or

(b) in respect of which it has been made known in any way at or about the time of, and in connection with, that offer, that the company concerned has applied or intends to apply for their listing by a stock exchange in Namibia or elsewhere,

unless it is accompanied by a prospectus which complies with the requirements of this Act and registered in the Companies Registration Office, and a person must not issue a prospectus which has not been so registered.

(2) For the purposes of subsection (1)*(a)* it is, unless the contrary is proved, sufficient evidence that an allotment of, or an agreement to allot, shares was made with a view to the shares being offered for sale to the public if it is shown that an

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offer for sale to the public in respect of those shares or any of them was made within 18 months after the allotment or the agreement to allot.

(3) Any person who contravenes subsection (1) and, if that a person is a company, any director or officer of that company who knowingly is a party to the contravention, commits an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment.

155 Application form for shares to be attached to prospectus

(1) A person must not issue, distribute or deliver or cause to be issued, distributed or delivered, any form of application in respect of shares of a company, unless the form-

(a) is attached to a prospectus a copy of which has been registered in the Companies Registration Office; and

(b) bears on the face of it the date of registration of the prospectus.

(2) Subsection (1) does not apply if it is shown that the form of application was issued either-

(a) in connection with an invitation made in good faith to enter into an underwriting agreement with respect to the shares; or

(b) in relation to shares which were not offered to the public.

(3) Any person who contravenes-

(a) subsection (1)*(a)* commits an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment; and

(b) subsection (1)*(b)* commits an offence and is liable to a fine which does not exceed N$400.

PART 3
PROSPECTUS (ss 156-171)

156 Matters to be stated in prospectus

(1) Every prospectus issued in terms of this Act must contain a fair representation of the state of the affairs of the company, the shares of which are being offered and must state at least the matters specified in, and set out the reports referred to in, Part 1 and Part 2 of Schedule 3.

(2) If the intended offer relates to shares which are or are to be in all respects uniform with existing shares previously issued and a stock exchange within Namibia has not in respect of those first-mentioned shares granted or agreed to grant a listing, and that offer is made only to existing members or debenture holders of a company with the right to renounce in favour of other persons, the prospectus may state, instead of the matters referred to in subsection (1), at least the matters specified in Part 3 of Schedule 3.

(3) The information referred to in subsection (1) and (2) must-

(a) be set out in print or type;

(b) not be less conspicuous than that in which the additional matter of the prospectus is printed or typed;

(c) be set out in separate paragraphs under the headings provided in Schedule 3 and in accordance with the instructions contained in Part 4 of that Schedule.

(4) Every prospectus in respect of an offer for the sale of shares under section 154(1)*(a)* must state, in addition to the matters specified in subsection (1) and (2)-

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

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(b) the place and time at which a contract under which the shares have been or are to be allotted to the issuer of the prospectus may be inspected.

(5) Any person who knowingly is a party to the issue of a prospectus in contravention of this section commits an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment.

157 Statement on face of issued prospectus

(1) Every prospectus issued must, on the face of it-

(a) state that a copy of it has been registered as required by this Act; and

(b) specify or refer to statements included therein specifying any documents required by sections 159 and 160 to be endorsed on or attached to or to accompany a prospectus when lodged for registration.

(2) Any person who knowingly is a party to the issue of a prospectus in contravention of subsection (1) commits an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment.

158 Consent of person named as director

A person must not be named as a director or proposed director of a company in any prospectus relating to shares of that company unless, at any time prior to the registration of that prospectus-

(a) his or her written consent, in the prescribed form, to act as that director has been lodged with the company; and

(b) the return referred to in section 224(2) reflecting the relevant particulars in regard to that person, has been lodged with the Registrar.

159 Consent by experts and others

(1) A prospectus which includes any statement or reference to any statement purporting to be made by an expert, must not be registered by the Registrar unless-

(a) the expert has given, and has not, before the lodging of a copy of the prospectus for registration in the Companies Registration Office, withdrawn his or her written consent to the issue with the statement or reference included in the form and context in which it is included;

(b) a statement that the expert has given and has not so withdrawn his or her consent appears in the prospectus; and

(c) that written consent is endorsed on or attached to the copy of the prospectus lodged for registration in the Companies Registration Office.

(2) The Registrar must not register any prospectus which names any person as the auditor, legal practitioner, banker or broker of a company unless it is accompanied by the consent in writing of the person so named to act in the capacity stated and to his or her name being stated in the prospectus.

160 Contracts and translations to be attached to prospectus

(1) The Registrar must not register a prospectus unless there is attached to it a copy of any material contract required by Schedule 3 to be stated in a prospectus or, in the case of that contract not reduced to writing, a memorandum giving full particulars of the contract.

(2) There must be attached to a contract referred to in subsection (1)-

(a) if it is in a language other than the official language, a certified translation into the official language; or

(b) if it is partly in a language other than the official language, a copy embodying a certified translation of the part which is in another language.

161 Where issue is underwritten

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(1) The Registrar must not register a prospectus containing a statement to the effect that the whole or any portion of the issue of the shares offered to the public, has been or is being underwritten until there is lodged with the Registrar a copy of the underwriting contract and a sworn declaration by the person named as underwriter, or, if that person is a company, by each of two directors of that company, or if that company has only one director, by that director, that to the best of the deponent's knowledge and belief the underwriter is and will be in a position to carry out that underwriter's obligations even if no shares are being applied for.

(2) If an offer of shares is made in respect of which no prospectus is required by this Act, the copy of the contract and sworn declaration referred to in subsection (1) must be lodged with the Registrar not later than the date of the proposed offer of shares.

(3) Any company which contravenes subsection (2), and any person or company and every director or officer of that company who knowingly is a party to the contravention, commits an offence and is liable to a fine which does not exceed N$4 000 or to be imprisoned for a period which does not exceed one year or to both the fine and imprisonment.

(4) If an underwriter is unable, when requested, to carry out that underwriter's obligations under the underwriting contract, any person who has in connection with that contract made a sworn declaration as required by subsection (1) commits an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment, unless that person proves that when the declaration was made he or she believed and had reasonable grounds for believing that the underwriter was or would be able to carry out those obligations.

162 Signing, date and date of issue, of prospectus

(1) A prospectus in respect of an offer for the subscription of shares of a company must be signed by every person named in it as a director of the company or by the agent of that person authorised by that person in writing to sign on his or her behalf.

(2) A prospectus in respect of any other offer of shares must be signed by every person making that offer or by the agent of that person authorised by that person in writing to sign on his or her behalf or if the person making the offer is a company or firm, by two directors of that company, or if that company has only one director, by that director, or by not less than one-half of the partners in that firm or by an agent authorised by a director or partner in writing to sign on his or her behalf.

(3) Where a prospectus has been signed by or on behalf of directors of a company or partners in a firm as provided in subsection (2), every director of that company or partner in that firm is deemed to have authorised the issue of that prospectus notwithstanding that he or she has not signed it, unless he or she proves that it was issued without his or her knowledge, authority or consent.

(4) Every signature to a prospectus must be dated and the latest of those dates is deemed to be the date of the prospectus.

(5) The date of registration of any prospectus in the Companies Registration Office must, unless the contrary is proved, be taken as the date of the issue of the prospectus.

163 Registration of prospectus

(1) The Registrar must not register a prospectus unless the requirements of this Chapter have been complied with and the prospectus is lodged with the Registrar for registration, together with any documents which are prescribed in this Chapter, within 14 days of the date of the prospectus.

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(2) As soon as the Registrar has registered the prospectus, the Registrar must send notice of the registration to the person lodging the prospectus or to the company.

164 Time limit for issue of prospectus

(1) A company or any person must not issue a prospectus more than three months after the date of the registration, and if a prospectus is so issued, it is deemed to be a prospectus which has not been registered.

(2) A person who knowingly is a party to the issue of a prospectus in contravention of subsection (1), commits an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment.

165 Advertisement as to prospectus

(1) Every newspaper or other advertisement whatsoever offering or calling attention to an offer or intended offer of shares of a company to the public is deemed to be a prospectus issued by the person responsible for publishing or disseminating the advertisement and all the legal requirements as to the contents of prospectuses and as to the liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses apply to the advertisement, unless it contains no more information than the following-

(a) the number and description of the shares concerned;

(b) the name and date of registration of the company;

(c) the general nature of the business or proposed business actually carried on or to be carried on by the company;

(d) the names and addresses of the directors;

(e) the places at and times during which copies of the prospectus may be obtained;

(f) where all the shares which are the subject of an offer are intended to be offered only to the members of a company or debenture holders, as the case may be, with or without the right to renounce in favour of other persons-

(i) the issue price of those shares;

(ii) the ratio in which those shares will be offered to the members or debenture holders entitled to accept the offer; and

(iii) the last day on which members or debenture holders must register as such in order to be entitled to receive the offer;

(g) the last day for subscribing.

(2) No statement that, or to the effect that, the advertisement referred to in subsection (1) is not a prospectus prevents the operation of this section.

166 Waiver of requirements of this Chapter void

Any condition requiring any applicant for shares to waive compliance with any requirements of this Chapter or purporting to affect him or her with notice of any contract, document or matter not specifically referred to in the prospectus, is void.

167 Variation of contract mentioned in prospectus

A company must not, within one year after the date of registration of a prospectus, vary or agree to the variation of the terms of a contract referred to in that prospectus unless the variation in specific terms is authorised or ratified by a general meeting of members of the company of which notice has been given on a date not earlier than six months after the date of registration of the prospectus.

168 Liability for untrue statements in prospectus

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(1) Where shares are offered to the public for subscription in pursuance of a prospectus, every person-

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

(b) who becomes a director at any time between the issue of the prospectus and the holding of the first general meeting of the company at which directors are elected or appointed;

(c) who with his or her authority is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;

(d) who is a promoter of the company; or

(e) who has authorised the issue of the prospectus,

is liable to pay compensation to all persons who have acquired any shares on the faith of the prospectus for the loss or damage they have sustained because of any untrue statement in the prospectus, or in any report or memorandum appearing on the face of, or issued with, or by reference incorporated in the prospectus.

(2) Where shares are offered to the public for sale in pursuance of a prospectus, every person-

(a) who has made that offer;

(b) who under section 162(3) is deemed to have authorised the issue of that prospectus; or

(c) who is in relation to the company the shares of which are so offered, a person referred to in subsection (1),

is liable to pay compensation to all persons who have acquired any shares on the faith of the prospectus for the loss or damage they have sustained because of any untrue statement in the prospectus, or in any report or memorandum appearing on the face of, or issued with, or by reference incorporated in the prospectus.

(3) The liability provided for in subsection (1) or (2) does not attach to any person if it is proved-

(a) with respect to any untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, that he or she had reasonable ground to believe, and did up to the time of the allotment of the shares or the acceptance of the offer, as the case may be, believe that the statement was true;

(b) with respect to any untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from the report or valuation of an expert, that it fairly represented the statement or was a correct and fair copy of or extract from the report or valuation and that the defendant had reasonable 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 that person had given the consent required by this Act to the issue of the prospectus or the making of the offer and had not withdrawn that consent before lodgment of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment or before the acceptance of the offer;

(c) with respect to any 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 statement, that it was a correct and fair representation of the statement or copy of or extract from the document; or

(d) that-

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

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

(iii) after the issue of the prospectus and before allotment or acceptance he or she, on becoming aware of any untrue statement, withdrew his or her consent and gave reasonable public notice of the withdrawal and of the reason for the withdrawal.

(4) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director, and he or she has not consented to become a director, or has withdrawn his or her consent before the issue of the prospectus and has not authorised or consented to the issue of the prospectus, the directors of the company, other than those without whose knowledge or consent the prospectus was issued, and any other person who issued it or authorised the issue, are liable to indemnify the person named as director of the company, against all damages, costs and expenses for which he or she is liable because of his or her name having been so stated in the prospectus or in defending himself or herself against any action or legal proceedings brought against him or her in respect of the matter.

(5) Every person who because of his or her being a director or having been named as a director, or having agreed to become a director, or of his or her having authorised the issue of the prospectus or of his or her having become a director between the issue of the prospectus and the holding of the first general meeting of the company at which directors are elected or appointed, has satisfied any liability to make payment under this section, may recover a contribution, as in cases of contract, from any other person, who, if sued separately, would have been liable to make the same payment, unless the person who has satisfied that liability was, and that other person was not, guilty of fraudulent misrepresentation.

169 Liability of experts and others

(1) Where the consent of any person is required under section 159 and he or she has given that consent, that person is not, because of his or her having given it, liable as a person who has authorised the issue of the prospectus either-

(a) under section 168(1) or (2) to compensate persons subscribing or purchasing on the faith of the prospectus, except in respect of any untrue statement purporting to be made by him or her as an expert; or

(b) under section 168(4) to indemnify any person against liability under section 168(1) or (2).

(2) The person referred to in subsection (1) is, in respect of any untrue statement purporting to be made by him or her as an expert, liable under section 168(1) or (2), unless one of the following things, is proved, namely-

(a) that having given his or her consent he or she withdrew it in writing before lodgment of a copy of the prospectus for registration;

(b) that after lodgment of a copy of the prospectus for registration and before allotment to, or before acceptance by, the person complaining, he or she, on becoming aware of the untrue statement, withdrew his or her consent in writing and gave reasonable public notice of the withdrawal and of the reason for withdrawal; or

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

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(3) Where under section 159 the consent of any person is required to the issue of a prospectus, and that person either has not given that consent or has withdrawn it before the issue of the prospectus, that person is entitled to indemnity under section 168 as if he or she had without his or her consent been named in the prospectus as a director of the company.

170 Offences in respect of untrue statements in prospectus

(1) Where a prospectus contains a statement which is untrue, every person referred to in section 168(1) or (2) does, subject to subsections (3) and (4), commit an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment.

(2) Where there is published with or as part of a prospectus a report of any expert or an extract from that report and the report or extract contains a statement which is untrue, the expert does, provided that expert has given his or her consent to the inclusion of that statement in the prospectus in the form and context in which it appears, and subject to subsections (3) and (4), commit an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment.

(3) In any prosecution under this section of any person it is a defence if it is proved either that the untrue statement was immaterial or-

(a) with respect to any untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, that the person charged had, after reasonable investigation, reasonable ground to believe and did up to the time of the allotment of the shares or acceptance of the offer believe that the statement was true, and that there was no omission to state any material fact necessary to make the statement as set out not misleading;

(b) with respect to any untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that the person charged had reasonable ground to believe and did believe that the person making the report or valuation was competent to make it;

(c) with respect to any untrue statement purporting to be a statement made by an ignore or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document.

(4) In any prosecution under this section of any person it is a defence if it is proved-

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

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

(c) that after the issue of the prospectus and before allotment or acceptance, he or she, on becoming aware of any untrue statement, withdrew his or her consent and gave reasonable public notice of the withdrawal, and of the reason for the withdrawal.

171 No diminution of liability under any other law or common law

Nothing in this Chapter contained limits or diminishes any liability which any person may incur under this Act apart from this Chapter, or under any other law, or under the common law.

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PART 4
ALLOTMENT AND ACCEPTANCE AFTER OFFER TO PUBLIC (ss 172-177)

172 Time limit as to allotment or acceptance

(1) A company must not allot any shares offered to the public for subscription and an offeror must not accept any offer to purchase any shares offered for sale to the public unless the application concerned is received by the company or the offeror, as the case may be, before the expiry of a period of four months after the date of registration of the prospectus.

(2) Any director or officer of a company or any offeror or, if the offeror is a company, any director or officer of that company who knowingly contravenes or permits the contravention of subsection (1) with respect to allotment or acceptance of an offer commits an offence and is liable to a fine which does not exceed N$2 000.

173 No allotment unless minimum subscription received

(1) Shares must not be allotted on any application made in pursuance of a prospectus for subscription unless the amount stated in that prospectus as the minimum amount which in the opinion of the directors of the company concerned must be raised by the issue of share capital in order to provide for the matters specified in paragraph 21 of Schedule 3 to this Act has been subscribed and the amount so stated has been paid to and received by the company.

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

(a) an amount stated in any cheque received by the company must not be taken to have been paid to and received by it until the amount of the cheque has been unconditionally credited to its account with its bankers; and

(b) any amount paid to and received by the company must be reduced by the amount of any money, bill, promissory note or cheque which it has at any time delivered to the payer otherwise than in discharge of a genuine debt due to that payer by the company.

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

(4) The amount paid on application must be set apart by the directors as a separate fund in a separate account with a banking institution registered under the Banking Institutions Act, 1998 (Act 2 of 1998), and is not be available for the purposes of the company or for the satisfaction of its debts until the minimum subscription has been made up.

(5) If the requirements provided for in subsection (1) have not been complied with at the end of 60 days after the issue of the prospectus, all moneys received from applicants for shares must, as soon as is reasonably possible, be repaid to them without interest, and, if that money is not so repaid within a period of 80 days after the issue of the prospectus, the directors and officers of the company are jointly and severally liable to repay that money with interest at the rate of six percent per annum or any other rate which has been determined by the Minister by notice in the *Gazette* reckoned from the end of the period of 80 days.

(6) It is a defence to any claim under subsection (5), or any charge under subsection (7), to prove that the default which is the subject of the claim or charge, was not due to any misconduct or negligence on the part of the defendant or the accused.

(7) Any director or officer of the company who knowingly contravenes or permits the contravention of this section, does, in addition to any other liability

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incurred under subsection (5), commit an offence and is liable to a fine which does not exceed N$4 000 or to be imprisoned for a period which does not exceed one year or to both the fine and imprisonment.

174 No allotment or acceptance if application form not attached to prospectus

(1) A company must not allot any shares offered to the public for subscription and an offeror must not accept any offer to purchase any shares offered for sale to the public unless the subscription or offer has been made on an application form which has been attached to a prospectus as required by section 155 or unless it is shown that the applicant, at the time of the application concerned, was in fact in possession of a copy of the prospectus or was aware of its contents.

(2) Any director or officer of a company or any offeror or if the offeror is a company, any director or officer of that company who knowingly contravenes or permits the contravention of subsection (1), commits an offence and is liable to a fine which does not exceed N$2 000.

175 Voidable allotment

(1) An allotment made by a company to an applicant, or the acceptance of an offer made by an applicant, in contravention of section 172, 173 or 174 is voidable at the instance of the applicant concerned within 30 days after the date of allotment or acceptance, and not later.

(2) Subsection (1) applies notwithstanding that the company concerned may be in the course of being wound up.

(3) When an allotment or an acceptance is declared void under subsection (1), every director and every officer of the company concerned or the offeror, and if the offeror is a company, every director and every officer of the company, becomes liable to compensate the company concerned and the applicant for any loss, damages or costs which that company or the applicant has sustained or incurred.

(4) Proceedings to recover any loss, damages or costs referred to in subsection (3) must not be commenced after the expiry of two years from the date of the relevant allotment or acceptance.

176 Minimum interval before allotment or acceptance

(1) Allotment of shares or acceptance of an offer in respect of shares of a company must not be made in pursuance of a prospectus, and proceedings must not be taken on applications made in pursuance of a prospectus, until the beginning of the third day after that on which the prospectus is first issued or any later time which is specified in the prospectus.

(2) The beginning of the third day or the later time is in this Chapter referred to as "the time of the opening of the subscription lists or offer".

(3) For the purposes of subsection (1), the reference to the day on which the prospectus is first issued must be construed as a reference to the day on which it is first issued as a newspaper advertisement, or, if it is not issued as a newspaper advertisement before the third day after that on which it is first issued in any other manner, as a reference to the day on which it is first issued in any other manner.

(4) The validity of an allotment or acceptance is not affected by any contravention of subsection (1), but, if there is any contravention, the company concerned, and every director and every officer of the company and the offeror, and, if the offeror is a company, every director and every officer who knowingly is a party to the contravention, commits an offence and is liable to a fine which does not exceed N$4 000.

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(5) An application for shares of a company which is made in pursuance of a prospectus is not revocable before the expiry of the third day after the time of the opening of the subscription lists or offer or the giving before the expiry of the said third day, of a public notice under section 168 having the effect of excluding or limiting the liability under that section of the person giving that notice.

(6) In reckoning any number of days for the purposes of this section, Saturdays, Sundays and public holidays must not be taken into account.

177 Conditional allotment if prospectus states shares to be listed by stock exchange

(1) A prospectus containing a statement to the effect that application has been or will be made for permission for the shares offered thereby to be dealt in on a stock exchange must not be issued unless that application has been made in accordance with the requirements of the stock exchange concerned on or before the date of issue of the prospectus and it names the particular stock exchange to which the application has been made.

(2) Any allotment of shares in pursuance of a prospectus referred to in subsection (1) is subject to the condition that the application for permission for those shares to be dealt in on the stock exchange concerned, is granted or that an appeal against a refusal of that application, is upheld.

(3) Any money received in respect of applications for shares in pursuance of a prospectus referred to in subsection (1) must be set apart by the directors of the company as a separate fund in a separate account with a banking institution registered under the Banking Institutions Act, 1998 (Act 2 of 1998), and is not be available for the purposes of the company or for the satisfaction of its debts so long as the company may in terms of subsection (4) become liable for the repayment.

(4) If any issue of shares in pursuance of a prospectus referred to in subsection (1) is oversubscribed, the directors of the company must, as soon as is reasonably possible, repay the amounts oversubscribed to the applicants.

(5) Where the application for permission to deal in the shares on a stock exchange has been refused and no appeal has been noted or when an appeal against the refusal of an application has been dismissed or an appeal against the granting of an application has been upheld, the company must, within 14 days, repay all moneys received in respect of applications made in pursuance of the prospectus together with any interest earned, if any.

(6) If the money contemplated in subsection (5) is not repaid within 14 days after the company becomes liable to repay it, the directors and officers of the company, together with the company, are jointly and severally liable to repay that money with interest at the rate of six percent or any other rate which has been determined by the Minister by notice in the *Gazette* per annum from the expiry of the 14th day.

(7) If subsection (1), (3) or (5) is contravened or not complied with, the company, and every director or officer of the company who knowingly is a party to that contravention or non-compliance, commits an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment.

(8) It is a defence to any claim under subsection (6) or any charge under subsection (7) to prove that the default which is the subject of the claim or the contravention or non-compliance was not due to misconduct or negligence on the part of the defendant or the accused.

(9) This section-

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(a) does in relation to any shares agreed to be taken by a person underwriting an offer of the shares by a prospectus, have effect as if that person had applied in pursuance of the prospectus;

(b) must, in the case of a prospectus offering shares for sale, be construed, except in so far as the context otherwise indicates-

(i) as if any reference to the allotment of shares were a reference to the acceptance of the offer;

(ii) subject to subparagraph (iii), as if any reference to a company by which a prospectus has been issued, or a director or officer, were a reference to the person by whom the shares have been offered; and

(iii) where the person by whom the shares have been offered is a company, as if the reference to a director or officer of a company by which a prospectus has been issued, were a reference to a director or officer of the company by which the shares have been offered for sale.

(10) In calculating any number of days for the purposes of this section, Saturdays, Sundays and public holidays must not be taken into account.

CHAPTER 7
ADMINISTRATION OF COMPANIES (ss 178-215)

PART 1
GENERAL (ss 178-186)

178 Postal address and registered office of company

(1) Every company, including every external company, must have in Namibia-

(a) a postal address to which all communications and notices may be addressed; and

(b) a registered office to which all communications and notices may be addressed and at which all process may be served.

(2) On incorporation of a company, notice of the situation of the registered office and of the postal address must be given to the Registrar.

(3) At least 21 days' notice of any intended change in the situation of the registered office or of the postal address must be given to the Registrar, but, if less than 21 days' notice of an intended change in the situation of the registered office or postal address is given, the Registrar may determine the date on which the change will take effect.

(4) Particulars of which notice was given to the Registrar in terms of subsection (2) or (3), must be recorded by the Registrar, and the Registrar must notify the company of the date on which the particulars of any change referred to in subsection (3) have been recorded by him or her.

(5) A change in the situation of the registered office or of the postal address of a company does not, for the purposes of this Act, take effect unless the Registrar has recorded the particulars of the change.

(6) Any notice referred to in this section must be in the prescribed form.

(7) A company which fails to comply with any requirement of this section, commits an offence and is liable to a fine which does not exceed N$2 000.

179 Names of directors to be stated on certain documents of company

(1) A company must not issue or send to any person in Namibia any trade catalogue, trade circular or business letter bearing the company's name unless there is stated on it in respect of every director-

(a) his or her present forenames, or the initials, and present surname;

(b) any former forenames and surnames not being those referred to in section 223(3);

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(c) if not Namibian, his or her nationality.

(2) Any company which fails to comply with any provision of subsection (1), commits an offence and is liable to a fine which does not exceed N$200.

180 Certificate to commence business

(1) A company having a share capital must not commence business or exercise any borrowing powers unless and until the Registrar has under this section issued under his or her hand and seal a certificate entitling the company to commence business.

(2) In the case of a public company which has issued a prospectus for the subscription for shares before a certificate to commence business has been issued, the certificate to commence business must be issued on the application of the company in the prescribed manner accompanied by an affidavit by a director or secretary of the company to the effect-

(a) that every director has paid to the company for each of the shares taken or contracted to be taken by him or her, and for which he or she is liable to pay in cash, the full subscription price;

(b) that shares paid for in cash have been allotted to a total amount of not less than the minimum subscription stated in the prospectus; and

(c) that no money is or may become repayable to applicants for any shares which have been offered to the public because of the refusal of an application for permission for the shares to be dealt in on a stock exchange or the dismissal of an appeal against that refusal,

and accompanied by the return prescribed by section 224(2) and proof of payment of the annual duty referred to in section 182.

(3) In the case of every company having a share capital, a certificate to commence business must be issued on the application of the company in the prescribed manner accompanied by-

(a) a statement of the opinion of each director to the effect that the capital of the company is adequate for the purposes of the company and its business or, if he or she is of the opinion that it is inadequate, the reasons and the manner in which and the sources from which the company is to be financed and the extent of the financing;

(b) the return referred to in section 224(2);

(c) proof of payment of the annual duty referred to in section 182;

(d) the consent to act as auditor, if not already lodged.

(4) Any certificate to commence business issued by the Registrar is conclusive evidence that the company is entitled to commence business.

(5) Any contract made by a company before the date on which it is entitled to commence business is provisional only and becomes binding on the company on that date and not earlier.

(6) Until a certificate entitling a company to commence business is issued, the directors and the subscribers of the memorandum of the company are jointly and severally liable for all the debts and liabilities arising from any business conducted by the company in contravention of subsection (1).

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

(8) If a company contravenes subsection (1), every person who is responsible for or knowingly is a party to the contravention does, in addition to any other liability incurred, commits an offence and is liable to a fine which does not exceed N$400 for every day during which the contravention continues.

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(9) This section does not apply to an existing company which was entitled, under the repealed Act, to commence business or exercise borrowing powers.

181 Annual return

(1) Every company having a share capital must, not later than one month after the end of its financial year, and, where any financial year is changed, also not later than one month after the end of that financial year, in the prescribed form, lodge with the Registrar a return, referred to as the annual return, specifying the following particulars in regard to the company as at the date of the end of its financial year-

(a) the name of the company, its registration number, the situation of its registered office and its postal address and the place where the registers of members, debenture holders, allotments, interests in shares and debentures under section 238 and interests in contracts under section 248 are kept, if they are not kept at the registered office;

(b) a description of the business actually carried on by the company;

(c) the date on which its financial year ends;

(d) the date on which its last annual general meeting was held and, if an extension of time was applied for, a statement to that effect;

(e) in the case of a public company, the date on which the last interim report was issued by the company;

(f) the full names, addresses and dates of appointment of the directors and officers of the company;

(g) the name and address of the auditor of the company;

(h) the nominal and issued share capital, its division into shares and the amount of any share premium account or the stated capital and the number of issued and unissued shares of no par value, and any changes therein during the period covered by the returns, specifying each class of shares;

(i) the amount of any undistributable reserve fund of the company, to the extent that it consists of an amount transferred from its share premium account;

(j) the amount and class of debentures issued and any changes therein during the period covered by the return;

(k) in the case of a public company, whether it has issued any share warrants and their particulars;

(l) a list of the special resolutions passed and the forms, notices and returns prescribed by this Act lodged with the Registrar during the period covered by the return and the respective dates on which they were so lodged; and

(m) in the case of a private company, the number of its members; and

(n) any other matters which may be prescribed.

(2) Every company limited by guarantee must, not later than one month after the end of its financial year, lodge with the Registrar a return in the prescribed form, specifying the particulars referred to in subsection (1)*(a)*, *(c)*, *(d)*, *(f)*, *(g)*, *(l)* and *(n)*, as at the date of the end of its financial year.

(3) The return referred to in subsection (1) or (2) must be signed by one of the directors and the secretary, if any, of the company and a copy of the return must be kept in the registered office of the company.

(4) A private company must annex to any return required to be lodged by it in terms of this section a certificate in the prescribed form, signed by a director or the secretary, if any, of the company to the effect that the company has during the period covered by the return complied with the requirements of section 22(1)*(b)* and *(c)*.

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(5) Every return under this section must be accompanied by proof of payment of the annual duty referred to in section 182.

(6) Any company which fails to comply with any requirements of this section, commits an offence and is liable to fine which does not exceed N$40 for every day during which the contravention continues.

(7) Section 120 in so far as it relates to the inspection of the register of members of a company and the furnishing of copies or extracts does, with the necessary changes, apply to the annual return by a company.

182 Annual duty

(1) Subject to section 183, every company other than a non-profit association incorporated under section 21, must-

(a) before a certificate to commence business is issued to it; or

(b) in the case of a company limited by guarantee, on its incorporation; and

thereafter not later than one month after the end of every financial year, pay an annual duty.

(2) The Minister must prescribe the rate of the annual duty, and the minimum and maximum annual duty payable in respect of each company.

(3) Subsection (1) applies to every company in respect of which no winding-up order has been granted or which has not been deregistered under section 74, but-

(a) if any winding-up order is discharged or declared void, the company concerned must within 30 days thereafter pay the annual duty provided for in subsection (1), or a part of the duty as the Court may direct; or

(b) if a company is deregistered under section 74(3) it ceases to be liable for payment of any annual duty provided for in subsection (1) which was owing by it on the date of its deregistration, but if any deregistered company is restored to the register of companies, the company concerned must within 30 days thereafter pay the annual duty provided for in subsection (1) or a part of the duty as the Court may direct.

(4) If a company commences business within its financial year, and there is an intervening period of six months or less between the date of commencement of business and the end of the financial year, the amount of the annual duty is half the amount of the annual duty payable for a full financial year.

(5) If a company changes its financial year under section 293(2)*(b)*, the amount of the annual duty payable for the additional period is half of the annual duty payable for a full financial year.

(6) A company which fails to pay the prescribed annual duty within the prescribed period or pays an amount less than prescribed must pay the additional fees prescribed under section 186.

183 Annual duty payable by external company

(1) Every external company must pay an annual duty as prescribed under section 182(2), but, where an external company has established and maintains a place of business in Namibia solely for the purpose of maintaining a share registration office or a share transfer office, the annual duty payable by that company is the minimum annual duty payable under section 182(2).

(2) The annual duty referred to in subsection (1) is payable-

(a) on lodgment of the memorandum of the external company for registration under section 328; and

(b) thereafter not later than one month after the end of every financial year.

(3) Section 182(3), (4), (5), and (6) relating to the non-payment of annual duty after issue of a winding-up order or deregistration, reduction of annual duty payable in certain cases and payment of additional annual duty in certain cases does,

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with the necessary changes, apply in respect of the annual duty payable by an external company.

184 Enforcement of duty of company to make returns to Registrar

(1) If a company, having failed to comply with any provision of this Act which requires it to lodge with, deliver or send to the Registrar any return, annual financial statements or other document, or to give notice to him or her of any matter, fails to comply within 14 days after the Registrar, on his or her own initiative or on application by any member or creditor of the company, has sent to the company a reminder by certified post to the company's registered office requiring it to do so, the Registrar may direct the company or any officer of the company, by written notice served on the company or officer or sent to the company or officer by certified post to the registered office of the company, to comply with the request within 30 days of the date on which the notice was served or sent.

(2) If the company on which or the officer on whom a notice referred to in subsection (1) was served or to which or whom, as the case may be, it was sent, within the period of 30 days fails to-

(a) make good the default; or

(b) satisfy the Registrar that, on good cause shown, a penalty ought not to be imposed,

the Registrar may, by further written notice served on the company or officer concerned or sent to the company or officer by registered post to the registered office of the company, impose on that company or officer a penalty of an amount as may from time to time be prescribed.

(3) When the Registrar has served a notice on or sent a notice to a company or an officer under subsection (2), the Registrar may, not less than 21 days after the date on which that notice was served or sent, forward a certified copy to the clerk of the magistrate's court in whose area of jurisdiction the registered office of the company is situated, who must record it, and that notice has the effect of a civil judgment of that magistrate's court against the company or officer concerned.

(4) On application by the company or the officer, having received a notice referred to in subsection (1), the magistrate's court in question may, before the clerk of that court has recorded the notice in terms of subsection (3), reduce the amount of the penalty, or set aside the imposition of the penalty, and the court may, where the clerk has already recorded the notice, exempt the company or officer wholly, or to the extent determined by the court, from the effect of the notice.

(5) If a penalty imposed by the Registrar under this section is reduced or set aside in terms of subsection (4), or the company or officer is so wholly or in part exempted from the effect of the notice, by the magistrate's court in question, costs must not be awarded against the Registrar unless it be proved that he or she acted in bad faith or without reasonable care or diligence.

(6) Nothing in this section must be taken to prejudice the operation of any provision of this Act, imposing penalties on a company or its officers in respect of any default.

185 Extension of time

Where in terms of this Act anything is to be performed within a specified period of time, the Registrar may in any case, on application to him or her before or after the expiry of that period, and on payment of the prescribed fee, or generally, and on his or her own initiative, extend that period as he or she may deem fit subject to this Act, and where any period has been so extended, any reference in section 186 to that period must be construed as a reference to that period as so extended.

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186 Additional fees in respect of late submissions or late payment of annual duty

Without derogating from this Act, a company or an external company which has failed within the time prescribed in the relevant provision to lodge any return or other document or to pay any annual duty required under section 99(3), 181, 182, 183, 208(1), 219(3), 224(2) and 284, may lodge that return or other document or pay the annual duty subject to the payment to the Registrar of the prescribed additional fee in respect of each failure.

PART 2
MEETINGS OF COMPANY (ss 187-200)

187 Annual general meeting

(1) Every company must, at the times specified in this section, hold general meetings to be known and described in the notices calling those meetings as annual general meetings of that company.

(2) The meetings referred to in subsection (1) must be held-

(a) in the case of the first meeting, within a period of 18 months after the date of the incorporation of the company concerned;

(b) thereafter within not more than nine months after the end of every ensuing financial year of that company;

(c) within not more than 15 months after the date of the last preceding annual meeting of that company.

(3) The annual general meeting of a company must deal with and dispose of the matters provided for in this Act and may deal with and dispose of any further matters which are provided for in the articles of the company and, subject to this Act, any matters capable of being dealt with by any general meeting of the company.

(4) The Registrar may, on application to him or her before, or, for the purposes of subsection (8), also after, the expiry of the period within which an annual general meeting of a company must be held and on good cause shown, and on payment of the prescribed fee, extend the period within which an annual general meeting of the company concerned must be held by a period not exceeding three months, but, notwithstanding any extension, the date for the holding of the first annual general meeting following the meeting in respect of which the extension is granted, must be determined as if that meeting had been held on the last day on which it should have been held if the extension had not been granted.

(5) If for any reason an annual general meeting of a company is not or cannot be held as provided in this section or any matter required by this Act to be dealt with and disposed of at that meeting is not dealt with at the meeting, the Registrar may, on application by the company or any member or the legal representative of that company or member and on payment of the prescribed fee, call or direct the calling of a general meeting of the company which must deemed to be an annual general meeting, and may give ancillary or consequential directions which the Registrar may think expedient, including directions modifying or supplementing, in relation to the calling, holding and conduct of the meeting, the operation of the company's articles, and directions providing for one member or the legal representative of a member or any specified number of members present in person or by proxy, to be deemed to constitute a meeting, and any meeting called, held and conducted in accordance with that direction is, for all purposes deemed to be an annual general meeting of the company duly called, held and conducted.

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(6) For the purpose of determining the date for the holding of the next succeeding annual general meeting of a company, after a meeting held in pursuance of subsection (5), subsection (4) does, with the necessary changes, apply.

(7) Any company which fails to comply with subsection (1) or with any direction given by the Registrar under subsection (5), and every director or officer of the company who knowingly is a party to the failure, commits an offence and is liable to a fine which does not exceed N$800.

(8) A company which has failed to hold its annual general meeting within the time or extended time contemplated in subsection (1) or (4), or as directed by the Registrar under subsection (5), is further liable to pay to the Registrar the prescribed additional fee for every day during which the default continues but not exceeding the prescribed maximum fee.

(9) A company need not hold any particular annual general meeting if all members entitled to attend that meeting agree in writing, and in that event a resolution in writing dealing with and disposing of-

(a) the matters required by this Act to be dealt with and disposed of at an annual general meeting of a company; and

(b) any other matters, if any, as may, in terms of subsection (2), be dealt with at that meeting,

and signed by all members entitled to vote at that meeting, before the expiry of the period within which that meeting is to be held, is deemed to be a resolution passed at an annual general meeting of the company held in terms of this section on the date on which the last signature to that resolution is affixed.

188 General meetings

(1) General meetings of a company may, subject to its articles, be held from time to time.

(2) Any general meeting may, save in so far as is otherwise provided in the articles of a company and without derogation from any other provisions of this Act, be called by two or more members holding not less than one-tenth of its issued share capital or, in the case of a company not having a share capital, by not less than five percent in number of the members of the company.

189 Calling of general meetings on requisition by members

(1) The directors of a company must, notwithstanding anything in its articles, on the requisition of-

(a) 100 members of the company or of members holding at the date of the lodging of the requisition not less than one-twentieth of such of the capital of the company as at the date of the lodgment carries the right of voting at general meetings of the company; or

(b) in the case of a company not having a share capital, 100 members of the company or of members representing not less than one-twentieth of the total voting rights of all the members having at that date a right to vote at general meetings of the company,

within 14 days of the lodging of the requisition issue a notice to members convening a general meeting of the company for a date not less than 21 and not more than 35 days from the date of the notice.

(2) The requisition must state the objects of the meeting and must be signed by the requisitionists and lodged at the registered office of 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 14 days from the date of the lodging of the requisition issue a notice as required by subsection (1), the requisitionists or any of them numbering more than 50 or representing more than one-half of the total voting

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rights of all of them, may themselves on 21 days' notice convene a meeting, stating the objects of the meeting, but the meeting so convened must not be held after the expiry of three months from that date.

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

(5) Any reasonable expense incurred by the requisitionists because of the failure of the directors duly to convene a meeting must be repaid to the requisitionists by the company, and any sum so repaid must 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 those directors who were knowingly party to the default.

(6) Any director or officer of a company who knowingly is a party to a failure to convene a meeting as required by subsection (1) commits an offence and is liable to a fine which does not exceed N$400.

190 Convening of general meetings by Registrar

If all the directors of a company have become incapacitated or have ceased to be directors, the Registrar may, unless the articles of a company make other provision in that behalf, on the application of any member of the company or the legal representative of that member, and on payment of the prescribed fee, call or direct the calling of a general meeting of the company and may give any ancillary or consequential directions which the Registrar considers expedient, including directions modifying or supplementing, in relation to the calling, holding and conduct of the meeting, the operation of the company's articles, and directions providing for one member or the legal representative of a member or any specified number of members present in person or by proxy to be deemed to constitute a meeting, and any meeting called, held and conducted in accordance with any that direction, is, for all purposes, deemed to be a general meeting of the company duly called, held and conducted.

191 General meetings on order of Court

If, for any reason, it is impracticable to call an annual general meeting or other general meeting of a company in any manner in which meetings of that company may be called, or to conduct that meeting in the manner prescribed by the articles of a company or this Act, or if for any other reason the Court thinks fit to do so, it may, either of its own motion or on the application of the Registrar or any director of the company or of any member of the company or the legal representative of that member, order a meeting of the company to be called, held and conducted in any manner which it may direct and may in making an order give ancillary or consequential directions as it thinks expedient, including directions providing for one member or the legal representative of a member or any specified number of members present in person or by proxy to be deemed to constitute a meeting, and any meeting called, held and conducted in accordance with that order, is, for all purposes deemed to be an annual general meeting or a general meeting, as the case may be, of the company duly called, held and conducted.

192 Meetings of company with one member

In the case of a company having only one member, that member present in person or by proxy is deemed to constitute a meeting.

193 Duty of company to circulate notice of resolutions and statements by members

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(1) Subject to this section, a company must, on the requisition in writing of the number of members referred to in subsection (2), and, unless the company otherwise determines, at the expense of the requisitionists-

(a) 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; and

(b) 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) must be-

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

(b) not less than one hundred members.

(3) Notice of any resolution referred to in subsection (1)*(a)* must be given and any statement referred to in subsection (1)*(b)* must 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 member in any manner permitted for the service of notice of the meeting, and notice of that resolution must 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 that member notice of meetings of the company.

(4) A copy of a resolution or statement referred to in subsection (1) must be served and notice of that resolution must be given in the same manner and, so far as practicable, at the same time as the notice of the meeting in question, or if it is not practicable to do so, as soon as practicable thereafter.

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

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

(i) in the case of a requisition requiring notice of a resolution, not less than 30 days before the meeting; and

(ii) in the case of any other requisition, not less than 10 days before the meeting; and

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

(6) If, after a copy of a requisition requiring notice of a resolution has been lodged at the registered office of the company, an annual general meeting is called for a date 30 days or less after the copy has been lodged, the copy, though not lodged within the time required by this subsection, is deemed to have been properly lodged.

(7) The Court may absolve any company from the obligation to circulate any resolution or statement in terms of this section if, on the application either of the company or of any other interested person, the Court is satisfied that the rights thereby conferred are being abused to secure needless publicity for defamatory matter.

(8) An order under subsection (7) may include an order for the payment by the requisitionists of the costs or any portion of the costs incurred in connection with the relevant application, whether or not they are parties to the application.

(9) Notwithstanding anything contained in the articles of a company, the business which may be dealt with at an annual general meeting, must include any

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resolution of which notice has been given in accordance with this section, and, for the purpose of this subsection, notice is deemed to have been so given notwithstanding the accidental omission to give that notice to one or more members.

(10) If there is a failure to comply with subsection (1), every director or officer of the company who authorises or knowingly permits or is party to the failure, commits an offence and is liable to a fine which does not exceed N$4 000.

194 Notice of meetings and resolutions

(1) Unless the articles of a company provide for a longer period of notice, the annual general meeting or a general meeting called for the purpose of passing a special resolution may be called by not less than 21 days' notice in writing and any other general meeting may be called by not less than 14 days' notice in writing.

(2) Any provision in the articles of a company providing for a shorter period of notice, not being of an adjourned meeting, is void.

(3) Notwithstanding subsection (1), a meeting of a company is deemed to have been duly called-

(a) in the case of a meeting which is called on a shorter period of notice than is specified in that subsection or provided for in the company's articles, if it is so agreed, before or at the meeting, by a majority in number of the members having a right to attend and vote at the meeting who hold not less than 95 percent of the total voting rights of all the members of the company; or

(b) in the case of a meeting in respect of which notice as contemplated in subsection (1) has not been given, if it is so agreed in writing, before or at the meeting, by all the members of the company.

(4) No resolution of which special notice is required to be given in terms of this Act has effect unless notice of the intention to move it has been given to the company not less than 28 days before the meeting at which it is moved, and the company must give its members notice of that resolution at the same time, and in the same manner as it gives notice of the meeting, or, if that is not practicable, either by advertisement in a newspaper having an appropriate circulation or in any other manner allowed by the articles of the company, not less than 21 days before the meeting, but, if a meeting of the company is called for a date 28 days or less after notice of the intention to move that resolution has been given to the company, the notice, though not given within the time required by this subsection, is deemed to have been properly given for the purposes of the meeting.

(5) Any company which fails to give notice to its members as required by subsection (4) commits an offence and is liable to a fine which does not exceed N$400.

195 Manner of giving notice

Unless the articles of a company otherwise provide, notice of a meeting of a company must be served on every member of the company in the manner in which notices are required to be served in terms of Table A or Table B of Schedule 1, whichever is applicable to the company.

196 Representation of company or other body corporate at certain meetings

(1) A company or other body corporate may, by resolution of its directors or other governing body, authorise any person to act as its representative at any meeting of any company of which it is a member or at any meeting of any class of members of that company.

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(2) Subsection (1) does, with the necessary changes, apply with reference to meetings of debenture holders and creditors of a company.

(3) A person authorised under subsection (1) is entitled to exercise on behalf of the company or other body corporate which he or she represents, the same powers as that company or body corporate could have exercised if it were an individual shareholder, debenture holder or creditor of the company in relation to which that person has been authorised to act.

197 Representation of members at meetings by proxies

(1) Any member of a company entitled to attend and vote at a meeting of the company, or where the articles of a company limited by guarantee so provide, any member of that company, is entitled to appoint another person, whether a member or not, as proxy to attend, speak, and vote in that member's stead at any meeting of the company, but, unless the articles otherwise provide, a proxy is not entitled to vote except on a poll and a member of a private company is not entitled to appoint more than one proxy.

(2) In every notice calling a meeting of a company having a share capital and on the face of every proxy form issued at the company's expense there must appear with reasonable prominence a statement that a member entitled to attend and vote at the meeting is entitled to appoint a proxy or, where it is allowed, one or more proxies, to attend and speak and vote in that member's stead, and that a proxy need not also be a member of the company.

(3) If there is a failure to comply with the requirements of subsection (2) in respect of any meeting, every director and every officer of the company who authorises, knowingly permits or is party to the failure, commits an offence and is liable to a fine which does not exceed N$400.

(4) Any provision contained in a company's articles is void in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company at its registered office or by any other person more than 48 hours before a meeting in order that the appointment may be effective.

(5) If, for the purposes 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 notice of the meeting and to be represented by proxy, every director or officer of the company who authorises or knowingly permits or is a party to that issue, commits an offence and is liable to a fine which does not exceed N$400.

(6) Subsection (5) does not apply in respect of the issue to a member of a company at that member's request in writing of a form of appointment naming a 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 be represented at the meeting in question by proxy.

(7) If, for the purposes of any meeting of a company, invitations to appoint as proxy a person, or one of a number of persons, specified in the invitations or the instruments appointing a proxy, are issued at the company's expense, that invitation or instrument appointing a proxy must-

(a) contain adequate blank space immediately preceding the name or names of the person or persons specified therein to enable a member to write in the name and, if so desired, an alternative name of a proxy of that member's own choice;

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(b) provide for the member to indicate whether that member's proxy is to vote in favour of or against any resolution or resolutions to be put at the meeting or is to abstain from voting.

(8) The person present at a meeting of the company, whose name appears first in the list of names which have not been deleted in any instrument appointing a proxy becomes the validly appointed proxy of the member concerned.

(9) If a member does not indicate on the instrument appointing a proxy that that member's proxy is to vote in favour of or against any resolution or resolutions or to abstain from voting, the proxy is entitled to vote as he or she thinks fit.

(10) If there is a failure to comply with any requirement of subsection (7), every director or officer of the company who authorises, knowingly permits or is party to the failure, commits an offence and is liable to a fine which does not exceed N$400.

(11) This section applies in relation to meetings of any class of members of a company as it applies in relation to general meetings of the company.

198 Quorum for meetings

Unless the articles of a company provide for a greater number of members entitled to vote to constitute a quorum at meetings of a company, the quorum for those meetings is-

(a) in the case of a public company, three members entitled to vote, personally present, or if a member is a body corporate, represented;

(b) in the case of a private company, not being a private company having one member, two members entitled to vote, present in person or by proxy or, if a member is a body corporate, represented; and

(c) in the case of a wholly-owned subsidiary company, the representative of the holding company.

199 Chairperson of meetings

Unless the articles of a company otherwise provide, any meeting of the company may elect any member to be the chairperson of the meeting.

200 Compulsory adjournment of meetings

(1) If at any meeting of a company any member of the company who is present or represented and entitled to vote at the meeting demands an adjournment of the meeting on any ground stated by that member, the chairperson must put the demand to the vote of the meeting, and if a majority of the members present or represented and entitled to vote at the meeting or members present or represented and entitled to vote representing either personally or by proxy more than half of the share capital of the company represented at the meeting, vote in favour of an adjournment, the chairperson must adjourn the meeting to a day not earlier than seven days and not later than 21 days after the date of the meeting.

(2) When a meeting has been adjourned as contemplated in subsection (1) the company must, on a date not later than three days after the adjournment, publish in a newspaper circulating in Namibia a notice stating-

(a) the time, date and place to which the meeting has been adjourned;

(b) the matter before the meeting at the time when it was adjourned; and

(c) the ground for the adjournment.

(3) A private company may, instead of publishing the notice in a newspaper as contemplated in subsection (2), send it by registered post to the members not later than three days after the adjournment.

(4) Any person acting as chairperson of a meeting of a company who fails to comply with any requirement of subsection (1) and any company which fails to

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comply with any requirement of subsection (2) and any director or officer of a company who knowingly is a party to the failure, commits an offence and is liable to a fine which does not exceed N$400.

PART 3
VOTING RIGHTS AND VOTING (ss 201-206)

201 Voting rights of shareholders

(1) Subject to sections 202 and 203 and to the exceptions stated in section 204, every member of a company having a share capital has a right to vote at meetings of that company in respect of each share held by that member.

(2) Every member of a company limited by guarantee has, unless the articles otherwise provide, the right to vote at meetings of that company and has one vote.

202 Voting rights of preference shareholders

(1) Notwithstanding section 20(1), the articles of a company may provide that preference shares do not confer the right to vote at meetings of the company except-

(a) during any period determined as provided in subsection (2) during which any dividend or any part of any dividend on those shares or any redemption payment thereon remains in arrear and unpaid; or

(b) in regard to any resolution proposed which directly affects any of the rights attached to those shares or the interests of the holders, including a resolution for the winding-up of the company.

(2) The period referred to in subsection (1)*(a)* must be a period commencing on a day specified in the articles of the company concerned, not being more than six months after the due date of the dividend or redemption payment in question, or, where no due date is specified, after the end of the financial year of the company in respect of which that dividend accrued or that redemption payment became due.

203 Determination of voting rights

(1) A member of a public company having a share capital is-

(a) if the share capital is divided into shares of par value, entitled to that proportion of the total votes in the company which the aggregate amount of the nominal value of the shares held by that member bears to the aggregate amount of the nominal value of all the shares issued by the company;

(b) if the share capital is divided into shares of no par value, entitled to one vote in respect of each share that member holds.

(2) The voting rights of a member of a private company must, subject to section 20(1), be determined by the articles of the company.

(3) When any shares of a company are converted into stock, or have been so converted after 1 January 1953, this section does, with the necessary changes, apply as if that stock consisted-

(a) in the case of shares of par value, of as many units of equivalent number and value as the number and nominal value of the shares so converted; or

(b) in the case of shares of no par value, of as many units as the number of shares so converted.

(4) Notwithstanding this section, the articles of a company may provide-

(a) for the chairperson of any meeting to have a casting vote; and

(b) for the votes to which any member is entitled above a stated number to increase, not in direct proportion to the number of shares held, but in some lower proportion specified in those articles and may in that event further provide that no member is entitled to a number of votes exceeding the

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number so specified or that the number of votes to which any member is entitled be limited to a specified number.

204 Exceptions as regards voting rights

(1) Section 20(1) does not apply in respect of shares of a company which on 1 January 1974 had already been issued without voting rights, or in respect of issued shares, other than preference shares, in respect of which at that date there existed different voting rights or in respect of shares subsequently issued in respect of which there existed at that date a contractual right or obligation to issue those shares.

(2) If a company issues new shares, all the provisions of this Act as to voting rights must, save as provided in subsection (1), apply in respect of those new shares, and, for the purpose of determining the voting rights attached to those new shares as provided in section 203 all its shares are deemed to have been issued with voting rights in accordance with this Act.

205 Exercise of voting rights

(1) Any person present and entitled to vote as a member or as a proxy or as a representative of a body corporate at any meeting of the company has, on a show of hands, only one vote, irrespective of the number of shares that person holds or represents.

(2) On a poll at any meeting of a company, any member, including a body corporate, or that member's proxy is entitled to exercise all voting rights as determined in accordance with this Act, but is not obliged to use all his or her votes or cast all the votes he or she uses in the same way.

206 Right to demand poll

(1) A provision contained in a company's articles is void in so far as it has the effect-

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

(b) of rendering ineffective a demand for a poll made-

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

(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 entitled to vote at the meeting and holding in the aggregate not less than one-tenth of the issued share capital of the company.

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

PART 4
SPECIAL RESOLUTIONS (ss 207-211)

207 Requirements for special resolutions

(1) A resolution by a company is a special resolution if at a general meeting of which not less than 21 days' notice has been given specifying the intention to propose the resolution as a special resolution, the terms and effect of the resolution and the reasons for it and at which-

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(a) members holding in the aggregate not less than one-fourth of the total votes of all the members entitled to vote, are present in person or by proxy; or

(b) in the case of a company limited by guarantee, not less than one-fourth of the members entitled to vote are present in person or by proxy,

the resolution has been passed, on a show of hands, by not less than three-fourths of the number of members of the company entitled to vote on a show of hands at the meeting who are present in person or by proxy or, where a poll has been demanded, by not less than three-fourths of the total votes to which the members present in person or by proxy are entitled.

(2) If less than one-fourth of the total votes of all the members entitled to attend the meeting and to vote or, in the case of a company limited by guarantee, less than one-fourth of the members of that company, are present or represented at a meeting called for the purpose of passing a special resolution, the meeting stands adjourned to a day not earlier than seven days and not later than 21 days after the date of the meeting and section 200(2) applies in respect of that adjournment.

(3) At the adjourned meeting the members who are present in person or by proxy and are entitled to vote may deal with the business for which the original meeting was convened and a resolution passed by not less than three-fourths of those members is deemed to be a special resolution even if less than one-fourth of the total votes are represented at that adjourned meeting.

(4) With the consent of a majority in number of the members of a company having the right to attend and vote at a meeting and holding in the aggregate not less than 95 percent of the total votes of all those members, a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given.

(5) A copy of the consent referred to in subsection (4) must, on the prescribed form, be lodged with the Registrar together with the copy of the special resolution.

(6) Notwithstanding subsection (1), a resolution may, with the written consent of all the members of the company, be proposed and passed as a special resolution at a meeting of which notice as contemplated in subsection (1) has not been given.

(7) The written consent referred to in subsection (6) must be in the prescribed form and copy of that notice must be lodged with the Registrar together with a copy of the special resolution.

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

(9) If a poll is demanded regard must be had, in computing the majority on the poll, to the number of votes cast for and against the resolution.

(10) For the purposes of this section notice of a meeting is, subject to this Act, deemed to have been duly given and the meeting must be taken to be duly held when the notice is given and the meeting is held in the manner provided by the articles of the company concerned.

208 Registration of special resolutions

(1) Within one month from the passing of a special resolution a copy of that resolution together with either a copy of the notice convening the meeting concerned or a copy of the consent contemplated in section 207(4) or (6), as the case may be, must be lodged with the Registrar, who must, subject to subsection (2), and on payment of the prescribed fee, register that resolution.

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(2) The Registrar may refuse to register any special resolution lodged under subsection (1), except on an order of the Court, if that resolution appears to him or her to be contrary to this Act or to the memorandum or articles of the company concerned.

(3) A copy of every special resolution for the time being in force must be embodied in or annexed to every copy of the articles issued after the registration of the resolution.

(4) The company concerned must transmit a copy of a special resolution to any member at that member's request, and on payment of an amount equal to the cost of making that copy or a lesser amount as the company may determine.

(5) Any company which fails to comply with any requirement of subsection (3) or (4) and every director or officer thereof who knowingly permits or is a party to the failure, commits an offence and is liable to a fine which does not exceed N$200.

(6) If a company makes default in lodging with the Registrar a copy of any special resolution, and the notice or the consent, as required by subsection (1), the company, and every director or officer who knowingly permits or is a party to the default, commits an offence and is liable to a fine which does not exceed N$40 for every day during which the contravention continues.

209 Alteration of memorandum or articles to pass special resolution

Where this Act permits any company to do anything by special resolution subject to the condition that its memorandum or articles authorises it and its memorandum or articles do not provide for that authority, but do not prohibit it, the company concerned may convene a single meeting for the purpose of-

(a) passing a special resolution for the creation of that authority in the memorandum or articles; and

(b) passing the intended special resolution.

210 Special resolution to lapse unless registered

Any special resolution of which a copy is not lodged with the Registrar and registered within six months from the date of the passing of that resolution lapses and becomes, unless the Court otherwise directs, void.

211 Dates on which resolutions take effect

(1) A special resolution does not take effect until it has been registered by the Registrar under section 208.

(2) Any other resolution passed by a meeting of a company or of the holders of any class of shares of a company has effect as from the date on which it is passed.

PART 5
MINUTES, MINUTE BOOKS AND REPORTS OF MEETINGS (ss 212-215)

212 Keeping of minutes of meetings

(1) Every company must, within one month after the date on which a meeting was held, cause minutes of the proceedings at any meeting of the company to be entered, in the official language, in one or more minute books kept for the purpose.

(2) The minute book referred to in subsection (1) must be kept at the registered office of the company or at the office where that minute book is made up.

(3) For the purpose of this section loose leaves of paper must not be regarded as constituting a minute book unless they are bound together permanently, without means provided for the withdrawal or insertion of leaves and the pages are consecutively numbered.

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(4) The minutes of any meeting purporting to be signed by the chairperson of that meeting or by the chairperson of the next succeeding meeting are evidence of the proceedings.

(5) Minutes kept under the repealed Act by an existing company in a language other than the official language must be taken to be sufficient compliance with subsection (1).

(6) Any company which fails to comply with any requirement of subsection (1) or (2), and every director or officer who knowingly permits or is a party to the failure, commits an offence and is liable to a fine which does not exceed N$400 for every meeting in respect of which the contravention takes place.

213 Validity of proceedings

Where minutes have been made of the proceedings at any general meeting of a company, in accordance with section 212, the meeting is deemed to have been duly held and convened and all proceedings to have been duly had and all appointments of directors, managers, liquidators, auditors and officers are, until the contrary is proved, deemed to be valid.

214 Right of members to inspect minute books

(1) Any minute book of a company kept under section 212 must be open to inspection during business hours by any member of the company, without charge, at the registered office of the company or the office where it is made up, subject to any restrictions which may be provided for in the articles or imposed by the company in general meeting, but not less than two hours in each day must be allowed for inspection.

(2) Any member of a company is entitled to be furnished, within seven days after having made a written request to the company, with a copy of the minutes of the proceedings at any general meeting of the company, certified by the secretary or a director of the company as correct, at a charge not exceeding an amount equal to the cost of making the copy.

(3) If any inspection required under this section is refused or if any copy required under this section is not furnished within the proper time-

(a) the Court may, on application made to it, order that the minutes in question be made available for inspection or that the copy required be furnished immediately or within any period which the Court may direct and may order the costs of the application to be paid by any director or officer of the company who is responsible for the default; and

(b) the company, and every director or officer of the company who knowingly is a party to the default, commits an offence and is liable to a fine which does not exceed N$400.

215 Publication of reports of meetings

(1) A report purporting to be a report of the proceedings at any meeting of a company must not be circulated or advertised at the expense of the company unless it contains a fair summary of all material questions and comments, relevant to any matter before the meeting, which have been asked or made by members taking part in the proceedings, but it is not necessary to include in that report any matter which can reasonably be regarded as defamatory of any person or as detrimental to the interest of the company.

(2) Any director or officer of a company who authorises or knowingly permits or is a party to the circulation or advertising of a report contrary to subsection (1) commits an offence and is liable to a fine which does not exceed N$2 000, and if in any prosecution under this subsection the defence is raised that the matter omitted

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from a report was immaterial or could reasonably be regarded as defamatory of some person or as detrimental to the interests of the company, the burden of proving this lies on the person raising the defence.

CHAPTER 8
DIRECTORS (ss 216-259)

PART 1
NUMBER AND APPOINTMENT (ss 216-222)

216 Number of directors

(1) Every public company must have at least two directors and every private company must have at least one director.

(2) Until directors are appointed, every subscriber to the memorandum of a company is deemed, for all purposes, to be a director of the company.

217 Determination of number of directors and appointment of first directors

Subject to the articles of any company, the number of directors of the company may be determined and the first directors may be appointed in writing by a majority of the subscribers to its memorandum.

218 Appointment of directors to be voted on individually

(1) At a general meeting of a company a motion for the appointment of two or more persons as directors of the company by a single resolution must not be moved, unless a resolution that it must be so moved has first been agreed to by the meeting without any vote being given against it.

(2) Subject to section 222, a resolution moved in contravention of this section is void, whether or not its being so moved was objected to at the time, but if a resolution so moved is passed, no provision for the automatic reappointment of a retiring director in default of another appointment applies.

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

(4) This section does not apply to a resolution altering the company's articles.

219 Consent to act as director or officer

(1) Any person who, before the issue of a certificate to commence business, is appointed as a director or officer of a company having a share capital, must-

(a) before that certificate is issued, sign and lodge with the company his or her written consent to act as a director or an officer, on a duly completed prescribed form containing the particulars prescribed; and

(b) in the case of a director, either in the memorandum of the company subscribe for a number of shares not less than the number, if any, required to be held by a director as qualification shares, or sign and lodge with the Registrar a contract in the prescribed form in writing to subscribe for or otherwise acquire those shares.

(2) For the purposes of this section "qualification shares" means the qualification shares required to be held on appointment to the office of director or within a period determined by reference to the time of appointment.

(3) Any person who is appointed as a director or officer of a company at any time after it has become entitled to commence business must, within 28 days after the date of that appointment or within a further period which the Registrar may, on good cause shown and on payment of the prescribed fee, allow, lodge with the

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company his or her written consent to that appointment on the prescribed form referred to in subsection (1)*(a)*, duly completed and signed by him or her.

(4) Subsection (3) does not apply to the reappointment of a retiring director.

(5) Failure to comply with subsection (1) or (3) does not affect the validity of an appointment.

(6) This section does not apply in respect of any person deemed to be a director under section 216(2).

(7) Any person appointed as a director or officer of a company in the circumstances referred to in subsection (1) or (3), who fails to comply with those subsections, commits an offence and is liable to a fine which does not exceed N$20 for every day during which the contravention continues.

(8) Any company which publishes, and every director or officer of the company who knowingly is a party to the publication of the name of any person as a director of the company when that person is not a director or has not validly been appointed as director of the company, commits an offence and is liable to a fine which does not exceed N$2 000.

220 Filling of vacancy where director is disqualified or removed

(1) If the articles of a company provide for the filling of casual vacancies in respect of directors, any vacancy created by the disqualification of any person from being a director of the company or by the removal of a director under this Act, may, subject to those articles, and if in the case of a removal, the vacancy is not filled at the meeting at which he or she is removed, be filled as a casual vacancy.

(2) A person appointed as a director under subsection (1) in the place of a director removed or disqualified under this Act must be treated, for the purpose of determining the time at which he or she or any other director is to retire, as if he or she had become director on the day on which the person in whose place he or she is appointed was last appointed a director.

221 Qualification shares of directors

(1) Without prejudice to the restrictions imposed by section 219, any director of a company who is, by its articles, required to hold a specified number of qualification shares, and who does not hold those qualification shares must vacate his or her office if he or she does not obtain those qualification shares within two months, or any shorter period which is provided in the articles of the company, from the date of his or her appointment, and he or she is not capable of being reappointed until he or she has obtained those qualification shares.

(2) For the purposes of articles of a company requiring a director to hold a specified number of shares as qualification shares, the bearer of a share warrant must not be regarded as the holder of the shares specified in the warrant.

(3) Any person who accepts an appointment or acts as a director of a company contrary to subsection (1), commits an offence and is liable to a fine which does not exceed N$40 for every day during which the contravention continues.

222 Validity of acts where appointment is defective

The acts of a director of a company are valid notwithstanding any defect that may afterwards be discovered in his or her appointment or qualification.

PART 2
REGISTER OF DIRECTORS AND OFFICERS (ss 223-224)

223 Register of directors, officers and corporate secretaries

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(1) Every company must in the official language, keep a register of directors and officers of the company and secretaries which are bodies corporate and cause to be entered in that register-

(a) in respect of every director or officer-

(i) his or her full forenames and surname and any former forenames and surname, identity number or, if he or she has no such number, date of birth, nationality if not a Namibian national, occupation, residential, business and postal addresses and the date of his or her appointment; and

(ii) the name and registration number of every other company of which that director is a director;

(b) in respect of every officer or secretary which is a body corporate, its name, its registration number, the address of its registered office and the date of its appointment; and

(c) any changes occurring from time to time in the particulars referred to in paragraphs *(a)* and *(b)* and the dates and nature of those changes.

(2) Every company must, in addition to the particulars referred to in subsection (1), enter in the register concerned the name and date of appointment of the auditor of the company and the date and particulars of any change of that name and date of appointment.

(3) For the purposes of subsection (1)*(a)* "former forenames and surname" does not include-

(a) in the case of a person adopted as a child, any forename and surname borne by him or her before his or her adoption;

(b) any forename or surname previously borne by any person which was changed or disused before he or she attained the age of 18 years or has been changed or disused for a period of not less than 10 years; or

(c) in the case of a married or divorced person, any forename or surname borne by him or her before his or her marriage.

(4) Section 117 in so far as it relates to the place where the register of members of a company must be kept and notice to the Registrar and section 120 in so far as it relates to the inspection of and copies of or extracts from that register, do, with the necessary changes, apply to the register to be kept under this section.

(5) A register of directors and officers kept under the repealed Act by an existing company in a language other than the official language is deemed to be sufficient compliance with subsection (1).

(6) Any company which fails to comply with subsection (1), (2) or (4), commits an offence and is liable to a fine which does not exceed N$2 000 and an additional fine which does not exceed N$40 for every day during which the contravention continues.

224 Duties of directors and others and of company in respect of register

(1) Any person in respect of whom the particulars referred to in section 223 are in terms of that section to be entered in the register mentioned in that section, must furnish those particulars in writing to the company concerned-

(a) in the case of a person appointed as a director or officer of the company, within 28 days after the date of his or her appointment; and

(b) in the case of a change in those particulars, but excluding any change contemplated in section 223(2) and a change by way of the vacation of office by the person concerned, within 14 days after the date of the occurrence of the change,

and the company must, on receipt of those particulars or any change, enter that information in the register of the company.

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(2) A company must, within 14 days after receipt of any particulars referred to in section 223(1)*(a)*(i) and *(b)* or of notice of any change in the particulars referred to in that section or after any director or officer or a secretary which is a body corporate has vacated office, lodge a return with the Registrar in the prescribed form reflecting the contents of the register after the particulars or the change or a statement that a vacation of office has occurred, have been entered in the register, but, any entry of a vacation of office previously advised to the Registrar, need not be reflected in that return.

(3) In respect of any of the matters referred to in section 219(1) the return referred to in subsection (2) must contain a statement, signed by a director, a secretary who is a body corporate or an officer of the company, that-

(a) the consent, referred to in section 219, of the director or officer in respect of whom particulars are reflected in that return, has been obtained on a duly completed and signed prescribed form; and

(b) any person appointed as director or officer of the company, is not disqualified under section 225 or 226.

(4) Any written consent referred to in section 219 must be retained by the company and the Registrar may by notice in writing require a company to transmit to him or her within 14 days after the date of the receipt of that notice, a certified copy of the consent of any director or officer of the company to act as such.

(5) Any person who or company or external company which fails to comply with this section commits an offence and is liable to a fine which does not exceed N$20 for every day during which the contravention continues.

PART 3
DISQUALIFICATIONS OF DIRECTORS (ss 225-228)

225 Disqualifications of directors

(1) Any of the following persons are disqualified from being appointed or acting as a director of a company-

(a) a body corporate;

(b) a minor or any other person under legal disability;

(c) any person who is the subject of any order under this Act or deemed to have been issued under this Act disqualifying him or her from being a director;

(d) save under authority of the Court-

(i) an unrehabilitated insolvent;

(ii) any person removed from an office of trust on account of misconduct;

(iii) any person who has been convicted of insider trading or any other fraud-on-the-market offence;

(iv) any person who has been convicted, whether in Namibia or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, an offence under any law for the prevention of corruption, or any offence involving dishonesty or in connection with the promotion, formation or management of a company, and has been sentenced to imprisonment without the option of a fine or to a fine to the equivalent of or exceeding N$1 000.

(2) Any person disqualified from being appointed or acting as a director of a company and who purports to act as a director or directly or indirectly takes part in or is concerned in the management of any company, commits an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment.

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(3) Nothing in this section prevents a company from providing in its articles for any further disqualifications for the appointment of or the retention of office by any person as a director of that company.

226 Disqualification of directors, officers and others by Court

(1) The Court may make an order directing that, for any period which is specified in the order, a person, director or officer must 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 any company when-

(a) that person, director or officer, has been convicted of an offence in connection with the promotion, formation or management of a company;

(b) the Court has made an order for the winding-up of a company and the Master has made a report under this Act stating that in his or her opinion a fraud has been committed-

(i) by that person in connection with the promotion or formation of the company; or

(ii) by any director or officer of the company in relation to the company since its formation;

(c) in the course of the winding-up or judicial management of a company it appears that that person-

(i) has been guilty of an offence referred to in section 430, whether or not he or she has been convicted of that offence; or

(ii) has otherwise while an officer of the company committed any fraud in relation to the company or any breach of his or her duty to the company;

(d) a declaration has been made in respect of any person under section 430(1);

(e) that director or officer has persistently failed to comply with this Act or the repealed Act requiring any return, statement or other document to be lodged with or delivered or sent to, or notice to be given to, the Registrar, or that person has, where the company has failed to so comply, persistently failed to take all reasonable steps to obtain compliance;

(f) that person has, while a director of a company, carried on the business of the company recklessly or with the intent to defraud creditors or for any fraudulent purpose or has been convicted of an offence in connection with that manner of carrying on of business.

(2) An order under subsection (1) may be made-

(a) by the Court, on application by the Master, or, in the case of a company being wound up or under judicial management, by the Prosecutor-General in terms of section 407, or by the liquidator or the judicial manager or by any person who is a creditor or is or has been a member of that company; or

(b) in the case of an order in the circumstances set out in subsection (1)*(a)* or *(f)*, also summarily by the Court convicting the person concerned.

(3) A person who makes an application under this section must give not less than 10 days' notice of his or her intention to apply for the order, to the person against whom the order is sought and the person against whom the order is sought may attend the hearing of the application and give evidence and call witnesses to give evidence on his or her behalf.

(4) Where an order under subsection (1) has been made, the person to whom the order relates must give not less than 10 days' notice to the Master, the Prosecutor-General, the liquidator or the person who was the judicial manager of the company concerned, of any application he or she intends making for leave of the Court referred to in subsection (1), and the Prosecutor-General, liquidator or judicial

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manager must draw the attention of the Court to any matter which may appear to him or her to be relevant, and may give evidence and call witnesses.

(5) For the purposes of subsection (1)*(b)*(ii) the reference to an officer of a company must be construed as including a reference to any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

(6) An order may be made under subsection (1)*(b)*(ii) whether or not criminal proceedings have been instituted in respect of any matter on which the order is based.

(7) For the purposes of subsection (1)*(e)* it is sufficient proof that a person has so persistently failed to comply with this Act or has so persistently failed to take all reasonable steps to obtain compliance where the relevant company has so failed to comply, if within a period of five years before the date on which application is made to the Court for the relevant order-

(a) that person has been found guilty on a criminal charge in connection with any defaults in respect of this Act;

(b) a civil penalty has been imposed on that person under section 184, whether or not on the same occasion, at least three times.

(8) Any person who contravenes any order made under subsection (1), commits an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment.

227 Register of disqualification orders

(1) The Registrar must, at the Companies Registration Office, keep a register of disqualification orders in which must be entered all disqualification orders made after the commencement of this Act by the Court under section 226 and any variation of, or leave granted by the Court with regard to, any order so entered.

(2) Sections 8 and 12 insofar as they relate to the inspection of documents in the Companies Registration Office and the transmission of orders of the Court to the Registrar and the Master do, with the necessary changes, apply to this section.

228 Removal of directors and procedures in that regard

(1) A company may, notwithstanding anything in its memorandum or articles or in any agreement between it and any director, by resolution remove a director before the expiry of his or her period of office.

(2) Subsection (1) must not be construed as authorising the removal of a director of a private company who was holding office for life on 13 June 1949.

(3) Special notice must be lodged with the company of any proposed resolution to remove a director under this section or to appoint any person in the place of a director so removed at the meeting at which he or she is removed, and, on receipt of notice of the proposed resolution, the company must, as soon as is reasonably possible, deliver a copy of the notice to the director concerned who is, whether or not he or she is a member of the company, entitled to be heard on the proposed resolution at the meeting.

(4) If notice is given of a proposed resolution to remove a director under this section, and the director concerned makes representations not exceeding a reasonable length in writing to the company and requests their notification to members of the company, the company must, 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 that representations have been made; and

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(b) send a copy of the representations to every member of the company to whom notice of the meeting is sent, whether that notice is sent before or after receipt of the representations by the company.

(5) If a copy of representations referred to in subsection (4) is not sent as contemplated in that subsection because it was received too late or because of the company's failure to do so, the director concerned may, without prejudice to his or her right to be heard orally, require that the representations be read at the meeting.

(6) A copy of the representations must not be sent out and the representations need not be read out at any meeting if, on the application of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter.

(7) The Court may order the company's costs or the costs of the person referred to in subsection (6) to be paid in whole or in part by the director concerned, notwithstanding that he or she is not a party to the application.

(8) Nothing in this section is to be construed as depriving a person removed from office of compensation or damages which may be payable to him or her in respect of the termination of his or her appointment as director or of any appointment terminating with that of director or as derogating from any power to remove a director which may exist apart from this section.

PART 4
RESTRICTIONS ON DIRECTORS, THEIR POWERS AND CERTAIN ACTS (ss 229-236)

229 Restriction of power of directors to issue share capital

(1) Notwithstanding anything contained in its memorandum of articles, the directors of a company have no power to allot or issue shares of the company without the prior approval of the company in general meeting.

(2) The approval referred to in subsection (1) may be in the form of a general authority to the directors, whether conditional or unconditional, to allot or issue any shares in their discretion, or in the form of a specific authority in respect of any particular allotment or issue of shares.

(3) If any approval is given in the form of a general authority to the directors, it is valid only until the next annual general meeting of the company but it may be varied or revoked by any general meeting of the company before the annual general meeting.

(4) Any director of a company who knowingly takes part in the allotment or issue of any shares in contravention of subsection (1), is liable to compensate the company for any loss, damages or costs which the company may have sustained or incurred thereby, but proceedings to recover any such loss or those damages or costs must not be commenced after the expiry of two years from the date of the allotment or issue.

230 Restriction on issue of shares and debentures to directors

(1) A provision in any memorandum or articles or in any resolution of a company which authorises the directors to allot or issue any shares or debentures convertible into shares of the company at the discretion of the directors, must not authorise the allotment or issue of those shares or debentures to any director of the company or his or her nominee, or to any body corporate which is or the directors of which are accustomed to act in accordance with the directions or instructions of that director or nominee, or at a general meeting of which that director or his or her

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nominee is entitled to exercise or control the exercise of one-fifth or more of the voting power, or to any subsidiary of that body corporate unless-

(a) the particular allotment or issue has before the allotment or issue been specifically approved by the company in general meeting;

(b) those shares or debentures are allotted or issued under a contract underwriting the shares or debentures;

(c) those shares or debentures are allotted or issued in proportion to existing holdings, on the same terms and conditions as have been offered to all the members or debenture holders of the company or to all the holders of the shares or debentures of the class or classes being allotted or issued; or

(d) those shares or debentures are allotted or issued on the same terms and conditions as have been offered to members of the public.

(2) Any director of a company who contravenes or permits the contravention of this section commits an offence and is liable to a fine which does not exceed N$4 000 or to be imprisoned for a period which does not exceed one year or to both the fine and imprisonment, and is further liable to compensate the company for any loss, damages or costs which the company may sustain or incur.

(3) Proceedings to recover any loss, damages or costs incurred under subsection (2) must not be commenced after the expiry of two years from the date of the allotment or issue.

231 Share option plans where director is interested

(1) An option or a right given directly or indirectly after 1 January 1974 to any director or future director of a company in terms of any scheme or plan, to subscribe for any shares of that company or to take up any debentures convertible into shares of that company on any basis other than that laid down in section 230(1)*(c)*, is not valid unless authorised in terms of a special resolution of that company.

(2) For the purposes of subsection (1), the expression "future director" does not include a person who becomes a director of the company after the lapse of six months from the date on which the option or right is acquired by that person.

(3) An option or a right is not invalid in terms of this section if that director or future director of the company holds salaried employment or office in the company and is given that option or right in his or her capacity as an employee.

232 Directors not to deal in options in respect of listed shares and debentures

(1) A director of a company who purchases a right-

(a) to call for delivery at a specified price, within a specified time of a specified number of shares or a specified amount of debentures which are listed by a stock exchange;

(b) to make delivery at a specified price, within a specified time of a specified number of shares or a specified amount of debentures which are listed as contemplated in paragraph *(a)*; or

(c) to call for delivery at a specified price within a specified time or to make delivery at a specified price within a specified time of a specified number of shares or a specified amount of debentures which are listed as contemplated in paragraph *(a)*,

commits an offence and is liable to a fine which does not exceed N$4 000 or to be imprisoned for a period which does not exceed one year or to both the fine and imprisonment.

(2) Nothing in this section is to be taken as penalising a person who buys a right to subscribe for shares or debentures of a body corporate or buys debentures of

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a body corporate that confer on the holder of the right a right to subscribe for, or to convert the debentures, whole or in part, into, shares of that body corporate.

(3) In subsection (1)-

(a) "shares" and "debentures" in relation to a director of a company, mean shares or debentures of that company or its subsidiary or holding company or a subsidiary of its holding company;

(b) "director" includes a person in accordance with whose directions or instructions the directors of a company are accustomed to act, and that person is deemed to be a director of the company.

233 Prohibition of tax free payments to directors

(1) A company must not pay to any of its directors, whether in an official or a personal capacity as a director, any remuneration free of any taxation in respect of his or her income, or otherwise calculated by reference to or varying with the amount of that taxation, or with the rate of taxation on incomes, except under a contract which was in force on 13 June 1949, and which provides expressly, and not merely by reference to the articles of the company, for payment of the remuneration.

(2) Any provision contained in the articles of a company, or in any contract other than the contract referred to in subsection (1), or in any resolution of a company or of its directors, providing for the payment to a director by way of remuneration of any amount to be determined in a manner prohibited by subsection (1), must be construed as if it provided for the payment of that amount without reference to the manner of determination of the amount.

234 Prohibition of loans to, or security in connection with transactions by, directors and managers

(1) A company must not, directly or indirectly make a loan to-

(a) any director or manager of-

(i) the company;

(ii) its holding company; or

(iii) any other company which is a subsidiary of its holding company; or

(b) any other company or other body corporate controlled by one or more directors or managers of the company or of its holding company or of any company which is a subsidiary of its holding company,

or provide any security to any person in connection with an obligation of that director, manager, company or other body corporate.

(2) For the purpose of subsection (1)-

(a) "loan" includes-

(i) a loan of money, shares, debentures or any other property; and

(ii) any credit extended by a company, where the debt concerned is not payable or being paid in accordance with normal business practice in respect of the payment of debts of the same kind; and

(b) one or more directors or managers of a company contemplated in subsection (1)*(b)* are deemed to control another company or body corporate only if-

(i) that director or manager or his or her nominee is a member or that directors or managers or their nominees are members of that other company or body corporate and the composition of its board of directors is controlled by that director, manager or nominee or those directors, managers or nominees, and the composition is deemed to be so controlled if the director or manager or his or her nominee or the directors or managers or their nominees may, by the exercise of some

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power and without the consent or concurrence of any other person, appoint or remove the majority of the directors concerned, and that director, manager or nominee or those directors, managers or nominees are deemed to have power to appoint a director where a person cannot be appointed as a director without his or her or their consent or concurrence; or

(ii) more than one-half of the equity share capital of that other company or body corporate or, if that other body corporate is a close corporation, more than 50 percent of the interest in that corporation is held by that director, manager or nominee or those directors, managers, or nominees;

(c) "security" includes a guarantee.

(3) Subsections (1) and (2)*(b)* must not be construed as prohibiting a company from making a loan to, or providing security to any person in connection with an obligation of, its holding company or subsidiary or a subsidiary of that holding company.

(4) Subsection (1) does not apply-

(a) in respect of-

(i) the making of a loan by a company to its own director or manager;

(ii) the provision of security by a company in connection with an obligation of its own director or manager;

(iii) the making of a loan by a company to any other company or other body corporate controlled by one or more of the directors or managers of the first-mentioned company; or

(iv) the provision of security by a company in connection with an obligation of any other company or other body corporate controlled by one or more of the directors or managers of the first-mentioned company,

with the prior consent of all the members of the company or in terms of a special resolution relating to a specific transaction, but, in respect of any loan made or security provided before the commencement of this Act, that consent is deemed to have been given if the transaction concerned has subsequently, whether before or after the commencement, been ratified by all the members of the company;

(b) subject to subsection (5), in respect of anything done to provide any director or manager with funds to meet expenditure incurred or to be incurred by him or her for the purposes of the company concerned or for the purpose of enabling him or her properly to perform his or her duties as director or manager of that company;

(c) in respect of anything done in good faith in the ordinary course of the business of a company actually and regularly carrying on the business of the making of loans or the provision of security;

(d) to the provision of money or making of loans by a company for the purposes contemplated in section 44(2)*(b)* and *(c)*;

(e) to the making of a loan or the provision of security with the approval of the company in general meeting for housing for its director or manager; or

(f) in respect of-

(i) the making of a loan by a company to a director or manager of its subsidiary; or

(ii) the provision of security by a company to another person in connection with an obligation of a director or manager of its subsidiary,

as long as that director or manager is not also a director or manager of that company itself.

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(5) A loan must not be made or security provided by virtue of subsection (4)*(b)*, except-

(a) with the prior approval of the company given at a general meeting at which the amount of the loan or the extent of the security and the purposes of the loan are disclosed; or

(b) that, if the approval contemplated in paragraph *(a)* is not given, as at or before the next annual general meeting of the company, on condition that the loan must be repaid or the liability under the security must be discharged, within six months from the conclusion of that annual general meeting.

(6) Any director or officer of a company who authorises, permits or is a party to the making of any loan or the provision of any security contrary to this section-

(a) is liable to indemnify the company and any other person who had no actual knowledge of the contravention, against any loss directly resulting from the invalidity of that loan or security; and

(b) commits an offence and is liable to a fine which does not exceed N$4 000 or to be imprisoned for a period which does not exceed one year or to both the fine and imprisonment.

(7) For the purposes of subsection (6) "director or officer of a company" includes, where the company is a subsidiary, any director or officer of its holding company.

235 Payments to directors for loss of office or in connection with arrangements and take-over schemes

(1) A company must not make any payment or grant any benefit or advantage to any director or past director of the company or of its subsidiary company or holding company or of any subsidiary of its holding company-

(a) by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office;

(b) by way of compensation, consideration or for any other reason, for loss or retention of office or otherwise, in connection with any scheme referred to in section 319; or

(c) by way of compensation, consideration or other reason in connection with any take-over scheme referred to in section 320,

unless full particulars with respect to the proposed payment benefit or advantage have been disclosed to the members of the company and the making of the payment or the grant of the benefit or advantage has been approved by special resolution of the company.

(2) Any payment made or benefit or advantage granted contrary to subsection (1) is-

(a) in the case of paragraphs *(a)* and *(b)* of that subsection, deemed to have been received by the director or past director concerned in trust for the company; and

(b) in the case of paragraph *(c)* of that subsection, deemed to have been received by the director or past director concerned in trust for any persons who have sold their shares as a result of the take-over offer concerned.

(3) If in connection with any take-over scheme the price to be paid to a director or past director for any shares of the company held by that director is in excess of the price offered to other holders of those shares in terms of the take-over scheme or any benefit or advantage is granted to that director or past director, the excess or the money value of the benefit or advantage, as the case may be, is for the purposes of this section, deemed to have been a payment made contrary to subsection (1)*(c)*.

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(4) A director's expenses of distributing any sum among persons entitled because of subsection (2)*(b)* must be borne by him or her and must not be retained out of that sum.

(5) Where in proceedings for the recovery of any payment, benefit or advantage deemed to have been received in trust, it is shown that-

(a) the payment was made or the benefit or advantage was granted in pursuance of any arrangement entered into as part of an agreement in respect of any scheme or take-over scheme, or within one year before or two years after that agreement or the take-over offer; and

(b) the company, or the transferee company under any scheme or the offeror in respect of any take-over scheme was privy to that arrangement,

the payment, benefit or advantage is deemed, except in so far as the contrary is shown, to be one to which this section applies.

(6) This section does not apply to any payment made or benefit or advantage granted in good faith by way of damages for breach of contract or by way of a pension, including any superannuation allowance, gratuity or similar payment in respect of past services.

(7) Nothing in this section is to be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any payments, benefits or advantages as are mentioned in this section or with respect to any other payments, benefits or advantages made or granted or to be made or granted to the directors or past directors of a company.

236 Disposal of undertaking or greater part of assets of company

(1) Notwithstanding anything contained in its memorandum or articles, the directors of a company have no power, save with the approval of a general meeting of the company, to dispose of-

(a) the whole or substantially the whole of the undertaking of the company; or

(b) the whole or the greater part of the assets of the company.

(2) A resolution of the company approving a disposal referred to in subsection (1) has no effect unless it authorises or ratifies in terms the specific transaction.

PART 5
INTERESTS OF AND DEALINGS BY DIRECTORS AND OTHERS IN SHARES OF COMPANY (ss 237-241)

237 Definitions for purposes of this Part

For the purposes of this Part-

"interest" includes, without derogating from the generality of the word, any option in respect of, any right to subscribe for or any right in or to any shares or debentures;

"officer" in relation to a company, includes any employee who would be in possession of any information consequent on his or her immediate relationship with the directors of the company immediately before a public announcement is to be made under section 241;

"past director" means a person who has ceased to be a director of the company concerned for a period not exceeding six months;

"person" means a person in accordance with whose directions or instructions any of the directors of a company is accustomed to act;

"shares and debentures of the company" means the shares and debentures of the company and of its subsidiary.

238 Register of interests of directors and others in shares and debentures of company

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(1) Every public company having a share capital must keep a register of the material interests of its directors, past directors, officers and persons in the shares and debentures of the company and must, within seven days after receipt of any written notice referred to in section 240, cause to be entered in respect of each director, past director, officer or person-

(a) a description of and the number or amount of shares or debentures held by each of them;

(b) the nature and extent of any material interest whatever, direct or indirect, held by each of them, directly or indirectly, in respect of those shares or debentures;

(c) in chronological order any change, including any contract for any change in the holding of or in the interests of each of them in any shares or debentures, specifying the consideration, if any, given or received or to be given or received; and

(d) the date on which each entry in the register is made.

(2) Section 117 in so far as it relates to the place where the register of members of a company must be kept and notice to the Registrar and section 120 in so far as it relates to the inspection of and copies of or extracts from that register, do, with the necessary changes, apply to the register of interests to be kept under this section.

(3) The Registrar may at any time by notice in writing require a company to transmit to him or her, within 14 days after the date of that notice, particulars of the entries made in the register for the period as may be specified in the notice.

(4) Any company which fails to comply with this section or with any requirement of the Registrar under this section and every director and officer of that company who knowingly is a party to that failure, commits an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment.

239 Directors to determine officers for purpose of register

(1) When the directors of a company have knowledge of any information concerning a transaction or proposed transaction of the company or of the affairs of the company, which, if it becomes publicly known, may be expected materially to affect the price of the shares or debentures of the company and that information has not been publicly announced, they must as soon as is reasonably possible, by resolution determine which officers of the company, whose names have not already been entered in the register under section 238, are to be taken to be possessed or to become possessed of that information in the course of their respective duties and must cause the names of those officers to be entered in that register.

(2) Every director of a company who fails to comply with the requirements of subsection (1), commits an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment.

240 Duty of directors and others as to register of interests

(1) There must be lodged with a company by-

(a) every director, past director, officer and person of the company within one month after the date on which this section comes into operation;

(b) every director within one month after his or her appointment as a director of the company;

(c) every person within one month after he or she becomes entitled to direct or instruct any director of the company; and

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(d) every officer who has been determined by the directors in terms of section 239,

a written notice, dated and signed by him or her or his or her authorised agent, containing the particulars referred to in section 238(1)*(a)* and *(b)*.

(2) Every director, past director, officer and person referred to in subsection (1) must, within 14 days after the occurrence of any change referred to in section 238(1)*(c)*, lodge with the company, a written notice, dated and signed by him or her or his or her authorised agent containing the particulars of the changes.

(3) The obligation imposed by subsection (2) on any officer ceases in respect of any change occurring after the time of the public announcement referred to in section 241.

(4) Any director, past director, officer or person who contravenes this section or who makes any statement in any notice under this section knowing it to be false or recklessly makes any statement which is false, commits an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment.

241 Offence to deal in shares with inside information before public announcement

Every director, past director, officer or person who has knowledge of any information concerning a transaction or proposed transaction of the company or of the affairs of the company which, if it becomes publicly known, may be expected materially to affect the price of the shares or debentures of the company and who deals in any way to his or her advantage, directly or indirectly, in those shares or debentures while that information has not been publicly announced on a stock exchange or in a newspaper or through the medium of the radio or television, or through other electronic media commits an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment.

PART 6
INTERESTS OF DIRECTORS AND OFFICERS IN CONTRACTS (ss 242-249)

242 Duty of director or officer to disclose interest in contracts

(1) A director of a company who is in any way, whether directly or indirectly, materially interested in a contract or proposed contract referred to in subsection (2), which has been or is to be entered into by the company or who so becomes interested in that contract after it has been entered into, must declare his or her interest and full particulars of his or her interest as provided in this Act.

(2) Subsection (1) applies to any contract or proposed contract which is of significance in relation to a company's business and which is entered into or to be entered into-

(a) in pursuance of a resolution taken or to be taken at a meeting of directors of a company; or

(b) by a director or officer of the company who either alone or together with others has been authorised by the directors of the company to enter into that contract or any contract of a similar nature.

(3) For the purposes of subsection (1) a general notice in writing given to the directors of a company by a director to the effect that he or she is a member of a specified company or firm and is to be regarded as interested in any contract which may after the date of the notice and before the date of its expiry be made with that company or firm, is deemed to be a sufficient declaration of interest in relation to any contract or proposed contract so made or to be made, if-

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(a) the nature and extent of the interest of that director in that company or firm is indicated in that notice; and

(b) at the time the question of confirming or entering into the contract in question is first considered or at the time that director becomes interested in a contract after it has been entered into, the extent of his or her interest in that company or firm is not greater than is stated in the notice.

(4) A general notice under subsection (3) may from time to time be amended and is not effective beyond the end of the financial year of the company but may from time to time be renewed.

(5) Any director or officer of a company who fails to comply with this section commits an offence and is liable to a fine which does not exceed N$4 000 or to be imprisoned for a period which does not exceed one year or to both the fine and imprisonment.

(6) Nothing in this section is to 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.

243 Manner of and time for declaration of interest

(1) A declaration of interest by a director under section 242 is not effective unless it is made at or before the meeting of directors at which the question of confirming or entering into the contract is first taken into consideration and, if in writing, is read out to the meeting or each director present states in writing that he or she has read that declaration.

(2) If for any reason it is not possible for a director to make the declaration referred to in section 242 at or before a particular meeting of directors, he or she may make it at the first meeting of directors held thereafter at which it is possible to do so and must, in that event, state the reason why it was not possible to make it at the particular meeting.

244 Written resolution where director is interested

Notwithstanding any provision in the articles of a company permitting the taking of a resolution by way of a written resolution signed by directors, no resolution which concerns contracts or proposed contracts referred to in section 242 is valid unless that section and section 243 are complied with.

245 Disclosure by interested director or officer acting for company

(1) A director or officer referred to in section 242(2)*(b)* who is in any way, whether directly or indirectly, materially interested in any proposed contract to be entered into by him or her on behalf of the company, must, before entering into that contract, declare his or her interest and the full particulars of the interest at a meeting of directors as provided for by section 235, and must not enter into that contract unless and until a resolution has been passed by the directors approving the transaction.

(2) Any officer referred to in subsection (1) who becomes materially interested in any contract entered into by him or her on behalf of the company after it was entered into, must as soon as is reasonably possible, declare his or her interest and the full particulars of the interest by a written notice given to the directors.

(3) A notice referred to in subsection (2) may be delivered to the secretary of the company, if the company has a secretary, and the secretary must as soon as possible transmit it to the directors for whom it is intended.

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(4) Nothing in this section is to be taken to prejudice the operation of any rule of law restricting an officer of a company from having an interest in contracts with the company.

(5) Any director or officer of a company who fails to comply with this section commits an offence and is liable to a fine which does not exceed N$4 000 or to be imprisoned for a period which does not exceed one year or to both the fine and imprisonment.

246 When particulars of interest to be stated in notice of meeting

(1) If a director of a company is in any way, whether directly or indirectly, materially interested in a contract or proposed contract which is placed before the company at any meeting for confirmation or authorisation, the notice convening that meeting must state the full particulars of the interest in that contract of the director concerned.

(2) A company which fails to comply with subsection (1) and any director who is a party to that failure, commits an offence and is liable to a fine which does not exceed N$4 000 or to be imprisoned for a period which does not exceed one year or to both the fine and imprisonment.

247 Minuting of declarations of interest

(1) Every declaration of interest made under section 242, 243 or 245(1) must be recorded in the minutes of the meeting of directors at which the declaration is made, and any declaration of interest by an officer under section 245(2) must be recorded in the minutes of the first meeting of directors held after the date of that declaration.

(2) Where a declaration is made in writing, the company must, unless copies of the minutes are circulated to the directors, cause the minute recording the declaration to be read out at the first meeting of directors held after the meeting in the minutes of which the declaration was recorded.

(3) Any company which fails to comply with this section, commits an offence and is liable to a fine which does not exceed N$2 000.

248 Register of interests in contracts of directors and officers and inspection

(1) Every company must keep, at its registered office or at the office where it is made up, a register of interests in contracts in the official language, and must enter in that register, the particulars of any declarations of interest made under section 242, 243 or 245, including any amendments under section 242(4).

(2) Section 117 in so far as relates to the place where the register of members of a company must be kept and section 120 in so far as it relates to the inspection of and copies of or extracts from that register, do, with the necessary changes, apply to the register to be kept under this section.

(3) A register of interests kept under the repealed Act by an existing company in a language other than the official language is deemed to be sufficient compliance with subsection (1).

249 Duty of auditor as to register of interests in contracts

The auditor of any company must satisfy himself or herself that the register of interests in contracts has been kept as required by section 248 and that every declaration of interest recorded in that register has been minuted as required by section 247.

PART 7
PROCEEDINGS AT MEETINGS OF DIRECTORS AND MANAGERS (ss 250-254)

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250 Keeping of minutes of meetings of directors and managers

(1) The directors of a company must cause minutes, in the official language, of all proceedings of meetings of directors or managers to be entered in one or more books to be kept for that purpose at the registered office of the company or at the office where those minutes are made up.

(2) Any resolution of directors or managers of a company in the form of a written resolution signed by the directors or managers is deemed to be a minute of a meeting and must be entered in the book or books provided for in subsection (1) and be noted by the next succeeding meeting of directors or managers.

(3) For the purposes of this section loose leaves of paper must not be taken to constitute a minute book unless they are bound together permanently without means provided for the withdrawal or insertion of leaves, and the pages or leaves are consecutively numbered.

(4) The minutes of any meeting of the directors or managers of a company purporting to be signed by the chairperson of that meeting or by the chairperson of the next succeeding meeting are sufficient evidence of the proceedings at that meeting.

(5) Minutes of meetings of directors or managers kept under the repealed Act by an existing company in a language other than the official language are deemed to be sufficient compliance with subsection (1).

(6) A company which fails to comply with any requirement of subsection (1) or (2) and any director, manager or officer of the company who knowingly is a party to the failure, commits an offence and is liable to a fine which does not exceed N$1 000 or to be imprisoned for a period which does not exceed three months or to both the fine and imprisonment.

251 Validity of proceedings at meetings of directors and managers

Where minutes of the proceedings at any meeting of directors or managers of a company have been kept in accordance with section 250, the meeting is deemed to have been duly held and convened and all proceedings had at that meeting to have been duly had, and all appointments of directors, managers, officers or auditors of the company are deemed to be valid, until the contrary is proved.

252 When resolution at adjourned meetings of directors and managers effective

Any resolution passed at an adjourned meeting of directors or managers of a company must for all purposes be treated as having been passed on the date on which it was in fact passed.

253 Attendance register of meetings of directors and managers

(1) Every director of a company present at any meeting of directors, and every manager present at any meeting of managers, must at the meeting sign his or her name under the date of the meeting in a book complying with section 250(3) to be kept for that purpose.

(2) The book referred to in subsection (1) must be kept at the registered office of the company or at the office where it is made up and must, during business hours, be open to inspection by any member of the company without charge.

(3) Any company, director or manager who fails to comply with this section, commits an offence and is liable to a fine which does not exceed N$400 for every meeting in respect of which the contravention takes place.

254 Duty of auditor as to minute books and attendance register

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The auditor of a company must satisfy himself or herself that a minute book or books and an attendance register are kept by the company in the form provided for by sections 250 and 253.

PART 8
INDEMNITY AND RELIEF OF, AND OFFENCES BY, DIRECTORS AND OTHERS (ss 255-259)

255 Exemption from or indemnity against liability of directors, officers or auditors

(1) Any provision, whether contained in the articles of a company or in any contract with a company, and whether expressed or implied, which purports to exempt any director or officer or the auditor of the company from any liability which by law would otherwise attach to him or her in respect of any negligence, default, breach of duty or breach of trust of which he or she may be guilty in relation to the company or to indemnify him or her against that liability, is void.

(2) Subsection (1) must not be construed as prohibiting a company from indemnifying any director, officer or auditor in respect of any liability incurred by him or her in defending any proceedings, whether civil or criminal, in which judgment is given in his or her favour or in which he or she is acquitted or in respect of any proceedings which are abandoned or in connection with any application under section 256 in which relief is granted to him or her by the Court.

256 Relief of directors and others by Court in certain cases

(1) If in any proceedings for negligence, default, breach of duty or breach of trust against any director, officer or auditor of a company it appears to the Court that the person concerned is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he or she has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his or her appointment, he or she ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the Court may relieve him or her, either wholly or partly, from his or her liability on terms which the Court considers appropriate.

(2) Any director, officer or auditor who has reason to believe that any claim will be made against him or her in respect of any negligence, default, breach of duty or breach of trust, may apply to the Court for relief, and the Court has, on that application, the same powers to grant relief as are by subsection (1) conferred on it with reference to proceedings referred to in that subsection.

257 False statements and evidence

(1) Any person who, in any statement, return, report, certificate, financial statement or other document required by or for the purposes of this Act, makes a statement which is false in any material particular, knowing it to be false, commits an offence and is liable to a fine which does not exceed N$4 000 or to be imprisoned for a period which does not exceed one year or to both the fine and imprisonment.

(2) Any person who, on examination on oath or affirmation in terms of this Act or in any affidavit or deposition in or about any matter arising under this Act, intentionally gives false evidence, commits an offence and liable on conviction to the penalties prescribed by law for perjury.

258 Falsification of books and records

(1) Any director or officer of a company or any other person who conceals, destroys, mutilates, falsifies or makes any false entry in or, with intent to defraud or deceive, makes any erasure in any book, register, document, financial record or

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financial statement of any company commits an offence and is liable to a fine which does not exceed N$4 000 or to be imprisoned for a period which does not exceed one year or to both the fine and imprisonment.

(2) It is a defence to any charge under subsection (1) of concealing, mutilating, falsifying or making a false entry or erasure in any book, register, document, financial record or financial statement to prove that the accused had no intention either to defraud or to conceal any offence or any conduct which he or she believed might constitute an offence or render any person liable to any penalty or civil obligation.

259 False statement by directors and others

(1) Every director or officer of a company or accountant employed by or auditor of a company or any other person employed generally or engaged for any special work or service by the company who makes, circulates or publishes or concurs in making, circulating or publishing any certificate, written statement, report or financial statement in relation to any property or affairs of the company which is false in any material particular, commits an offence and is liable to a fine which does not exceed N$4 000 or to be imprisoned for a period which does not exceed one year or to both the fine and imprisonment.

(2) In any prosecution under subsection (1) it is a defence to prove that the person charged had, after reasonable investigation, reasonable grounds to believe and did believe that the certificate, written statement, report or financial statement was true, and that there was no omission to state any material fact necessary to make the statement as drafted not misleading.

CHAPTER 9
REMEDIES OF MEMBERS AND INVESTIGATIONS (ss 260-276)

PART 1
RELIEF FROM OPPRESSION (s 260)

260 Remedy of member in case of oppressive or unreasonably prejudicial conduct

(1) Any member of a company who complains that any particular act or omission of a company is unreasonably prejudicial, unjust or inequitable, or that the affairs of the company are being conducted in a manner unreasonably prejudicial, unjust or inequitable to him or her or to some part of the members of the company, may, subject to subsection (2), make an application to the Court for an order under this section.

(2) Where the act complained of relates to-

(a) any alteration of the memorandum of the company under section 62;

(b) any variation of rights in respect of shares of a company under section 108;

(c) a conversion of a private company into a public company or of a public company into a private company under section 24,

an application to the Court under subsection (1) must be made within 30 days after the date of the passing of the relevant special resolution required in connection with the particular act concerned.

(3) If on any application it appears to the Court that the particular act or omission is unreasonably prejudicial, unjust or inequitable, or that the company's affairs are being conducted in a manner which is unreasonably prejudicial, unjust or inequitable and if the Court considers it just and equitable, the Court may, with a view to bringing to an end the matters complained of, make an appropriate order, whether for regulating the future conduct of the company's affairs or for the

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purchase of the shares of any members of the company by other members or by the company.

(4) Where an order under this section makes any alteration or addition to the memorandum or articles of a company-

(a) the alteration or addition has, subject to paragraph *(b)*, effect as if it had been duly made by special resolution of the company; and

(b) the company has, notwithstanding anything contained in this Act, no power, save as otherwise provided in the order, to make any alteration in or addition to its memorandum or articles which is inconsistent with the order, except with the leave of the Court.

(5) A copy of any order made under this section which alters or adds to or grants leave to alter or add to the memorandum or articles of a company must, within one month after its making and in the prescribed form, be lodged by the company with the Registrar for registration.

(6) Any company which fails to comply with subsection (5) commits an offence and is liable to a fine which does not exceed N$20 for every day during which the contravention continues.

PART 2
INQUIRY INTO MEMBERSHIP AND OWNERSHIP OF SHARES AND CONTROL OF COMPANY (ss 261-264)

261 Power of Registrar to request information concerning shares and members

(1) The Registrar may by notice in writing require a company or external company to transmit to him or her within 14 days after the date of that notice particulars of the transfer of any share or shares and a list of persons for the time being members of the company and of all persons who ceased to be members as from a particular date.

(2) Any company or external company which fails to comply with any requirement of the Registrar under subsection (1) and every director or officer of that company who knowingly is a party to the failure, commits an offence and is liable to a fine which does not exceed N$40 for every day during which the contravention continues.

262 Appointment and powers of inspectors to investigate financial interest in and control of company

(1) The Minister may-

(a) where it is reasonable to do so, appoint one or more inspectors to investigate and report to him or her on the membership of any company and otherwise with respect to that company for the purpose of determining the true persons who are or have been financially interested in the success or failure of the company or able to control or materially to influence the policy of the company;

(b) on an application complying with section 265 in respect of an application under that section, for an investigation with respect to particular shares or debentures of a company, appoint an inspector to carry out that investigation.

(2) The Minister must, when appointing an inspector under this section, define the scope of the investigation to be carried out, whether in respect of the matters to be investigated or the period in respect of which the investigation is to be undertaken or otherwise, and may provide for an investigation to be confined to particular shares or debentures.

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(3) An application under subsection (1)*(b)* must not be refused unless the Minister is satisfied that the application is vexatious, and there must not be excluded from the scope of the investigation by an inspector appointed in pursuance of that application any matter which the applicant seeks to have included, except in so far as the Minister determines that it would be unreasonable for that matter to be investigated.

(4) The powers of an inspector do, subject to the terms of his or her appointment, 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 any matter to be investigated.

(5) Sections 267 insofar as it relates to the investigation of a subsidiary or holding company of the company under investigation, 268 insofar as it relates to the powers of an inspector and 269 insofar as it relates to submission of reports to the Minister do, with the necessary changes, apply with reference to any investigation under this section.

263 Power to require information as to interest in shares or debentures

(1) If it appears to the Minister that there is good reason to investigate any interest in shares or debentures of a company, he or she may by written notice require-

(a) any director or officer of the company; or

(b) any person whom the Minister has reason to believe-

(i) to have or to have had any interest in those shares or debentures; or

(ii) to be acting or to have acted in relation to those shares or debentures as the trustee or agent or nominee of someone having any interest in the shares,

to furnish the Minister in writing, within 21 days after the date of the notice, with any information which he or she has or can reasonably be expected to obtain as to any present or past interest in those shares or debentures and the name and address of the interested person concerned and of any person who is acting or has acted on his or her behalf in relation to those shares or debentures.

(2) For the purposes of this section, a person is deemed to have an interest in a share or debenture of a company if he or she has any right as against any member of or any holder of a debenture of the company in respect of dividends, interest or capital received from the company by that member or holder, or if he or she has any right to acquire or dispose of the share or debenture or any interest in the share or debenture or to vote in respect of the share or debenture or is able materially to influence the exercise of that voting right, or if his or her consent is necessary for the exercise of any of the rights of a member or any other person having an interest in the share or debenture, or if a member or any other person having an interest in the share or debenture can be required or is accustomed to exercise his or her rights in accordance with his or her instructions, or if he or she is a beneficiary, of whatever nature, in relation to that share or debenture.

(3) Any person who fails to give any information required of him or her under this section and which he or she is able to give or can reasonably obtain, or who in giving that information knowingly or recklessly makes any statement which is false in any material particular, commits an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment.

264 Power to impose restrictions on shares or debentures

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(1) Where in connection with an investigation under section 262 or 263 it appears to the Minister that there is difficulty in finding out the relevant facts about any shares of a company, and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist in the investigation, the Minister may, by notice published in the *Gazette* and served by post on the company at its registered office, declare that the shares are, as from the date of publication of the notice in the *Gazette*, subject to the restrictions imposed by this section.

(2) The Minister may in like manner withdraw or amend the notice referred to in subsection (1).

(3) As long as any notice is in force-

(a) any transfer of the shares to which it relates or, in the case of unissued shares, any transfer of the right to be issued or any issue of the share, is void;

(b) voting rights are not exercisable in respect of those shares;

(c) further shares must not be issued in pursuance of any right attached to those shares or in pursuance of any offer made to the holder of the shares; and

(d) except in a winding-up, payment must not be made of any sums due from the company in respect of those shares, whether in respect of capital or otherwise.

(4) Where the Minister has by notice referred to in subsection (1) declared that shares are subject to the restrictions imposed by subsection (3), or refuses to withdraw or amend that notice, any person aggrieved by the notice may apply to the Court, and the Court may direct that the shares cease to be subject to those restrictions or to any one or more of them.

(5) Any notice of the Minister or order of the Court directing that shares must cease to be subject to any of the restrictions referred to in subsection (3), which is expressed to be made with a view to permitting a transfer of those shares, may continue the restrictions referred to in paragraphs *(c)* and *(d)* of that subsection, either in whole or in part, in so far as they relate to any right acquired or offer made before the transfer.

(6) Any person who-

(a) exercises or purports to exercise any right to dispose of any shares which to his or her knowledge are subject to the restrictions mentioned in subsection (3) or of any right to be issued with those shares;

(b) votes in respect of the shares, referred to in paragraph *(a)* whether as holder or proxy, or appoints a proxy to vote in respect of the shares; or

(c) being the holder of any shares, fails to give notice of their being subject to restrictions to any person whom he or she does not know to be aware of that fact, but does know to be entitled, apart from those restrictions, to vote in respect of those shares, whether as holder or proxy,

commits an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment.

(7) Where shares of any company are issued in contravention of the restrictions referred to in subsection (3), the company, and every director or officer who knowingly takes part in the contravention, commits an offence and is liable to a fine which does not exceed N$4 000.

(8) This section applies in relation to debentures as it applies in relation to shares.

PART 3
INVESTIGATION INTO AFFAIRS OF COMPANY (ss 265-270)

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265 Inspection of affairs of company on application of members

(1) The Minister may appoint one or more inspectors to investigate the affairs of a company and to report to the Minister in any manner which he or she may direct-

(a) in the case of a company having a share capital, on the application of not less than 100 members or of members holding not less than one-twentieth of the shares issued; or

(b) in the case of a company not having a share capital, on the application of not less than one-tenth of the number of persons on the register of members.

(2) The application referred to in subsection (1) must be supported by any evidence which the Minister may require showing that the applicants have good reason for desiring an investigation, and the Minister may, before appointing an inspector on that application, require the applicants to give security to his or her satisfaction in an amount not exceeding N$5 000 or any lesser amount which the Minister may determine towards the cost of the investigation.

(3) Before appointing an inspector under subsection (1), the Minister must, unless he or she is of the opinion that to do so would defeat the objects of this section, furnish in writing to the company concerned a statement setting out the substance of the complaint made and afford it a reasonable opportunity to reply.

266 Investigation of affairs of company in other cases

(1) When a company by special resolution resolves or the Court by order declares that the affairs of a company ought to be investigated, the Minister must appoint one or more inspectors to investigate the affairs of that company and to report to the Minister in any manner which he or she may direct.

(2) The Minister may appoint one or more inspectors to investigate the affairs of a company and to report to the Minister in any manner which he or she may direct, if it appears to the Minister that there are circumstances suggesting-

(a) that the business of the company is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or an unlawful purpose or in a manner oppressive or unreasonably prejudicial or unjust or inequitable to any part of its members or that it was formed for any fraudulent or unlawful purpose;

(b) that persons concerned with its formation or the management of its affairs have in that connection committed any fraud, delict or other misconduct towards it or towards its members; or

(c) that its members have not been given all the information with respect to its affairs they might reasonably expect.

(3) Section 265(3) in so far as it relates to the furnishing of a statement of complaint by the Minister to a company does, with the necessary changes, apply in respect of an investigation under this section.

267 Power of inspector to conduct investigation into affairs of related companies

An inspector appointed to investigate the affairs of a company may, if he or she considers it necessary for the purpose, with the approval of the Minister, also investigate the affairs of any other company or other body corporate which is or has at any relevant time been the first-mentioned company's subsidiary or holding company or a subsidiary of its holding company and must in that event report on the affairs of that other company or other body corporate so far as the results of his or

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her investigation are in his or her opinion relevant to the investigation of the affairs of the first-mentioned company.

268 Production of documents and evidence on investigation

(1) Any director, officer or agent of a company or other body corporate whose affairs are being investigated by an inspector under this Act, must at the request of that inspector produce all books and documents of or relating to the company or other body corporate, in his or her custody or under his or her control, and afford the inspector any assistance within his or her power in connection with the investigation as the inspector may require.

(2) An inspector may for the purpose of any investigation conducted by him or her-

(a) summon any director, officer, employee, member or agent of the company or other body corporate to appear before him or her at a time and place specified in the summons, to be questioned or to produce any book or document so specified;

(b) administer an oath to or accept an affirmation from any person appearing before him or her in pursuance of a summons, and question that person and require that person to produce any book or document;

(c) retain for examination any book or document produced to him or her in pursuance of a summons for a period not exceeding two months or for any further period or periods which the Registrar may on good cause shown, permit.

(3) A summons for the attendance of any person before an inspector or for the production of any book or document may be in any form which the inspector may determine, must be signed by the inspector, and must be served in the same manner as a subpoena in a criminal case issued by a magistrate's court.

(4) Any person duly summoned to appear before an inspector who, without lawful excuse or sufficient cause-

(a) fails to attend at the time and place specified in the summons or to remain in attendance until excused by the inspector from further attendance; or

(b) refuses, on being required to do so by the inspector, to take an oath or to affirm as a witness or refuses or fails to produce any book or document which he or she has been required to produce or to answer fully and satisfactorily to the best of his or her knowledge and belief all questions put to him or her by the inspector concerning the affairs of the company or other body corporate whose affairs are being investigated,

commits an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment, but, in relation to the questioning of that person, or the production of any book or document, the law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce any book or document before a court of law, applies.

(5) If an inspector considers it necessary for the purposes of his or her investigation that a person whom he or she has no power to examine on oath should be so examined, the inspector may apply to the Court for an order calling on that person to appear before it for examination and the Court may order that person to attend before it to be examined on oath on any matter relevant to the investigation, and on that examination-

(a) the inspector may take part in the proceedings either personally or may be represented by a legal practitioner;

(b) the Court may put any relevant questions to the person examined;

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(c) the person examined must answer all questions which the Court may put or allow to be put to him or her.

(6) The Court may allow the person who attends an examination pursuant to subsection (5) costs and any costs so allowed must be paid as part of the costs of the investigation.

(7) In this section-

(a) any reference to a director, officer, employee, member or agent of a company or other body corporate, includes a reference to a past director, officer, employee, member or agent of that company or other body corporate;

(b) any reference to an agent of a company or other body corporate, includes a reference to the bankers, legal practitioners and auditor of the company or other body corporate.

(8) Any person examined under this section may at his or her own cost employ a legal practitioner, who is at liberty to put to him or her any questions which the inspector or the Court may deem just for the purpose of enabling him or her to explain or qualify any answers given by him or her.

269 Report of inspector

(1) An inspector who may make interim reports to the Minister in regard to any investigation conducted by him or her, must make those reports if the Minister so directs, and must at the conclusion of the investigation make a final report to the Minister.

(2) Any report referred to in subsection (1) must be written or printed as the Minister may direct.

(3) The Minister must direct the Registrar-

(a) to send a copy of any report made by an inspector to the registered office of the company or other body corporate concerned;

(b) to furnish a copy of that report on request and on payment of any fee that may be prescribed, to any person who is a member of the company or of any other body corporate dealt with in the report or whose interests as a creditor of the company or that other body corporate appear to the Minister to be affected;

(c) where the inspector is appointed under section 265, to furnish a copy of the report to the applicants concerned at their request; and

(d) where the inspector is appointed under section 266 in pursuance of an order of the Court, to furnish a copy of the report to the Court,

and may direct the Registrar to cause any report to be printed and published.

270 Proceedings on report of inspector

(1) If, in the case of any company or other body corporate liable to be wound up under this Act, it appears to the Minister from any report that it is expedient to do so because of any circumstance referred to in section 266(2)*(a)* or *(b)*, the Minister may, unless the company or other body corporate is already being wound up by the Court, make an application to the Court for it to be so wound up, or an application for the order referred to in section 260 or both an application for an order that it be wound up and an application for the order referred to in that section, and the Court may make an appropriate order.

(2) If, from any report, it appears to the Minister that proceedings ought, in the public interest, to be brought by any company or other body corporate dealt with by the report for the recovery of damages in respect of any fraud, delict or other misconduct in connection with the promotion or formation of that company or other body corporate or the management of its affairs, or for the recovery of any property

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of the company or other body corporate which has been misapplied or wrongfully retained, the Minister may bring proceedings for that purpose in the name of the company or other body corporate.

(3) The Minister must indemnify the company or other body corporate against any costs or expenses incurred by it in or in connection with any proceedings brought under subsection (2).

PART 4
MATTERS INCIDENTAL TO INVESTIGATIONS (ss 271-273)

271 Expenses of and incidental to investigation of affairs of company

(1) The Minister must in the first instance defray the expenses of and incidental to an investigation under section 265 or 266, but the following persons are, to the extent stated, liable to repay the Minister-

(a) any person convicted of an offence disclosed by the investigation or ordered to pay damages or to restore any property in proceedings instituted under section 270(2), is liable for an amount, if any, determined by the Court when convicting that person or ordering the payment of damages or the restoration of property;

(b) in any case where no proceedings are instituted in respect of any offence and no order for the payment of damages or the restoration of property is made-

(i) any body corporate whose affairs were the subject of the investigation; and

(ii) in the case of an investigation under section 265, the applicants concerned, are liable for any amount which the Minister may in each case determine;

(c) any body corporate in whose name proceedings are instituted under section 270(2), is liable for the balance, if any, of any expenditure not recovered under paragraph *(a)*, but not for an amount exceeding the amount or value of any property recovered in those proceedings.

(2) The amount determined under subsection (1)*(a)* may be the full amount of the expenditure in question or any lesser amount or proportion which the Court considers just.

(3) Subsection (1)*(b)*(i) does not apply in any case where it appears from the relevant report that there was no substance in the allegations which gave rise to the investigation to which the report relates.

(4) Any amount for which a body corporate may be liable because of subsection (1) constitutes a first charge on the amount or value of any property recovered in proceedings referred to in subsection (1)*(c)*.

(5) An inspector may, if he or she considers it proper, and must, if the Minister so directs, include in his or her report on any investigation a recommendation as to the amount, if any, which in his or her opinion should, under subsection (1)*(b)*, be ordered to be paid by any body corporate or the applicants referred to in that subsection.

(6) For the purposes of this section any costs or expenses incurred by the Minister in or in connection with proceedings instituted by him or her under section 270(2), including any amount which may become payable by him or her in terms of subsection (3) of that section, must be regarded as part of the expenditure incurred by him or her in respect of the investigation giving rise to the proceedings.

272 Saving in respect of legal practitioners and bankers

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(1) Nothing in this Act is to be construed as requiring the disclosure to the Minister or to an inspector-

(a) by a legal practitioner of any privileged communication made to him or her in his or her capacity as such, except as respects the name and address of his or her client; or

(b) by a banker of any information as to the affairs of any of his or her customers except-

(i) a company or its nominee and any other body corporate whose affairs are being investigated; and

(ii) any person having an interest in shares held in the name of the banker's nominee.

273 Report of inspectors to be evidence

A copy of the report of any inspector appointed under this Act is admissible in any legal proceedings as evidence of the opinion of the inspector in relation to any matter contained in the report.

PART 5
PROCEEDINGS ON BEHALF OF COMPANIES (ss 274-276)

274 Initiation of proceedings on behalf of company by member

(1) For the purposes of this section, section 275 and 276, "curator" means a person who institutes or otherwise participates in legal proceedings on behalf of a company.

(2) Where a company has suffered damages or loss or has been deprived of any benefit as a result of any wrong, breach of trust or breach of faith committed by any director or officer of that company or by any past director or officer while a director or officer of that company and the company has not instituted proceedings for the recovery of the damages, loss or benefit, any member of the company may initiate proceedings on behalf of the company against that director or officer or past director or officer in the manner provided for by this section notwithstanding that the company has in any way ratified or condoned that wrong, breach of trust or breach of faith or any act or omission relating to the breach or wrong.

(3) The member referred to in subsection (2) must, before initiating any proceedings under subsection (2), serve a written notice on the company calling on the company to institute those proceedings within one month from the date of service of the notice and stating that if the company fails to do so, an application to the Court under subsection (4) will be made.

(4) If the company fails to institute proceedings within the period contemplated in subsection (3), the member may make application to the Court for an order appointing a curator for the company for the purpose of instituting and conducting proceedings on behalf of the company against that director or officer or past director or officer.

(5) On receipt of an application made under subsection (4) the Court may, if it is satisfied-

(a) that the company has not instituted the proceedings;

(b) that there are sufficient grounds for the proceedings; and

(c) that an investigation into the grounds and into the desirability of the institution of those proceedings is justified,

appoint a provisional curator and direct him or her to conduct an investigation and to report to the Court on the return day of the provisional order.

(6) The Court may on the return day discharge the provisional order referred to in subsection (5) or confirm the appointment of the curator for the company and

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issue directions as to the institution of proceedings in the name of the company and the conduct of the proceedings on behalf of the company by the curator, which it considers necessary and may order that any resolution ratifying or condoning the wrong, breach of trust or breach of faith or any act or omission is of no force or effect.

275 Powers of curator

(1) A provisional curator appointed by the Court under section 274(5) and a curator whose appointment is confirmed by the Court under section 274(6) has, in addition to the powers expressly granted by the Court in connection with the investigation, proceedings and enforcement of a judgment, the same powers as an inspector under section 268, and that section does, subject to subsection (2), with the necessary changes, apply to the provisional curator and to the curator and to the directors, officers, employees, members and agents of the company concerned.

(2) If the disclosure of any information about the affairs of a company to a provisional curator or a curator would, in the opinion of the company, be harmful to the interests of the company, the Court may on an application for relief by that company, if it is satisfied that the information is not relevant to the investigation, grant that relief.

276 Security for costs by applicant for appointment of curator

The Court may, if it appears that there is reason to believe that the applicant in respect of an application under section 274(3) will be unable to pay the costs of the respondent company if successful in its opposition, require sufficient security to be given for those costs and costs of the provisional curator before a provisional order is made.

CHAPTER 10
AUDITORS (ss 277-291)

PART 1
APPOINTMENT (ss 277-284)

277 First appointment of auditor of company

(1) When the memorandum and articles of a company to be incorporated are lodged with the Registrar for registration, a written consent by a person to be appointed as auditor of the company to be formed may be lodged simultaneously, and that auditor is deemed to have been appointed as such by the company.

(2) If no appointment of an auditor of a company is made under subsection (1), the directors of the company must appoint the first auditor of the company within 21 days after the date of incorporation of the company.

(3) The auditor of a company appointed under subsection (1) or (2) holds office until the conclusion of the first annual general meeting of the company.

(4) If the directors of a company fail to appoint an auditor of the company as provided in subsection (2), the Registrar may appoint the first auditor.

(5) If the directors of a company fail to appoint the first auditor of the company as required by subsection (2), each of those directors commits an offence and is liable to a fine which does not exceed N$40 for every day during which the contravention continues.

278 Annual appointment of auditor

(1) A company must, at every annual general meeting, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting of the company.

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(2) An outgoing auditor is deemed to be reappointed at any annual general meeting without any resolution being passed, unless-

(a) that auditor is not qualified for reappointment;

(b) a resolution has been passed under section 286; or

(c) that auditor has given the company and the Registrar notice in writing of being unwilling to be reappointed at the next annual general meeting.

(3) Subsection (2) does not apply where notice of an intended resolution to appoint some person or persons in place of an outgoing auditor has been duly given under section 287 but cannot be proceeded with because of the death, incapacity or disqualification of that person or of all those persons.

279 Failure to appoint auditor

(1) If at an annual general meeting of a company no auditor is appointed or reappointed, the directors must, within 30 days as from the date of the meeting, appoint a person or persons to fill the vacancy, and if they fail to do so, the Registrar may at any time do so.

(2) The company must and any director may, if the directors fail to appoint an auditor as provided in subsection (1), within seven days after the expiry of the period mentioned in that subsection, lodge with the Registrar a notice in the prescribed form to that effect.

(3) Any company which fails, and any director or officer of that company who knowingly fails, to comply with subsection (2), commits an offence and is liable to a fine which does not exceed N$40 for every day during which the contravention continues.

280 Minister may appoint joint auditor

The Minister may at any time, in the case of a company having a share capital, on the application of 100 members or of members holding not less than one-twentieth of the issued share capital, and, in the case of a company not having a share capital, on the application of not less than one-tenth of the members, appoint, at the expense of the company, for any period and at a remuneration which the Registrar may determine, an auditor to act jointly with any other auditor of the company.

281 Filling of casual vacancies

Subject to section 288, a casual vacancy in the office of auditor of a company-

(a) must, if that auditor is the only incumbent, be filled by the directors within 30 days, and section 279 in so far as it relates to the appointment of an auditor by the Registrar does, with the necessary changes, apply in regard to the filling of that vacancy and the duty of the company; or

(b) may, if there is more than one incumbent, be filled by the directors, but while that vacancy continues, the surviving or continuing auditor must act as auditor of the company.

282 Firm may be appointed auditor

(1) A firm of auditors may be appointed to hold the office of auditor of a company.

(2) A change in the composition of the members of a firm of auditors while holding office as auditor of a company does not constitute a casual vacancy in the office of auditor but if less than one-half of the members of that firm remain after any one change, it must be taken as a resignation of the auditor and a casual vacancy is constituted.

283 Disqualification for appointment as auditor

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(1) No person qualifies for appointment as auditor of a company if that person is-

(a) a director, officer or employee of the company;

(b) a director, officer or employee of any company performing secretarial work for the company;

(c) a partner or employer or employee of a director or an officer of the company;

(d) a person who personally, or a partner or employee of that person who, habitually or regularly performs the duties of secretary or bookkeeper of the company;

(e) a body corporate;

(f) a person who at any time during the financial year was a director or officer of the company; or

(g) not qualified to act as such under the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951).

(2) Any person who in terms of subsection (1) is disqualified for appointment as the auditor of a company is likewise disqualified for appointment as the auditor of any other body corporate which is a subsidiary or holding company of that company or is a subsidiary of that holding company, or would be so disqualified if that body corporate were a company.

(3) Subsection (1) must not be construed as prohibiting the appointment as auditor of a private company, no shares of which are held by a public company, of a person who personally, or the partner or employee of that person who, habitually or regularly performs the duties of secretary or bookkeeper of that private company if that person is registered under the Public Accountants' and Auditors' Act, 1951, and all the shareholders of that private company agree in writing to the appointment of that person and the relevant circumstances are set out in the auditor's report on the affairs and annual financial statements of that private company.

(4) Any person who acts as the auditor of a company or other body corporate while disqualified, commits an offence and is liable to a fine which does not exceed N$4 000 or to be imprisoned for a period which does not exceed one year or to both the fine and imprisonment.

(5) For the purposes of this section "secretarial work" does not include share transfer secretarial work.

284 Consent by, and notice, entry and lodging of information pertaining to, auditor

(1) The written consent contemplated in section 277(1) must be given by the person concerned on the prescribed form.

(2) Any other person who consents to being appointed as auditor of a company, other than a retiring auditor contemplated in section 278(2), must give notice in the prescribed form to the company concerned of that consent.

(3) Any auditor of a company must give notice on the prescribed form to the company concerned of any change in his or her particulars which are in terms of section 223(2) to be entered in the register referred to in that section, and must give that notice within 14 days after the occurrence of any change.

(4) A company must, after any entry has been made in the register referred to in section 223 in respect of particulars pertaining to the auditor of the company, lodge with the Registrar a return in the prescribed form, and the company must lodge that return within 14 days after an auditor has vacated office or after receipt of a notice contemplated in subsection (2) or (3), as the case may be.

(5) Any company which fails to lodge a return contemplated in subsection (4), and any person who fails to comply with subsection (2) or (3), commits an offence

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and is liable to a fine which does not exceed N$20 for every day during which the contravention continues.

PART 2
REMOVAL AND RESIGNATION OF AUDITOR (ss 285-288)

285 Removal of auditor appointed by directors or Registrar, and filling of vacancy

(1) Subject to subsection (2) and section 287, a company may at a general meeting by resolution remove any auditor appointed by the directors or the Registrar under section 277 or 279 or by the directors under section 281 before the expiration of the auditor's term of office and at the same meeting appoint another person as auditor in that auditor's place.

(2) Where an auditor has reason to believe that in the conduct of the affairs of the company a material irregularity has taken place or is taking place which has caused or is likely to cause financial loss to the company or to any of its members or creditors, and has made a report in writing to the directors of the company, that auditor may not be removed from office until section 26(3)*(b)* of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951), has been complied with.

286 Removal of auditor and appointment of new auditor

(1) Any company may, subject to subsection (2) and section 287, at an annual general meeting by resolution passed by not less than three-fourths of the members entitled to vote who are present in person or by proxy, determine that any person then holding office as its auditor must not be reappointed or that some other person must be appointed as the auditor of the company.

(2) Where an auditor has reason to believe that in the conduct of the affairs of the company a material irregularity has taken place or is taking place which has caused or is likely to cause financial loss to the company or to any of its members or creditors, and has made a report in writing to the directors of the company, that auditor may not be removed from office until section 26(3)*(b)* of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951), has been complied with.

287 Special notice for removal of auditor

(1) Special notice to the company is required for a resolution to be proposed at a general meeting under section 285 or at an annual general meeting under section 286 and on receipt of notice of that proposed resolution the company must immediately deliver a copy of the notice to the auditor concerned.

(2) Where a notice referred to in subsection (1) is given and the auditor concerned makes in respect to the proposed resolution representations in writing to the company and requests their notification to members of the company, the company must, unless the representations are received by it too late for it to do so-

(a) in any notice of the proposed resolution given to members of the company, state that representations have 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 the notice is sent before or after receipt of the representations by the company.

(3) If a copy of representations contemplated in subsection (2) is not sent as provided for in that subsection because of their being received too late or because of the company's default, the auditor may, without prejudice to the right to be heard orally, require that the representations be read out at the meeting.

(4) A copy of representations contemplated in subsection (2) must 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 person who claims to be aggrieved, the

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Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter.

(5) The Court may, on an application under subsection (4), order the company's or the person's costs to be paid in whole or in part by the auditor, notwithstanding that the auditor is not a party to the application.

288 Resignation of auditor

(1) The auditor of a company may at any time during his or her period of office resign from office provided the requirements of this section are complied with.

(2) An auditor intending to resign must deliver to the company and to the Registrar a written notification in the prescribed form to the effect that he or she has no reason to believe that in the conduct of the affairs of the company a material irregularity has taken place or is taking place which has caused or is likely to cause financial loss to the company or to any of its members or creditors, other than an irregularity which has been reported to the Public Accountants' and Auditors' Board in terms of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951), and it is not necessary that that auditor has carried out, for the purposes of the notification, a special audit subsequent to the date up to which the last annual financial statements on which he or she has already reported, were made up.

(3) The directors of the company must, on receipt of the written notification referred to in subsection (2), appoint an auditor to fill the vacancy and must lodge that notification together with the return required under section 284 with the Registrar.

(4) The resignation of an auditor becomes effective on the receipt by the Registrar of the written notification referred to in subsection (2).

(5) If the directors fail to appoint an auditor to fill the vacancy within three months after the receipt of the written notification referred to in subsection (2), any person who-

(a) at the expiry of that period of three months was a director of the company or became a director of the company after that period has expired and before the filling of the vacancy; and

(b) was aware of the vacancy but failed to take all reasonable steps to ensure that it would be filled in accordance with subsection (3),

is together with the company jointly and severally liable for all debts incurred by the company during the existence of the vacancy.

PART 3
RIGHTS, DUTIES AND REMUNERATION (ss 289-291)

289 Right of auditor to access of books and to be heard at general meetings

An auditor of a company-

(a) has the right of access at all times to the accounting records and all books and documents of the company, and is entitled to require from the directors or officers of the company any information and explanations which the auditor may consider necessary for the performance of his or her duties as auditor;

(b) has, in the case of an auditor of a holding company, the right of access to all current and former financial statements of any subsidiary of that holding company and is entitled to require from the directors or officers of that holding company or subsidiary all information and explanations in connection with any statements and in connection with the accounting records, books and documents of the subsidiary as the auditor may consider necessary; and

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(c) is 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 the auditor attends on any part of the business of the meeting which concerns him or her as auditor.

290 Duties of auditor

The auditor of a company must report to its members in any manner and on any matters which are prescribed by this Act and carry out all other duties imposed on him or her by this Act or any other law.

291 Remuneration of auditor

(1) Save as is otherwise provided in this Act, the remuneration of the auditor of a company is determined by agreement with the company.

(2) All payments made or to be made by a company to its auditor, specifying the remuneration for the audit, the remuneration for other specified services, the auditor's expenses and payments in respect of the audit and any other matter, must be included under a separate heading in the income statement in respect of the accounting period concerned.

CHAPTER 11
ACCOUNTING AND DISCLOSURE (ss 292-316)

PART 1
ACCOUNTING RECORDS (ss 292-295)

292 Duty of company to keep accounting records

(1) Every company must keep, in the official language, accounting records which are necessary fairly to present the state of affairs and business of the company and to explain the transactions and financial position of the trade or business of the company, including-

(a) records showing the assets and liabilities of the company;

(b) a register of fixed assets showing the respective dates of acquisition and the cost, depreciation, if any, the date of any revaluation and the revalued amount, the respective dates of any disposals and the consideration received;

(c) records containing entries from day to day in sufficient detail of all cash received and paid out and of the matters in respect of which receipts and payments take place;

(d) where the trade or business of the company has involved dealings in goods, records of all goods sold and purchased and, except in the case of ordinary retail trade, records showing the goods and the buyers and the sellers in sufficient detail to enable the nature of those goods and those buyers and sellers to be identified; and

(e) statements of the annual stocktaking.

(2) The accounting records referred to in subsection (1) may be kept by making entries in bound books or by recording the matters in question in any other manner, and where those records are not kept by making entries in bound books, adequate precautions must be taken for guarding against falsification and facilitating its discovery.

(3) The accounting records must be kept at the registered office of the company or at any other place which the directors consider proper and must, at all times, be open to inspection by the directors and if those records are kept at a place outside Namibia, there must be sent to and kept at a place in Namibia, and be at all

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times open to inspection by the directors, financial statements and returns with respect to the business dealt with in those records as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding 12 months, subject to section 293, and will enable the company's annual financial statements to be prepared in accordance with this Act.

(4) Any company which fails to comply with this section and every director or officer who is a party to that failure or who fails to take all reasonable steps to secure compliance by the company with this section, commits an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment.

(5) In any proceedings against any director or officer of a company in respect of an offence consisting of a failure to take reasonable steps to secure compliance by a company with this section, it is a defence to prove that the accused had reasonable grounds for believing and did believe that a competent and reliable person was charged with the duty of seeing that this section was complied with and was in a position to discharge that duty and that the accused had no reason to believe that that person had failed in any way to discharge that duty.

(6) For the purposes of subsection (1), the expression "fixed assets" does not include any assets acquired or used solely for the purposes of carrying on mining operations.

(7) Accounting records kept under the repealed Act by an existing company in a language other than the official language are deemed to be sufficient compliance with subsection (1).

293 Determination of financial year of company

(1) The financial year of a company is, subject to this section and any other law, its annual accounting period, the commencing date of which and the date on which it ends in the next succeeding calendar year, must be determined on the incorporation of the company, but, the first financial year of a company is, where the commencing date so determined-

(a) is a date more than three months after that incorporation, the period commencing on the incorporation and ending on the date immediately preceding the commencing date so determined; or

(b) is a date not more than three months after that incorporation, the period commencing on the incorporation and ending on the date so determined as the end of the financial year in the next calendar year.

(2) A company may at any time before the end of its current financial year on payment of the prescribed fee and on lodgment with the Registrar of the prescribed form-

(a) change the end of that financial year to a date being not more than six months earlier; or

(b) with the approval of the Registrar given on good cause shown, change the end of that financial year to a date being not more than six months later,

and in that case every subsequent financial year of the company ends, subject to this section, on the date as so changed.

(3) Any reference in this Act to the financial year of a company must be construed as including a reference to any period which in terms of this section is stated to be a financial year of that company.

294 Duty to make out annual financial statements and to lay them before annual general meeting

(1) The directors of a company must, in respect of every financial year of the company, cause to be made out in the official language annual financial statements

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and must present them before the annual general meeting of the company required to be held in terms of section 187 in respect of that financial year.

(2) The annual financial statements required to be made out under subsection (1) consist of-

(a) a balance sheet, including any notes or documents annexed to it providing information required by this Act;

(b) an income statement, including any similar financial statement where that form is appropriate and including any notes or document annexed to it providing information required by this Act;

(c) a cash flow statement;

(d) a directors' report complying with the requirements of this Act; and

(e) an auditor's report as required by section 309.

(3) The annual financial statements of a company must, in conformity with generally accepted accounting practice, fairly present the state of affairs of the company and its business as at the end of the financial year concerned and the profit or loss of the company for that financial year and must for that purpose be in accordance with and include at least the matters prescribed by Schedule 4, in so far as they are applicable, and comply with any other requirements of this Act.

(4) Section 292(7) in so far as it relates to the keeping of existing accounting records by existing companies does, with the necessary changes, apply to annual financial statements.

(5) Any director or officer of a company who fails to take all reasonable steps to comply or to secure compliance with this section or with any other requirements of this Act as to matters to be stated in annual financial statements, commits an offence and is liable to a fine which does not exceed N$2 000 or to be imprisoned for a period which does not exceed six months or to both the fine and imprisonment.

(6) In any proceedings against any director or officer of a company under subsection (5), the defence referred to in section 292(5) is available to that director or officer.

295 Offence to issue incomplete financial statements and circulars

If any financial statements or circulars of a company which are incomplete in any material particular or otherwise do not comply with the requirements of this Act, are issued, circulated or published, the company and every director or officer who is a party to that issue, circulation or publication, commits an offence and is liable to a fine which does not exceed N$1 000 or to be imprisoned for a period which does not exceed three months or to both the fine and imprisonment.

PART 2
ACCOUNTING BY HOLDING COMPANIES (ss 296-301)

296 Obligation to lay group statements before annual general meeting

(1) Where at the end of its financial year a company, which is not a wholly owned subsidiary of another company incorporated in Namibia, including an external company which is a subsidiary of a company incorporated in Namibia, has subsidiaries, group annual financial statements must be made out and must be presented before the annual general meeting of the company before which its own annual financial statements are so presented under section 294(1).

(2) Subject to section 299, the group annual financial statements referred to in subsection (1) must, together with the company's own annual financial statements in conformity with generally accepted accounting practice, fairly present the state of affairs and business of the company and all its subsidiaries at the end of the financial year concerned and the profit or loss of the company and all its subsidiaries for that

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financial year, as a whole so far as concerns the members of the company and must, for that purpose, include at least the matters prescribed by Schedule 4, in so far as they are applicable and comply with any other requirements of this Act.

(3) Any director or officer of a company who fails to take all reasonable steps to comply or to secure compliance with this section or with any other requirements of this Act as to matters to be stated in group annual financial statements, commits an offence and is liable to a fine which does not exceed N$2 000 or to be imprisoned for a period which does not exceed six months or to both the fine and imprisonment.

(4) In any proceedings against any director or officer of a company under subsection (3) the defence referred to in section 292(5) is available to that director or officer.

297 Group annual financial statements

(1) Subject to section 298, group annual financial statements may consist of consolidated annual financial statements in accordance with section 294(2)*(a)*, *(b)* and *(c)* and being-

(a) a consolidated balance sheet dealing with the state of affairs of the company and all the subsidiaries to be dealt with in group annual financial statements;

(b) a consolidated income statement dealing with the profit or loss of the company and those subsidiaries; and

(c) a consolidated cash flow statement of the company and those subsidiaries.

(2) Where consolidated annual financial statements under subsection (1) are not made out, group annual financial statements may consist of-

(a) more than one set of consolidated annual financial statements, that is to say, one set dealing with the company and one group of subsidiaries and one or more sets dealing with other groups of subsidiaries;

(b) separate annual financial statements dealing with each of the subsidiaries;

(c) statements annexed to the company's own annual financial statements expanding the information therein contained about the subsidiaries; or

(d) any combination of the matters in paragraphs *(a)*, *(b)* or *(c)*.

(3) Group annual financial statements may be wholly or partly incorporated in the company's own annual financial statements.

298 Where annual financial statements are to be consolidated

Consolidated annual financial statements must be made out unless the directors of the company are of the opinion that the required information about the state of affairs, business and profit or loss of the company and its subsidiaries would be presented more effectively and meaningfully in the manner contemplated in section 297(2).

299 Where group annual financial statements need not deal with subsidiary

(1) Group annual financial statements need not deal with a subsidiary if the directors of the company are of the opinion that it is impracticable or would be of no real value to members of the company, in view of the insignificant amounts involved, or would entail expense or delay out of proportion to the value to members of the company and, if the directors are of that opinion about each of the company's subsidiaries, group annual financial statements are not required.

(2) If the directors of a company are of the opinion that-

(a) if a subsidiary were to be dealt with in group annual financial statements, the result would be misleading or harmful to the business of the company or any of its subsidiaries; or

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(b) the business of the company and that of a subsidiary are so different that they cannot reasonably be treated as a single undertaking or are of that opinion about each of the company's subsidiaries,

group annual financial statements need not deal with that subsidiary, or, as the case may be, no group annual financial statements is required, if the Registrar approves.

(3) A company must apply to the Registrar for approval under subsection (2) on the prescribed form and the application must be accompanied by a report by the auditor of the company on the opinion and decision of the directors.

(4) Any approval given under this section by the Registrar expires after two years but may be renewed on application by the company.

(5) Any director or officer of a company who fails to comply with subsection (3), commits an offence and is liable to a fine which does not exceed N$2 000.

300 Accounting periods of company and subsidiary to be the same

The directors of any subsidiary must, notwithstanding anything to the contrary in this Act or in its articles, cause annual financial statements as required by section 294 to be made out so as to cover an accounting period or accounting periods ending on the same date or dates as the period or periods covered by the annual financial statements of its holding company or holding companies.

301 Duty of auditor to report on decisions of directors on group annual financial statements

In every case where the directors of a holding company have decided not to make out consolidated annual financial statements under section 298, or not to deal with any subsidiary in group annual financial statements under section 299(1), the auditor of the holding company must report to the members of the company on that decision of the directors.

PART 3
DISCLOSURE OF CERTAIN MATTERS IN FINANCIAL STATEMENTS AND FURTHER REQUIREMENTS (ss 302-307)

302 Disclosure of loans to and security for benefit of directors and managers

(1) The annual financial statements of a company must state-

(a) the amount and particulars of every loan referred to in section 234(1) which has during the relevant financial year been made by virtue of section 234(4)*(a)*, *(b)* or *(e)*, including every loan which has, during that financial year, been repaid;

(b) the particulars of every security, together with details of the transaction to which it relates, referred to in section 234(1), which has during the relevant financial year been provided by virtue of section 234(4)*(a)*, *(b)* or *(e)*, including every security which has, during that financial year, been cancelled;

(c) the balance outstanding of every loan described in paragraph *(a)*, made at any time before that financial year and outstanding at the end of it; and

(d) the particulars of every security, together with details of the transaction to which it relates, described in paragraph *(b)*, provided at any time before that financial year and still in existence at the end of the year including, if applicable, the balance outstanding on the transaction to which it relates.

(2) If a company which has made a loan or provided any security referred to in subsection (1) is a subsidiary and its holding company is by this Act required to make out group annual financial statements or otherwise to furnish particulars of

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that subsidiary, there must be included in the statements the information provided for in subsection (1).

(3) Where a loan is a loan of shares, debentures or other property, or where any security is provided in respect of a loan of shares, debentures or other property, the requirements of this section may be complied with by stating the particulars in the directors' report or by way of a note to the annual financial statements.

(4) If this section is not complied with in respect of the annual financial statements of a company, the auditor of the company must, in his or her report relating to those annual financial statements, include a statement containing any information in regard to the matter which he or she is reasonably able to furnish.

(5) Any director or manager or past director or manager of a company or of its holding company or of any other subsidiary of that holding company must, at the written request of the first-mentioned company or its auditor, in writing give that information, including particulars relating to his or her control of a company or body corporate contemplated in section 234(1)*(b)*, as the company or its auditor may require for compliance with this section.

(6) Any director or manager or past director or manager referred to in subsection (5) who fails to comply with that request within one month from the date of the request, commits an offence and is liable to a fine which does not exceed N$2 000.

303 Disclosure of loans made to and security provided for benefit of directors or managers before their appointment

(1) The annual financial statements of a company must state-

(a) the amount and particulars of every loan which has at any time been made by the company to any person before his or her appointment as director or manager of the company, if-

(i) the loan was still in existence at the date of the appointment; and

(ii) the appointment was made at any time during the financial year concerned; and

(b) the particulars of every security, together with details of the transaction to which it relates, which has at any time been provided by the company for the benefit of any person before his or her appointment as director or manager of the company, if-

(i) the security was still in existence at the date of the appointment; and

(ii) the appointment was made at any time during the financial year concerned.

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

(a) "loan" includes-

(i) a loan of money, shares, debentures or any other property; and

(ii) any credit extended by a company where the debt concerned is not payable or being paid in accordance with normal business practice in respect of payment of debts of the same kind;

(b) "security" includes a guarantee.

(3) Section 302(2), (3) and (4) in so far as it relates to the contents of annual financial statements, the manner of showing loans and other securities in the statements and the duty of the auditor to report does, with the necessary changes, apply with reference to loans and securities contemplated in this section.

(4) This section does not apply in respect of a loan made or security provided in good faith in the ordinary course of the business of a company actually and regularly carrying on the business of the making of loans or the provision of security.

304 Disclosure of emoluments and pensions of directors

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(1) For the purposes this section-

"compensation for loss of office" includes sums paid as consideration for or in connection with a person's retirement from office;

"contribution", in relation to a pension scheme, means any payment made for the purposes of the scheme by or in respect of persons rendering services in respect of which pensions will or may become payable under the scheme, but does not include any payment in respect of two or more persons if the amount paid in respect of each of them is not ascertainable;

"emoluments", in relation to a director, includes fees and percentages, salaries, any sums paid by way of expenses allowance, any contribution paid under any pension scheme and the estimated money value of any other material benefits received;

"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 a director or otherwise which is maintained in whole or in part by means of contributions.

(2) The annual financial statements of a company must, in so far as the information necessary for the purpose is contained in the records of the company or is otherwise available to it, contain particulars showing-

(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.

(3) The amount to be shown under subsection (2)*(a)* must-

(a) include any emoluments paid to or receivable by any person in respect of that person's services as a director of the company or any of its subsidiaries or in respect of services rendered in any other capacity while director of the company or of any subsidiary or otherwise in connection with the carrying on of the affairs of the company or that subsidiary; and

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

(4) The amount to be shown under subsection (2)*(b)* must-

(a) include any pension paid or receivable in respect of any services of a director or past director of the company referred to in subsection (3) whether to or by him or her or on his or her nomination or, by virtue of dependence on or other connection with him or her, to or by any other person but does not include any pension paid or receivable under a pension scheme, if the contributions payable under the scheme are substantially adequate for the maintenance of the dependent person; and

(b) distinguish between pensions in respect of services as a director or otherwise, whether of the company or its subsidiary, and other pensions.

(5) The amount to be shown under subsection (2)*(c)* must-

(a) include any sums paid to or receivable by a director or past director by way of compensation for the loss of office as a director of the company or for loss, while a director of the company or on or in connection with his or her ceasing to be a director of the company, of any other office in connection with the carrying on of the company's affairs or of any office as director or otherwise in connection with the management of the affairs of any subsidiary of the company; and

(b) distinguish between compensation in respect of the office of director, whether of the company or its subsidiary, and compensation in respect of other offices.

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(6) The amounts to be shown under each paragraph of subsection (2) must-

(a) include all relevant sums paid by or receivable from-

(i) the company;

(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 235 to past or present members of the company or any of its subsidiaries or any class of those members; and

(b) distinguish, in the case of the amount to be shown under subsection (2)*(c)*, between the sums respectively paid by or receivable from the company, the company's subsidiaries and other persons.

(7) The amounts to be shown under this section for any financial year must 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 any sums are not shown in the annual financial statements for the relevant financial year on the ground that the person receiving them is liable to account for them as mentioned in subsection (6)*(a)*, but the liability is thereafter wholly or partly released or is not enforced within a period of two years, those sums must, to the extent to which the liability is released or not enforced, be shown in the first annual financial statements in which it is practicable to show them and must be distinguished from the amounts to be shown apart from this provision.

(8) For the purpose of enabling them to show separately the respective amounts received under different headings as required by this section, the directors of a company may apportion any payments received or receivable in any manner which they consider appropriate.

(9) In this section any reference to a company's subsidiary includes, for the purpose of subsections (3) and (4), a reference to a company which was a subsidiary of the first-mentioned company at the time the services contemplated in those subsections were rendered, and, for the purposes of subsection (5), includes a reference to a company which was a subsidiary immediately before the loss of office as director of the company concerned.

(10) Every director or past director of a company must, at the written request of the company or its auditor, give notice in writing to the company or the auditor, within 21 days from the date of that request, of matters relating to himself or herself which may be necessary for the purposes of this section, and he or she commits an offence, if he or she fails to comply with that request, and is liable to a fine which does not exceed N$2 000 or to be imprisoned for a period which does not exceed six months or to both the fine and imprisonment.

(11) If, in respect of any annual financial statements the requirements of this section are not complied with, the auditor of the company by whom the annual financial statements are examined, must include in his or her report, so far as he or she is reasonably able to do so, a statement giving the required particulars.

305 Approval and signing of financial statements

(1) The annual financial statements of a company other than the auditor's report, must be approved by its directors and signed on their behalf by two of the directors or, if there is only one director, by that director, and group annual financial statements must similarly be approved and signed by the directors of the holding company.

(2) If a copy of any annual financial statements, or group annual financial statements which have not been approved and signed as required by subsection (1), is issued, circulated or published, every director or officer of the company concerned who is a party to that issue, circulation or publication commits an offence and is

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liable to a fine which does not exceed N$2 000 or to be imprisoned for a period which does not exceed six months or to both the fine and imprisonment.

306 Duty of company to send annual financial statements to members and Registrar

(1) A copy of the annual financial statements of a company and the group annual financial statements, if any, must, not less than 21 days before the date of the annual general meeting of the company, be sent to every member of the company and every holder of debentures of the company, whether or not that member or holder of debentures is entitled to receive notices of general meetings of the company, and to all persons other than members or holders of debentures of the company who are entitled to receive those notices.

(2) Where a member, holder of debentures or other person referred to in subsection (1) has indicated in writing the manner in which he or she wishes to receive the annual financial statements, the company is deemed to have sent the annual financial statements to that member, holder of debentures or person if the company makes the annual financial statements so available not less than 21 days before the date of the annual general meeting.

(3) Subsection (1) must not be construed as requiring a copy of those statements to be sent-

(a) in the case of a company not having a share capital, to any member or holder of debentures of the company who is not entitled to receive notices of general meetings of the company;

(b) to any member or holder of debentures of a company who is entitled to receive those notices and whose address is not known to the company;

(c) to more than one of the joint holders of any shares or debentures of a company none of whom is entitled to receive those notices;

(d) in the case of joint holders of any shares or debentures of whom some are and others are not entitled to receive those notices, to any joint holder who is not so entitled.

(4) Any copy of the annual financial statements not sent to members and debenture holders and other persons referred to in subsection (1) at least 21 days before the date of the relevant meeting is deemed to have been so sent if it is so agreed by all the members entitled to attend and vote at the meeting.

(5) A public company must, on the day on which it sends copies to its members as provided in subsection (1), send, on the prescribed form, to the Registrar a copy, certified to be a true copy by a director and the secretary of the company of-

(a) the annual financial statements and group annual financial statements, if any; and

(b) the annual financial statements of every private company which is a subsidiary of that public company.

(6) The Registrar may, on application by any public company made on the prescribed form, on good cause shown and on payment of the prescribed fee, exempt that public company from the requirements of subsection (5)*(b)*.

(7) Any exemption made under subsection (6) by the Registrar expires after two years but may be renewed on application by the company.

(8) If default is made in complying with subsection (1) or (5), the company concerned, and every director who knowingly is a party to the default, commits an offence and is liable to a fine which does not exceed N$2 000 or to be imprisoned for a period which does not exceed six months or to both the fine and imprisonment.

307 Report of directors

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(1) Except in the case of a company which is a wholly-owned subsidiary of any other company incorporated in Namibia, every company must, as part of its annual financial statements, present before the annual general meeting a report by the directors with respect to the state of affairs, the business and the profit or loss of the company or of the company and its subsidiaries, if any.

(2) The directors' report must deal with every matter which is material for the appreciation by the members of the company of the state of affairs, the business and the profit or loss of the company or of the company and its subsidiaries, if any, and must for that purpose be in accordance with and include at least the matters prescribed by Schedule 4, in so far as these are applicable, and comply with any other requirements of this Act.

(3) Any director of a company who fails to take all reasonable steps to ensure compliance with this section, commits an offence and is liable to a fine which does not exceed N$2 000 or to be imprisoned for a period which does not exceed six months or to both the fine and imprisonment.

PART 4
DUTIES OF AUDITOR AS TO ANNUAL FINANCIAL STATEMENTS (ss 308-309)

308 Duties of auditor as to annual financial statements and other matters

It is the duty of the auditor of a company-

(a) to examine the annual financial statements and group annual financial statements to be presented before its annual general meeting;

(b) to satisfy himself or herself that proper accounting records, as required by this Act have been kept by the company and that proper returns adequate for the purposes of his or her audit have been received from branches not visited by him or her;

(c) to satisfy himself or herself that the minute books and attendance registers in respect of meetings of the company and of directors and managers have been kept in proper form as required by this Act;

(d) to satisfy himself or herself that a register of interests in contracts as required by section 248 has been kept and that the entries are in accord with the minutes of directors' meetings;

(e) to examine or satisfy himself or herself as to the existence of any securities of the company;

(f) to obtain all the information and explanations which to the best of his or her knowledge and belief are necessary for the purposes of carrying out his or her duties;

(g) to satisfy himself or herself that the company's annual financial statements are in agreement with its accounting records and returns;

(h) to examine group annual financial statements and satisfy himself or herself that they comply with the requirements of this Act;

(i) to examine the accounting records of the company and carry out tests in respect of those records and other auditing procedures which he or she considers necessary in order to satisfy himself or herself that the annual financial statements or group annual financial statements fairly present the financial position of the company or of the company and its subsidiaries and the results of its operations and those of its subsidiaries, in conformity with generally accepted accounting practice applied on a basis consistent with that of the preceding year;

(j) to satisfy himself or herself that statements made by the directors in their reports do not conflict with a fair interpretation or distort the meaning of the annual financial statements and accompanying notes;

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(k) when he or she gets to know that the company is not carrying on business or is not in operation and has no intention of resuming operations in the foreseeable future, to report forthwith accordingly by certified post to the Registrar;

(l) to comply with any other duty imposed on him or her by this Act; and

(m) to comply with any applicable requirements of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951).

309 Report of auditor

(1) When the auditor of a company has complied with the requirements of, and has satisfied himself or herself as to the matters stated in, section 308, and has carried out the audit free from any restrictions whatsoever, the auditor must make a report to the members of the company to the effect that he or she has examined the annual financial statements and group annual financial statements and that in his or her opinion they fairly present the financial position of the company and its subsidiaries and the results of its operations and that of its subsidiaries in the manner required by this Act.

(2) If the auditor is unable to make the report referred to in subsection (1) or to make it without qualification, the auditor must include in his or her report a statement to that effect and set out the facts or circumstances which prevent him or her from so making his or her report or from making it without qualification.

(3) The auditor's report under subsection (1) must, unless all the members present agree to the contrary, be read out at the annual general meeting.

PART 5
INTERIM ACCOUNTING (ss 310-315)

310 Half-yearly interim reports

(1) Every public company having a share capital, other than a wholly owned subsidiary, must, not later than three months after the expiry of the first period of six months of its financial year, send to every member and holder of debentures of the company an interim report fairly presenting the business and operations of the company, or in the case of a holding company, of the company and its subsidiaries, during that period of six months, and the results, but-

(a) the first interim report to be sent to members and holders of debentures of a company after its incorporation must-

(i) in any case where section 293(1)*(a)* applies and where the period of the first financial year of the company exceeds nine months, be in respect of a period of six months commencing on the date of incorporation of the company; and

(ii) in any case where section 293(1)*(b)* applies, be in respect of a period commencing on the date of incorporation of the company and ending six months before the end of its first financial year;

(b) where a company has changed the end of its financial year under section 293(2)*(b)* an additional interim report must be made out for the period from the beginning of the financial year so changed to the date of the end of the financial year before it was so changed.

(2) Section 306(2) in so far as it relates to the manner in which annual financial statements are to be send to members of a company does, with the necessary changes, apply to half-yearly reports.

311 Provisional annual financial statements

(1) Every public company having a share capital, other than a wholly owned subsidiary, which does not within three months after the end of its financial year

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issue copies of its annual financial statements in terms of section 306(1) must, not later than the date on which that period of three months expires, send to every member and holder of debentures of the company a copy of the provisional annual financial statements of the company fairly presenting the business and operations of the company or, in the case of a holding company, of the company and its subsidiaries during that accounting period.

(2) Section 306(2) in so far as it relates to the manner in which annual financial statements are to be sent to members of a company does, with the necessary changes, apply to provisional financial statements.

(3) If a private company has not issued its annual financial statements in terms of section 306(1) within nine months after the end of its financial year, the Registrar may, on application in the prescribed manner, by any member of that company, and on good cause shown, require that company by written notice to lodge with him or her provisional annual financial statements as referred to in subsection (1) within a period of 30 days from the date of that notice and that company must, unless it issues its annual financial statements within that period, lodge provisional annual financial statements with the Registrar within that period.

312 Form and contents of interim report and provisional annual financial statements

(1) For the purposes of sections 310 and 311 interim reports and provisional annual financial statements must, respectively, be in accordance with and include at least the matters prescribed by Schedule 4 in so far as they are applicable and must comply with the other requirements of this Act.

(2) Provisional annual financial statements are not required to be audited.

(3) Every interim report and all provisional annual financial statements of a company must be approved by the directors and signed on their behalf by two of the directors, or, if there is only one director, by that director.

313 Copies of interim report and provisional annual financial statements to be lodged with Registrar

Every company which issues an interim report or provisional annual financial statements must, within seven days from the date of issue and on the prescribed form, lodge a copy of that interim report or provisional annual financial statements with the Registrar.

314 Registrar may grant exemptions and extensions of time

(1) If the Registrar approves, no half-yearly interim reports are required under section 310 if the directors of the company are of the opinion that those reports-

(a) would be misleading to the members of the company or harmful to the business of the company; or

(b) would entail unnecessary expense or for any other reason would serve no useful purpose.

(2) Section 299(3) in so far as it relates to applications for the Registrar's approval does, with the necessary changes, apply with reference to any application of the company for the Registrar's approval under subsection (1) and to the period of any exemption.

(3) The Registrar may on application by any company made to him or her before the expiry of the periods in which an interim report under section 310 or provisional annual financial statements under section 311 are required to be issued, on good cause shown and on payment of the prescribed fee, extend those periods respectively by period which he or she considers appropriate.

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315 Offences under sections 310 to 313, inclusive

Any company which fails to comply with any requirement of section 310, 311, 312 or 313 and any director of a company who fails to take all reasonable steps to secure compliance with that requirement, commits an offence and is liable to a fine which does not exceed N$2 000 or to be imprisoned for a period which does not exceed six months or to both the fine and imprisonment.

PART 6
RIGHT OF MEMBERS AND OTHERS TO COPIES OF ANNUAL FINANCIAL STATEMENTS AND INTERIM REPORTS (s 316)

316 Right of members and others to copies of annual financial statements and interim reports

(1) Any member or holder of debentures of a company is entitled to be furnished, on demand without charge, with a copy of the last annual financial statements, including group annual financial statements, and provisional annual financial statements and of the last interim report of the company.

(2) A judgment creditor of a private company is, where it appears from the return of the person whose duty it is to execute the judgment in question that insufficient disposable property to satisfy that judgment was found, entitled to be furnished on demand without charge with a copy of the last annual financial statement of the company.

(3) Any company which fails to comply with a demand under this section within seven days after the making of the demand, and any director of the company who knowingly is a party to the default, commits an offence and is liable to a fine which does not exceed N$40 for every day during which the contravention continues.

(4) It is a defence to a charge under subsection (3) to prove that the person concerned had previously demanded a copy of the document to which the charge relates and that that copy had been supplied.

CHAPTER 12
COMPROMISE, ARRANGEMENT AND AMALGAMATION (ss 317-327)

317 Compromise and arrangement between company, its members and creditors

(1) In this section-

"arrangement" includes a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both these methods; and

"company" means any company liable to be wound up under this Act.

(2) Where any compromise or arrangement is proposed between a company and its creditors or any class of them or between a company and its members or any class of them, the Court may, on the application of the company or any creditor or member of the company or, in the case of a company being wound up, of the liquidator, or if the company is subject to a judicial management order, of the judicial manager, 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 any manner which the Court may direct.

(3) If a compromise or arrangement is agreed to by-

(a) a majority in number representing three-fourths in value of the creditors or class of creditors; or

(b) a majority representing three-fourths of the votes exercisable by the members or class of members,

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present and voting either in person or by proxy at the meeting, that compromise or arrangement is, if sanctioned by the Court, binding on all the creditors or the class of creditors, or on the members or class of members and also on the company or on the liquidator if the company is being wound up or on the judicial manager if the company is subject to a judicial management order.

(4) A compromise or arrangement made under this section does not affect the liability of any person who is a surety for the company.

(5) If the compromise or arrangement is in respect of a company being wound up and provides for the discharge of the winding-up order or for the dissolution of the company without winding up, the liquidator of the company must lodge with the Master a report in terms of section 406(2) and a report as to whether or not any director or officer or past director or officer of the company is or appears to be personally liable for damages or compensation to the company or for any debts or liabilities of the company under this Act, and the Master must report to the Court.

(6) The Court, in determining whether the compromise or arrangement should be sanctioned or not, must have regard to the number of members or members of a class present or represented at the meeting referred to in subsection (3) voting in favour of the compromise or arrangement and to the report of the Master referred to in subsection (5).

(7) An order by the Court sanctioning a compromise or arrangement has no effect until a certified copy of it has been lodged, on the prescribed form, with the Registrar and registered by him or her.

(8) A copy of the order of the Court referred to in subsection (7) must be annexed to every copy of the memorandum of the company issued after the date of the order.

(9) If a company fails to comply with subsection (8), the company and every director and officer of the company who is a party to the failure, commits an offence and is liable to a fine which does not exceed N$200.

318 Information as to compromises and arrangements

(1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under section 317 for the purpose of agreeing to a compromise or arrangement, there must-

(a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement-

(i) explaining the effect of the compromise or arrangement;

(ii) stating all relevant information material to the value of the shares and debentures concerned in any arrangement; and

(iii) in particular stating any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise, and the effect of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons; and

(b) in every notice summoning the meeting which is given by advertisement, be included either the statement contemplated in paragraph *(a)* 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 that statement.

(2) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement referred to in subsection (1) must give the same explanation and statement with respect to the trustee of any deed for securing the issue of the debentures as it is required to give with respect to the company's directors.

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(3) Where a notice given by advertisement includes a notification that copies of the statement referred to in subsection (1) can be obtained by creditors or members entitled to attend the meeting, everyone of those creditors or members must, 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 director or officer of the company who is a party to the default, commits an offence and is liable to a fine which does not exceed N$4 000, 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 is deemed to be an officer of the company.

(5) A person is not be liable under subsection (4) if he or she 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 or her interests and that fact has been stated in the statement.

(6) It is the duty of every director of a company and of every trustee for debenture holders to give notice to the company of any matters relating to himself or herself which may be necessary for the purposes of this section, and if he or she makes default in complying with that duty, he or she commits an offence and is liable to a fine which does not exceed N$2 000 or to be imprisoned for a period which does not exceed six months or to both the fine and imprisonment.

319 Provisions facilitating reconstruction or amalgamation

(1) If an application is made to the Court under section 317 for the sanctioning of a compromise or arrangement proposed between a company and any persons referred to 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 the "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 allotment or appropriation by the transferee company of any shares, debentures 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;

(e) the provision to be made for any persons who, within the time and in the manner which the Court may direct, dissent from the compromise or arrangement;

(f) any incidental, consequential and supplemental matters which are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) An order for the dissolution, without winding-up, of any transferor company must not be made under subsection (1) prior to the transfer in due form of all the property and liabilities of that company.

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(3) Where an order under this section provides for the transfer of property or liabilities, that property must, by virtue of the order, vest in, subject to transfer in due form, and those liabilities become the liabilities of the transferee company.

(4) If an order is made under this section, every company in relation to which the order is made must, within 30 days after the making of the order and in the prescribed form, cause a copy of the order to be lodged with the Registrar for registration, and if default is made in complying with this subsection, the company commits an offence and is liable to a fine which does not exceed N$400.

320 Take-over offers

(1) For the purposes of this section and sections 321 to 327, inclusive-

"offeree company", in relation to a take-over scheme or a take-over offer, means the company the shares of which are to be acquired under the scheme or offer;

"offeror", in relation to a take-over scheme or a take-over offer, means the person by whom, or the company, external company or any other body corporate by which, any take-over offer under a take-over scheme or the take-over offer, is made, and if that take-over offer is made jointly by more than one offeror, then sections 321 to 327 in so far as they relate to an offeror must, with the necessary changes, be construed to include joint offerors;

"take-over offer" means an offer for the acquisition of shares under a take-over scheme;

"take-over scheme" means a scheme involving the making of an offer by the offeror for acquiring shares of the offeree company which together with any shares of that company already held by the offeror at the time of the making of the offer, will have the effect of-

(a) vesting the control of the offeree company directly or indirectly in the offeror; or

(b) the offeror acquiring all the shares or all the shares of a particular class of the offeree company,

but does not include any offer made in the course of or in connection with any individual negotiation with any shareholder for the acquisition of those shares.

(2) A take-over offer must not be made unless-

(a) it is made in the same terms to all the shareholders of the shares or of a particular class of shares of the offeree company;

(b) there is annexed to it a take-over statement by the offeror;

(c) a copy of the offer, together with its annexure, is, in the prescribed form, lodged with the Registrar not later than the day on which it is intended to issue the take-over offer,

but, if the consideration offered consists wholly or partly of cash and any of the shareholders is resident outside Namibia, the offer may, with the approval of the Minister granted after consultation with the Minister responsible for Finance, provide for payment or settlement of that consideration to or in respect of the shareholders referred to in a manner other than the manner of payment or settlement to or in respect of shareholders resident in Namibia, but in such a manner that all shareholders receive equal treatment.

(3) Subject to subsection (4), no take-over offer is valid and capable of acceptance after the expiry of four months from the date of its issue and a take-over offer must not be withdrawn within that period unless-

(a) it is superseded by a new take-over offer by the offeror; or

(b) a take-over offer is made by some other offeror.

(4) If a take-over offer is declared by the offeror to be unconditional within the period of four months referred to in subsection (3), it must not be withdrawn

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within 10 days after that declaration and it remains available for acceptance during those 10 days.

(5) If an offeror, while the take-over offer of that offeror is open and available for acceptance, improves the terms of that take-over offer, it is deemed that all acceptances of the offer previously made by any shareholder concerned have been made on those improved terms, and that improved offer must not be construed as a new take-over offer.

321 Contents of take-over statement by offeror

(1) Any take-over statement by the offeror must contain at least the following information-

(a) if the offeror is a company, the name of the company, a list of its directors and the name of its controlling company, if any, and if not acting as a principal, the same information in respect of its principal;

(b) if the offeror is a person, his or her full names, occupation and address and if not acting as a principal, the same information in respect of his or her principal, and if his or her principal is a company, the particulars required under paragraph *(a)*;

(c) the full terms of the take-over offer;

(d) all material information relevant to the take-over offer and to the change of control of the offeree company, if any;

(e) if the consideration offered is wholly or partly other than cash, a valuation of that consideration by the offeror and the ground on which that valuation is based;

(f) full disclosure of any payment or other benefit, from whatever source, made or granted or promised to any director or shareholder of the offeree company in connection with the take-over scheme.

(2) Any take-over statement must, on the face of it, bear the date of its issue to the shareholders of the offeree company by the offeror.

322 Duty of directors of offeree company to furnish take-over statement

(1) The directors of any offeree company must, within 14 days after delivery to the offeree company by the offeror of a take-over offer and take-over statement by the offeror, which is intended to be issued or has been issued to shareholders of the offeree company, or within any extended period agreed to by the offeror, deliver to the offeror a take-over statement by the directors of the offeree company.

(2) If any director of the offeree company does not agree with the take-over statement by the directors of the offeree company or any part of it, he or she must make out a separate statement, signed by him or her, containing the full reasons for his or her disagreement, which statement must be incorporated in the take-over statement by the directors of the offeree company and form part of it.

(3) The offeror must, within seven days after receipt of the take-over statement by the directors of the offeree company, send a copy of that statement-

(a) to the shareholders referred to in section 320(2)*(a)*; and

(b) on the prescribed form to the Registrar.

323 Contents of take-over statement by directors of offeree company

Any take-over statement by the directors of the offeree company must contain at least the following information-

(a) the opinion of the directors of the offeree company as to the fairness of the take-over offer stating all relevant information material to the assessment of the value of the shares of the offeree company;

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(b) whether or not there has been any material change in the financial position, state of affairs or business of the offeree company since the end of the financial year dealt with by its last annual financial statements;

(c) the number of shares of the offeree company held, directly or indirectly, by each of the directors and the intention of each of the directors in relation to the take-over offer and his or her own shareholding;

(d) whether any of the directors of the offeree company is a director or shareholder of, or has any other interest in, the offeror or any company controlled by the offeror or by the controlling company of the offeror and if so, full disclosure of that interest; and

(e) particulars of any interest of any director of the offeree company in the take-over scheme concerned and any payment, benefit or advantage or proposed payment, benefit or advantage from whatever source in connection with that take-over scheme, including those referred to in section 235(3).

324 Statement by the directors of offeree company in case of counter bid

Notwithstanding section 320(2)*(b)*, a take-over offer may be made without there being annexed to it a take-over statement by the directors of the offeree company, if it is made while another take-over offer made by another offeror is open and available for acceptance, but, the directors of the offeree company must, within 14 days of the making of that offer, deliver to the offeror a take-over statement in terms of section 323 and the offeror must as soon as possible issue copies of that take-over statement to the shareholders of the offeree company and lodge, in the prescribed form, a copy of that statement with the Registrar.

325 Requirements for take-over offer may be waived

If all the shareholders of shares of an offeree company involved in a take-over scheme consent in writing the requirements of this Act in regard to take-over offers may be waived.

326 Liability and offences in regard to take-over offers

(1) Any person who or company which fails to comply with any requirement of section 320(2) or (3), 321, 322, 323 or 324 commits an offence and is liable to a fine which does not exceed N$4 000.

(2) Any director of the offeree company who conceals, or fails to take reasonable steps to have included in the take-over statement by the directors of the offeree company, any information required by section 323*(d)* and *(e)* commits an offence and is liable to a fine which does not exceed N$4 000.

(3) Where a take-over statement by the offeror contains a statement which is untrue, the offeror and every director and officer of an offeror which is a company, and where a take-over statement by the directors of the offeree company contains a statement which is untrue, every director of the offeree company, commits an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment.

(4) The defences referred to in section 170(3) and (4) are, with the necessary changes, available to any person charged under subsection (3).

(5) Where a take-over statement by the offeror or the take-over statement by the directors of the offeree company contains a statement which is untrue, the offeror and every director and officer of an offeror which is a company, and every director of the offeree company respectively, is liable to pay compensation to all persons who have accepted the take-over offer concerned for the loss or damage they have sustained because of that untrue statement, and section 168 is so far as it

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relates to the liability for untrue statements in a prospectus does, with the necessary changes, apply to any liability provided for in this subsection, and-

(a) the reference in section 168 to a prospectus must be construed as a reference to a take-over statement by the offeror or the take-over statement by the directors of the offeree company;

(b) the reference in section 168 to persons who have acquired, subscribed for or purchased shares, must be construed as a reference to persons who have accepted the take-over offer; and

(c) the reference in section 168 to the allotment or sale of shares, must be construed as a reference to the acceptance of the take-over offer.

(6) The expression "statement which is untrue" or "untrue statement" in subsections (3) and (5) bears, for the purposes of those subsections, the meaning ascribed to the expression "untrue statement" in section 148.

327 Power to acquire shares of minority in take-over scheme

(1) If a take-over offer under a scheme or contract involving the transfer of shares or any class of shares of a company to an offeror, has, within four months after the making of the offer in that behalf by the offeror, been accepted by the holders of not less than nine-tenths of the shares or any class of shares, other than shares already held at the date on which the offer is issued by, or by a nominee for, the offeror or its subsidiary, whose transfer is involved the offeror may, at any time within two months after that acceptance, give notice in the prescribed manner to any shareholder who has not accepted that offer, that the offeror desires to acquire that shareholder's shares, and where that notice is given, the offeror is, unless on an application made by that shareholder within 30 days from the date on which the notice was given the Court orders otherwise, entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the shareholders who have accepted the offer, are to be transferred to the offeror.

(2) Where a notice has been given by the offeror under this section and the Court, on an application made by a shareholder who has not accepted the offer, has not ordered to the contrary, the offeror must, at the expiry of 30 days from the date on which the notice was given, or, if an application to the Court by that shareholder is then pending, after the application has been disposed of, send a copy of the notice to the offeree company together with an instrument of transfer executed on behalf of that shareholder by any person appointed by the offeror and pay or transfer to the offeree company the amount or other consideration representing the price payable by the offeror for the shares which because of this section he or she or it is entitled to acquire, and, subject to the payment of the stamp duties ordinarily payable, the offeree company must register the offeror as the holders of those shares, but an instrument of transfer is not required for any share for which a share warrant is for the time being outstanding.

(3) Where, in pursuance of any scheme or contract contemplated in this section, shares of an offeree company are transferred to a person or another company or its nominee, and those shares together with any other shares of that offeree company held by, or by a nominee for, the offeror or its subsidiary at the date of the transfer, comprise or include nine-tenths of the shares in the first-mentioned company or if any class of those shares, then-

(a) the offeror must, within a month from the date of the transfer, give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class, as the case may be, who have not accepted the offer under the scheme or contract: and

(b) that holder may, within three months from the giving of the notice to him or her, by written notice, require the offeror to acquire the shares in question.

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(4) Where a shareholder gives notice under subsection (3)*(b)*, the offeror is entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the shareholders who have accepted the offer were transferred to him or her or it, or on other terms which may be agreed on or which the Court on the application of either the offeror or the shareholders may order.

(5) Any sum received by the offeree company under this section must be paid into a separate bank account with a banking institution registered under the Banking Institutions Act, 1998 (Act 2 of 1998), and those sums and any other consideration so received must be held by the offeree company for the several persons entitled to the shares in respect of which those sums or other consideration was received.

(6) In this section the expression "shareholder who has not accepted the offer" includes any shareholder who has failed or refused to transfer his or her shares to the offeror in accordance with the scheme or contract.

CHAPTER 13
EXTERNAL COMPANIES (ss 328-341)

PART 1
REGISTRATION (ss 328-330)

328 Registration of memorandum of external company

(1) Every external company must, within 21 days after the establishment of a place of business in Namibia, lodge, in the prescribed manner, with the Registrar-

(a) a certified copy of the memorandum of the company, and if that memorandum is not in the official language, a certified translation of it, in the official language;

(b) the notice, in the prescribed form, referred to in section 178;

(c) the consent of and the name and address of the auditor of the company in Namibia;

(d) a notice of the financial year of the company as contemplated in section 293;

(e) a list, in the prescribed form, containing the following particulars-

(i) the full forenames and surname and any former forenames and surname, nationality, current country of residence, occupation, residential, business and postal addresses and the date of appointment of each director, and section 223(3) in so far as it describes what constitutes former forenames and surnames does, with the necessary changes, apply to a former forename and surname of a director;

(ii) the full forenames and surname, nationality, occupation, residential, business and postal addresses, the date of appointment, of the local manager and secretary, and in the case of any local manager or secretary being a corporate body, its registered office;

(iii) the name and address of the auditor of the company in Namibia;

(f) a notice, in the prescribed form, of the name and address of the person authorised by the company to accept service on behalf of the company under section 332; and

(g) proof of payment of the annual duty payable under section 183.

(2) The Registrar must, on payment of the prescribed fee, register the memorandum of the company in the register kept under section 4, distinguishing the registration from the registrations in respect of companies incorporated in Namibia, and must issue a certificate of registration signed by him or her and under his or her seal to the company.

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(3) An external company in respect of which a notice has been published under section 31(2)*(b)* of the Registration and Incorporation of Companies in South West Africa Proclamation, 1978 (Proclamation 234 of 1978), in the *Gazette*, is deemed to be registered under this section as an external company from the date mentioned in the notice.

(4) Section 341(5), (6) and (7) in so far as it provides for the legal effects of the registration of an external company in Namibia does, with the necessary changes, apply in respect of a company referred to in subsection (3).

(5) On the registration of the memorandum of an external company the Registrar must allocate a registration number to the company concerned.

329 Effect of registration of memorandum of external company

(1) On the registration of the memorandum of an external company the external company becomes a body corporate in Namibia subject to the applicable provisions of this Act.

(2) A certificate of registration given by the Registrar in respect of any external company is, on its mere production, in the absence of proof of fraud, conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental have been complied with.

330 Power of external company to own immovable property in Namibia

(1) Save as may be expressly provided in any other law, an external company of which the memorandum has been registered under section 328 has the same power to own immovable property in Namibia as if it were a company incorporated in Namibia.

(2) No external company is capable of acquiring the ownership of immovable property in Namibia unless its memorandum has been or is deemed to be registered under section 328.

PART 2
ADMINISTRATIVE AND OTHER DUTIES OF EXTERNAL COMPANIES (ss 331-341)

331 External company to have auditor

(1) Every external company must appoint and must, at all times, have an auditor within the meaning of this Act and must, not later than 14 days after that appointment or any change in the office of auditor and in the prescribed form, lodge with the Registrar a notice stating the name and address of that auditor or the change in the office.

(2) The auditor of any external company may at any time resign as such and section 280 which relates to the power of the Minister to appoint a joint auditor does, with the necessary changes, apply with reference to the appointment of an auditor after a resignation.

(3) If an external company fails to appoint an auditor as provided in subsection (1), the Registrar must appoint the auditor.

(4) Subsection (1) does not apply where the sole purpose of the external company in establishing a place of business in Namibia is to establish a share registration office or a share transfer office.

332 External company to have person authorised to accept service

(1) Notwithstanding section 78, every external company must appoint and must, at all times, have one or more persons resident in Namibia authorised by the company to accept on its behalf service of process and any notices required to be served on the company.

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(2) The authorised person referred to in subsection (1) is entitled to withdraw from that authorisation after having given one month's written notice of the withdrawal to the company and must, at the same time, lodge, in the prescribed form, two copies of the notice with the Registrar.

(3) Every external company must, within 21 days after receipt of the notice referred to in subsection (2) or after the termination of an authorisation in any other manner, lodge, in the prescribed form, with the Registrar a notice stating the alteration and the name and address of the new authorised person appointed by the company.

333 Register of directors and managers and secretaries and power of Registrar to request particulars

(1) Sections 219, 223 and 224 in so far as they relate to the giving of written consent by a director or officer of a company, the keeping, by a company, of a register of directors or officers and the duty of a director or officer to furnish a company with his or her particulars respectively do, with the necessary changes, apply to a director, local manager and local secretary of an external company, but-

(a) if a director is not resident in Namibia-

(i) the entries referred to in section 224(1) must be made in the register not later than the end of the financial year of the company and the return referred to in section 224(2) must be lodged with the Registrar within 14 days after the date of those entries; and

(ii) the form of consent provided for under section 219 may be signed by the director or his or her duly authorised agent on his or her behalf;

(b) section 219 in so for as it relates to the prescribed form does not apply where the sole purpose of the company in establishing a place of business in Namibia is to establish a share registration office or a share transfer office.

(2) Every external company must, within 21 days after the date of a written request by the Registrar to that effect, lodge with the Registrar complete particulars of the present residential, business and postal addresses of every director not resident in Namibia, together with a complete list containing the names and registered offices of companies incorporated in Namibia and other external companies of which that director is also a director.

334 Changes in memorandum of external company

If any alteration is made in the memorandum of an external company, the company must, within three months of that alteration, lodge, on the prescribed form, with the Registrar for registration, a certified copy of the instrument showing the alteration, and if the instrument is in a language other than the official language, a certified translation of it in the official language.

335 External company to keep accounting records and lodge annual financial statements and interim report

(1) Every external company must keep, in the official language, accounting records, including the matters referred to in section 292(1)*(a)* to *(e)* inclusive, which are necessary fairly to present the state of affairs and business of the company in Namibia and to explain the transactions concerning its trade and business and its financial position in Namibia.

(2) The accounting records of an existing company, which is an external company, kept under the repealed Act in a language other than the official language are deemed to be sufficient compliance with subsection (1).

(3) Sections 293 and 310 in so far as they relate to the determination of the financial year of a company and the sending by a company to its members of an

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interim report respectively do, with the necessary changes, apply to every external company.

(4) Every external company must, within six months after the end of every financial year, lodge, on the prescribed form, with the Registrar, a copy of its annual financial statements together with the report of the auditor of the company, in respect of its financial position, trade and business in Namibia.

(5) Sections 289, 290 and 291 do, in so far as they relate to the rights of an auditor, duties of an auditor and the remuneration of an auditor respectively and Chapter 11 does, in so far as it relates to the financial statements of companies, with the necessary changes, apply to the financial statement and report required by subsection (4) in respect of every external company.

(6) Every external company must, within six months after the end of its financial year, lodge with the Registrar a certified copy of its latest complete annual financial statements as prepared under the requirements of the foreign jurisdiction in which it was incorporated, and, if those statements are in a language other than the official language, a certified translation of the financial transactions in the official language.

(7) The Minister may, where necessary in the public interest, exempt an external company from all or any of the obligations imposed by this section and may also do so on application by that external company on the ground that the required disclosure of information or of any particular information will be harmful to the company or will be impracticable or will be of no real benefit to the members of the company in Namibia in view of the insignificant amounts involved and that application must be renewed every two years.

336 External companies to lodge annual return

(1) Every external company must, not later than one month after the end of its financial year, lodge, in the prescribed form, with the Registrar a return, specifying the particulars prescribed by the Minister by regulation, in regard to the company, as at the date of the end of its financial year.

(2) The annual return referred to in subsection (1) must be signed by one of the resident directors or local managers.

337 Further administrative duties of external company

(1) Every external company must-

(a) conspicuously exhibit outside all its places of business in Namibia the name of the company and the foreign country in which the company is incorporated; and

(b) have the name of the company and of the foreign country in which the company is incorporated, as well as the registration number referred to in section 328(5), mentioned in legible characters in all bill-heads and letter-heads and in all notices, advertisements and other official publications of the company, and for the purposes of this subsection, section 56 which relates to use and publication of the name of a company does, with the necessary changes, apply.

(2) An external company which fails to comply with subsection (1) commits an offence and is liable to a fine which does not exceed N$4 000.

(3) An external company must not issue or send to any person in Namibia any trade catalogue, trade circular or business letter bearing the company's name unless the names of its directors, their nationality if not Namibian nationals, the names of its local managers and its local secretary are stated in that catalogue, circular or letter.

338 Deregistration of external company

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(1) If any external company ceases to have a place of business in Namibia, it must, as soon as possible, give notice of that fact to the Registrar.

(2) If the Registrar has reasonable cause to believe that an external company has ceased to have a place of business in Namibia, he or she must send by certified post to the company at its postal address and at the address of its registered office, to the person authorised to accept service on its behalf and to its auditor, letters requiring details of its place of business, if any.

(3) If the Registrar does not, within one month of sending the letters referred to in subsection (2), receive any answer or receives an answer to the effect that the company has ceased to have a place of business in Namibia, he or she may publish in the *Gazette* and may by certified post send to the company at its postal address and at the address of its registered office, to the person authorised to accept service on its behalf and to its auditor, a notice to the effect that at the expiry of a period of two months from the date of that notice that company will, unless good cause is shown to the contrary, be deregistered.

(4) At the expiry of the period of two months mentioned in any notice referred to in subsection (3) or on receipt from any external company of a notice contemplated in subsection (1), the Registrar may, unless good cause to the contrary has been shown by the company, deregister the company and must, if he or she so deregisters the company, give notice to that effect in the *Gazette* and the date of the publication of that notice in the *Gazette* is deemed to be the date of deregistration, but, the liability, if any, of every director, officer and member of the company continues and may be enforced as if the company had not been deregistered.

(5) The Registrar must cancel the memorandum of an external company which has been deregistered under this section.

339 Offences in respect of external companies

(1) Any company incorporated outside Namibia which establishes a place of business in Namibia without complying with section 328(1), and every director, officer or agent of that company, commits an offence and is liable to a fine which does not exceed N$400.

(2) Every external company which and every director or officer of that company who fails to comply with section 331, 332, 333, 334, 335, 336 or 337 commits an offence and is liable to a fine which does not exceed N$400.

340 Transfer of undertaking of external company and exemption from transfer duty under scheme

(1) Where an external company which is registered under this Act is being or is about to be wound up voluntarily or dissolved or whose shares have or are about to be acquired for the purpose of winding up or dissolution, the Registrar must submit a certificate to that effect to the Court.

(2) On receipt of the certificate referred to in subsection (1) the Court may, notwithstanding anything to the contrary contained in any law, if an external company satisfies the Court that it carries on its principal business within Namibia and that-

(a) it is being or is about to be wound up voluntarily or dissolved for the purpose of transferring the whole of its business and all its rights, obligations and property, wherever situate, to a company which has been or will be incorporated under this Act (in this section referred to as "the new company") for the purpose of taking over and acquiring that business, rights, obligations and property; or

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(b) all the issued shares of that external company have been, are being or are about to be acquired by the new company under a scheme in terms of which the transfer to the new company is to take place; and

(c) in both cases of paragraphs *(a)* and *(b)*-

(i) the sole consideration for that transfer or acquisition is the issue to the members of the external company of shares of the new company in proportion to their shareholdings in the external company; and

(ii) no shares in the new company will be available for issue to any persons other than the members of the external company,

make the orders specified in subsection (3).

(3) After considering the matters referred to in subsection (2) the Court may order that-

(a) the new company has been incorporated and is entitled to commence business and that the shares of the new company have been issued in proportion to the members of the external company;

(b) as from a date specified by it, the whole of the business and all rights, obligations and property of the external company, wherever situated, must be transferred to, vest in and are binding on the new company;

(c) no transfer or stamp duty is payable in respect of the transfer of any property from the external company to the new company; and

(d) any licence, exemption, permit, certificate or authority held in terms of any law by the external company in respect of its business or property, is, with effect from the date specified under paragraph *(b)*, deemed for the purposes of that law to be held by the new company in respect of the business or property so transferred.

341 Registration of external companies as companies in Namibia

(1) Any external company, having a share capital, which has a place of business in Namibia and which has complied with section 328 may, subject to this section, make an application for registration under Chapter 4.

(2) If an external company, making an application referred to in subsection (1), satisfies the Minister that-

(a) it conducts the whole or the major portion of its business in Namibia and that the greater part of its assets, other than interests in subsidiary companies incorporated outside Namibia, are situated in Namibia;

(b) the majority of its directors are or will be Namibian nationals;

(c) the majority of its shareholders are resident in Namibia and that the company has resolved to make an application under this section;

(d) its registration and incorporation in the foreign country concerned will, on registration in Namibia, be terminated in accordance with the laws of that foreign country;

(e) it has lodged with the Registrar documents necessary for registration under this Act as the Registrar may require, and that it has paid all fees and duties payable under this Act or any other Act; and

(f) it has complied with any other requirements which the Registrar may deem necessary,

the Minister may by notice in the *Gazette* declare that that external company is, subject to compliance with subsection (3), deemed, with effect from the date of termination of its registration and incorporation in the foreign country concerned, to be a company incorporated under this Act.

(3) The Registrar must, with effect from the date of termination of its registration and incorporation in the foreign country, effect the necessary registration in respect of that company in the manner and form prescribed by and subject to the

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applicable provisions of Chapter 4 and must simultaneously cancel the registration in respect of the external company under section 328.

(4) On the registration of an external company the Registrar must issue to that company a certificate, signed and sealed by him or her, to the effect that registration has taken place and that the company has been incorporated under this Act.

(5) If at the date of the registration any action, arbitration or proceeding or any cause of action, arbitration or proceeding are pending or existing by or against or in favour of the external company the same must not abate or be discontinued or be in any way prejudicially affected because of the registration but may be continued, prosecuted and enforced by, against or in favour of the external company as if that registration had not taken place.

(6) All contracts, agreements, conveyances, deeds, leases, and other instruments affecting the external company and in force at the date of registration under this section are, as from that date as binding and of as full force against or in favour of the company and may be enforced by, against or in favour of the company as fully and effectually as if the external company had at all material times been incorporated under this Act.

(7) All books, registers and documents which if registration under this section had not taken place would have been evidence in respect of any matter for or against the external company are, on and after the date of the registration, admissible in evidence in respect of the same or a like matter for or against the company.

CHAPTER 14
WINDING-UP OF COMPANIES (ss 342-432)

PART 1
GENERAL (ss 342-348)

342 Definitions for purposes of winding-up of companies

In this Chapter, unless the context otherwise indicates-

"company" includes a company, external company and any other body corporate;

"contributory", in relation to a company limited by guarantee, means any person who has undertaken to contribute to the assets of the company in terms of section 59(3)*(b)* in the event of its being wound up and, in relation to any company which is unable to pay its debts and is being wound up by the Court or by a creditors' voluntary winding-up, includes any person who is liable to contribute to the costs, charges and expenses of the winding-up of the company.

343 Application of repealed Act, where winding-up has already commenced

The provisions of this Act relating to the winding-up of a company do not apply to any company whose winding-up was commenced before the coming into operation of this Act, and the winding-up of such a company must be continued under the relevant provisions of the repealed Act.

344 Law of insolvency to apply with the necessary changes

In the winding-up of a company unable to pay its debts the law relating to insolvency must, in so far as it is applicable, with the necessary changes, be applied in respect of any matter not specially provided for by this Act.

345 Voidable and undue preferences

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(1) Every disposition by a company of its property which, if made by an individual, could, for any reason, be set aside because of his or her insolvency, may, if made by a company, be set aside because of the company being wound up and unable to pay all its debts, and the law relating to insolvency must, with the necessary changes, be applied to that disposition.

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

(a) in the case of a winding-up by the Court, the presentation of the application, unless that winding-up has superseded a voluntary winding-up, when it is the registration in terms of section 208 of the special resolution to wind up the company;

(b) in the case of a voluntary winding-up, the registration in terms of section 208 of the special resolution to wind up the company;

(c) in the case of a winding-up of any company unable to pay its debts by the Court superseding a judicial management order, the presentation of the application to the Court in terms of section 439(1) and 447.

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

346 Dispositions and share transfers after winding-up void

(1) Every transfer of shares of a company being wound up or alteration in the status of its members effected after the commencement of the winding-up without the sanction of the liquidator, is void.

(2) Every disposition of its property, including rights of action, by any company being wound-up and unable to pay its debts made after the commencement of the winding-up, is void unless the Court otherwise orders.

347 Application of assets and costs of winding-up

(1) In every winding-up of a company the assets must be applied in payment of the costs, charges and expenses incurred in the winding-up and, subject to section 442(2), the claims of creditors as nearly as possible as they would be applied in payment of the costs of sequestration and the claims of creditors under the law relating to insolvency and, unless the memorandum or articles otherwise provide, the residual assets must be distributed among the members according to their rights and interests in the company.

(2) The law relating to insolvency in respect of contributions by creditors towards any costs applies to every winding-up of a company.

348 Modes of winding-up

(1) A company may be wound up-

(a) by the Court; or

(b) voluntarily.

(2) A voluntary winding-up of a company may be-

(a) a creditors' voluntary winding-up; or

(b) a members' voluntary winding-up.

PART 2
WINDING-UP BY COURT (ss 349-353)

349 Circumstances in which company may be wound up by Court

A company may be wound up by the Court if-

(a) the company has by special resolution resolved that it be wound up by the Court;

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(b) the company commenced business before the Registrar certified that it was entitled to commence business;
(c) the company has not commenced its business within a year from its incorporation, or has suspended its business for a whole year;
(d) in the case of a public company, the number of members has been reduced below seven;
(e) 75 percent of the issued share capital of the company has been lost or has become useless for the business of the company;
(f) the company is unable to pay its debts as described in section 350;
(g) in the case of an external company, that company is dissolved in the country in which it has been incorporated, or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs; or
(h) it appears to the Court that it is just and equitable that the company should be wound up.

350 When company is deemed unable to pay debts

(1) A company or body corporate is deemed to be unable to pay its debts if-
(a) a creditor, by cession or otherwise, to whom the company is indebted in a sum not less than the prescribed amount then due-
(i) has served on the company, by leaving the same at its registered office, a demand requiring the company to pay the sum so due; or
(ii) in the case of any body corporate not incorporated under this Act, has served that demand by leaving it at its main office or delivering it to the secretary or some director, manager or principal officer of that body corporate or in some other manner as the Court may direct,
and the company or body corporate has for 15 days thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or
(b) any process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned by the sheriff or the messenger with an endorsement that not sufficient disposable property has been found to satisfy the judgment, decree or order or that any disposable property found did not on sale satisfy the process; or
(c) it is proved to the satisfaction of the Court that the company is unable to pay its debts.

(2) In determining for the purpose of subsection (1) whether a company is unable to pay its debts, the Court must also take into account the contingent and prospective liabilities of the company.

351 Application for winding-up of company

(1) An application to the Court for the winding-up of a company may, subject to this section, be made-
(a) by the company;
(b) by one or more of its creditors, including contingent or prospective creditors;
(c) by one or more of its members;
(d) by any person referred to in section 110(3), irrespective of whether his or her name has been entered in the register of members or not;
(e) jointly by any or all of the parties mentioned in paragraphs *(a)*, *(b)* and *(c)*;
(f) in the case of any company being wound up voluntarily, by the Master or any creditor or member of that company; or

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(g) in the case of the discharge of a provisional judicial management order under section 434(3) or 438(2), by the provisional judicial manager of the company.

(2) A member of a company is not entitled to present an application for the winding-up of that company unless that member has been registered as a member in the register of members for a period of at least six months immediately before the date of the application or the shares that member holds have devolved on that member through the death of a former holder and unless the application is on the grounds referred to in section 349*(b)*, *(c)*, *(d)*, *(e)* or *(h)*.

(3) Every application to the Court referred to in subsection (1), except an application by the Master in terms of paragraph *(f)* of that subsection, must be accompanied by a certificate by the Master, issued not more than 10 days before the date of the application, to the effect that sufficient security has been given for the payment of all fees and charges necessary for the prosecution of all winding-up proceedings and of all costs of administering the company in liquidation until a provisional liquidator has been appointed, or, if no provisional liquidator is appointed, of all fees and charges necessary for the discharge of the company from the winding-up.

(4) Before an application for the winding-up of a company is presented to the Court, a copy of the application and of every affidavit confirming the facts stated therein must be lodged with the Master.

(5) The Master may report to the Court any facts ascertained by him or her which appear to him or her to justify the Court in postponing the hearing or dismissing the application and must transmit a copy of that report to the applicant or the agent of the applicant and to the company.

352 Power of Court in hearing application

(1) Subject to subsection (2), the Court may grant or dismiss any application under section 351, or adjourn the hearing, conditionally or unconditionally, or make any interim order or any other order it may deem just, but the Court must 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 Court grants an application made under section 351, the Court must, unless there is good reason not to do so-

(a) grant a rule *nisi* calling on the company and all interested persons to show cause on the return day why the company should not be finally wound up; and

(b) direct that the rule be published in the *Gazette* and, if the Court deems it necessary, in a newspaper circulating in Namibia.

(3) Where the application is presented-

(a) by members of the company and it appears to the Court that the applicants are entitled to relief, the Court must make a winding-up order, unless it is satisfied that some other remedy is available to the applicants and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy;

(b) on the ground that the company commenced business before the Registrar had certified that it was entitled to commence business, the Court may, instead of granting a winding-up order, give directions that the company obtains that certificate from the Registrar or make any other appropriate order and the Court may order the costs to be paid by any person who in the opinion of the Court is responsible for the default;

(c) to the Court by-

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(i) any applicant under section 351(1)*(f)*, the Court may, in the winding-up order or by any subsequent, order confirm all or any of the proceedings in the voluntary winding-up; or

(ii) any member under that section, the Court must satisfy itself that the rights of the member will be prejudiced by the continuation of a voluntary winding-up.

353 Commencement of winding-up by Court

A winding-up of a company by the Court is deemed to commence at the time of the presentation to the Court of the application for the winding-up.

PART 3
VOLUNTARY WINDING-UP (ss 354-358)

354 Circumstances under which company may be wound up voluntarily

A company, not being an external company, may be wound up voluntarily if the company has by special resolution resolved that it be so wound up.

355 Voluntary winding-up of members and security

(1) A voluntary winding-up of a company is a members' voluntary winding-up if the resolution contemplated in section 354 so states, but that resolution is of no force and effect unless-

(a) it has been registered in terms of section 208; and

(b) prior to the registration-

(i) security has been furnished to the satisfaction of the Master for the payment of the debts of the company within a period not exceeding 12 months from the commencement of the winding-up of the company; or

(ii) the Master has dispensed with the furnishing of that security on production to him or her of-

(aa) a sworn statement by the directors of the company that it has no debts; and

(bb) a certificate by the auditor of the company that to the best of his or her knowledge and belief and according to the records of the company, it has no debts.

(2) The costs incurred in furnishing the security referred to in subsection (1)*(b)* may be recovered from the company concerned.

(3) Unless otherwise provided, in a members' voluntary winding-up, the liquidator may without the sanction of the Court exercise all powers by this Act given to the liquidator in a winding-up by the Court, subject to any directions which may be given by the company in general meeting.

356 Voluntary winding-up of creditors

(1) A voluntary winding-up of a company is a creditors' voluntary winding-up if the resolution contemplated in section 354 so states, but that resolution is of no force and effect unless it has been registered in terms of section 208.

(2) Unless otherwise provided, in a creditors' voluntary winding-up, the liquidator may without the sanction of the Court exercise all powers by this Act given to the liquidator in a winding-up by the Court, subject to any directions which may be given by the creditors.

357 Commencement of voluntary winding-up

(1) A voluntary winding-up of a company commences at the time of the registration in terms of section 208 of the special resolution authorising the winding-up.

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(2) The Registrar must, as soon as possible after the registration by him or her of a special resolution referred to in subsection (1), send a copy to the Master.

358 Effect of voluntary winding-up on status of company and on directors

(1) A company which is being wound up voluntarily does, notwithstanding anything contained in its articles, remain a corporate body and retain all its powers as such, but, must, from the commencement of the winding-up, cease to carry on its business except in so far as may be required for the beneficial winding-up of the company.

(2) As from the commencement of a voluntary winding-up all the powers of the directors of the company concerned cease except in so far as their continuance is sanctioned-

(a) by the liquidator or the company in general meeting in a members' voluntary winding-up; or

(b) by the liquidator or the creditors in a creditors' voluntary winding-up.

PART 4
GENERAL PROVISIONS AFFECTING ALL WINDINGS-UP (ss 359-373)

359 Court may stay or set aside winding-up

(1) The Court may at any time after the commencement of a winding-up, on the application of any liquidator, creditor or member, and on proof to the satisfaction of the Court that all proceedings in relation to the winding-up ought to be stayed or set aside, make an order staying or setting aside the proceedings or for the continuance of any voluntary winding-up on terms and conditions which the Court considers appropriate.

(2) The Court may, as to all matters relating to a winding-up, have regard to the wishes of the creditors or members as proved to it by any sufficient evidence.

360 Notice to creditors or members in review by Court in winding-up

In any review by the Court of any matter under the winding-up of a company where the general body of creditors, members or contributories is affected, notice to the liquidator must be considered as notice to them.

361 Notice of winding-up of company

(1) On receipt of a copy of any winding-up order of any company lodged with him or her, the Master must give notice of that winding-up in the *Gazette*.

(2) Any company which has passed a special resolution under section 354 for its voluntary winding-up, must within 28 days after the registration of that resolution in terms of section 208-

(a) lodge with the Master a certified copy of the resolution concerned, together with-

(i) in the case of a members' voluntary winding-up if any further resolution nominating a person or persons for appointment as liquidator or liquidators of the company has been passed, a certified copy of that resolution; or

(ii) in the case of a creditors' voluntary winding-up, two certified copies of the statement referred to in section 368(1); and

(b) give notice of the voluntary winding-up of the company in the *Gazette*.

(3) Any company which fails to comply with subsection (2) and every director or officer of a company who knowingly authorised or permitted that failure, commits an offence and is liable to a fine which does not exceed N$40 for every day during which the contravention continues.

362 Notice of winding-up to certain officials and their duties

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(1) The Registrar of the Court must immediately send a copy of every winding-up order, whether provisional or final and of any order staying, amending or setting that order aside, made by the Court to-

(a) the sheriff of the Court;

(b) every registrar or other officer charged with the maintenance of any register under any Act in respect of any property within Namibia which appears to be an asset of that company;

(c) the messenger of every magistrate's court by the order where it appears that property of that company is under attachment.

(2) Where the assets of a company being wound-up are under N$2 000 in value, the Court may direct that its movable assets may, on any terms as to security which it may determine, remain in the custody of a person who is specified in the directions, and in that event it is not necessary to transmit a copy of any order to any sheriff or messenger.

(3) A company must, within 14 days after registration of a resolution in terms of section 208 or the making of an order, send a copy of every special resolution for the voluntary winding-up of that company passed under section 354 and of every order of court amending or setting aside the proceedings in relation to the winding-up to the officers and registrars referred to in paragraphs subsection (1)*(a)*, *(b)* and *(c)*.

(4) Any officer or registrar to whom a copy of any order or resolution is sent in terms of subsection (1) or (3) must record that copy and note the day and hour of receipt.

(5) Any registrar or officer referred to in subsection (1)*(b)* must, on receipt of a copy of any order or resolution referred to in subsection (1) or (3), enter a caveat in his or her register accordingly.

(6) Any company which fails to comply with subsection (3) and every director or officer of that company who knowingly is a party to that failure, commits an offence and is liable to a fine which does not exceed N$40 for every day during which the contravention continues.

363 Stay of legal proceedings before winding-up order granted

At any time after the presentation of an application for winding-up and before a winding-up order has been made, the company concerned or any creditor or member may-

(a) if any action or proceeding by or against the company is pending in any court in Namibia, apply to that court for a stay of the proceedings; and

(b) if any other action or proceeding is being or about to be instituted against the company, apply to the Court to which the application for winding-up has been presented, for an order restraining further proceedings in the action or proceeding,

and the Court may stay or restrain the proceedings accordingly on appropriate terms.

364 Legal proceedings suspended and attachments void

(1) When the Court has made an order for the winding-up of a company or a special resolution for the voluntary winding-up of a company has been registered in terms of section 208-

(a) all civil proceedings by or against the company concerned must be suspended until the appointment of a liquidator; and

(b) any attachment or execution put in force against the estate or assets of the company after the commencement of the winding-up are void.

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(2) Every person who, having instituted legal proceedings against a company which were suspended by a winding-up, intends to continue the same, and every person who intends to institute legal proceedings for the purpose of enforcing any claim against the company which arose before the commencement of the winding-up, must, within 20 days after the appointment of the liquidator, give the liquidator not less than 15 days' notice in writing before continuing or commencing the proceedings.

(3) If the notice referred to in subsection (2) is not so given, the proceedings must be considered to be abandoned unless the Court otherwise directs.

365 Inspection of records of company being wound up

(1) Any member or creditor of any company unable to pay its debts and being wound up by the Court or by a creditors' voluntary winding-up may apply to the Court for an order authorising him or her to inspect any or all of the books and papers of that company, whether in possession of the company or the liquidator, and the Court may, in granting that authority, impose any condition.

(2) Subsection (1) must not be construed as affecting any powers or rights conferred by any law on any department of State or any person acting under its authority at all times to inspect or cause to be inspected, the books and papers of any company being wound up.

366 Custody of or control over, and vesting of property of, company

(1) In any winding-up by the Court all the property of the company concerned is deemed to be in the custody and under the control of the Master until a provisional liquidator has been appointed and has assumed office.

(2) In any winding-up of any company, at all times while the office of the liquidator is vacant or the liquidator is unable to perform his or her duties, the property of the company is deemed to be in the custody and under the control of the Master.

(3) If, for any reason it appears expedient, the Court may, by the winding-up order or by any subsequent order, direct that all or any part of the property, immovable and movable belonging to the company, or to trustees on its behalf, vest in the liquidator in his or her official capacity, and the property or the part of it specified in the order vests accordingly, and the liquidator may, after giving any indemnity, if any, which the Court may direct, bring or defend in his or her official capacity any action or other legal proceedings relating to that property, or necessary to be brought or defended for the purpose of effectually winding-up the company and recovering its property.

367 Court may order directors and others to deliver property to liquidator or to pay into bank

(1) The Court may, at any time after making a winding-up order or after a special resolution for the voluntary winding-up of a company has been registered in terms of section 208, order any director, member, trustee, banker, agent or officer of the company concerned to pay, deliver, convey, surrender or transfer to the liquidator of the company immediately, or within the time which the Court directs, any money, property or books and papers in his or her hands to which the company is entitled.

(2) The Court may order any director, member, purchaser or other person from whom money is due to any company which is being wound up, to pay the same into a banking institution registered under the Banking Institutions Act, 1998 (Act 2 of 1998), to be named by the Court for the account of the liquidator instead of to the

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liquidator, and that order may be enforced in the same manner as if it had ordered payment to the liquidator.

(3) All moneys paid into a banking institution as contemplated in subsection (2) is subject in all respects to the orders of the Court.

368 Directors and others to submit statement of affairs

(1) Where it is intended to pass a resolution for a creditors' voluntary winding-up of a company, the directors of that company must make out or cause to be made out, in the prescribed form, a statement as to the affairs of the company and present it before the meeting convened for the purpose of passing that resolution.

(2) Where an order for the winding-up of a company has been made by the Court-

(a) the persons who at the time of the winding-up order were directors and officers of the company; and

(b) persons who have been directors or officers of the company or who participated in its formation, at any time within one year before the winding-up order, as may be required to do so by the Master,

must make out or cause to be made out, in the prescribed form, a statement as to the affairs of the company and lodge two certified copies of the statement with the Master within 14 days from the date of the winding-up order in question or within any extended time which the Master or the Court may for special reasons determine.

(3) The Master may exempt any person referred to in subsection (2) from the obligation to comply with the requirements of that subsection if that person satisfies the Master by affidavit that he or she is unable to make out or cause to be made out or to verify the statement as to the affairs of the company concerned.

(4) The statement as to the affairs of a company referred to in subsection (1) or (2) must-

(a) be in the prescribed form and contain prescribed matter, including particulars of the company's assets, debts, liabilities, including contingent and prospective liabilities, any pending legal proceedings by or against it, the names, addresses and nature of the businesses of its creditors, the security held by each of them, the dates when each of the securities was given and, in the case of a statement under subsection (2), any further information which the Master may require; and

(b) be verified by affidavit by each of the persons referred to in subsection (1) or (2), as the case may be, and that verifying affidavit must be annexed to the statement.

(5) The Master must send a copy of any statement as to the affairs of a company lodged with him or her in terms of this section to the liquidator on the latter's appointment.

(6) Any person is entitled personally or by his or her agent, on payment of the prescribed fee, to inspect or apply for a copy of or an extract from any statement as to the affairs of a company lodged with the Master in pursuance of this section.

(7) The Master must, out of the assets of the company, pay to any person who is required to make or cause to be made any statement as to the affairs of a company in terms of this section, reasonable costs and expenses incurred by that person in respect of the preparation and making of that statement.

(8) Any person who fails to comply with any requirement of subsection (1), (2) or (4) commits an offence and is liable to a fine which does not exceed N$2 000 or to be imprisoned for a period which does not exceed six months or to both the fine and imprisonment.

369 Change of address of directors and secretaries to be given to liquidator

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(1) Any person who is a director or secretary of a company which is being wound up and who, after the winding-up of that company has commenced but before the liquidator's final account has in terms of section 414 been confirmed, changes his or her residential or postal address, must notify the liquidator by registered post of his or her new residential or postal address within 14 days after that change, or, if the liquidator has not been appointed on the date of that change, within 14 days after the appointment of the liquidator.

(2) Any person who fails to comply with any requirement of subsection (1) commits an offence and is liable to a fine which does not exceed N$2 000 or to be imprisoned for a period which does not exceed six months or to both the fine and imprisonment.

(3) Whenever at the trial of any person charged with an offence referred to in subsection (2) it is proved that that person is a director or secretary of a company which is being wound up and that he or she has changed his or her residential or postal address after the winding-up of that company has commenced and that the liquidator has no written record of the change, it must be presumed, unless the contrary is proved, that he or she did not notify the liquidator of the change.

370 Master to summon first meetings of creditors and members and purpose thereof

(1) As soon as maybe possible after a final winding-up order has been made by the Court or a special resolution for a creditors' voluntary winding-up of a company has been registered in terms of section 208, the Master must summon-

(a) a meeting of the creditors of the company for the purpose of-

(i) considering the statement as to the affairs of the company lodged with the Master under section 361 or 368, as the case may be;

(ii) the proof of claims against the company; and

(iii) nominating a person or persons for appointment as liquidator or liquidators; and

(b) a meeting of the members of the company or, in the case where the winding-up concerns a company limited by guarantee, a meeting of the contributories in respect of that company, for the purpose of-

(i) considering the statement as to the affairs of the company; and

(ii) nominating a person or persons for appointment as liquidator or liquidators,

unless the company in general meeting, when passing a resolution provided for in section 354, has already disposed of the matters referred to in subparagraphs (i) and (ii).

(2) Meetings of creditors under this section must be summoned and held as nearly as may be in the manner provided by the law relating to insolvency and meetings of members or contributories must be summoned and held in the manner prescribed by regulation, but, in the case of a meeting of creditors, the Master may direct the company concerned or the provisional liquidator to send a notice of that meeting by post to every creditor of the company.

371 Offences in securing nomination as liquidator

Any person who gives or agrees or offers to give to any member, creditor or contributory of a company any reward with a view to securing his or her own nomination or appointment or to securing or preventing the nomination or appointment of any person as the company's liquidator commits an offence and is liable to the penalties provided for in the Anti-Corruption Act, 2003 (Act 8 of 2003).

372 Restriction on voting at meetings

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(1) The law governing insolvency in so far as it relates to voting, the manner of voting and voting by an agent at meetings of creditors, does, with the necessary changes, apply to any meeting referred to in sections 356 and 370, but, in any winding-up by the Court a director or former director of a company has no voting right in respect of the nomination of a liquidator on the ground of his or her loan account with the company or claims for arrear salary, travelling expenses or allowances due by the company or claims paid by that director or former director on behalf of the company.

(2) Subsection (1) does, with the necessary changes, apply to a person to whom a right contemplated in that subsection has been ceded.

373 Claims and proof of claims

(1) In the winding-up of a company by the Court and by a creditors' voluntary winding-up-

(a) the claims against the company must, at a meeting of creditors, be proved, with necessary changes, in accordance with the law relating to the proof of claims against an insolvent estate;

(b) a secured creditor is under the same obligation to set a value on his or her security as if that creditor were proving his or her claim against an insolvent estate under the law relating to insolvency, and the value of that creditor's vote must be determined in the same manner as is provided for under that law;

(c) a secured creditor and the liquidator has, where the company is unable to pay its debts, the same right respectively to take over the security as a secured creditor and a trustee would have under the law relating to insolvency.

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

PART 5
LIQUIDATORS (ss 374-391)

374 Appointment of liquidator

For the purpose of conducting the proceedings in a winding-up of a company the Master must appoint a liquidator or liquidators in accordance with this Part.

375 Appointment of provisional liquidator

As soon as a winding-up order has been made in relation to a company, or a special resolution for a voluntary winding-up of a company has been registered in terms of section 208, the Master may appoint any suitable person as provisional liquidator of the company concerned, who must give security to the satisfaction of the Master for the proper performance of his or her duties as provisional liquidator and who holds office until the appointment of a liquidator.

376 Determination of person to be appointed liquidator

(1) In the case of a members' voluntary winding-up of a company, the Master must, subject to section 377, appoint the person or persons nominated by the company in the resolution referred to in section 361(2)*(a)*(i) as liquidator or liquidators of the company concerned.

(2) In the case of a creditors' voluntary winding-up and a winding-up by the Court of a company, the Master must, subject to section 377, appoint the person or persons nominated by any meetings referred to in section 370 as liquidator or

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liquidators of the company concerned, if the same person or persons have been nominated by those meetings.

(3) If the meetings referred to in section 370 have nominated different persons, the Master must, subject to section 377, decide the difference and appoint all or any of the persons so nominated, as liquidator or liquidators of the company concerned.

377 Master may decline to appoint nominated person as liquidator

(1) If a person who has been nominated as liquidator by meetings of creditors and members or contributories of a company was not properly nominated or is disqualified from being nominated or appointed as liquidator under section 379 or 380 or has failed to give, within a period of seven days as from the date on which he or she was notified that the Master had accepted his or her nomination or within any further period which the Master may allow, the security mentioned in section 382(1) or, if in the opinion of the Master the person nominated as liquidator should not be appointed as liquidator of the company concerned, the Master must give notice in writing to the person so nominated that the Master declines to accept his or her nomination or to appoint him or her as liquidator and the Master must in that notice state reasons for declining to accept the nomination or to appoint him or her.

(2) When the Master has declined to accept the nomination of any person or to appoint him or her as liquidator or the Minister has under section 378(3) set aside the appointment of a liquidator, the Master must convene meetings of creditors and members or contributories of the company concerned for the purpose of nominating another person for appointment as liquidator in the place of the person whose nomination as liquidator the Master has declined to accept or whom the Master has declined to appoint or whose appointment has been so set aside.

(3) In the notice convening the meetings referred to in subsection (2), the Master must state that he or she has declined to accept the nomination for appointment as liquidator of the person previously nominated or to appoint the person so nominated and the reasons for that, or that the appointment of the person previously appointed as liquidator has been set aside by the Minister, as the case may be, and that the meetings are convened for the purpose of nominating another person for appointment as liquidator.

(4) The Master must post a copy of the notice referred to in subsection (1) to every creditor whose claim against the company was previously proved and admitted.

(5) The meetings referred to subsection (2) are deemed to be continuations of the first meetings of creditors, members or contributories or of the meetings at which a person or persons were nominated for appointment as liquidator or liquidators as referred to in sections 361 and 370.

(6) If the Master again declines for any reason mentioned in subsection (1) to accept the nomination for appointment as liquidator by the meetings mentioned in subsection (2), or to appoint a person so nominated, the Master must-

(a) act in accordance with subsection (1); and

(b) if the person so nominated was nominated as sole liquidator or if all the persons so nominated have not been appointed by the Master, appoint as liquidator or liquidators of the company concerned any other person or persons not disqualified from being liquidator of that company.

378 Remedy of aggrieved persons

(1) Any person aggrieved by the appointment of a liquidator or the refusal of the Master to accept the nomination of a liquidator or to appoint a person nominated as a liquidator, may, within a period of seven days from the date of that appointment

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or refusal, request the Master in writing to submit reasons for the appointment or refusal to the Minister.

(2) The Master must, within seven days of the receipt of the request referred to in subsection (1), submit to the Minister, in writing, reasons for the appointment or refusal together with any relevant documents, information or objections received by him or her.

(3) The Minister may, after consideration of the reasons referred to in subsection (2) and any representations made in writing by the person who made the request referred to in subsection (1) and of all relevant documents, information or objections submitted to the Minister or the Master by any interested person, confirm, uphold or set aside the appointment or the refusal by the Master and, in the event of the refusal by the Master being set aside, direct the Master to accept the nomination of the liquidator concerned and to appoint him or her as liquidator of the company concerned.

379 Persons disqualified from appointment as liquidator

(1) A person does not qualify for nomination or appointment as the liquidator of a company, if that person is-

(a) an insolvent;

(b) a minor or any other person under legal disability;

(c) a person declared under section 380 to be incapable of being appointed as a liquidator, while he or she remains so incapable;

(d) a person removed from an office of trust by the Court on account of misconduct or a person who is the subject of any order under this Act disqualifying him or her from being a director;

(e) a corporate body;

(f) any person who has at any time been convicted, whether in Namibia or elsewhere, of theft, fraud, forgery or uttering a forged document or perjury and has been sentenced therefor to imprisonment without the option of a fine or to a fine exceeding N$1 000;

(g) any person who has by means of any misrepresentation or any reward, whether directly or indirectly induced or attempted to induce any person to vote for him or her in the nomination of a liquidator or to effect or assist in effecting his or her nomination or appointment as liquidator of any company;

(h) a person who does not reside in Namibia;

(i) a person who at any time during a period of 12 months immediately preceding the winding-up of a company acted as a director, officer or auditor of that company; or

(j) any agent authorised specially or under a general power of attorney to vote for or on behalf of a creditor at a meeting of creditors of the company concerned and acting or purporting to act under that special authority or general power of attorney.

(2) Subsection (1)*(i)* does not apply to an auditor in the case of the voluntary winding-up of the company concerned by the members as contemplated in section 355.

380 Persons disqualified by Court from being appointed or acting as liquidators

The Court may, on the application of any interested person, declare any person proposed to be appointed or appointed as liquidator, to be disqualified from holding office, and, if he or she has been appointed, remove him or her from office,

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and declare him or her for a period which it determines, of being appointed as a liquidator under this Act-

(a) if he or she has accepted or offered or agreed to accept or solicited from any auctioneer, agent or other person employed on behalf of a company in liquidation, any share of the commission or remuneration of that auctioneer, agent or person or any other benefit; or

(b) if he or she has, in order to obtain or in return for the vote of any creditor, member or contributory, or in order to exercise any influence on his or her nomination or appointment as liquidator-

(i) procured or been privy to the wrongful insertion or omission of the name of any person in or from any list or schedule required by this Act;

(ii) directly or indirectly given or agreed to give any consideration to any person;

(iii) offered or agreed with any person to abstain from investigating any transactions of or relating to the company or of any of its directors or officers; or

(iv) been guilty of or privy to the splitting of claims for the purpose of increasing the number of votes.

381 Master may appoint co-liquidator at any time

If the Master considers it desirable he or she may appoint any person not disqualified from holding the office of liquidator and who has given security to the Master's satisfaction, as a co-liquidator with the liquidator or liquidators of the company concerned.

382 Appointment, commencement of office and validity of acts of liquidator

(1) When the person to be appointed to the office of liquidator of a company has been determined and when that person has given security to the satisfaction of the Master for the proper performance of his or her duties as liquidator, except where, in the case of a members' voluntary winding-up, the company concerned has resolved that no security is required, the Master must appoint him or her as liquidator of the company by issuing to him or her a certificate of appointment.

(2) The certificate of appointment is valid throughout Namibia.

(3) A liquidator is entitled to act as such from the date of his or her certificate of appointment.

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

(5) On receipt of the certificate of appointment the liquidator must-

(a) within seven days after receipt of the certificate, send, on the prescribed form, a copy to the Registrar; and

(b) give notice of his or her appointment in the *Gazette*.

383 Title of liquidator

A liquidator must be described as the liquidator of the particular company in respect of which, he or she has been appointed, and not by his or her individual name.

384 Filling of vacancies

(1) Subject to subsection (2), when a vacancy occurs in the office of liquidator, the Master must-

(a) in the case of-

(i) a winding-up by the Court or a creditors' voluntary winding-up, convene meetings of creditors and members or contributories of the company concerned; and

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(ii) in the case of a members' voluntary winding-up, convene or direct the company concerned to convene a meeting of members; or

(b) if there is a remaining liquidator or liquidators, direct that liquidator or liquidators to convene the meetings referred to in paragraph *(a)*,

for the purpose of nominating a person or persons for appointment as liquidator to fill the vacancy.

(2) If the Master reasonably believes that the remaining liquidator or liquidators will be able to complete the winding-up, the Master may dispense with the appointment of a liquidator to fill the vacancy and may direct the remaining liquidator or liquidators to complete the winding-up.

(3) All the provisions of this Act relating to the convening and conduct of the meetings and the nomination and appointment of a liquidator apply to the filling of a vacancy in the office of liquidator.

(4) If for any reason a vacancy is not filled as provided in this section, the Master may appoint any person as provisional liquidator or as liquidator to fill that vacancy.

385 Leave of absence or resignation of liquidator

(1) A liquidator must not be absent from Namibia for a period exceeding 60 days unless-

(a) the Master has before his or her departure from Namibia granted him or her permission in writing to be absent; and

(b) he or she complies with any conditions which the Master may impose.

(2) At the request of a liquidator the Master may relieve him or her of his or her office or direct him or her to resign, on any conditions which the Master may impose.

(3) Every liquidator who is permitted to be absent from Namibia for a period exceeding 60 days or who is relieved of his or her office by the Master or so resigns from office, must give notice of that fact in the *Gazette*.

386 Removal of liquidator by Master and by Court

(1) The Master may remove a liquidator from his or her office on the ground-

(a) that he or she-

(i) was not qualified for nomination or appointment as liquidator or that his or her nomination or appointment was for any other reason illegal;

(ii) has become disqualified from being nominated or appointed as a liquidator;

(iii) has been authorised, specially or under a general power of attorney, to vote for or on behalf of a creditor, member or contributory at a meeting of creditors, members or contributories of the company of which he or she is the liquidator and has acted or purported to act under that special authority or general power of attorney;

(b) that he or she has failed to perform satisfactorily any duty imposed on him or her by this Act or to comply with a lawful demand of the Master or a commissioner appointed by the Court under this Act;

(c) that his or her estate has become insolvent;

(d) that he or she has become mentally or physically incapable of performing satisfactorily his or her duties as liquidator;

(e) that the majority, reckoned in number and in value, of creditors entitled to vote at a meeting of creditors or, in the case of a members' voluntary winding-up, a majority of the members of the company, or, in the case of a winding-up of a company limited by guarantee, the majority of the contributories, has requested him or her in writing to do so; or

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(f) that in his or her opinion the liquidator is no longer suitable to be the liquidator of the company concerned.

(2) The Court may, on application by the Master or any interested person, remove a liquidator from office if the Master fails to do so in any of the circumstances mentioned in subsection (1) or for any other good cause.

(3) The Master must give notice in the *Gazette* of the removal of any liquidator.

387 Control of Master over liquidators

(1) The Master must take cognisance of the conduct of liquidators and must, if he or she has reason to believe that a liquidator is not faithfully performing his or her duties and duly observing all the requirements imposed on him or her by any law or otherwise with respect to the performance of his or her duties, or if any complaint is made to the Master by any creditor, member or contributory in that regard, enquire into the matter and take appropriate action.

(2) The Master may at any time require any liquidator to answer any enquiry in relation to any winding-up in which that liquidator is engaged, and the Master may examine that liquidator or any other person on oath concerning the winding-up.

(3) The Master may at any time appoint a person to investigate the books and vouchers of a liquidator.

(4) The Court may, on the application of the Master, order that any costs reasonably incurred by the Master in performing his or her duties under this section be paid out of the assets of the company, or by the liquidator personally.

(5) Any expenses incurred by the Master in carrying out any provision of this section must, unless the Court otherwise orders, be regarded as part of the costs of the winding-up of that company.

388 Plurality of liquidators, liability and disagreement

(1) When two or more liquidators have been appointed they must act jointly in performing their functions as liquidators and they are jointly and severally liable for every act performed by them jointly.

(2) Whenever two or more liquidators disagree on any matter relating to the company of which they are liquidators, one or more of them may refer the matter to the Master who may determine the question in issue or give directions as to the procedure to be followed for the determination of the matter.

389 Cost and reduction of security by liquidator

(1) The cost of giving security by a person appointed as liquidator to an amount which the Master considers reasonable must, subject to section 89(1) of the Insolvency Act, 1936 (Act 24 of 1936), be paid out of the assets of the company concerned as part of the costs of the liquidation.

(2) If a liquidator has in the course of the winding-up of a company accounted to the satisfaction of the Master for any property belonging to the company, the liquidator may in writing apply for the consent of the Master to a reduction of the security given by him or her and the Master, if satisfied that the reduced security will suffice to indemnify the company and the creditors and contributories against any maladministration on the part of the liquidator in respect of the remaining property belonging to the company, may consent wholly or in part to that reduction.

390 Remuneration of liquidator

(1) In any winding-up a liquidator is entitled to a reasonable remuneration for his or her services to be taxed by the Master in accordance with the prescribed tariff of remuneration, but in the case of a members' voluntary winding-up, the liquidator's remuneration may be determined by the company in a general meeting.

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(2) The Master may reduce or increase a liquidator's remuneration if there is good cause to do so, and may disallow the remuneration either wholly or in part on account of any failure or delay by the liquidator in the discharge of his or her duties.

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

391 Certificate of completion of duties by liquidator and cancellation of security

(1) When a liquidator of a company has performed all the duties imposed by this Act and complied with all the requirements of the Master, the liquidator may apply in writing to the Master for a certificate to that effect.

(2) The Master must, when issuing the certificate referred to in subsection (1), additionally state in that certificate that he or she consents to the reduction of the security given by the liquidator to a stated amount or to its cancellation.

PART 6
POWERS OF LIQUIDATORS (ss 392-396)

392 General powers

(1) The liquidator in any winding-up has power-

(a) to execute in the name and on behalf of the company all deeds, receipts and other documents, and for that purpose to use the company's seal;

(b) to prove a claim in the estate of any debtor or contributory of the company and receive payment in full or a dividend in respect of that claim;

(c) to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, but, a liquidator does not, except with the leave of the Court or the authority referred to in subsection (5) or (6), or for the purposes of carrying on the business of the company in terms of subsection (6)*(f)* have power to impose any additional liabilities on the company;

(d) to summon any general meeting of the company or the creditors or contributories of the company for the purpose of obtaining its or their authority or sanction with respect to any matter or for any other purposes which he or she considers necessary;

(e) subject to subsections (5), (6) and (7), to take measures for the protection and better administration of the affairs and property of the company which the trustee of an insolvent estate may take in the ordinary course of his or her duties and without the authority of a resolution of creditors.

(2) Subject to the consent of the Master, a liquidator may, at any time before a general meeting contemplated in subsection (1)*(d)* is convened for the first time, terminate any lease in terms of which the company is the lessee of movable or immovable property.

(3) At any time before a general meeting contemplated in subsection (1)*(d)* is convened for the first time the liquidator may, if satisfied that any movable or immovable property of the company ought to be sold immediately, recommend to the Master in writing accordingly, stating reasons for that recommendation.

(4) On receipt of a recommendation made under subsection (3) the Master may authorise the sale of the property or any portion of it on any conditions and in any manner which the Master may determine, but, if that property or a portion of it

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is subject to a preferential right, the Master must not authorise the sale of that property or portion unless the person entitled to that preferential right has given consent in writing.

(5) The liquidator of a company-

(a) in a winding-up by the Court, with the authority granted by meetings of creditors and members or contributories or on the directions of the Master given under section 393;

(b) in a creditors' voluntary winding-up, with the authority granted by a meeting of creditors; and

(c) in a members' voluntary winding-up, with the authority granted by a meeting of members,

has the powers mentioned in subsection (6).

(6) The powers referred to in subsection (5) are-

(a) to bring or defend in the name and on behalf of the company any action or other legal proceedings of a civil nature, and, subject to any law relating to criminal procedure, any criminal proceedings, except that immediately on the appointment of a liquidator and in the absence of the authority referred to in subsection (5), the Master may authorise, on appropriate conditions, any urgent legal proceedings for the recovery of outstanding accounts;

(b) to agree to any reasonable offer of composition made to the company by any debtor and to accept payment of any part of a debt due to the company in settlement or to grant an extension of time for the payment of any debt;

(c) to compromise or admit any claim or demand against the company, including an unliquidated claim;

(d) except where the company being wound up is unable to pay its debts, to make any arrangement with creditors, including creditors in respect of unliquidated claims;

(e) to submit to the determination of arbitrators any dispute concerning the company or any claim or demand by or on the company;

(f) to carry on or discontinue any part of the business of the company in so far as may be necessary for the beneficial winding-up of the company, but, if he or she considers it necessary, the liquidator may carry on or discontinue any part of the business of the company concerned before he or she has obtained the leave of the Court or the authority referred to in subsection (5), but, is not, in that event, entitled, as between himself or herself and the creditors or contributories of the company, to include the cost of any goods purchased by him or her in the costs of the winding-up of the company unless those goods were necessary for the immediate purpose of carrying on the business of the company and there are funds available for payment of the cost of those goods after providing for the costs of winding-up;

(g) with the necessary changes, to exercise the same powers as are by sections 35 and 37 of the Insolvency Act, 1936, (Act 24 of 1936), conferred on a trustee under that Act, on the like terms and conditions as are mentioned in those sections, but, the powers conferred by section 35 of that Act, must not be exercised unless the company is unable to pay its debts;

(h) to sell any movable and immovable property of the company by public auction, public tender or private contract and to give delivery of the property;

(i) to perform any act or exercise any power for which he or she is not expressly required by this Act to obtain the leave of the Court.

(7) In a winding-up by the Court, the Court may grant leave to a liquidator to raise money on the security of the assets of the company concerned or to do any

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other thing which the Court may consider necessary for winding up the affairs of the company and distributing its assets.

(8) The Master may restrict the powers of a provisional liquidator.

393 Power of liquidator in winding-up by Court

(1) Subject to this Act, the liquidator of a company which is being wound up by the Court, must, in the administration of the assets of the company, have regard to any directions that may be given by resolution of the creditors or members or contributories of the company at any general meeting.

(2) In regard to any matter which has been submitted by the liquidator for the directions of creditors and members or contributories in general meeting, but as to which no directions have been given or as to which there is a difference between the directions of creditors and members or contributories, the liquidator may apply to the Master for directions and the Master may give or refuse to give directions.

(3) If the Master has refused to give directions as contemplated in subsection (2) or in regard to any other particular matter arising under the winding-up, the liquidator may apply to the Court for directions.

(4) Any person aggrieved by any act or decision of the liquidator may apply to the Court after notice to the liquidator and the Court may make an appropriate order.

394 Court may determine questions in voluntary winding-up

(1) Where a company is being wound up voluntarily, the liquidator or any member or creditor or contributory of the company may apply to the Court to determine any question arising in the winding-up or to exercise any of the powers which the Court might exercise if the company were being wound up by the Court.

(2) In determining an application made under subsection (1), the Court may, if satisfied that the determination of any question or the exercise of any power will be just and beneficial, accede wholly or partly to the application on terms and conditions which it may determine, or make any other appropriate order on the application.

395 Exercise of power to make arrangement and the binding of dissentient creditors

(1) Any arrangement entered into between a company able to pay its debts and about to be or in the course of being wound up and its creditors is, subject to subsection (2), binding on the company if sanctioned by a special resolution of members and on the creditors of the company if acceded to by three-fourths in number and value of those creditors.

(2) A creditor or member referred to in subsection (1) may, within 21 days from the completion of the arrangement, bring the same under review by the Court, and the Court may amend, vary, set aside or confirm the arrangement.

396 Power of liquidator in voluntary winding-up to accept shares for assets of company

(1) If a company is proposed to be or is being wound up voluntarily and the whole or part of its business or property is proposed to be transferred or sold to another company, whether registered under this Act or not (in this section called the "transferee company"), the liquidator of the first-mentioned 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-

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(a) 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

(b) enter into any other arrangement, whereby the members of the transferor company may, instead of receiving cash, shares, policies or other like interests, or in addition, participate in the profits of or receive any other benefit from the transferee company,

but, in the case of a creditors' voluntary winding-up, the powers of the liquidator conferred by this section must not be exercised except with the consent of three-fourths in number and value of the creditors present or represented at a meeting called by the liquidator for that purpose and of which not less than 14 days' notice has been given, or with the sanction of the Court.

(2) Any sale or arrangement in pursuance of this section is 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 dissent in a written notice addressed and delivered to the liquidator or left at the registered office of the company within seven days after the passing of the resolution, he or she may require the liquidator either to abstain from carrying the resolution into effect or to purchase his or her interest at a price to be determined by agreement or by arbitration in the manner provided by this section.

(4) If the liquidator elects to purchase a member's interest as provided for in subsection (3), the purchase money must be paid before the company is dissolved and be raised by the liquidator in any manner which may be determined by special resolution of the company concerned.

(5) A special resolution is not invalid for the purposes of this section merely because it is passed before or concurrently with a resolution for winding-up the company or for nominating liquidators, but if an order is made within one year of that resolution for winding-up the company by the Court, the special resolution is not valid unless sanctioned by the Court.

(6) For the purposes of an arbitration under this section, the Arbitration Act, 1965 (Act 42 of 1965), applies.

PART 7
DUTIES OF LIQUIDATORS (ss 397-417)

397 General duties

A liquidator in any winding-up must, as soon as is reasonably possible-

(a) proceed to recover and reduce into possession all the assets and property of the company, movable and immovable;

(b) apply the assets and property in satisfaction of the costs of the winding-up and the claims of creditors; and

(c) distribute the balance among those who are entitled to it.

398 Duty of liquidator to give information to Master

Every liquidator must give the Master any relevant information and access to and facilities for inspecting the books and documents of the company and generally any aid which may be requisite for enabling the Master to perform his or her duties under this Act.

399 Duty of liquidator to keep records and inspection

(1) Immediately after appointment a liquidator must open a book or other record where he or she must enter from time to time a statement of all moneys,

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goods, books, accounts and other documents received by him or her on behalf of the company.

(2) The Master may at any time in writing require the liquidator to produce, for inspection, any book or record referred to in subsection (1).

(3) Any creditor or contributory may, subject to the control of the Master, at all reasonable times personally or by his or her agent inspect any book or record referred to in subsection (1).

400 Banking accounts and investments

(1) The liquidator of a company-

(a) must, with a banking institution registered under the Banking Institutions Act, 1998 (Act 2 of 1998), within Namibia, open a current account from which amounts are withdrawable by cheque in the name of the company in liquidation, and must, from time to time, deposit into that account to the credit of the company all moneys received by him or her on its behalf;

(b) may, with a banking institution referred to in paragraph *(a)* or a building society registered under the Building Societies Act, 1986 (Act 2 of 1986), within Namibia, open a savings account in the name of that company and may transfer into that account moneys deposited in the account referred to in paragraph *(a)* and not immediately required for the payment of any claim against that company;

(c) may place moneys deposited in the account referred to in paragraph *(a)* and not immediately required for the payment of any claim against that company, on interest-bearing deposit with that banking institution or building society within Namibia;

(d) must not withdraw any money from any account referred to in paragraph *(b)* or *(c)* otherwise than by way of a transfer to the current account.

(2) If required by the Master to do so, the liquidator must, in writing, notify the Master of the banking institution or building society and the office, branch office or agency with which an account referred to in subsection (1) has been opened, and furnish the Master with a bank statement or other sufficient evidence of the state of the account.

(3) A liquidator must not transfer any account opened under this section from any office, branch office or agency of the banking institution or building society to a different office, branch office or agency except after written notice to the Master.

(4) All cheques or orders drawn on any account opened under this section must contain the name of the payee and the cause of payment and must be drawn to order and be signed by the liquidator or his or her duly authorised agent.

(5) The Master and any surety for the liquidator or any person authorised by that surety has the same right to information in regard to that account as the liquidator personally possesses, and may examine all vouchers in relation to that account, whether in the possession of the banking institution or building society or of the liquidator.

(6) The Master may, after notice to the liquidator, in writing direct the manager of any office, branch office or agency with which an account referred to in subsection (1) has been opened, to pay over into the Guardian's Fund established by section 86 of the Administration of Estates Act, 1965 (Act 66 of 1965), all moneys standing to the credit of that account at the time of the receipt, by that manager, of that direction, and all moneys which may thereafter be paid into that account, and that manager must carry out that directive.

(7) Any liquidator who without lawful excuse, retains or knowingly permits his or her co-liquidator to retain any sum of money exceeding N$500 belonging to the company concerned longer than the earliest day after its receipt on which it was

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possible for him or her or the co-liquidator to pay the money into the bank, or uses or knowingly permits the co-liquidator to use any assets of the company except for its benefit, is, in addition to any other penalty to which he or she may be liable, liable to pay to the company an amount not exceeding double the sum so retained or double the value of the assets so used.

(8) The amount which the liquidator is so liable to pay under subsection (7), may be recovered by action in any competent court at the instance of the co-liquidator, the Master or any creditor or contributory.

401 Duties of liquidator as to contributories

(1) In the case of a winding-up by the Court or of a creditors' voluntary winding-up of a company, the liquidator must, if necessary, draw up a list of contributories.

(2) A past member of a company limited by guarantee is not liable to contribute to its assets unless-

(a) at the commencement of the winding-up there is unsatisfied debt or liability of the company contracted before he or she ceased to be a member; and

(b) it appears to the liquidator that the present members are unable to satisfy the contributions required to be made by them in pursuance of this Act.

402 Notices to contributories and objections

(1) As soon as the liquidator has drawn up the list of contributories, he or she must send a notice to every person included in the list, stating that fact and the extent of the liability of that person.

(2) Any person who objects to his or her inclusion in the list, is entitled, within 14 days from the date of the notice, to file an objection with the liquidator in the form of an affidavit giving full reasons why he or she should not be included in the list.

(3) The liquidator may accept the objection and amend the list of contributories or may reject that objection and must, if the objection is rejected, notify the person concerned accordingly by registered post.

(4) A person whose objection has been rejected, is entitled, within 14 days from the date of the notice provided for in subsection (3), to apply to the Master for a ruling as to whether his or her name should be included in the list, and the Master must direct the liquidator to include his or her name in or to exclude it from that list.

403 Recovery of contributions and nature of liability

(1) A liquidator must proceed to recover from the contributories a proportion of or the full amount of their liability as may be required from time to time, taking into consideration the probability that some of the contributories may partly or wholly fail to pay the amount demanded from them.

(2) If a contributory dies or a contributory's estate becomes insolvent, the liquidator may recover the contribution from the estate concerned.

(3) The liability for the payment of any amount by a contributory to the company becomes a debt due by him or her to the company as from the date on which the amount was demanded from him or her by the liquidator.

(4) A contributory is not entitled to set off against his or her liability any amount due to him or her by the company in respect of dividends, profits or directors' remuneration.

404 Adjustment of rights of contributories

The liquidator must adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled to the surplus.

405 Evidence as to contributions and contributories

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(1) A letter of demand by the liquidator to a contributory for the payment of a contribution is sufficient evidence that the amount appearing to be due, is due.

(2) All books and papers of the company and of the liquidator are, as between the contributories and the company, sufficient evidence of the truth of all matters recorded in those books or papers.

406 Duty of liquidator to expose offences and to report

(1) A liquidator must examine the affairs and transactions of the company before its winding-up in order to ascertain-

(a) whether any of the directors and officers or past directors and officers of the company have contravened or appear to have contravened this Act or have committed or appear to have committed any other offence; and

(b) in respect of any of the persons referred to in paragraph *(a)*, whether there are or appear to be any grounds for an order by the Court under section 226 disqualifying a director from office.

(2) A liquidator must, before lodging his or her final account with the Master, submit to the Master a report containing full particulars of any contraventions or offences, suspected contraventions or offences and any ground which he or she has ascertained.

(3) Any report submitted to the Master under subsection (2) is confidential and is not available for inspection by any person.

(4) If the report referred to in subsection (2) contains particulars of contraventions or offences committed or suspected to have been committed or of any of the grounds, the Master must immediately send a copy of it to the Prosecutor-General.

(5) A liquidator must conduct any further investigation and must render assistance in connection with any prosecution or contemplated prosecution which the Master or the Prosecutor-General may require.

407 Prosecutor-General may make application to Court for disqualification of director

If the Prosecutor-General, on receipt of the report referred to in section 406(4) and after any further enquiry, is satisfied that there are grounds for an application to the Court for an order in terms of section 226, the Prosecutor-General may make that application to the Court.

408 Duty of liquidator to present report to creditors and contributories

Except in the case of a members' voluntary winding-up, a liquidator must, as soon as practicable and, except with the consent of the Master, not later than three months after the date of his or her appointment, submit to a general meeting of creditors and contributories of the company concerned a report as to the following matters-

(a) the amount of capital issued by the company and the estimated amount of its assets and liabilities;

(b) if the company has failed, the causes of the failure;

(c) whether or not he or she has submitted or intends to submit to the Master a report under section 406(2);

(d) whether or not any director or officer or former director or officer appears to be personally liable for damages or compensation to the company or for any debts or liabilities of the company as provided in this Act;

(e) any legal proceedings by or against the company which have been pending at the date of the commencement of winding-up or which have been or may be instituted;

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(f) whether or not further enquiry is in his or her opinion desirable in regard to any matter relating to the promotion, formation or failure of the company or the conduct of its business;

(g) whether or not the company has kept the accounting records required by section 292, and, if not, in what respects the requirements of that section have not been complied with;

(h) the progress and prospects of the winding-up;

(i) any other matter which he or she may think fit or in regard to which he or she may desire the directions of the creditors or the contributories.

409 Duty of liquidator to file liquidation and distribution account

(1) Every liquidator must, unless he or she receives an extension of time as provided for in section 410, frame and lodge with the Master not later than six months after his or her appointment an account of his or her receipts and payments and a plan of distribution or, if there is a liability among creditors and contributories to contribute towards the costs of the winding-up, a plan of contribution apportioning their liability.

(2) If the account lodged under subsection (1) is not a final account, the liquidator must, from time to time and as the Master may direct, but at least once in every period of six months, unless he or she receives an extension of time,, frame and lodge with the Master a further account and plan of distribution, but the Master may at any time and in any case where the liquidator has funds in hand, which ought in the opinion of the Master to be distributed or applied towards the payment of debts, direct the liquidator in writing to frame and lodge with him or her an account and plan of distribution in respect of those funds within a period specified.

(3) Any account must be lodged in duplicate in the prescribed form, must be fully supported by vouchers, including the liquidator's bank statements or certified extracts from his or her bank and building society accounts showing all deposits and withdrawals, and must be verified by an affidavit in the prescribed form.

410 Master may grant extension of time for lodging account

(1) If any liquidator is unable to lodge an account with the Master under section 409 he or she must, before the expiry of any relevant period specified under that section-

(a) make and lodge with the Master an affidavit stating the reasons why he or she is not able to lodge an account, the amount of funds in hand available for distribution, a summary of the position in respect of the winding-up, and whether he or she has applied for an extension of time, and must send a copy to each creditor of the company; and

(b) lodge with the Master written reasons for his or her inability to lodge the account in question together with a statement of the grounds, if any, on which he or she claims an extension of time within which to lodge that account,

and the Master may grant any extension of time which the Master considers appropriate in the circumstances.

(2) If any liquidator fails to lodge an account with the Master as required by section 409 and to comply with subsection (1), the Master or any person having an interest in the company may serve a notice on the liquidator requiring him or her within 10 days after the date of that notice-

(a) to lodge the account in question with the Master; or

(b) to comply with the requirements of subsection (1),

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and the Master may, if the account has not been lodged but subsection (1) has been complied with, grant an extension of time which the Master considers appropriate in the circumstances.

(3) Any liquidator who fails to satisfy the Master that he or she ought to receive an extension of time for the lodging of any account may, after notice to the Master and to the person referred to in subsection (2), apply to the Court for an order granting that extension of time within which to lodge that account.

411 Failure of liquidator to lodge account or to perform duties

(1) If any liquidator fails to lodge an account with the Master as and when required by or under this Chapter or to lodge any vouchers in support of that account or to perform any other duty imposed on him or her by this Chapter or to comply with any reasonable demand of the Master for information or proof required by him or her in connection with the liquidation of the company, the Master or any person having an interest in the company may, after giving the liquidator not less than 10 days' notice, apply to the Court for an order directing the liquidator to lodge that account or vouchers in support of the application or to perform that duty or to comply with that demand.

(2) In an application made under subsection (1) the costs adjudged to the Master or any person must, unless ordered otherwise by the Court, be paid by the liquidator personally.

412 Places for and periods of inspection of account

(1) Every liquidator's account must lie open for inspection for a period, not being less than 14 days, which the Master may determine-

(a) at the office of the Master; and

(b) if the office of the Master and the registered office of the company are not situated in the same district-

(i) at the office of the magistrate of the district in which that registered office is situated; or

(ii) if that registered office is situated in a portion of a district in respect of which an additional or assistant magistrate permanently performs the functions of the magistrate of the district at a place other than the seat of magistracy of that district, at the office of that additional or assistant magistrate; and

(c) if the company also carried on business at any other place, then also at the office of the magistrate, including any additional or assistant magistrate, of the district or the portion in which that other place is situated, as may be determined by the liquidator with the approval of the Master.

(2) The liquidator must lodge a copy of the account with every magistrate, additional magistrate or assistant magistrate in whose offices the account is to lie open for inspection.

(3) The liquidator must give due notice in the *Gazette* of the places at which any account will lie open for inspection and must in that notice state the period during which the account will lie open for inspection and must send by post or deliver a similar notice to every creditor who has proved a claim against the company.

(4) The magistrate must cause to be affixed in some public place in or about his or her office a list of all accounts which have been lodged in that office, showing the respective periods during which they will lie open for inspection, and must at the expiry of that period, endorse on the account in question his or her certificate that the account has lain open at his or her office for inspection in terms of this section and send the account to the Master.

413 Objections to account

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(1) Any person having an interest in the company being wound up may, at any time before the confirmation of an account, lodge with the Master an objection to that account stating reasons for the objection.

(2) If the Master reasonably believes that any objection raised pursuant to subsection (1) ought to be sustained, the Master must direct the liquidator to amend the account or give other appropriate directions.

(3) If, in respect of any account, the Master reasonably believes that any improper charge has been made against the assets of a company or that the account is in any respect incorrect and should be amended, the Master may, whether or not any objection to the account has been lodged with him or her, direct the liquidator to amend the account, or may give other appropriate directions.

(4) The liquidator or any person aggrieved by any direction of the Master under this section, or by the refusal of the Master to sustain an objection lodged under this section, may, within 14 days after the date of the Master's direction and after notice to the liquidator, apply to the Court for an order setting aside the Master's decision, and the Court may on that application confirm the account in question or make any other appropriate order.

(5) If any direction given by the Master under this section affects the interests of a person who has not lodged an objection with the Master, the relevant account as amended must again lie open for inspection in the manner and with the notice as provided for in section 412, unless the person affected consents in writing to the immediate confirmation of the account.

414 Confirmation of account

(1) If an account has lain open for inspection as provided for in section 412 and-

(a) no objection has been lodged;

(b) an objection has been lodged and the account has been amended in accordance with the direction of the Master and has again lain open for inspection, if necessary, as in section 413(5) provided for, and no application has been made to the Court within the time specified to set aside the Master's decision; or

(c) an objection has been lodged but has been withdrawn or has not been sustained and the objector has not applied to the Court within the specified time,

the Master must confirm the account and the confirmation has the effect of a final judgment, save as against those persons who may be permitted by the Court to re-open the account after that confirmation but before the liquidator commences with the distribution.

(2) The Court must not authorise the re-opening of any duly confirmed account or plan of distribution or of contribution otherwise than as is provided in this section.

415 Distribution of estate

(1) Immediately after the confirmation of any account the liquidator must proceed to distribute the assets in accordance with the confirmed account or to collect from the creditors and contributories liable to contribute to the company the amounts for which they may respectively be liable.

(2) The liquidator must give notice of the confirmation of the account in the *Gazette* and must, in that notice, state, according to the circumstances, that a dividend is being paid or that a contribution is to be collected and that every creditor and contributory liable to contribute is required to pay to the liquidator the amount for which he or she is liable and the address at which the contribution is to be paid.

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416 Duty of liquidator as to receipts and unpaid dividends

(1) The liquidator must, without delay, lodge with the Master the receipts for any dividends paid or other proof of payment of the dividends.

(2) If any dividend remains unpaid for a period of two months, or any longer period which the Master may, after the confirmation of the relevant account approve, the liquidator must immediately pay the amount to the Master for deposit into the Guardians' Fund established by section 86 of the Administration of Estates Act, 1965 (Act 66 of 1965), for the account of the creditor or member concerned.

(3) Any failure by a liquidator to furnish the Master within the period referred to in subsection (2) with a proper receipt or other proof of payment in respect of any dividend which has not been deposited as provided for in subsection (1), is sufficient evidence that that dividend has been retained by him or her and has not been dealt with as provided for in this section, and the Master may thereafter institute proceedings against the liquidator under section 411.

(4) The Court may, at the hearing of any proceedings instituted under subsection (3), order the liquidator to pay any dividend which has not been paid or deposited and in addition to pay to the Master for the benefit of the State Revenue Fund an amount equal to the amount of that dividend.

(5) Any creditor or member of a company entitled to any dividend may, if payment is delayed, after notice to the liquidator, apply to the Court for an order compelling the liquidator to pay that dividend to that creditor or member.

417 Payment of money deposited with Master

Any person claiming to be entitled to any money deposited with the Master by a liquidator under this Act may apply to the Master for payment, and the Master may, on a certificate by the liquidator or on other sufficient evidence that the person claiming the payment is entitled to the money, pay the amount in question to the person concerned.

PART 8
MEETINGS IN WINDING-UP (ss 418-422)

418 Meetings of creditors and members and voting at meetings of creditors

(1) In any winding-up of a company, meetings of creditors and members or contributories must, save as otherwise provided in this Act, be convened and held in the following manner:

(a) in the case of meetings of creditors, as nearly as may be in the manner prescribed for the holding of meetings of creditors under the law relating to insolvency; or

(b) in the case of meetings of members or contributories, in the manner prescribed by regulation.

(2) Section 52 of the Insolvency Act, 1936 (Act 24 of 1936), does, with the necessary changes, apply to the right of any creditor to vote at a meeting of creditors in a winding-up of a company.

419 Meetings to ascertain wishes of creditors and others

Where by this Act the Court is authorised, in relation to a winding-up, to have regard to the wishes of creditors, members or contributories-

(a) the value of the respective creditors' claims and the voting rights of the various members or contributories of the company in terms of its memorandum or articles must also be taken into consideration; and

(b) the Court may, for the purpose of ascertaining the wishes of those creditors, members or contributories, direct meetings of the creditors, members or

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contributories to be called, held and conducted in such manner as it directs, and may appoint a person to act as chairperson of any meeting and to report the result to the Court.

420 Duty of directors and officers to attend meetings

(1) In any winding-up of a company unable to pay its debts, every director and officer of the company must-

(a) attend the first and second meetings of creditors of the company, including any meeting which is adjourned, unless the Master or the officer presiding or to preside at any meeting has, after consultation with the liquidator, authorised him or her in writing to absent himself or herself from that meeting; and

(b) attend any subsequent meeting or adjourned meeting of creditors of the company which the liquidator has in writing required him or her to attend.

(2) The Master or officer who presides or is to preside at any meeting of creditors, may, in the prescribed manner, summon any person-

(a) who is known or on reasonable grounds believed to be or to have been in possession of any property which belongs or belonged to the company or to be indebted to the company, or who the Master or other officer reasonably believes may be able to give material information concerning the company or its affairs, in respect of any time before or after the commencement of the winding-up, to appear at that meeting, including any meeting which has been adjourned, for the purpose of being questioned; or

(b) who is known or on reasonable grounds believed to have in his or her possession or custody or under his or her control any book or document containing any information referred to in paragraph *(a)*, to produce that book or document or an extract from that book or document at that meeting or adjourned meeting.

(3) Any director or officer of a company or any person who fails to comply with this section commits an offence and is liable to a fine which does not exceed N$2 000 or to be imprisoned for a period which does not exceed six months or to both the fine and imprisonment.

421 Examination of directors and others at meetings

(1) The Master or officer presiding at any meeting of creditors of a company which is being wound-up and is unable to pay its debts, may call and administer an oath to or accept an affirmation from any director of the company or any other person present at the meeting who was summoned in terms of section 420(2), and the Master or that officer and any liquidator of the company and any creditor who has proved a claim against the company, or the agent of that liquidator or creditor, may question the director or person so called and sworn or affirmed concerning all matters relating to the company or its business or affairs in respect of any time, either before or after the commencement of the winding-up, and concerning any property belonging to the company.

(2) The Master or officer referred to in subsection (1) must disallow any question which is irrelevant or could prolong the questioning unnecessarily.

(3) In connection with the production of any book or document in compliance with a summons issued under section 420(2)*(b)* or the questioning of a person under subsection (1), the law relating to privilege as applicable to a witness subpoenaed to produce a book or document or give evidence in a magistrate's court applies, but, a banker at whose bank the company concerned keeps or at any time kept an account, is obliged, if summoned to do so under section 420(2)*(b)*, to produce-

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(a) any cheque in his or her possession which was drawn by the company within one year before the commencement of the winding-up; or

(b) if any cheque so drawn is not available, any record of the payment, the date of payment and the amount of the cheque which may be available to him or her, or a copy of the record, and must, if called upon to do so, give any other information available to him or her in connection with that cheque or the account of the company.

(4) The Master or officer presiding at any meeting held under this Part must record or cause to be recorded in the manner provided by the rules of court for the recording of evidence in a civil case before a magistrate's court the statement of any person giving evidence under this section, but, if a person who is required to give evidence under this section, has made to the liquidator or his or her agent a statement which has been reduced to writing, or has delivered a statement in writing to the liquidator or his or her agent, that statement may be read by or read over to that person when that person is called as a witness under this section and, if then adhered to by him or her, is deemed to be evidence given under this section.

(5) Any person called upon to give evidence under this section may be represented at his or her questioning by a legal practitioner.

(6) Any person, other than a director or officer of the company concerned, summoned to attend a meeting of creditors for the purpose of being questioned under this section is entitled to the witness fees, to be paid out of the funds of the company, which he or she would be entitled to if he or she were a witness in civil proceedings in a magistrate's court.

(7) Any director or other officer of a company who is called on to attend any meeting of creditors held after the second meeting or an adjourned second meeting, is entitled to be paid an allowance out of the funds of the company to defray his or her necessary expenses in connection with the attendance.

422 Application of Insolvency Act, 1936

(1) Sections 66, 67 and 68 of the Insolvency Act, 1936 (Act 24 of 1936), do, in so far as they can be applied and are not inconsistent with this Act, with the necessary changes, apply in relation to-

(a) any person who is, in terms of section 420(1) of this Act, required to attend any meeting of a company being wound up and which is unable to pay its debts, as if that person were an insolvent required to attend any meeting referred to in section 64 of the Insolvency Act, 1936; and

(b) any person summoned, in terms of section 420(2) of this Act, to attend any meeting of the creditors of that company or to produce any book or document at that meeting,

and section 65 of the Insolvency Act, 1936, does, in so far as it can be applied and is not inconsistent with this Act, with the necessary changes, apply in relation to the production of any book or document or the questioning of any person under section 421 of this Act, as if that person had been summoned to produce any book or document or were being questioned under section 65 of the Insolvency Act, 1936.

(2) In applying sections 66, 67 and 68 of the Insolvency Act, 1936, as contemplated in subsection (1), any reference in any of those sections or in section 64 or 65 of that Act-

(a) to the estate of an insolvent, must be construed as a reference to the estate of the company concerned;

(b) to the trustee of an insolvent estate, must be construed as a reference to the liquidator of that company;

(c) to a meeting of the creditors of an insolvent, must be construed as a reference to a meeting of the creditors of that company;

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(d) to a creditor who has proved a claim against an insolvent estate, must be construed as a reference to a person who has proved a claim against that company;

(e) to the business or affairs or property of an insolvent, must be construed as a reference to the business or affairs or property of that company;

(f) to any person indebted to an insolvent estate, must be construed as a reference to a person indebted to that company;

(g) to the sequestration of an insolvent estate, must be construed as a reference to the commencement of the winding-up of that company.

PART 9
EXAMINATION OF PERSONS IN WINDING-UP (ss 423-424)

423 Summoning and examination of persons as to affairs of company

(1) In any winding-up of a company unable to pay its debts, the Master or the Court may, at any time after a winding-up order has been made, summon before the Master or the Court any director or officer of the company or person known or suspected to have in his or her possession any property of the company or believed to be indebted to the company, or any person whom the Master or the Court deems capable of giving information concerning the trade, dealings, affairs or property of the company.

(2) Any person summoned under subsection (1) may be represented at his or her attendance before the Master or the Court by a legal practitioner.

(3) The Master or the Court may examine any person summoned under subsection (1) on oath or affirmation concerning any matter referred to in that subsection, either orally or on written interrogatories, and may reduce his or her answers to writing and require him or her to sign them and that person must, unless he or she has a lawful excuse for not doing so, answer any question put to him or her at the examination.

(4) The Master or the Court may require the person referred to in subsection (1) to produce any books or papers in his or her custody or under his or her control relating to the company but without prejudice to any lien claimed with regard to any books or papers, and the Court has the power to determine all questions relating to that lien.

(5) If any person who has been duly summoned under subsection (1) and to whom a reasonable sum for his or her expenses has been tendered, fails to attend before the Master or the Court at the time appointed by the summons without lawful excuse made known to the Master or the Court at the time of the sitting and accepted by the Master or the Court, he or she commits an offence and is liable to a fine which does not exceed N$4 000 or to be imprisoned for a period which does not exceed one year or to both the fine and imprisonment, and the Master or the Court may cause him or her to be apprehended and brought before the Master or the Court for examination.

(6) Any person summoned by the Master under subsection (1) is entitled to the witness fees which he or she would have been entitled to if he or she were a witness in civil proceedings in a magistrate's court.

(7) Any person who applies for an examination or enquiry in terms of this section or section 424 is liable for the payment of the costs and incidental expenses, unless the Master or the Court directs that the whole or any part of those costs and expenses must be paid out of the assets of the company concerned.

(8) Any examination or enquiry under this section or section 424 and any application in that regard is private and confidential, unless the Master or the Court, either generally or in respect of any particular person, directs otherwise.

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424 Examination by commissioners

(1) Every magistrate and every other person appointed for the purpose by the Master or the Court is a commissioner for the purpose of taking evidence or holding any enquiry under this Act in connection with the winding-up of any company.

(2) The Master or the Court may refer the whole or any part of the examination of any witness or of any enquiry under this Act to a commissioner.

(3) The Master, the liquidator or any creditor, member or contributory of the company may be represented at an examination or enquiry carried out under this section by a legal practitioner, who is entitled to question any witness, except that a commissioner must disallow any question which is irrelevant or could prolong the questioning unnecessarily.

(4) Section 423(3) and (6) in so far as it relates to representation by a legal practitioner, answering of questions and the payment of witnesses fees does, with the necessary changes, apply in respect of an examination or enquiry carried out under this section.

(5) A commissioner has, in any matter referred to him or her, the same powers of summoning and examining witnesses and of requiring the production of documents, and, if the commissioner is a magistrate, of punishing defaulting or recalcitrant witnesses, or causing defaulting witnesses to be apprehended, and of determining questions relating to any lien with regard to documents, as the Master or the Court referred to in section 423.

(6) If a commissioner-

(a) has been appointed by the Master, the commissioner must, in the manner which the Master may direct, report to the Master; or

(b) has been appointed by the Court, the commissioner must, in the manner which the Court may direct, report to the Master and the Court,

on any examination or enquiry referred to him or her.

(7) Any witness who has given evidence before the Master or the Court under section 423 or before a commissioner under this section, is entitled, at his or her cost, to a copy of the record of his or her evidence.

(8) Any person who-

(a) has been duly summoned under this section by a commissioner who is not a magistrate and who fails, without sufficient cause, to attend at the time and place specified in the summons; or

(b) has been duly summoned under section 423(1) by the Master or under this section by a commissioner who is not a magistrate and who-

(i) fails, without sufficient cause, to remain in attendance until excused by the Master or that commissioner, as the case may be, from further attendance;

(ii) refuses to be in sworn or to be affirmed as a witness; or

(iii) fails, without sufficient cause-

(aa) to answer fully and satisfactorily any question lawfully put to him or her in terms of section 423(3) or this section; or

(bb) to produce books or papers in his or her custody or under his or her control which he or she was required to produce in terms of section 423(4) or this section,

commits an offence and is liable to a fine which does not exceed N$2 000 or to be imprisoned for a period which does not exceed six months or to both the fine and imprisonment.

PART 10
DISSOLUTION OF COMPANIES AND OTHER BODIES CORPORATE (ss 425-428)

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425 Dissolution

(1) In any winding-up, when the affairs of a company have been completely wound up, the Master must send to the Registrar a certificate to that effect and send a copy of the certificate to the liquidator.

(2) The Registrar must record the dissolution of the company and must publish notice of the dissolution in the *Gazette*.

(3) The date of dissolution of the company is the date of recording referred to in subsection (2).

(4) In the case of any other body corporate the certificate of the Master under subsection (1) constitutes its dissolution.

426 Court may declare dissolution void

When a company has been dissolved, the Court may at any time on an application by the liquidator of the company, or by any other person who appears to the Court to have an interest, make an order, on terms which the Court considers appropriate, declaring the dissolution to have been void, and any proceedings may be taken against the company as might have been taken if the company had not been dissolved.

427 Registrar to keep register of directors of dissolved companies

(1) The Registrar must establish and maintain a register of directors of companies which have been dissolved and were unable to pay their debts, and cause to be entered in that register, in respect of each director-

(a) the full forenames and surname, and any former forenames and surname, nationality if not a Namibian national, occupation, date of birth and last known residential and postal addresses, of that director;

(b) the name of the company of which he or she was a director when that company was dissolved for the reason that it was unable to pay its debts and, where more than one company was dissolved at the same time, the names of those companies;

(c) the date of his or her appointment as director;

(d) the date of dissolution of the company or companies.

(2) The liquidator must, within 14 days after the date of the certificate referred to in section 425(1), send to the Registrar on a prescribed form, in duplicate, in respect of each director of the company who was a director at a date within two years before the commencement of the winding-up, the particulars referred to in subsection (1)*(a)* to *(d)*, together with a statement as to which director, in the liquidator's opinion, was the effective cause of the company being unable to pay its debts.

(3) The Registrar must, on the prescribed form, send to each director one copy of the particulars furnished under subsection (2) in respect of that director, and where the liquidator has in a statement furnished under that subsection expressed any opinion as to which director was the effective cause of the company being unable to pay its debts, the Registrar must at the same time send a copy of that statement to that director.

(4) A director may, within one month of the date of the receipt of the form referred to in subsection (3), object, by affidavit or otherwise, to his or her name being entered in the register referred to in subsection (1).

(5) If after considering the objections made by or on behalf of a director or if a director fails to object and the Registrar is of opinion that the name of the director should be entered in the register, the Registrar must inform that director accordingly.

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(6) The Registrar must, at the expiry of one month after the date of the decision under subsection (5) or, if an application under subsection (7) is then pending, after the application has been disposed of and the Court has not ordered otherwise, enter the name of the director in the register.

(7) Any person aggrieved by the decision of the Registrar to make an entry or not to make an entry in the register, is entitled, within one month of the date of that decision, to apply to the Court for relief, and the Court has the power to consider the merits of the matter, to receive further evidence and to make any order it deems fit.

(8) Any liquidator who fails to comply with subsection (2), commits an offence and is liable to a fine which does not exceed N$2 000 or to be imprisoned for a period which does not exceed six months or to both the fine and imprisonment.

(9) Section 8 in so far as it relates to the inspection of documents or extracts from documents does, with the necessary changes, apply to the register to be maintained under this section.

428 Disposal of records of dissolved company

(1) If any company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidator may be disposed of-

(a) in the case of a winding-up by the Court, in any way which the Master may direct;

(b) in the case of a members' voluntary winding-up, in any way which the company by special resolution may direct;

(c) in the case of a creditors' voluntary winding-up, in any way which the creditors may direct.

(2) After five years from the dissolution of the company, no responsibility rests on the liquidator, or any person to whom the custody of the books and papers has been committed, by reason of the same not being forthcoming to a person claiming to be interested therein.

PART 11
PERSONAL LIABILITY OF DELINQUENT DIRECTORS AND OTHERS AND OFFENCES (ss 429-432)

429 Delinquent directors and others to restore property and to compensate the company

(1) If in the course of the winding-up or judicial management of 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 or any officer of the company has misapplied or retained or become liable or accountable for any money or property of the company or has been guilty of any breach of faith or trust in relation to the company the Court may, on the application of the Master or of the liquidator or of any creditor or member or contributory of the company, enquire into the conduct of the promoter, director or officer concerned and may order him or her to repay or restore the money or property or any part of it, with interest at a rate which the Court considers just, or to contribute any sum of money to the assets of the company by way of compensation in respect of the misapplication, retention, breach of faith or trust.

(2) This section applies notwithstanding that the offence is one for which the offender may be criminally liable.

430 Liability of directors and others for fraudulent conduct of business

(1) If it appears, whether it be in a winding-up, judicial management or otherwise, that any business of the company was or is being carried on recklessly or with intent to defraud creditors of the company or creditors of any other person or

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for any fraudulent purpose, the Court may, on the application of the Master, the liquidator, the judicial manager, any creditor or member or contributory of the company, declare that any person who was knowingly a party to the carrying on of the business in that manner, is personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court may direct.

(2) Where the Court makes the declaration contemplated in subsection (1), it may give any further directions for the purpose of giving effect to the declaration, and in particular may make provision for making the liability of any person under the declaration a charge on any debt or obligation due from the company to him or her, 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 her or any company or person on his or her behalf or any person claiming as assignee from or through the person liable or any company or person acting on his or her behalf, and may from time to time make any further orders which may be necessary for the purpose of enforcing any charge imposed under this subsection.

(3) For the purposes of subsection (2), the word "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 was created, but does not include an assignee for valuable consideration given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(4) Without prejudice to any other criminal liability incurred, where any business of a company is carried on recklessly or with the intent or for the purpose mentioned in subsection (1), every person who was knowingly a party to the carrying on of the business in that manner commits an offence and is liable to a fine which does not exceed N$8 000 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment.

(5) This section has effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is made.

431 Application of criminal provisions of the law relating to insolvency

If any person who is or was a director or officer of a company in respect of which a winding-up order has been granted, whether or not that order has been discharged or confirmed under this Act, and which is or was unable to pay its debts, has committed any act or made any omission in relation to any assets, books, records, documents, business or the affairs of that company, which act or omission, if that act had been committed or that omission had been made by a person whose estate was sequestrated on the date on which the winding-up of that company commenced, in relation to his or her assets, books, documents, business or affairs, or those of his estate, would have constituted an offence under the law relating to insolvency, that past or present director or officer commits that offence and liable on conviction to the penalties provided for in the law relating to insolvency, and the law relating to insolvency does, with the necessary changes, apply in respect of that act or omission, the method of establishing the same, and that past or present director or officer charged with the same.

432 Private prosecution of directors and others

(1) If it appears in the course of the winding-up of a company that any past or present director, member or officer of the company has committed an offence for which he or she is criminally liable under this Act or, in relation to the company or the creditors of the company, under the common law, the liquidator must cause all

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the facts known to him or her which appear to constitute the offence, to be presented to the Prosecutor-General and, if the Prosecutor-General certifies that he or she declines to prosecute, the liquidator may, subject to section 392(5) and (6), institute and conduct a private prosecution in respect of that offence.

(2) The Court may, on an application by the liquidator, order the whole or any portion of the costs and expenses incidental to a private prosecution referred to in subsection (1) to be paid out of the assets of the company in priority to all other liabilities.

CHAPTER 15
JUDICIAL MANAGEMENT (ss 433-447)

433 Circumstances in which company may be placed under judicial management

(1) When any company because of mismanagement or for any other reason-

(a) is unable to pay its debts or is probably unable to meet its obligations; and

(b) has not become or is prevented from becoming a successful concern,

and there is a reasonable probability that, if it is placed under judicial management, it will be enabled to pay its debts or to meet its obligations and become a successful concern, the Court may, if it appears just and equitable, grant a judicial management order in respect of that company.

(2) An application to Court for a judicial management order in respect of any company may be made by any of the persons who, under section 351, are entitled to make an application to Court for the winding-up of a company, and section 351 in so far as it relates applications for winding-up does, with the necessary changes, apply to an application for a judicial management order.

(3) If an application for the winding-up of a company is made to Court under this Act and it appears to the Court that if the company is placed under judicial management the grounds for its winding-up may be removed and that it will become a successful concern and that the granting of a judicial management order would be just and equitable, the Court may grant that order in respect of that company.

434 Provisional judicial management order

(1) The Court may, on an application under section 433(2) or (3), grant a provisional judicial management order, stating the return day, or dismiss the application or make any other appropriate order.

(2) A provisional judicial management order must contain-

(a) directions that the company named in that order is under the management, subject to the supervision of the Court, of a provisional judicial manager appointed under section 435, and that any other person vested with the management of the company's affairs is, from the date of the making of the order, divested of the power to manage; and

(b) any other directions in relation to the management of the company, or any incidental matter incidental, including directions conferring on the provisional judicial manager the power, subject to the rights of the creditors of the company, to raise money in any way without the authority of shareholders as the Court may consider necessary,

and may contain directions that while the company is under judicial management, all actions, proceedings, the execution of all writs, summonses and other processes against the company be stayed and be not proceeded with without the leave of the Court.

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(3) The Court may at any time and in any manner, on the application of the applicant, a creditor or member, the provisional judicial manager or the Master, vary the terms of an order made under this section or discharge it.

435 Custody of property and appointment of provisional judicial manager

On the granting of a provisional judicial management order-

(a) all the property of the company concerned is deemed to be in the custody of the Master until a provisional judicial manager has been appointed and has assumed office;

(b) the Master must, without delay-

(i) appoint a provisional judicial manager, who must not be the auditor of the company or any person disqualified under this Act from being appointed as liquidator in a winding-up, who must give security for the proper performance of his or her duties in his or her capacity as such, which the Master may direct, and who must hold office until discharged by the Court as provided in section 438(3)*(a)*;

(ii) convene separate meetings of the creditors, the members and debenture holders, if any, of the company for the purposes referred to

436 Duties of provisional judicial manager

A provisional judicial manager must-

(a) assume the management of the company and recover and reduce into possession all the assets of the company;

(b) within seven days after his or her appointment lodge, on the prescribed form, with the Registrar a copy of his or her letter of appointment as provisional judicial manager; and

(c) prepare and present before the meetings convened under section 435*(b)*(ii) a report containing-

(i) an account of the general state of the affairs of the company;

(ii) a statement of the reasons why the company is unable to pay its debts or is probably unable to meet its obligations or has not become or is prevented from becoming a successful concern;

(iii) a statement of the assets and liabilities of the company;

(iv) a complete list of creditors of the company, including contingent and prospective creditors, and of the amount and the nature of the claim of each creditor;

(v) particulars as to the source or sources from which money has been or is to be raised for purposes of carrying on the business of the company; and

(vi) the considered opinion of the provisional judicial manager as to the prospects of the company becoming a successful concern and of the removal of the facts or circumstances which prevent the company from becoming a successful concern.

437 Purpose of meetings convened under section 435*(b)*(ii)

(1) Any meeting convened under section 435*(b)*(ii) must be presided over by the Master or a magistrate having jurisdiction in the area where the meeting is held and must be convened and held in the manner provided for in section 418 in respect of a meeting in the winding-up of a company.

(2) The purpose of a meeting convened under section 435*(b)*(ii) is-

(a) to consider the report of the provisional judicial manager under section 436*(c)* and the desirability or otherwise of placing the company finally under

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judicial management, taking into account the prospects of the company becoming a successful concern;

(b) to nominate the person or persons, other than persons disqualified under section 435*(b)*(i), whose names are to be submitted to the Master for appointment as final judicial manager or managers;

(c) in the case of a meeting of creditors, the proving of claims against the company; and

(d) in the case of a meeting of creditors, to consider the passing of a resolution referred to in section 442(1).

(3) The chairperson of a meeting convened under section 435*(b)*(ii) must prepare and present before the Court a report of the proceedings of that meeting, including a summary of the reasons for any conclusion arrived at under subsection (2)*(a)*.

(4) The provisions of this Act relating to the proof of claims against a company which is being wound up and to the nomination and appointment of a liquidator of that company do, with the necessary changes, apply with reference to the proof of claims against a company which has been placed under judicial management and the nomination and appointment of a judicial manager of that company.

438 Return day of provisional order of judicial management and powers of Court

(1) Any return day fixed under section 434(1) must not be later than 60 days after the date of the provisional judicial management order but may be extended by the Court on good cause shown.

(2) On the return day referred to in subsection (1), the Court may after consideration of-

(a) the opinion and wishes of creditors and members of the company;

(b) the report of the provisional judicial manager under section 436;

(c) the number of creditors who did not prove claims at the first meeting of creditors and the amounts and nature of their claims;

(d) the report of the Master; and

(e) the report of the Registrar,

grant a final management order if it appears to the Court that the company will, if placed under judicial management, be enabled to become a successful concern and that it is just and equitable that it be placed under judicial management, or may discharge the provisional order or make any other appropriate order.

(3) A final judicial management order must contain-

(a) directions for the vesting of the management of the company, subject to the supervision of the Court, in the final judicial manager, the handing over of all matters and the accounting by the provisional judicial manager to the final judicial manager and the discharge of the provisional judicial manager, where necessary;

(b) any other directions in relation to the management of the company, or any incidental matter, including directions conferring on the final judicial manager the power, subject to the rights of the creditors of the company, to raise money in any way without the authority of shareholders.

(4) The Court may, on the application of the Master, the final judicial manager or a representative acting on behalf of the general body of creditors of the company concerned, by virtue of a resolution passed by a majority in value and number of those creditors at a meeting of those creditors, vary the terms of an order made under subsection (2).

439 Duties of final judicial manager

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A judicial manager must, subject to the memorandum and articles of the company concerned in so far as they are not inconsistent with any direction contained in the relevant judicial management order-

(a) take over from the provisional judicial manager and assume the management of the company;

(b) conduct that management, subject to the orders of the Court, in a manner which he or she considers most economic and most promotive of the interests of the members and creditors of the company;

(c) comply with any direction of the Court made in the final judicial management order or any variation;

(d) lodge with the Registrar-

(i) a copy of the judicial management order and of the Master's letter of appointment on the prescribed form;

(ii) in the event of the judicial management order being cancelled, a copy of the order cancelling it,

within seven days of his or her appointment or of the cancellation of that judicial management order, as the case may be;

(e) comply with the requirements of section 181 with which the company would have been obliged to comply if it had not been placed under judicial management;

(f) keep accounting records and prepare annual financial statements, interim reports and provisional annual financial statements which the company or its directors would have been obliged to keep or prepare if it had not been placed under judicial management;

(g) convene the annual general meeting and other meetings of members of the company provided for by this Act and in that regard comply with all the requirements with which the directors of the company would in terms of this Act have been obliged to comply if the company had not been placed under judicial management;

(h) convene meetings of the creditors of the company by notices issued separately on the dates on which the notices convening annual general meetings of the company are issued or on which any interim report is sent out to members and, in the case of a private company, not later than nine months after the end of its financial year, and submit to those meetings reports showing the assets and liabilities of the company, its debts and obligations as verified by the auditor of the company, and all information which is necessary to enable the creditors to become fully acquainted with the company's position as at the date of the end of the financial year or the end of the period covered by that interim report or, in the case of a private company, as at a date nine months after the end of its financial year;

(i) lodge with the Master copies of all the documents submitted to the meetings as provided in paragraphs *(g)* and *(h)*;

(j) examine the affairs and transactions of the company before the commencement of the judicial management in order to ascertain whether any director, past director, officer or past officer of the company has contravened or appears to have contravened this Act or has committed any other offence, and within six months from the date of his or her appointment submit to the Master the reports which are in terms of section 406 required to be submitted to the Master by a liquidator, and in relation to which that section applies;

(k) examine the affairs and transactions of the company before the commencement of the judicial management in order to ascertain whether any director, past director, officer or past officer of the company is or

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appears to be personally liable for damages or compensation to the company or for any debts or liabilities of the company, and within six months from the date of his or her appointment prepare and submit to the Master and to the next succeeding meeting of members and of creditors of the company, a report containing full particulars of any liability; and

(l) if at any time he or she is of opinion that the continuation of the judicial management will not enable the company to become a successful concern, apply to the Court, after not less than 14 days' notice by registered post to all members and creditors of the company, for the cancellation of the relevant judicial management order and the issue of an order for the winding-up of the company.

440 Application of assets during judicial management

(1) A judicial manager must not, without the leave of the Court, sell or otherwise dispose of any of the company's assets save in the ordinary course of the company's business.

(2) Any money of the company becoming available to the judicial manager must be applied in paying the costs of the judicial management and in the conduct of the company's business in accordance with the judicial management order and so far as the circumstances permit in the payment of the claims of creditors which arose before the date of the order.

(3) The costs of the judicial management and the claims of creditors of the company must, with the necessary changes, be paid in accordance with the law relating to insolvency as if those costs were costs of the sequestration of an estate and those claims were claims against an insolvent estate.

441 Remuneration of provisional judicial manager or judicial manager

(1) The provisional judicial manager or the judicial manager is entitled to remuneration for his or her services which may be fixed by the Master.

(2) In fixing the remuneration the Master must take into account the manner in which the provisional judicial manager or the judicial manager has performed his or her functions and any recommendation by the members or creditors of the company relating to that remuneration.

(3) Sections 151 and 151*bis* of the Insolvency Act, 1936 (Act 24 of 1936), apply with reference to any fixing of remuneration by the Master under this section.

442 Pre-judicial management creditors may consent to preference

(1) The creditors of a company whose claims arose before the granting of a judicial management order in respect of that company may, at a meeting convened by the judicial manager or provisional judicial manager for the purpose of this subsection or by the Master in terms of section 435*(b)*(ii), resolve that all liabilities incurred or to be incurred by the judicial manager or provisional judicial manager in the conduct of the company's business be paid in preference to all other liabilities not already discharged exclusive of the costs of the judicial management, and all claims based on those first-mentioned liabilities must have preference in the order in which they were incurred over all unsecured claims against the company except claims arising out of the costs of the judicial management.

(2) If a judicial management order is superseded by a winding-up order-

(a) the preference conferred in terms of subsection (1) remains in force except in so far as claims arising out of the costs of the winding-up are concerned; and

(b) all claims based on those liabilities incurred by the judicial manager must be taken to have been proved and section 373 must not apply in that respect.

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(3) A meeting convened by the provisional judicial manager or the judicial manager in terms of subsection (1) must be convened by written notice sent by registered post at least 10 days before the date of the meeting, as specified in the notice, to every creditor of the company whose name and address is known to him or her, and also by notice in one or more newspapers circulating in the region where the company's main place of business is situated.

(4) The notice in a newspaper as contemplated in subsection (3) must comply with section 40(3)*(c)* of the Insolvency Act, 1936 (Act 24 of 1936), and must appear at least 10 days before the date of the meeting.

(5) The provisional judicial manager or the judicial manager, as the case may be, must preside over a meeting referred to in subsection (3), and the laws relating to insolvency do, with the necessary changes, apply in respect of the conduct of that meeting, the right to vote there, the manner of voting and the calculation of the value of votes, as if that meeting were a meeting of creditors in an insolvent estate, but, for the purposes of voting at any meeting convened by a provisional judicial manager, the claims of creditors must be determined to the satisfaction of the provisional judicial manager.

443 Voidable and undue preferences in judicial management

(1) Every disposition of its property which if made by an individual could for any reason be set aside because of his or her insolvency, may, if made by a company unable to pay its debts, be set aside by the Court at the suit of the judicial manager if the company is placed under judicial management, and the law relating to insolvency does, with the necessary changes, apply in respect of that disposition.

(2) For the purposes of this section, the event which is deemed to correspond with a sequestration order under the Insolvency Act, 1936 (Act 24 of 1936), in the case of an insolvent, is the presentation to the Court of the application in pursuance of which a judicial management order is granted.

444 Period of judicial management to be discounted in determining preference under mortgage bond

The time during which any company being a mortgage debtor in respect of any mortgage bond, is subject to a judicial management order, must be excluded in the calculation of any period of time for the purpose of determining whether that mortgage bond confers any preference in terms of section 88 of the Insolvency Act, 1936 (Act 24 of 1936), as applied to the winding-up of companies by this Act.

445 Position of auditor in judicial management

Notwithstanding the granting of a judicial management order in respect of any company and for so long as the order is in force, the provisions of this Act relating to the appointment and reappointment of an auditor and the rights and duties of an auditor continue to apply as if any reference in those provisions to the directors of the company were a reference to the judicial manager.

446 Application to judicial management of certain provisions of winding-up

(1) In every case in which a company is placed under judicial management, sections 365, 418, 429, 430 and 431 apply as if the company under judicial management were a company being wound up and the judicial manager were the liquidator.

(2) Section 423 and, if the Court so orders, sections 418, 420, 421, 424 and apply in a judicial management as they apply in a winding-up of a company which is unable to pay its debts, any reference to the liquidator being taken to be a reference to the judicial manager.

447 Cancellation of judicial management order

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(1) If at any time on application by the judicial manager or any person having an interest in the company it appears to the Court that the purpose of a judicial management order has been fulfilled or that for any reason it is undesirable that that order should remain in force, the Court may cancel that order and the judicial manager is divested of his or her functions.

(2) In cancelling a judicial management order the Court must give any directions which are necessary for the resumption of the management and control of the company by the officers of the company, including directions for the convening of a general meeting of members for the purpose of electing directors of the company.

CHAPTER 16
TRANSITIONAL AND MISCELLANEOUS PROVISIONS (ss 448-450)

448 Preservation of rights of existing companies

(1) Any reference in this Act, express or implied, to the date of incorporation of an existing company, must be construed as a reference to the date on which that company was originally incorporated.

(2) Nothing in this Act contained affects any right or privilege acquired or liability incurred by any existing company or external company, whether by agreement or otherwise, before the commencement of this Act, or affects the validity of the memorandum and articles of any existing company or the memorandum of an external company in force, or deemed to be in force, at the commencement and not in conflict with this Act.

(3) Those provisions of the articles of any existing company which should have been contained in a memorandum of association if the company had been formed under this Act, are, for the purposes of this Act, deemed to be or to be included in the memorandum of the company, and are subject in all respects to the provisions of this Act relating to a memorandum of association.

(4) Section 341(5), (6) and (7) in so far as it relates to the legal effect of the registration of an external company in Namibia does, with the necessary changes, apply in relation to a company in respect of which a notice has been published in terms of section 30(2)*(b)* of the Registration and Incorporation of Companies in South West Africa Proclamation, 1978 (Proclamation 234 of 1978), in the former *Official Gazette*, as if that company were an external company registered in the former territory of South West Africa on the date mentioned in that notice and the reference in those sections to registers and documents included a reference to copies of registers and documents sent to the Registrar of Companies, Windhoek, in terms of section 31(1)*(c)* of that Proclamation.

449 Transitional provisions as to unlimited companies and partly paid-up shares

(1) Any existing company which is an unlimited company within the meaning of the Companies Act, 1926 and which is not converted into a type of company under the repealed Act or this Act, must remain on the register of companies as an unlimited company and the Companies Act, 1926 must, save as is otherwise provided in this Act, continue to apply to that company as if that Act had not been repealed.

(2) Any existing company which has issued any shares which are at the commencement of this Act not fully paid-up, must remain subject to the Companies Act, 1926, in respect of those shares only as if this Act had not been passed.

450 Regulations under repealed Act relating to winding-up and judicial management

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Regulations made under the repealed Act relating to the winding-up and judicial management of companies, including former rules not repealed by regulation 26 of the Regulations in terms of section 15 of the repealed Act, for the Winding-up and Judicial Management of Companies, promulgated by GN R. 2490 of 28 December 1973 and which have in terms of section 16(1) of the repealed Act been deemed to have been made under section 15 of that Act, as they exist immediately prior to the coming into operation of this section, must notwithstanding section 451 remain in force and are deemed to be regulations made under section 13 of this Act.

CHAPTER 17
REPEAL OF LAWS AND COMMENCEMENT OF ACT (ss 451-452)

451 Repeal of laws

(1) The laws specified in Schedule 5 are repealed to the extent set out in the third column of that Schedule.

(2) Notwithstanding subsection (1), Schedule 4 of the repealed Act does, in the case of a company to which that Schedule applied and whose financial year has on the date of the repeal of the repealed Act not been completed, remain applicable to that company until the date on which that financial year ends, and must, during that period, be interpreted and applied as if this Act has not been enacted.

452 Short title and commencement

(1) This Act is called the Companies Act, 2004, and it comes into operation on a date to be determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of the Act.

(3) Any reference in this Act to the commencement of this Act must be construed as a reference to the date determined under subsection (2).

Schedule 1

TABLE A
ARTICLES FOR A PUBLIC COMPANY HAVING A SHARE CAPITAL

Interpretation

1. In these articles, unless the context otherwise indicates-

(a) "the Act" means the Companies Act, 2004; and

(b) "foreign committee" means a committee appointed under article 64 of these articles.

Commencement of Business

2. The directors shall have regard to the restrictions on the commencement of business imposed by section 180 of the Act.

Shares and Certificates of Shares

3. Subject to the provisions, if any, of the memorandum, and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred or other special rights, or subject to such restrictions (whether in regard to dividend, voting, return of share capital or otherwise) as the company may from time to time determine, and the company may determine that any preference shares shall be issued on the condition that they are, or are at the option of the company, liable to be redeemed.

4. Every person whose name is entered in the register of members shall be entitled to one certificate for all the shares registered in his or her name, or to several certificates, each for a part of such shares. Every share certificate shall

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specify the number of shares in respect of which it is issued. Every original member shall be entitled to one share certificate free of charge but for every subsequent certificate the directors may make such charge as from time to time they may think fit: Provided that if a share certificate is defaced, lost or destroyed, it may be renewed on payment of an amount, not exceeding N$5,00, if any, and on such terms, if any, as to evidence and indemnity as the directors may think fit.

5. Share certificates shall be issued under the authority of the directors, or the foreign committee when authorised thereto by resolution of the directors, in such manner and form as the directors shall from time to time prescribe. If any shares are numbered all such shares shall be numbered in numerical progression beginning with the number one, and each share shall be distinguished by its appropriate number; and, if any shares are not numbered, each share certificate in respect of such shares shall be numbered in numerical progression and each share certificate distinguished by its appropriate number and by such endorsement as may be required under section 101(2) of the Act.

6. A certificate for shares registered in the names of two or more persons shall be delivered to the person first named in the register as a holder thereof, and delivery of a certificate for a share to that person shall be a sufficient delivery to all joint holders of that share.

Variation of Rights

7. 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 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 resolution passed at a separate general meeting of the holders of the shares of the class, and section 207 of the Act shall, with the necessary changes, apply to the said resolution and meeting as if the resolution were a special resolution. To every such separate general meeting the provisions of these articles relating to general meetings shall, with the necessary changes, apply but so that the necessary quorum, unless the company has only one member, shall be two persons holding or representing by proxy at least one-third of all the issued shares of the class.

Register of Members

8. *(a)* The company shall maintain at its registered office a register of members of the company as provided in section 112 of the Act. The register of members shall be open to inspection, as provided in section 120 of the Act.

(b) The company may maintain a branch register under section 114 of the Act and the provisions of paragraph *(a)* shall, with the necessary changes, apply to such register.

Payment of Commission

9. *(a)* The company may pay a commission at a rate not exceeding 10 percent of the issue price of a share to any person in consideration of his or her subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company or for procuring or agreeing to procure, whether absolutely or conditionally, subscriptions for any shares of the company.

(b) Such commission may be paid in cash or by the allotment of shares of the company.

(c) The company may, on any issue of shares, pay such brokerage as may be lawful.

Transfer and Transmission of Shares

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10. The instrument of transfer of any share of the company, not being a security in terms of section 141 of the Act, shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register of members in respect thereof.

11. Subject to such of the restrictions as may be applicable, any member may transfer all or any of his or her shares by instrument in writing in any usual or common form or any other form which the directors may approve.

12. The directors may suspend the registration of transfers during the 14 days immediately preceding any general meeting of the company and at any other times, provided that the periods of suspension shall not in any one year exceed 60 days.

13. The directors may decline to recognise any instrument of transfer unless-

(a) a sum not exceeding N$5,00 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 share transfer duty thereon has been paid.

14. Every instrument of transfer shall be left at a transfer office of the company at which it is presented for registration, accompanied by a certificate of the shares to be transferred. Every power of attorney given by a shareholder authorising the transfer of shares, shall, when lodged, produced or exhibited to the company or any of its proper officers, be deemed as between the company and the donor of the power to continue and remain in full force and effect, and the company may allow that power to be acted upon until such time as express notice in writing of its revocation has been lodged at such of the company's transfer offices as the power was lodged, produced, or exhibited as aforesaid. The company shall not be bound to allow the exercise of any act or matter by an agent for a shareholder unless a duly certified copy of that agent's authority be produced and lodged with the company.

15. The executor of the estate of a deceased sole holder of a share shall be the only person recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the executor of the deceased survivor shall be the only persons recognised by the company as having any title to the share.

16. Any person becoming entitled to a share in consequence of the death or insolvency of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right, either to be registered as a member in respect of the share or instead of being registered himself or herself, to make such transfer of the share as the deceased or insolvent could have made, 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 the deceased or insolvent before the death or insolvency.

17. *(a)* The parent or guardian of a minor and the *curator bonis* of a mentally disabled member and any person becoming entitled to shares in consequence of the death or insolvency of any member or by any lawful means other than by transfer in accordance with these articles, may, upon producing such evidence as sustains the character in which he or she proposes to act under this article, or of his or her title, as the directors think sufficient, transfer those shares to himself or herself or any other person subject to the articles as to transfer hereinbefore contained.

(b) This article is hereinafter referred to as the 'transmission clause'.

18. A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he or she would be entitled if he or she were the registered

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holder of the share, except that he or she 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.

19. A person who submits proof of his or her appointment as the executor, administrator, trustee, curator or guardian in respect of the estate of a deceased member of the company or the estate of a member whose estate has been sequestrated, or who is otherwise under a disability or as the liquidator of any body corporate which is a member of the company shall be entered in the register or members of the company *nomine officii*, and shall thereafter, for all purposes, be deemed to be a member of the company.

Conversion of Shares into Stock

20. The company may by special resolution convert all or any of its paid-up shares into stock, and reconvert such stock into any number of paid-up shares.

21. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same articles as the shares from which the stock arose might prior to conversion have been transferred, or as near thereto as circumstances permit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of such minimum, but the minimum shall not exceed the nominal amount, in the case of shares of par value or the issue price in the case of shares of no par value, of the shares from which the stock arose.

22. The holders of stock shall, according to the amount of the 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 participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

23. Such of the articles of the company (other than those relating to share warrants) as are applicable to shares shall apply to stock, and the word "share" and "shareholder" therein shall include "stock" and "stock-holder".

Share Warrants

24. The company may issue share warrants, and accordingly the directors or, if so authorised, any foreign committee, may, in their discretion, with respect to any share, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence as the directors or foreign committee may from time to time require as to the identity of the person signing the request, and on receiving the certificate of the share and the stamp duty (if any), on the warrant and such sum as the directors may from time to time require, issue a warrant, duly stamped, if stamp duty is payable, 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 dividends or other moneys, on the shares included in the warrant.

25. A share warrant shall entitle the bearer to the shares included therein and the shares shall be transferred by the delivery of the share warrant, and the provisions of the articles of the company with respect to transfer and transmission of shares shall not apply thereto.

26. The bearer of a share warrant shall, on surrender of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time prescribe, be entitled to have his or her name entered as a member in the register of members in respect of the shares included in the warrant.

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27. The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of the deposit, as if his or her name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognised as depositor of the share warrant. The company shall, on two days' written notice, return the deposited share warrant to the depositor.

28. Save as herein otherwise expressly provided, no person shall as bearer of a share warrant, sign a requisition for calling a meeting of the company, or attend, or vote, or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company; but the bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he or she were named in the register of members as the holder of the shares included in the warrant, and he or she shall be a member of the company.

29. The directors may from time to time make rules as to the terms on which (if they think fit) a new share warrant or coupon may be issued by way of renewal in case of defacement, loss or destruction.

Alteration of Capital

30. *(a)* The company may from time to time by special resolution increase the share capital by such sum divided into shares of such amount, or may increase the number of its shares of no par value to such number, as the resolution shall prescribe.

(b) The company may increase its share capital constituted by shares of no par value by transferring reserves or profits to the stated capital, with or without a distribution of shares.

(c) New shares shall be subject to the same provisions as to transfer, transmission and otherwise as the shares in the original capital.

31. The company may, by special resolution-

(a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares or consolidate and reduce the number of the issued shares of no par value;

(b) increase the number of its issued no par value shares without an increase of its stated capital;

(c) subdivide its existing shares or any of them into shares of smaller amount than is fixed by its memorandum;

(d) convert all of its ordinary or preference share capital consisting of shares having a par value into stated capital constituted by shares of no par value;

(e) convert its stated capital constituted either by ordinary or preference shares of no par value into share capital consisting of shares having a par value;

(f) cancel any shares which, at the date of the passing of the resolution, have not been taken by any person, or which no person has agreed to take;

(g) reduce its share capital, stated capital, any capital redemption fund or any share premium account in any manner and with, and subject to, any incident authorised, and consent required, by law;

(h) subject to the provisions of section 105 of the Act, convert its issued preference shares into shares which can be redeemed.

General Meetings

32. The company shall hold its first annual general meeting within 18 months after the date of its incorporation and shall thereafter in each year hold an annual

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general meeting: Provided that not more than 15 months shall elapse between the date of one annual general meeting and that of the next and that an annual general meeting shall be held within nine months after the expiration of the financial year of the company.

33. Other general meetings of the company may be held at any time.

34. Annual general meetings and other general meetings shall be held at such time and place as the directors shall appoint or at such time and place as is determined if the meetings are convened under section 187(5), 189, 190 or 191 of the Act.

Notice of General Meetings

35. An annual general meeting and a meeting called for the passing of a special resolution shall be called by not less than 21 clear days' notice in writing and any other general meeting shall be called by not less than 14 clear days' notice in writing. 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 the meeting and shall be given in such 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 these articles, entitled to receive such notices from the company: Provided that a meeting of the company shall, notwithstanding the fact 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 by a majority in number of the members having a right to attend and vote at the meeting, being a majority holding not less than 95 percent of the total voting rights of all the members.

Proceedings at General Meetings

36. The annual general meeting shall deal with and dispose of all matters prescribed by the Act, including the sanctioning of a dividend, the consideration of the annual financial statements, the election of directors and the appointment of an auditor, and may deal with any other business laid before it. All business laid before any other general meeting shall be considered special business.

37. 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 or by proxy, or if the company is a wholly owned subsidiary, the nominee of the holding company, present in person or by proxy, shall be a quorum.

38. If within half an hour after 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 a day not earlier than seven days and not later than 21 days after the date of the meeting and if at such adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting the members present in person or by proxy shall be a quorum.

39. Where a meeting has been adjourned as aforesaid, the company shall, upon a date not later than three days after the adjournment, publish in a newspaper circulating in Namibia, a notice stating-

(a) the date, time and place to which the meeting has been adjourned;

(b) the matter before the meeting when it was adjourned; and

(c) the ground for the adjournment.

40. The chairperson, if any, of the board of directors shall preside as chairperson at every general meeting of the company. If there is no such chairperson, or if at any meeting he or she is not present within 15 minutes after the

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time appointed for holding the meeting or is unwilling to act as chairperson, the members present shall elect one of their number to be chairperson.

41. The chairperson 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 at which the adjournment took place. When a meeting is adjourned, the provisions of articles 38 and 39 shall with the necessary changes apply to such adjournment.

42. 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 by the chairperson or members referred to in section 206(1)*(b)* of the Act, and, unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or negatived, 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.

43. If a poll is duly demanded it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. Scrutineers shall be elected to determine the result of the poll. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson 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.

44. A poll demanded on the election of a chairperson 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 chairperson of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.

Inspection of Minutes

45. The minutes kept of every general meeting and annual general meeting of the company under section 212 of the Act, may be inspected and copied as provided in section 120 of the Act.

Votes of Members

46. 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 and if a member is a body corporate, its representative, shall have one vote and on a poll every member present in person or by proxy shall be entitled to exercise the voting rights determined by section 203 of the Act.

47. In the case of joint holders the vote of the person whose name appears first in the register of members and who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.

48. The parent or guardian of a minor, and the *curator bonis* of a mentally disabled member, and also any person entitled under the transmission clause to transfer any shares, may vote at any general meeting in respect thereof in the same manner as if he or she were the registered holder of those shares: Provided that 48 hours at least before the time of holding the meeting at which he or she proposes to vote he or she shall satisfy the directors that he or she is such parent, guardian or curator or that he or she is entitled under the transmission clause to transfer those shares, or that the directors have previously admitted his or her right to vote in

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respect of those shares. Co-executors of a deceased member in whose name shares stand in the register shall, for the purposes of this article, be deemed to be joint holders of those shares.

49. On a poll, votes may be given either personally or by proxy.

Proxies

50. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his or her agent duly authorised in writing, or, if the appointer is a body corporate, under the hand of an officer or agent authorised by the body corporate. A proxy need not be a member of the company. The holder of a general or special power of attorney, whether he or she is himself or herself a member or not, given by a shareholder shall be entitled to attend meetings and to vote, if duly authorised under that power to attend and take part in the meetings.

51. 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 such power or authority shall be deposited at the registered office of the company not less than 48 hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default of complying herewith the instrument of proxy shall not be treated as valid. No instrument appointing a proxy shall be valid after the expiration of six months from the date when it was signed, unless so specifically stated in the proxy itself, and no proxy shall be used at an adjourned meeting which could not have been used at the original meeting.

52. The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit:

"....Limited
I, ...of....
being a member of the .... Limited,
hereby appoint
.... of .... or failing him/her
.... of .... or failing him/her
....of ....,
as my proxy to vote for me and on my behalf at the annual general or general meeting (as the case may be) of the company to be held on the .... day of
.... and at any adjournment thereof as follows:

	In favour of	Against
Resolution to		
Resolution to		
Resolution to		

(Indicate instruction to proxy by way of a cross in space provided above.)
Unless otherwise instructed, my proxy may vote as he/she thinks fit.
Signed this .... day of ....
....
Signature
Note: A member entitled to attend and vote is entitled to appoint a proxy to attend, speak and on a poll vote in his/her stead, and such proxy need not also be a member of the company."

Directors

53. The number of the directors shall not be less than two and the names of the first directors may be determined in writing by a majority of the subscribers of the memorandum. Until directors are appointed, whether or not the directors have been named by a majority of the subscribers of the memorandum, every subscriber of the memorandum shall be deemed for all purposes to be a director of the company.

54. The remuneration of the directors shall from time to time be determined by the company in a general meeting.

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55. Where any director is called upon to perform extra services or to make any special exertions in going or residing abroad, or otherwise, for any of the purposes of the company, the company may remunerate that director either by a fixed sum or by a percentage of profits or otherwise as may be determined, and such remuneration may be either in addition to, or in substitution for, the remuneration determined under article 54.

56. The shareholding qualification of a director shall be the holding of at least one share of the company, and it shall be his or her duty to comply with section 221 of the Act, except where the company is a wholly owned subsidiary, when a director shall not be required to hold a share of the company.

Alternate Directors

57. Each director shall have the power to nominate any person who is a shareholder of the company (except where the company is a wholly owned subsidiary, when such person need not be a shareholder) possessing the necessary qualifications of a director, to act as alternate director in his or her place during his or her absence or inability to act as such director, provided that the appointment of an alternate director shall be approved by the board, and on such appointment being made, the alternate director shall, in all respects, be subject to the terms, qualifications, and conditions existing with reference to the other directors of the company.

58. The alternate directors, whilst acting in the stead of the directors who appointed them, shall exercise and discharge all the powers, duties and functions of the directors they represent. The appointment of an alternate director shall be revoked, and the alternate director shall cease to hold office, whenever the director who appointed him or her ceases to be a director or gives notice to the secretary of the company that the alternate director representing him or her has ceased to do so, and in the event of the disqualification or resignation of any alternate director during the absence or inability to act of the director whom he or she represents, the vacancy so arising shall be filled by the chairperson of the directors who shall nominate a person who is a shareholder of the company (except where the company is a wholly owned subsidiary, when such person need not be a shareholder of the company) to fill such vacancy, subject to the approval of the board.

Powers and Duties of Directors

59. The business of the company shall be managed by the directors who may pay all expenses incurred in promoting and incorporating 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 to these articles, to the provisions of the Act, and to such regulations, not inconsistent with the aforesaid articles or provisions, as may be prescribed by the company in general meeting, but no regulation prescribed by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been prescribed.

Borrowing Powers

60. The directors may exercise all the powers of the company to borrow money and to mortgage or bind 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: Provided that the amount for the time being remaining undischarged in respect 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

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not at any time, without the prior sanction of the company in general meeting, exceed one-half of the amount of the issued share capital plus the amount of the share premium account (if any) or of the stated capital.

Managing Director

61. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term and at such remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another) as they may think fit and may revoke such appointment subject to the terms of any agreement entered into in any particular case. A director so appointed shall not, while holding such office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors; but his or her appointment shall determine if he or she ceases for any reason to be a director.

62. The directors may from time to time entrust to or confer upon a managing director or manager, for the time being, such of the powers and authorities vested in them as they may think fit, and may confer such powers and authorities for such time and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as they may think expedient, and they may confer such powers and authorities either collaterally or to the exclusion of, or in substitution for, all or any of the powers and authorities of the directors and may from time to time revoke or vary all or any of such powers and authorities.

Minutes

63. The directors shall, in terms of section 212 of the Act, cause minutes to be kept-

(a) of all appointments of officers;

(b) of names of directors present at every meeting of the company and of the directors; and

(c) of all proceedings at all meetings of the company and of the directors,

and minutes shall be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.

Foreign Committees

64. The directors may from time to time appoint persons resident in a foreign country to be a foreign committee for the company in that country with such powers and duties as the directors may from time to time determine. The directors may from time to time establish branch registers of members and transfer offices in foreign countries, close them at any time and may appoint and remove agents for any purposes in any foreign country.

Disqualification of Directors

65. The office of director shall be vacated if the director-

(a) ceases to be a director or becomes prohibited from being a director by virtue of any provision of the Act; or

(b) without the consent of the company in a general meeting holds any other office of profit under the company except that of managing director or manager; or

(c) resigns his or her office by notice in writing to the company and the Registrar; or

(d) for more than six months is absent without permission of the directors from meetings of directors held during that period; or

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(e) is directly or indirectly interested in any contract or proposed contract with the company and fails to declare his or her interest and the nature thereof in the manner required by the Act.

Rotation of Directors

66. 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, the number nearest to one-third, shall retire from office.

67. 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.

68. A retiring director shall be eligible for re-election.

69. The company, at the annual general meeting at which a director retires in the manner aforesaid or at any other general meeting may fill the vacancy by electing a person thereto.

70. If at any meeting at which an election of directors ought to take place the offices of the retiring directors are not filled, unless it is expressly resolved not to fill such vacancies, the meeting shall stand adjourned and the provisions of articles 38 and 39 shall apply with the necessary changes to such adjournment, and if at such adjourned meeting the vacancies are not filled, the retiring directors or such of them as have not had their offices filled shall be deemed to have been re-elected at such adjourned meeting unless a resolution for the re-election of any such director shall have been put to the meeting and negatived.

71. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to retire from office.

72. Unless the shareholders otherwise determine in general meeting any casual vacancy occurring on the board of directors may be filled by the directors, but the director so appointed shall be subject to retirement at the same time as if he or she had become a director on the day on which the director in whose stead he or she is appointed, was last elected a director.

73. The directors shall have power at any time, and from time to time, to appoint a person as an additional director but so that the total number of directors shall not at any time exceed the number fixed according to these articles.

74. An additional director shall retire from office at the next following annual general meeting and shall then be eligible for re-election, but shall not be taken into account in determining which directors are to retire by rotation at such meeting.

Proceedings of Directors

75. The directors may meet together for the despatch 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 event of an equality of votes, the chairperson shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time convene a meeting of the directors.

76. Subject to sections 242 to 249, inclusive, of the Act, a director shall not vote in respect of any contract or proposed contract with the company in which he or she is interested, or any matter arising therefrom, and if he or she does so vote, his or her vote shall not be counted.

77. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall, when the number of

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directors exceeds three, be three and when the number of directors does not exceed three, shall be two.

78. The continuing directors may act notwithstanding any vacancy on their body, but, if and so long as their number is reduced below the number fixed by or pursuant to these articles as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of convening a general meeting of the company, but for no other purpose.

79. The directors may elect a chairperson of their meetings and determine the period for which he or she is to hold office, but if no such chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for holding the same, the directors present may elect one of their number to be chairperson of the meeting.

80. 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 the rules that may be imposed on it by the directors.

81. A committee may elect a chairperson of its meetings. If no such chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for holding the same, the members present may elect one of their number to be chairperson of the meeting.

82. A committee may meet and adjourn as it thinks fit. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the event of an equality of votes the chairperson shall have a second or casting vote.

83. All acts done by any meeting of the directors or 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 directors 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 were qualified to be a director.

Dividends and Reserve

84. The company in an annual general meeting may declare dividends but no dividend shall exceed the amount recommended by the directors.

85. 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.

86. No dividend shall be paid otherwise than out of profits, or bear interest against the company.

87. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think fit 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 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.

88. Notice of any dividend that may have been declared shall be given in the manner hereinafter provided to the persons entitled to share therein.

89. Every dividend or other moneys payable in cash in respect of shares may be paid by cheque, warrant, coupon or otherwise as the directors may from time to time determine, and shall, if paid otherwise than by coupon, either be sent by post to the registered address of the member entitled thereto or be given to him or her personally, and the receipt or endorsement on the cheque or warrant of the person

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whose name appears in the register as the shareholder, or his or her duly authorised agent, or the surrender of any coupon shall be a good discharge to the company in respect thereof. Any one of two or more joint holders may give effectual receipts for any dividends or other moneys payable in respect of the shares held by them as joint holders.

90. The company shall not be responsible for the loss in transmission of any cheque, warrant, coupon or other document sent through the post to the registered address of any member, whether or not it was so sent at his or her request.

Accounting Records

91. The directors shall cause such accounting records as are prescribed by section 292 of the Act to be kept. Proper accounting records shall not be deemed to be kept if there are not kept such accounting records as are necessary fairly to present the state of affairs and business of the company and to explain the transactions and financial position of the trade or business of the company.

92. The accounting records shall be kept at the registered office of the company or at such other place or places as the directors think fit, and shall always be open to inspection by the directors.

93. 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 accounting records of the company or any of them shall be open to inspection by members not being directors, and no member (not being a director) shall have any right of inspecting any accounting records or documents of the company except as conferred by the Act or authorised by the directors or by the company in general meeting.

Annual Financial Statements and Interim Reports

94. The directors shall from time to time, in accordance with sections 294 and 296 of the Act, cause to be prepared and laid before the company in general meeting such annual financial statements, group annual financial statements and group reports (if any) as are referred to in those sections.

95. The directors shall, in accordance with section 310 of the Act, prepare or cause to be prepared interim reports, a copy of which shall be sent to every member of the company and to the Registrar.

96. A copy of any annual financial statements, group annual financial statements and group reports which are to be laid before the company in an annual general meeting, shall not less than 21 days before the date of the meeting be sent to every member of, and every holder of debentures of, the company and to the Registrar: 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 shares or debentures.

Audit

97. An auditor shall be appointed in accordance with Chapter 10 of the Act.

Notices

98. A notice may be given by the company to any member either by advertisement or personally, or by sending it by post in a prepaid letter addressed to such member at his or her registered address, or (if he or she has no registered address in Namibia) at the address (if any) within Namibia supplied by him or her to the company for the giving of notices. Any notice which may be given by advertisement shall be inserted in the *Gazette* and in such newspapers as the directors may from time to time determine.

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99. Whenever a notice is to be given personally or sent by post, the notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register in respect of the share.

100. Whenever a notice is to be given personally or sent by post, the notice may be given by the company to the persons entitled to a share in consequence of the death or insolvency of a member, or 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 trustees of the insolvent or by any like description, at the address (if any) in Namibia supplied for the purpose by the persons claiming to be so entitled, or (until such address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred.

101. Notice of every general meeting shall be given in any manner authorised-

(a) to every member of the company (including bearers of share warrants) except, in the case of notices to be given personally or sent by post, those members who (having no registered address in Namibia) have not supplied to the company an address in Namibia for the giving of notices to them;

(b) to every person entitled to a share in consequence of the death or insolvency of a member who, but for his or her death or insolvency, would have been entitled to receive notice of the meeting; and

(c) to the auditor for the time being of the company.

No other person shall be entitled to receive notice of general meetings

102. Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and any notice by advertisement shall be deemed to have been given on the day upon which the advertisement was published in the *Gazette*, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

103. A notice given to any member shall be binding on all persons claiming on his or her death or on any transmission of his or her interests.

104. The signature to any notice given by the company may be written or printed, or partly written and partly printed.

105. When a given number of days' notice or notice extending over any other period is required to be given, the day of service shall not be counted in such number of days or period.

106. If the company has a seal, it shall not be affixed to any instrument except by the authority of a resolution of the directors, and shall be affixed in the manner and subject to such safeguards as the directors may from time to time determine.

Winding-up

107. If the company is to be wound up, the assets remaining after payment of the debts and liabilities of the company and the costs of the liquidation shall be applied as follows:

(a) To repay to the members the amounts paid up on the shares respectively held by each of them; and

(b) the balance (if any) shall be distributed among the members in proportion to the number of shares respectively held by each of them:

Provided that the provisions of this article shall be subject to the rights of the holders of shares (if any) issued upon special conditions.

108. In a winding-up, any part of the assets of the company, including any shares or securities of other companies, may, with the sanction of a special

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resolution of the company, be divided among the members of the company *in specie*, or may, with the same sanction, be vested in trustees for the benefit of such members, and the liquidation of the company may be closed and the company dissolved.

TABLE B
ARTICLES FOR A PRIVATE COMPANY HAVING A SHARE CAPITAL

Interpretation

1. In these articles, unless the context otherwise indicates-

(a) "the Act" means the Companies Act, 2004; and

(b) "foreign committee" means a committee appointed under article 65 of these articles.

Restrictions

2. The directors shall have regard to the restrictions on the commencement of business imposed by section 180 of the Act.

3. The company is a private company and accordingly-

(a) the right to transfer its shares is restricted;

(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 since the determination of such employment, to be members of the company) is limited to fifty;

(c) any invitation to the public to subscribe for any shares or debentures of the company is prohibited; and

(d) the company shall not have power to issue share warrants to bearer.

4. Where two or more persons hold one or more shares of the company jointly they shall for the purposes of article 3 be treated as a single member.

Shares and Certificates of Shares

5. Subject to the provisions, if any, of the memorandum, and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred, or other special rights, or subject to such restrictions (whether in regard to dividend, voting, return of share capital or otherwise) as the company may from time to time determine, and the company may determine that any preference shares shall be issued on the condition that they are or are at the option of the company, liable to be redeemed.

6. Every person whose name is entered as a member in the register of members shall be entitled to one certificate for all the shares registered in his or her name, or to several certificates, each for a part of such shares. Every share certificate shall specify the number of shares in respect of which it is issued. Every original member shall be entitled to one share certificate free of charge but for every subsequent certificate the directors may make such charge as from time to time they may think fit: Provided that if a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding N$5,00, and on such terms, if any, as to evidence and indemnity as the directors may think fit.

7. Share certificates shall be issued under the authority of the directors, or the foreign committee when authorised thereto by resolution of the directors, in such manner and form as the directors shall from time to time prescribe. If any shares are numbered, all such shares shall be numbered in numerical progression beginning with the number one, and each share shall be distinguished by its appropriate number; and if any shares are not numbered, each share certificate in respect of such shares shall be numbered in numerical progression and each share certificate

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distinguished by its appropriate number and by such endorsement as may be required under section 101(2) of the Act.

8. A certificate for shares registered in the names of two or more persons shall be delivered to the person first named in the register as a holder thereof, and delivery of a certificate for a share to that person shall be a sufficient delivery to all joint holders of that share.

Variation of Rights

9. 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 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 resolution passed at a separate general meeting of the holders of the shares of the class, and section 207 of the Act shall, with the necessary changes, apply to the said resolution and meeting as if the resolution were a special resolution. To every such separate general meeting the provisions of these articles relating to general meetings shall with the necessary changes apply but so that the necessary quorum, unless the company has only one member, shall be two persons holding or representing by proxy at least one-third of all the issued shares of the class.

Register of Members

10. *(a)* The company shall maintain at its registered office a register of members of the company as provided in section 112 of the Act. The register of members shall be open to inspection as provided in section 120 of the Act.

(b) The company may maintain a branch register under section 114 of the Act and the provisions of paragraph *(a)* shall with the necessary changes apply to such register.

Transfer and Transmission of Shares

11. The directors shall have power to refuse to register the transfer of any shares.

12. The instrument of transfer of any share of the company, not being a security in terms of section 141 of the Act, shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register of members in respect thereof.

13. Subject to such of the restrictions as may be applicable, any member may transfer all or any of his or her shares by instrument in writing in any usual or common form or any other form which the directors may approve.

14. The directors may decline to recognise any instrument of transfer unless-

(a) a sum not exceeding N$5,00 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 share transfer duty thereon has been paid.

15. Every instrument of transfer shall be left at a transfer office of the company at which it is presented for registration, accompanied by a certificate of the shares to be transferred. Every power of attorney given by a shareholder authorising the transfer of shares, shall, when lodged, produced or exhibited to the company or any of its proper officers, be deemed as between the company and the donor of the power to continue and remain in full force and effect, and the company may allow that power to be acted upon until such time as express notice in writing of its revocation has been lodged at such of the company's transfer offices as the power

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was lodged, produced, or exhibited as aforesaid. The company shall not be bound to allow the exercise of any act or matter by an agent for a shareholder unless a duly certified copy of that agent's authority be produced and lodged with the company.

16. The executor of the estate of a deceased sole holder of a share shall be the only person recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the executor of the deceased survivor shall be the only persons recognised by the company as having any title to the share.

17. Any person becoming entitled to a share in consequence of the death or insolvency of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right, either to be registered as a member in respect of the share or instead of being registered himself or herself, to make such transfer of the share as the deceased or insolvent could have made, 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 the deceased or insolvent before the death or insolvency.

18. *(a)* The parent or guardian of a minor and the *curator bonis* of a mentally disabled member and any person becoming entitled to shares in consequence of the death or insolvency of any member or by any lawful means other than by transfer in accordance with these articles, may, upon producing such evidence as sustains the character in which he or she proposes to act under this article, or of his or her title, as the directors think sufficient, transfer those shares to himself or herself or any other person, subject to the articles as to transfer hereinbefore contained.

(b) This article is hereinafter referred to as the "transmission clause".

19. A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he or she would be entitled if he or she were the registered holder of the share, except that he or she 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.

20. Any person who submits proof of his or her appointment as the executor, administrator, trustee, curator or guardian in respect of the estate of a deceased member of the company, or of a member whose estate has been sequestrated or of a member who is otherwise under a disability or as the liquidator of any body corporate which is a member of the company, shall be entered in the register of members of the company *nomine officii*, and shall thereafter, for all purposes, be deemed to be a member of the company.

21. If a member of the company desires to sell all or any of his or her shares of the company he or she shall give notice, in writing, of his or her intention to sell, to the directors of the company, and state the price he or she requires for the shares.

22. The directors shall within one month of the date of receipt of the notice referred to in article 21 advise every other member of the company of the contents thereof and each such member shall be entitled to acquire the shares so offered within one month after the date of the receipt of such advice: Provided that if more than one member makes an offer for all of the shares so offered, the shares shall be sold to each such member in equal proportions, and where fractional proportions of shares remain, such members shall become joint holders of such fractional proportions of the shares.

23. If the members of the company are unable to agree upon the selling price of the shares, the auditor of the company may be requested to determine the true and fair value thereof and the members shall accept that value as the selling price of the shares.

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24. If none of the members of the company offers to purchase the shares within the time referred to in article 22, or if members of the company offer to purchase a part of the shares so offered, the member who is offering the shares for sale may offer the shares or the remaining portion of the shares which have not been purchased by members of the company, for sale to any other person and, notwithstanding the provisions of article 11, the directors shall approve the registration of the shares in the name of that person unless they have good reason to refuse such registration.

Conversion of Shares into Stock

25. The company may by special resolution convert all or any of its paid-up shares into stock, and reconvert such stock into any number of paid-up shares.

26. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same articles as the shares from which the stock arose might prior to conversion have been transferred, or as near thereto as circumstances permit, but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of such minimum, but the minimum shall not exceed the nominal amount, in the case of shares of par value, or the issue price in the case of shares of no par value, of the shares from which the stock arose.

27. The holders of stock shall, according to the amount of the 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 participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

28. Such of the articles of the company as are applicable to shares shall apply to stock, and the word "share" and "shareholder" therein shall include "stock" and "stock-holder".

Alteration of Capital

29. *(a)* The company may from time to time by special resolution increase the share capital by such sum dividend into shares of such amount, or may increase the number of its shares of no par value to such number, as the resolution shall prescribe.

(b) The company may increase its share capital constituted by shares of no par value by transferring reserves or profits to the stated capital, with or without a distribution of shares.

(c) New shares shall be subject to the same provisions as to transfer, transmission and otherwise as the shares in the original capital.

30. The company may, by special resolution-

(a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares or consolidate and reduce the number of the issued shares of no par value;

(b) increase the number of its issued no par value shares without an increase of its stated capital;

(c) subdivide its existing shares or any of them into shares of smaller amount than is fixed by its memorandum;

(d) convert all of its ordinary or preference share capital consisting of shares having a par value into stated capital constituted by shares of no par value;

(e) convert its stated capital constituted either by ordinary or preference shares of no par value into share capital consisting of shares having a par value;

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(f) cancel any shares which, at the date of the passing of the resolution, have not been taken by any person, or which no person has agreed to take;

(g) reduce its share capital, stated capital, any capital redemption fund or any share premium account in any manner and with, and subject to, any incident authorised, and consent required, by law;

(h) subject to section 105 of the Act, convert its issued preference shares into shares which can be redeemed.

General Meetings

31. The company shall hold its first annual general meeting within 18 months after the date of its incorporation and shall thereafter in each year hold an annual general meeting: Provided that not more than 15 months shall elapse between the date of one annual general meeting and that of the next and that an annual general meeting shall be held within nine months after the expiration of the financial year of the company.

32. Other general meetings of the company may be held at any time.

33. Annual general meetings and other general meetings shall be held at such time and place as the directors shall appoint or at such time and place as is determined if the meetings are convened under section 187(5), 189, 190 or 191 of the Act.

Notice of General Meetings

34. An annual general meeting and a meeting called for the passing of a special resolution shall be called by not less than 21 clear days' notice in writing and any other general meeting shall be called by not less than 14 clear days' notice in writing. 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 the meeting and shall be given in the 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 these articles, entitled to receive such notices from the company: Provided that a meeting of the company shall, notwithstanding the fact 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 by a majority in number of the members having a right to attend and vote at the meeting, being a majority holding not less than 95 percent of the total voting rights of all the members.

Proceedings at General Meetings

35. The annual general meeting shall deal with and dispose of all matters prescribed by the Act, including the sanctioning of a dividend, the consideration of the annual financial statements, the election of directors and the appointment of an auditor, and may deal with any other business laid before it. All business laid before any other general meeting shall be considered special business.

36. 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, or if the company has one member, such member present in person or by proxy, or if the company is a wholly owned subsidiary, the nominee of the holding company in person or by proxy, shall be a quorum.

37. If within half an hour after 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 a day not earlier than seven days and not later than 21 days after the date of the meeting and if at such adjourned meeting a quorum is not present within half an hour after the time

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appointed for the meeting the members present in person or by proxy, shall be a quorum.

38. Where a meeting has been adjourned as aforesaid, the company shall, upon a date not later than three days after the adjournment send a written notice to each member of the company stating-

(a) the date, time and place to which the meeting has been adjourned;

(b) the matter before the meeting when it was adjourned; and

(c) the ground for the adjournment.

39. The chairperson, if any, of the board of directors shall preside as chairperson at every general meeting of the company.

40. If there is no such chairperson, or if at any meeting he or she is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the members present shall elect one of their number to be chairperson.

41. The chairperson 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 at which the adjournment took place. When a meeting is adjourned, articles 37 and 38 shall with the necessary changes apply to such adjournment.

42. 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 by the chairperson or members referred to in section 206(1)*(b)* of the Act, and unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or negatived, 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.

43. If a poll is duly demanded it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. Scrutineers shall be elected to determine the result of the poll.

44. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson 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.

45. A poll demanded on the election of a chairperson 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 chairperson of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.

Inspection of Minutes

46. The minutes kept of every general meeting and annual general meeting of the company under section 212 of the Act, may be inspected and copied as provided in section 120 of the Act.

Votes of Members

47. 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 and if a member is a body corporate, its representative, shall have one vote, and on a

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poll every member present in person or by proxy shall be entitled to exercise the voting rights determined by section 203(1) of the Act.

48. In the case of joint holders the vote of the person whose name appears first in the register of members and who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.

49. The parent or guardian of a minor, and the *curator bonis* of a mentally disabled member, and also any person entitled under the transmission clause to transfer any shares, may vote at any general meeting in respect thereof in the same manner as if he or she were the registered holder of those shares: Provided that 48 hours at least before the time of holding the meeting at which he or she proposes to vote he or she shall satisfy the directors that he or she is such parent, guardian or curator or that he or she is entitled under the transmission clause to transfer those shares, or that the directors have previously admitted his or her right to vote in respect of those shares. Co-executors of a deceased member in whose name shares stand in the register shall, for the purposes of this article, be deemed to be joint holders of those shares.

50. On a poll, votes may be given either personally or by proxy.

Proxies

51. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his or her agent duly authorised in writing, or, if the appointer is a body corporate, under the hand of an officer or agent authorised by the body corporate. A proxy need not be a member of the company. The holder of a general or special power of attorney, whether he or she is himself or herself a member or not, given by a shareholder shall be entitled to attend meetings and to vote, if duly authorised under that power to attend and take part in the meetings.

52. 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 such power or authority shall be deposited at the registered office of the company not less than 48 hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default of complying herewith the instrument of proxy shall not be treated as valid. No instrument appointing a proxy shall be valid after the expiration of six months from the date when it was signed, unless so specifically stated in the proxy itself, and no proxy shall be used at an adjourned meeting which could not have been used at the original meeting.

53. The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit:

"..... Limited
I, ... of .....
being a member of the ..... Limited,
hereby appoint
..... of ..... or failing him/her
..... of ..... or failing him/her
..... of .....,
as my proxy to vote for me and on my behalf at the annual general or general meeting (as the case may be) of the company to be held on the ..... day of
..... and at any adjournment thereof as follows:

	In favour of	Against
Resolution to		
Resolution to		
Resolution to		

(Indicate instruction to proxy by way of a cross in space provided above.)
Unless otherwise instructed, my proxy may vote as he/she thinks fit.
Signed this ..... day of .....
.....

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Signature
Note: A member entitled to attend and vote is entitled to appoint a proxy to attend, speak and on a poll vote in his/her stead, and such proxy need not also be a member of the company."

Directors

54. The number of the directors shall not be less than one and the names of the first directors may be determined in writing by a majority of the subscribers of the memorandum. Until directors are appointed, whether or not the directors have been named by a majority of subscribers of the memorandum, every subscriber of the memorandum shall be deemed for all purposes to be a director of the company.

55. The remuneration of the directors shall from time to time be determined by the company in a general meeting.

56. If any director be called upon to perform extra services or to make any special exertions in going or residing abroad, or otherwise, for any of the purposes of the company, the company may remunerate that director either by a fixed sum or by a percentage of profits or otherwise as may be determined, and such remuneration may be either in addition to, or in substitution for, the remuneration determined under article 55.

57. The shareholding qualification of a director shall be the holding of at least one share in the company, and it shall be his or her duty to comply with section 221 of the Act, except where the company is a wholly owned subsidiary when a director shall not be required to hold a share of the company.

Alternate Directors

58. Each director shall have the power to nominate any person whether a member of the company or not possessing the necessary qualifications of a director, to act as alternate director in his or her place during his or her absence or inability to act as such director, provided that the appointment of an alternate director shall be approved by the board, and on such appointment being made, the alternate director shall, in all respects, be subject to the terms, qualifications, and conditions existing with reference to the other directors of the company.

59. The alternate directors, whilst acting in the stead of the directors who appointed them, shall exercise and discharge all the powers, duties and functions of the directors they represent. The appointment of an alternate director shall be revoked, and the alternate director shall cease to hold office, whenever the director who appointed him or her ceases to be a director or gives notice to the secretary of the company that the alternate director representing him or her has ceased to do so, and in the event of the disqualification or resignation of any alternate director during the absence or inability to act of the director whom he or she represents, the vacancy so arising shall be filled by the chairperson of the directors who shall nominate a person to fill such vacancy, subject to the approval of the board.

Powers and Duties of Directors

60. The business of the company shall be managed by the directors who may pay all expenses incurred in promoting and incorporating 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 a general meeting, subject to these articles, to the provisions of the Act, and to such regulations, not inconsistent with the aforesaid articles or provisions, as may be prescribed by the company in general meeting, but no regulation prescribed by the company in a general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Borrowing Powers

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61. The directors may exercise all the powers of the company to borrow money and to mortgage or bind 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: Provided that the amount for the time being remaining undischarged in respect 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 at any time, without the prior sanction of the company in a general meeting, exceed one-half of the amount of the issued share capital plus the amount of the share premium account (if any), or of the stated capital.

Managing Director

62. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term and at such remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another) as they may think fit and may revoke such appointment subject to the terms of any agreement entered into in any particular case. A director so appointed shall not, while holding such office, be subject to retirement by rotation, or be taken into account in determining the rotation of retirement of directors, but his or her appointment shall determine if he or she ceases for any reason to be a director.

63. The directors may from time to time entrust to or confer upon a managing director or manager, for the time being, such of the powers and authorities vested in them as they may think fit, and may confer such powers and authorities for such time and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as they may think expedient, and they may confer such powers and authorities either collaterally or to the exclusion of, or in substitution for, all or any of the powers and authorities of the directors and may from time to time revoke or vary all or any of such powers and authorities.

Minutes and Minute Books

64. The directors shall, in terms of section 212 of the Act, cause minutes to be kept-

(a) of all appointments of officers;

(b) of names of directors present at every meeting of the company and of the directors; and

(c) of all proceedings at all meetings of the company and of the directors.

Such minutes shall be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.

Foreign Committees

65. The directors may from time to time appoint persons resident in a foreign country to be a foreign committee for the company in that country with such powers and duties as the directors may from time to time determine. The directors may from time to time establish branch registers of members and transfer offices in foreign countries, close them at any time and may appoint and remove agents for any purposes in any foreign country.

Disqualification of Directors

66. The office of director shall be vacated if the director-

(a) ceases to be a director or becomes prohibited from being a director by virtue of any provision of the Act; or

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(b) without the consent of the company in a general meeting holds any other office of profit under the company except that of managing director or manager; or

(c) resigns his or her office by notice in writing to the company and the Registrar; or

(d) for more than six months is absent without permission of the directors from meetings of directors held during that period; or

(e) is directly or indirectly interested in any contract or proposed contract with the company and fails to declare his or her interest and the nature thereof in the manner required by the Act.

Rotation of Directors

67. The company in a general meeting may from time to time determine the number of directors, their terms of office and the manner of their retirement. An annual general meeting or other general meeting of the company may fill any vacancy and a retiring director shall be eligible for re-election.

68. If at any meeting at which an election of directors ought to take place the offices of the retiring directors are not filled, unless it is expressly resolved not to fill such vacancies, the meeting shall stand adjourned and the provisions of articles 37 and 38 shall apply with the necessary changes to such adjournment, and if at such adjourned meeting the vacancies are not filled, the retiring directors or such of them as have not had their offices filled shall be deemed to have been re-elected at such adjourned meeting unless a resolution for the re-election of any such director shall have been put to the meeting and negatived.

69. The company may from time to time in a general meeting increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to retire from office.

70. Unless the shareholders otherwise determine in a general meeting any casual vacancy occurring on the board of directors may be filled by the directors, but the director so appointed shall be subject to retirement at the same time as if he or she had become a director on the day on which the director in whose stead he or she is appointed was last elected a director.

71. The directors shall have power at any time, and from time to time, to appoint a person as an additional director but so that the total number of directors shall not at any time exceed the number fixed according to these articles.

72. An additional director shall retire from office at the next following annual general meeting and shall then be eligible for re-election, but shall not be taken into account in determining which directors are to retire by rotation at such meeting.

Proceedings of Directors

73. The directors may meet together for the despatch 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 event of an equality of votes, the chairperson shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time convene a meeting of the directors.

74. Subject to sections 242 to 249, inclusive, of the Act, a director shall not vote in respect of any contract or proposed contract with the company in which he or she is interested, or any matter arising therefrom, and if he or she does so vote his or her vote shall not be counted: Provided that this article shall not apply where the company has only one director.

75. The quorum necessary for the transaction of the business of the directors, unless there is only one director, may be fixed by the directors, and unless so fixed

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shall, when the number of directors exceeds three, be three and when the number of directors does not exceed three, shall be two.

76. Subject to the provisions of the Act, a resolution in writing, signed by all the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

77. The continuing directors may act notwithstanding any vacancy on their body, but, if and so long as their number is reduced below the number fixed by or pursuant to these articles as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of convening a general meeting of the company, but for no other purpose.

78. The directors may elect a chairperson of their meetings and determine the period for which he or she is to hold office, but if no such chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for holding the same, the directors present may elect one of their number to be chairperson of the meeting.

79. 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 rules that may be imposed on it by the directors.

80. A committee may elect a chairperson of its meetings. If no such chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for holding the same, the members present may elect one of their number to be chairperson of the meeting.

81. A committee may meet and adjourn as it thinks fit. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the event of an equality of votes the chairperson shall have a second or casting vote.

82. All acts done by any meeting of the directors or 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 directors 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 were qualified to be a director.

Dividends and Reserves

83. The company in annual a general meeting may declare dividends but no dividend shall exceed the amount recommended by the directors.

84. 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.

85. No dividend shall be paid otherwise than out of profits or bear interest against the company.

86. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think fit 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 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.

87. Notice of any dividend that may have been declared shall be given in the manner hereinafter provided to the persons entitled to share therein.

88. Every dividend or other moneys payable in cash in respect of shares may be paid by cheque, warrant, coupon or otherwise as the directors may from time to

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time determine, and shall, if paid otherwise than by coupon, either be sent by post to the registered address of the member entitled thereto or be given to him or her personally, and the receipt or endorsement on the cheque or warrant of the person whose name appears in the register as the shareholder, or his or her duly authorised agent, or the surrender of any coupon shall be a good discharge to the company in respect thereof. Any one of two or more joint holders may give effectual receipts for any dividends or other moneys payable in respect of the shares held by them as joint holders.

89. The company shall not be responsible for the loss in transmission of any cheque, warrant, coupon, or other document sent through the post to the registered address of any member, whether or not it was so sent at his or her request.

Accounting Records

90. The directors shall cause such accounting records as are prescribed by section 292 of the Act to be kept. Proper accounting records shall not be deemed to be kept if there are not kept such accounting records as are necessary fairly to present the state of affairs and business of the company and to explain the transactions and financial position of the trade or business of the company.

91. The accounting records shall be kept at the registered office of the company or at such other place or places as the directors think fit, and shall always be open to inspection by the directors.

92. 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 accounting records of the company or any of them shall be open to inspection by members not being directors, and no member (not being a director) shall have any right of inspecting any accounting records or document of the company except as conferred by the Act or authorised by the directors or by the company in a general meeting.

Annual Financial Statements

93. The directors shall from time to time, in accordance with sections 294 and 296 of the Act, cause to be prepared and laid before the company in a general meeting such annual financial statements, group annual financial statements and group reports (if any) as are referred to in those sections.

94. A copy of any annual financial statements, group annual financial statements and group reports which are to be laid before the company in an annual general meeting, shall not less than 21 days before the date of the meeting be sent to every member of, and every holder of debentures of, the company, and if the company is a controlled company, also to the Registrar: 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 shares or debentures.

Audit

95. An auditor shall be appointed in accordance with Chapter 10 of the Act.

Notices

96. A notice may be given by the company to any member either by advertisement or personally, or by sending it by post in a prepaid letter addressed to such member at his or her registered address or (if he or she has no registered address in Namibia) at the address (if any) in Namibia supplied by him or her to the company for the giving of notices.

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97. Whenever a notice is to be given personally or sent by post, the notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register in respect of the share.

98. Whenever a notice is to be given personally or sent by post, the notice may be given by the company to the persons entitled to a share in consequence of the death or insolvency of a member, or 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 trustees of the insolvent or by any like description, at the address (if any) in Namibia supplied for the purpose by the persons claiming to be so entitled, or (until such address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred.

99. Notice of every general meeting shall be given in any manner authorised-

(a) to every member of the company except, in the case of notices to be given personally or sent by post, those members who (having no registered address in Namibia) have not supplied to the company an address in Namibia for the giving of notices to them;

(b) to every person entitled to a share in consequence of the death or insolvency of a member who, but for his or her death or insolvency, would have been entitled to receive notice of the meeting; and

(c) to the auditor for the time being of the company.

No other person shall be entitled to receive notice of general meetings.

100. Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

101. A notice given to any member shall be binding on all persons claiming on his or her death or on any transmission of his or her interests.

102. The signature to any notice given by the company may be written or printed, or partly written and partly printed.

103. When a given number of days' notice or notice extending over any other period is required to be given, the day of service shall not be counted in such number of days or period.

104. If the company has a seal, it shall not be affixed to any instrument except by the authority of a resolution of the directors, and shall be affixed in the manner and subject to such safeguards as the directors may from time to time determine.

Winding-up

105. If the company is to be wound up, the assets remaining after payment of the debts and liabilities of the company and the costs of the liquidation shall be applied as follows:

(a) to repay to the members the amounts paid up on the shares respectively held by each of them; and

(b) the balance (if any) shall be distributed among the members in proportion to the number of shares respectively held by each of them:

Provided that the provisions of this article shall be subject to the rights of the holders of shares (if any) issued upon special conditions.

106. In a winding-up, any part of the assets of the company, including any shares or securities of other companies may, with the sanction of a special resolution of the company, be paid to the members of the company *in specie*, or may, with the same sanction, be vested in trustees for the benefit of such members, and the liquidation of the company may be closed and the company dissolved.

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Schedule 2
COMMON POWERS OF COMPANIES

Included in the powers of every company as laid down by section 39 of the Act, and subject to the provisions of the Act, the memorandum and articles of the company, are the following common powers:

(a) To purchase or acquire in any way stock-in-trade, plant, machinery, land, buildings, agencies, shares, debentures and every other kind or description of movable and immovable property;

(b) to manage, insure, sell, lease, mortgage, dispose of, give in exchange, work, develop, build on, improve, turn to account or in any way otherwise deal with its undertaking or all or any part of its property and assets;

(c) to apply for, purchase or by any other means acquire, protect, prolong and renew any patents, patent rights, licences, trade marks, concessions or other rights and to deal with and alienate them as provided in paragraph *(b)* of this Schedule;

(d) to borrow money;

(e) to secure the payment of moneys borrowed in any manner including the mortgaging and pledging of property and, without derogating from the generality thereof, in particular by the issue of any kind of debenture or debenture stock, with or without security;

(f) to lend money to any person or company;

(g) to invest money in any manner;

(h) to open and operate banking accounts and to overdraw such accounts;

(i) to make, draw, issue, execute, accept, endorse and discount promissory notes, bills of exchange and any other kind of negotiable or transferable instruments;

(j) to enter into indemnities, guarantees and suretyships and to secure payment thereunder in any way;

(k) to form and have an interest in any company or companies for the purpose of acquiring the undertaking of all or any of the assets or liabilities of the company or for any other purpose which may seem, directly or indirectly, calculated to benefit the company, and to transfer to any such company or companies the undertaking of all or any of the assets or liabilities of the company;

(l) to amalgamate with other companies;

(m) to take part in the management, supervision and control of the business or operations of any other company or business and to enter into partnerships;

(n) to remunerate any person or persons, either in cash or by the allotment of shares (credited as fully paid-up), for services rendered in its formation or in the development of its business;

(o) to make donations;

(p) to undertake and execute any trust;

(q) to act as principals, agents, contractors or trustees;

(r) to pay gratuities and pensions and establish pension schemes, profit-sharing plans and other incentive schemes in respect of its directors, officers and employees;

(s) to distribute *in specie* or in kind any of its assets among its members;

(t) to enter into contracts outside Namibia and to execute any contracts, deeds and documents in any foreign country; and

(u) to have a seal and to use such seal for any purpose in Namibia or in any foreign country.

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Schedule 3
MATTERS WHICH MUST BE STATED IN A PROSPECTUS IN ADDITION TO THOSE SPECIFIED IN THE ACT

Interpretation

For the purposes of this Schedule, unless the context otherwise indicates-

(a) in respect of any property hired or proposed to be hired by the company, this Schedule shall have effect as if the expression "vendor" included the lessor and the expression "purchase money" included the consideration for the lease;

(b) "mining company" means, without limiting the generality thereof, any company which carries on or proposes to carry on mining, development or prospecting for or exploitation of any mineral resources, or which acquires or proposes to acquire any mineral rights thereto or options thereon;

(c) "property" includes movable and immovable property and, without limiting the generality thereof, shares in any other body corporate but does not include any property if its purchase price is not material;

(d) "the Act" means the Companies Act, 2004;

(e) "vendor" includes any person who, directly or indirectly, sells or otherwise disposes of any property to the company.

PART I (paras 1-24)

Name, Address and Incorporation

1. (1) The name and address of the registered office and of the transfer office, the date of incorporation of the company and, if an external company, the country in which it is incorporated and the date of registration in Namibia.

(2) If the company is a subsidiary, the name and address of the registered office of its holding company, or of any body corporate which, had it been registered under the Act, would have been its holding company.

Directors and Management

2. (1) The names, occupations and addresses of the directors and proposed directors of the company (specifying the chairperson and managing director, if any), and their nationalities, if not Namibian.

(2) The term of office for which any director has been or is to be appointed, the manner in and terms on which any proposed director will be appointed and particulars of any right held by any person relating to the appointment of any director.

(3) Particulars of any remuneration or proposed remuneration of the directors or proposed directors in their capacity as directors, managing directors or in any other capacity, whether determined by the articles or not, by the company and any subsidiary.

(4) If the business of the company or its subsidiary or any part thereof is managed or is proposed to be managed by a third party under a contract, the name and address (or the address of its registered office, if a company) of such third party and a description of the business so managed or to be managed.

(5) The borrowing powers of the company and its subsidiary exercisable by the directors and the manner in which such borrowing powers may be varied.

Auditor

3. The name and address of the auditor of the company.

Legal Practitioner, Banker, Stockbroker, Trustee and Underwriter

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4. The names and addresses of the legal practitioner, banker, stockbroker, trustee, if any, and underwriter, if any.

Secretary

5. The name, address and professional qualifications, if any, of the secretary of the company.

History, State of Affairs and Prospects of Company

6. (1) The general history of the company and its subsidiary stating, among others-

(a) the length of time during which the business of the company and of any subsidiary has been carried on;

(b) brief particulars of any alteration of capital during the past three years;

(c) a summary of any offers of shares of the company to the public for subscription or sale during the preceding three years, the prices at which such shares were offered, the number of shares allotted in pursuance thereof and whether issued to all shareholders in proportion to their shareholdings and, if not, to whom issued, the reasons why the shares were not so issued and the basis of allotment; and

(d) the date of conversion into a public company.

(2) A general description of the business carried on or to be carried on by the company and its subsidiary and, where the company or its subsidiary carries on or proposes to carry on, two or more businesses which are material having regard to the profits or losses, assets employed or to be employed or any other factor or information as to the relative importance of each such business.

(3) The situation, area and tenure (including in the case of leasehold property the rental and unexpired term of the lease) of the principal immovable property held or occupied by the company and its subsidiary.

(4) Details of any change in the business of the company, if material, during the past five years.

(5) A general description giving a fair presentation of the state of affairs of the company and its subsidiary, including-

(a) the name, date and place of incorporation and the issued or stated capital of its subsidiary, together with details of the shares held by the holding company, and the main business of its subsidiary and the date on which it became a subsidiary; and

(b) if material, a statement as to the estimated commitments of the company and its subsidiary for the purchase and erection of buildings, plant and machinery, the estimated date of completion and the commencement of the operational use thereof.

(6) For the company and each subsidiary, in respect of each of the preceding five years, particulars of-

(a) the profits or losses before and after tax;

(b) the dividends paid;

(c) the dividends paid in cents per share; and

(d) the dividend cover for each year,

or where the company is a holding company, the same information, with the necessary changes, for the company in consolidated form.

(7) If any part of the proceeds of the issue of shares is to be applied, directly or indirectly, to the acquisition by the company or its subsidiary of the shares of any other company or body corporate, in consequence of which that company or that body corporate will become a subsidiary of the company, in respect of each of the preceding five years, the same particulars relating to such company or body

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corporate as are, with the necessary changes, required by subparagraph (6) and a general history of such company or body corporate, as required by subparagraphs (1) and (2).

(8) If any part of the proceeds of the issue of shares is to be applied, directly or indirectly, to the acquisition by the company or its subsidiary of a business undertaking, in respect of each of the preceding five years, particulars relating to such business undertaking of-

(a) the profits before and after tax;

(b) its general history.

(9) The opinion of the directors, stating the grounds therefor, as to the prospects of the business of the company and of its subsidiary and of any subsidiary or business undertaking to be acquired.

Purpose of the Offer

7. A statement of the purpose of the offer giving reasons why it is considered necessary for the company to raise the capital offered, and if the capital offered is more than the amount of the minimum subscription referred to in paragraph 21, the reasons for the difference between the capital offered and the said minimum subscription.

Share Capital of the Company

8. Particulars of the share capital-

(a) if consisting of shares of par value, the authorised and issued share capital, share premium and share capital held in reserve, the number and classes of shares and their nominal value;

(b) if consisting of shares of no par value, the stated capital, the number of shares issued and held in reserve and the classes of shares;

(c) a description of the respective preferential conversion and exchange rights, rights to dividends, profits or capital of each class, including redemption rights and rights on liquidation or distribution of capital assets;

(d) the number of founders' and management or deferred shares, if any, and the special rights attaching thereto.

Loans

9. (1) Details of material loans, including debentures, to the company and to its subsidiary at the date of the prospectus, stating-

(a) whether such loans are secured or unsecured;

(b) the names of the lenders if not debenture-holders;

(c) the amount, terms and conditions of repayment;

(d) the rates of interest on each loan; and

(e) details of the security, if any.

(2) Details of material loans by the company or by its subsidiary, other than in the ordinary course of business, at the date of the prospectus, stating-

(a) the date of the loan;

(b) the person to whom made;

(c) the rate of interest;

(d) if the interest is in arrear, the last date on which it was paid and the extent of the arrears;

(e) the period of the loan;

(f) the security held;

(g) the value of such security and the method of valuation;

(h) if the loan is unsecured, the reasons therefor; and

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(i) if the loan was made to another company, the names and addresses of the directors of such company.

Options or Preferential Rights in Respect of Shares

10. (1) The substance of any contract or arrangement or proposed contract or arrangement, whereby any option or preferential right of any kind was or is proposed to be given to any person to subscribe for any shares of the company or its subsidiary, giving the number and description of any such shares, including, in regard to the option or right, particulars of-

(a) the period during which it is exercisable;
(b) the price to be paid for shares subscribed for under it;
(c) the consideration given or to be given for it;
(d) the names and addresses of the persons to whom it was given, other than to existing shareholders as such or to employees under a *bona fide* staff option scheme;
(e) if given to existing shareholders as such, material particulars thereof; and
(f) any other material fact or circumstance concerning the granting of such option or right.

(2) Subscribing for shares shall, for the purpose of this paragraph, include acquiring them from a person to whom they were allotted or were agreed to be allotted with a view to him or her offering them for sale.

Shares Issued or to be Issued otherwise than for Cash

11. The number of shares which within the preceding two years were issued, or were agreed to be issued, by the company or its subsidiary, to any person, otherwise than for cash, and the consideration for which those shares were issued or were agreed to be issued, and the value of the property, if any, acquired or to be acquired.

Property Acquired or to be Acquired

12. (1) Particulars of any immovable property or other property of the nature of fixed assets purchased or acquired by the company or its subsidiary or proposed to be purchased or acquired, the purchase price of which is to be defrayed in whole or in part out of the proceeds of the issue, or is to be or was within the preceding two years paid in whole or in part in securities of the company or its subsidiary, or out of the funds of the company or its subsidiary, whether in cash or shares, or the purchase or acquisition of which has not been completed at the date of the prospectus, and the nature of the title or interest therein acquired or to be acquired by the company or its subsidiary.

(2) Details of the consideration given, or to be given, for the acquisition of any such property, specifying the value payable for goodwill, if any.

(3) The names and addresses of the vendors and the consideration received or to be received by each.

(4) Brief particulars of any transaction relating to the property completed within the preceding two years in which any vendor of the property to the company or its subsidiary 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, subject thereto that where the vendors or any of them are a partnership, the members of the partnership shall not be treated as separate vendors.

(5) Particulars of the price at which any such property which is immovable property or an option over immovable property was purchased or sold within three years prior to the date of the prospectus where any promoter or director had any interest, directly or indirectly, in such transaction or where any promoter or director

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was a member of a partnership, syndicate or other association of persons which had such an interest, with the dates of any such purchases and sales and the names of any such promoter or director, and the nature and extent of his or her interest.

(6) For the purposes of subparagraph (5), shares of a company, the major asset of which is immovable property, shall be deemed to be immovable property.

Amounts Paid or Payable to Promoters

13. The amount paid within the preceding two years or proposed to be paid to any promoter, with his or her name and address, or to any partnership, syndicate or other association of which he or she is or was a member, and the consideration for such payment, and any other benefit given to such promoter, partnership, syndicate or other association within the said period or proposed to be given, and the consideration for the giving of such benefit.

Commissions Paid or Payable in Respect of Underwriting

14. The amount, if any, or the nature and extent of any consideration, paid within the preceding two years, or payable as commission to any person (including commission so paid or payable to any subunderwriter who is a promoter or director or officer of the company) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions for any shares of the company, the name, occupation and address of each such person, particulars of the amounts underwritten or subunderwritten by each and the rate of the commission payable for such underwriting or subunderwriting contract with such person, and if such person is a company, the names of the directors of such company and the nature and extent of any interest, direct or indirect, in such company of any promoter, director or officer of the company in respect of which the prospectus is issued.

Preliminary Expenses and Issue Expenses

15. The amount or estimated amount of preliminary expenses, if incurred within two years of the date of the prospectus, and the persons by whom any of those expenses were 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 were paid or are payable.

Material Contracts

16. (1) The dates and the nature of, and the parties to, every material contract entered into by the company or its subsidiary, not being a contract entered into in the ordinary course of the business carried on or proposed to be carried on by the company or its subsidiary or a contract entered into more than two years before the date of the prospectus, and a reasonable time and place at which any such contract or a copy thereof may be inspected.

(2) A brief summary of existing contracts or proposed contracts, either written or oral, relating to the directors' and managerial remuneration, royalties, and secretarial and technical fees payable by the company and its subsidiary.

Interest of Directors and Promoters

17. (1) Full particulars of the nature and extent of any material interest, direct or indirect, of every director or promoter in the promotion of the company and in any property proposed to be acquired by the company out of the proceeds of the issue, and where the interest of such director or promoter consists in being a member of a partnership, company, syndicate or other association of persons, the nature and extent of the interest of such partnership, company, syndicate or other association, and the nature and extent of such director's or promoter's interest in the partnership, company, syndicate or other association.

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(2) Full particulars of the nature and extent of any material interest, direct or indirect, of every director or promoter in the property acquired or proposed to be acquired by the company or its subsidiary during the three years preceding the date of the prospectus.

(3) A statement of all sums paid or agreed to be paid within the three years preceding the date of the prospectus to any director or to any company in which he or she is beneficially interested or of which he or she is a director, or to any partnership, syndicate or other association of which he or she is a member, in cash or shares or otherwise, by any person either to induce him or her to become or to qualify him or her as a director, or otherwise for services rendered by him or her or by the company, partnership, syndicate or other association in connection with the promotion or formation of the company.

Particulars of the Offer

18. (1) Particulars of the shares offered, including-

(a) the class of shares;
(b) the nominal value of the shares, if applicable;
(c) the number of shares offered;
(d) the issue price; and
(e) other conditions of the offer.

(2) Particulars of the debentures offered, including-

(a) the class of debentures;
(b) the conditions of the debentures;
(c) if the debentures are secured, particulars of the security, specifying the property comprising the security and the nature of the title to the property; and
(d) other conditions of the offer.

Time and Date of the Opening and of the Closing of the Offer

19. The time and date of the opening and of the closing of the subscription lists or of the offer.

Issue Price

20. (1) The amount payable by way of premium, if any, on each share which is to be issued or was issued in the five years preceding the date of the prospectus, stating the dates of issue, the reasons for any such premium, and, where some shares were or are to be issued at a premium and other shares at par or at a lower premium, also the reasons for the differentiation, and how any such premium was or is to be dealt with.

(2) Where no par value shares are to be issued or were issued within five years preceding the date of the prospectus, the dates of issue, the price at which they are to be or were issued, and the reasons for any differentiation.

Minimum Subscription

21. (1) The minimum amount which, in the opinion of the directors, must be raised by the issue of the 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:

(a) 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;
(b) any preliminary expenses payable by the company, and any commission payable to any person in consideration of his or her agreeing to subscribe for, or of his or her procuring or agreeing to procure subscriptions for, any shares of the company;

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(c) the repayment of any moneys borrowed by the company and its subsidiary in respect of any of the foregoing matters;

(d) working capital, stating the specific purposes for which it is to be used and the estimated amount required for each such purpose; and

(e) any other expenditure, stating the nature and purposes thereof and the estimated amount in each case.

(2) The amounts to be provided in respect of the matters mentioned in subparagraph (1) otherwise than out of the proceeds of the issue, and the sources from which those amounts are to be provided.

Statement as to Adequacy of Capital

22. A statement that in the opinion of the directors the issued capital of the company (including the amount to be raised in pursuance of this offer) is adequate for the purposes of the business of the company and of its subsidiary, and if they are of the opinion that it is inadequate, the extent of the inadequacy and the manner in which and the sources from which the company and its subsidiary are or are to be financed.

Statement as to Listing on Stock Exchange

23. A statement as to whether or not an application has been made under section 171 of the Act for a listing of the shares offered and the name of the stock exchange.

Requirements for Prospectus of Mining Company

24. (1) A report by an expert containing information appropriate to the subject matter of the prospectus and including, if applicable-

(a) a statement describing briefly the geological characteristics of the occurrence;

(b) details of previous operations and production relevant to the workability and payability of the proposed mining operations;

(c) survey, drilling and borehole results;

(d) ore reserves;

(e) an interpretation of the information available with reference to the viability of the project.

(2) Material information not otherwise required by this Schedule relating to the mineral rights, or any other right to mine, mining title, including any Government mining lease, and immovable property available for the mine, including, if applicable-

(a) whether the aforesaid is owned by the company, or in process of transfer or is under option or lease;

(b) the name of the farm on and district in which each is situated;

(c) the area of each;

(d) the aggregate price or other consideration for which they were or are to be acquired;

(e) relevant details of any option as aforesaid.

(3) A statement by the directors of the plans for reaching the production stage or for increasing output, including information regarding-

(a) shaft sinking and development;

(b) capital expenditure for each material stage of development.

PART II
REPORTS TO BE SET OUT (paras 25-31)

Report by Auditor of Company

25. (1) A report by the auditor of the company with respect to-

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(a) profits or losses and assets and liabilities, in accordance with subparagraph (2) or (3) of this paragraph, as the case requires; and

(b) the rates of the dividends, if any, paid by the company in respect of each class of shares of 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 were paid and particulars of the cases in which no dividends were paid in respect of any class of shares in respect of any of those years, and, if no annual financial statements were made out in respect of any part of the period of five years ending on a date three months before the issue of the prospectus, a statement of that fact.

(2) If the company has no subsidiary, the report shall-

(a) in regard to profits or 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) in regard to assets and liabilities, deal with the assets and liabilities of the company at the last date to which the annual financial statements of the company were made out.

(3) If the company has a subsidiary, the report shall-

(a) in regard to profits or losses, deal separately with the company's profits or losses as provided by subparagraph (2), and in addition, deal-

(i) as a whole with the combined profits or losses of all subsidiaries, as far as they concern members of the company; or

(ii) individually with the profits or losses of each subsidiary, so far as they concern members of the company; or

(iii) as a whole with the consolidated profits or losses of the company and (so far as concerns members of the company) of all subsidiaries; and

(b) in regard to assets and liabilities, deal separately with the company's assets and liabilities as provided by subparagraph (2) and, in addition, deal-

(i) as a whole with the combined assets and liabilities of all subsidiaries, indicating the interests therein of members other than the company; or

(ii) individually with the assets and liabilities of each subsidiary, indicating the interests therein of members other than the company; or

(iii) as a whole with the consolidated assets and liabilities of the company and all subsidiaries, indicating the interests therein of members other than the company;

(c) if a subsidiary incurred losses, state the amounts of such losses and the manner in which provision was made therefor.

(4) The auditor shall satisfy himself or herself, as far as reasonably practicable, that, save as stated in his or her report-

(a) the debtors and creditors do not include any accounts other than trade accounts;

(b) the provisions for doubtful debts are adequate;

(c) adequate provision has been made for obsolete, damaged or defective goods, and for supplies purchased at prices in excess of current market prices;

(d) inter-company profits in the group have been eliminated;

(e) there have been no material changes in the assets and liabilities of the company and of any subsidiary since the date of the last annual financial statements.

Report by Auditor where Business Undertaking to be Acquired

26. If the proceeds, or any part of the proceeds, of the issue of the shares or any other funds are to be applied directly or indirectly in the purchase of any

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business undertaking, a report made by an auditor (who shall be named in the prospectus) upon-

(a) the profits or losses of the business undertaking in respect of each of the five financial years preceding the date of the prospectus; and

(b) the assets and liabilities of the business undertaking at the last date to which the financial statements of the business undertaking were made out.

Report by Auditor where Body Corporate will become a Subsidiary

27. (1) If the proceeds or any part of the proceeds of the issue of the shares are to be applied, directly or indirectly, in any manner resulting in the acquisition by the company or its subsidiary of shares of any other body corporate by reason of which or of 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 an auditor (who shall be named in the prospectus) upon-

(a) the profits or losses of the other body corporate in respect of each of the five financial years preceding the date of the prospectus; and

(b) the assets and liabilities of the other body corporate at the last date to which the annual financial statements of the body corporate were made out.

(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 respect of 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

(b) where the other body corporate has a subsidiary, or, had it been a company in terms of the Act, would have had a subsidiary, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiary and such other body corporate as would have been its subsidiary if it had been a company in terms of the Act, in the manner provided by paragraph 25(3) in relation to the company and its subsidiary.

Auditor not Qualified to make Reports

28. Any report by an auditor required by this Schedule shall not be made by any auditor who is a director, officer or employee or a partner of or in the employment of a director, officer or employee of the company or of the company's subsidiary or holding company or of any other subsidiary of the holding company.

Qualification in Respect of References to Period of Five years

29. If in the case of a company which has been carrying on business, or of a business undertaking which has been carried on, for less than five years, the annual financial statements of the company or business undertaking have only been made out in respect of four years, three years, two years, or one year, this Part 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.

Adjustment of Figures in Reports

30. Any report required by this Part of this Schedule shall either indicate by way of note any adjustments as regards 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 these adjustments and indicate that adjustments have been made.

Report by Directors as to Material Changes

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31. A report by the directors of the company setting out any material change in the assets or liabilities of the company or any subsidiary which may have taken place between the last date to which the annual financial statements of the company or any subsidiary, as the case may be, were made out, and the date of the prospectus.

PART III
MATTERS WHICH MUST BE STATED IN A PROSPECTUS UNDER SECTION 156(2) OF THE ACT (paras 32-48)

Name, Address and Incorporation

32. The name and address of the registered office and of the transfer office, and, if an external company, or a body corporate incorporated outside Namibia, the country in which it is incorporated.

Description of Business

33. If there has been a material change in the nature of the activities of the company since the issue of its last financial statements, then a general description of the business carried on by the company and any subsidiary.

Directors

34. The names of the directors of the company.

Secretary

35. The name, address and professional qualifications, if any, of the secretary of the company.

Purpose of the Offer

36. (1) A statement of the purpose of the offer, giving reasons why it is considered necessary for the company to raise the capital offered.

(2) If it is the intention to acquire a business undertaking or property, a brief history of such business undertaking or property must be given, including-

(a) particulars of any such business undertaking or property purchased or acquired or proposed to be purchased or acquired by the company or its subsidiary, the purchase price of which is to be defrayed in whole or in part out of the proceeds of the issue;

(b) the amount, if any, paid or payable as purchase money in cash or shares, for any such business undertaking or property as aforesaid, specifying the amount, if any, payable for goodwill;

(c) the name and address of any vendor;

(d) the amount payable in cash or shares to any vendor and, where there is more than one vendor or the company is a sub-purchaser, the amount so payable to each vendor.

Share Capital of the Company

37. Particulars of the share capital-

(a) if consisting of shares of par value, the authorised and issued share capital, share premium and share capital held in reserve, the number and classes of shares and their nominal value;

(b) if consisting of shares of no par value, the stated capital, the number of shares issued and held in reserve and classes of shares;

(c) a description of the respective preferential, conversion and exchange rights, rights to dividends, profits or capital of each class, including redemption rights and rights on liquidation or distribution of capital assets;

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(d) the number of founders' and management or deferred shares, if any, and any special rights attaching thereto.

Previous Issues of Debentures

38. Where debentures are offered-

(a) the aggregate amount raised before the date of the offer by the issue of debentures which have not been redeemed;

(b) particulars of debentures issued during the preceding period of two years, specifying the classes of debentures, whether secured or unsecured and, if secured, the property comprising the security;

(c) any material outstanding loans.

Options or Preferential Rights in Respect of Shares

39. The substance of any contract or arrangement or proposed contract or arrangement, whereby any option or preferential right of any kind was or is proposed to be given to any person to subscribe for any shares of the company or its subsidiary, giving the number and description of any such shares, including, in regard to the option or right, particulars of-

(a) the period during which it is exercisable;

(b) the price to be paid for shares subscribed for under it;

(c) the consideration given or to be given for it;

(d) the names and addresses of the persons to whom it was given, other than existing shareholders as such or to employees under a *bona fide* staff option scheme;

(e) if given to existing shareholders as such, material particulars thereof; and

(f) any other material fact or circumstance concerning the granting of such option or right.

Material Contracts

40. The dates and nature of, and the parties to, every material contract entered into by the company or its subsidiary, 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 its subsidiary or a contract entered into more than two years before the date of the prospectus, and a reasonable time and place at which any such contract or a copy thereof may be inspected.

Interest of Directors

41. (1) Full particulars of the nature and extent of any material interest, direct or indirect, of every director in any property proposed to be acquired by the company or its subsidiary out of the proceeds of the issue, and, where the interest of such director consists in being a member of a partnership, company, syndicate or other association of persons, the nature and extent of the interest of such partnership, company, syndicate or other association, and the nature and extent of such director's interest in the partnership, company, syndicate or other association.

(2) Full particulars of the nature and extent of any material interest, direct or indirect, of every director in the property acquired or proposed to be acquired by the company or its subsidiary during the three years preceding the date of the prospectus.

(3) A statement of all sums paid or agreed to be paid within the three years preceding the date of the prospectus to any director or to any company in which he or she is beneficially interested or of which he or she is a director, or to any partnership, syndicate or other association of which he or she is a member, in cash or shares or otherwise, by any person either to induce him or her to become or to qualify him or her as a director, or otherwise for services rendered by him or her or

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by the company, partnership, syndicate or other association in connection with the promotion or formation of the company.

Commissions Paid or Payable in Respect of Underwriting

42. In respect of the issue, the amount, or the nature and extent of any consideration, paid or payable as commission to any person (including a subunderwriter who is a director or officer of the company) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions for any shares of the company which are being issued in terms of the prospectus, the name, occupation and address of each such person, particulars of the amounts which each has underwritten and the rate of the commission payable for such underwriting to such person, and if such a person is a company, the names of the directors of such company and the nature and extent of any interest, direct or indirect, in such company of any director or other officer of the company in respect of which the prospectus is issued.

Particulars of the Offer

43. (1) Particulars of the shares offered, including-

(a) the class of shares;
(b) the nominal value of the shares, if applicable;
(c) the number of shares offered;
(d) the issue price; and
(e) other conditions of the offer.

(2) Particulars of debentures offered, including-

(a) the class of debentures;
(b) the conditions of the debentures;
(c) if the debentures are secured, particulars of the security, specifying the property comprising the security and the nature of the title of the property; and
(d) other conditions of the offer.

Time and Date of the Opening and of the Closing of the Offer

44. The time and date of the opening and of the closing of the subscription lists of the offer.

Statement where an Offer is not Underwritten

45. In the event of the offer not being underwritten, a statement by the directors of the manner in which, and the sources from which, any shortfall in the amount proposed to be raised by means of the offer is to be financed.

Report by Directors as to Material Changes

46. A report by the directors of the company setting out any material change in the state of the affairs of the company or its subsidiary which may have taken place between the last date to which the interim reports or the annual financial statements were made out and the date of the prospectus.

Report by Auditor where Business Undertaking is to be Acquired

47. If the proceeds, or any part of the proceeds, of the issue of the shares are to be applied, directly or indirectly, in the purchase of any business undertaking, a report made by an auditor (who shall be named in the prospectus) upon-

(a) the profits or losses of the business undertaking in respect of each of the five financial years preceding the date of the prospectus; and
(b) the assets and liabilities of the business undertaking at the last date to which the financial statements of the business undertaking were made out.

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Report by Auditor where Body Corporate will Become a Subsidiary

48. (1) If the proceeds or any part of the proceeds of the issue of the shares are to be applied, directly or indirectly, in any manner resulting in the acquisition by the company or its subsidiary of shares of any other body corporate by reason of which or of 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 an auditor (who shall be named in the prospectus) upon-

(a) the profits or losses of the other body corporate in respect of each of the five financial years preceding the date of the prospectus; and

(b) the assets and liabilities of the other body corporate at the last date to which the annual financial statements of the body corporate were made out.

(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 respect of 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

(b) where the other body corporate has a subsidiary or, had it been a company in terms of the Act, would have had a subsidiary, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiary and such other body corporate as would have been its subsidiary if it had been a company in terms of the Act, in the manner provided by paragraph 25(3) in relation to the company and its subsidiary.

PART IV
DIRECTIONS AS TO THE FORM OF A PROSPECTUS (paras 49-51)

49. The information required to be stated in a prospectus shall be set out in print or type and shall not be less conspicuous than that in which any additional matter is printed or typed and shall be set out in separate paragraphs under the headings included in this Schedule.

50. (1) A prospectus shall deal with each of the applicable paragraphs of this Schedule under its prescribed heading but not necessarily in the same order, and shall in each case by means of a number in brackets, or otherwise, refer to the number of the paragraph of this Schedule.

(2) In the last paragraph of the prospectus under the heading "Paragraphs of Schedule 3 which are not applicable" the numbers of the paragraphs of this Schedule which are not applicable shall be stated.

51. As far as possible the general matter of a prospectus shall be presented in narrative form and statistical matter in tabular form.

Schedule 4
REQUIREMENTS FOR ANNUAL FINANCIAL STATEMENTS, INTERIM REPORTS AND PROVISIONAL ANNUAL FINANCIAL STATEMENTS

Preliminary

1. This Schedule sets out the disclosure requirements in terms of sections 294(3), 297, 310 and 311(1) of the Companies Act. The disclosure is required where material.

2. This Schedule has effect in addition to the requirements of the Act in respect of annual financial statements, provisional annual financial statements and interim reports.

3. A company may, in addition to matters expressly permitted by this Schedule give any information required by this Schedule to be stated in a balance

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sheet or income statement, in the form of a note or annexure thereto if such presentation would be more effective or convenient.

Interpretation

4. For the purposes of this Schedule, unless the context otherwise indicates-

(a) "accounting date" means, in the case of annual financial statements, the date on which the financial year of a company terminates and in the case of interim reports, the date on which the accounting period concerned terminates;

(b) "accounting period" means, in the case of annual financial statements, the financial year of the company and in the case of interim reports, the period concerned for which a report is required by the Act;

(c) an "associated company" is an investee that is neither a subsidiary nor a joint venture of the investor, is held as a long term investment and provides the investor with the ability to exercise significant influence;

(d) "contingent right to the allotment of shares" means any option to subscribe for shares and any other rights to the allotment of shares to any person whether arising on the conversion into shares of securities of any other description or otherwise;

(e) "convertible instruments" are instruments which may be voluntarily exchanged for shares during a designated conversion period at a specified exchange ratio;

(f) "current taxation" is the amount of income tax payable in respect of taxable income for the period;

(g) "deferred taxation" is the tax attributable to timing differences;

(h) "defined benefit plans" are retirement benefit plans under which amounts to be paid as retirement benefits are determinable, usually by reference to employee's pensionable remuneration or years of service or both;

(i) "defined contribution plans" are retirement benefit plans under which amounts to be paid as retirement benefits are determined by contributions to a fund together with investment earnings thereon;

(j) "distributable reserve" means any amount which has been transferred to reserves and which may be distributed by way of dividend, and "non-distributable reserve" shall be construed accordingly;

(k) "earnings per share" means the earnings attributable to each equity share, based on the consolidated net income for the period, after tax, and after deducting outside shareholders' interest and preference dividends, but before extraordinary items, divided by the weighted average number of that class of share in issue;

(l) "effective tax rate" is the taxation charge in the income statement expressed as a percentage of reported income before extraordinary items;

(m) "extraordinary items" means any material item of income and expense resulting from occurrences, the underlying nature of which is not typical of the ordinary trading or operating activities of the company;

(n) "fellow subsidiary" means, in relation to another company, a company which is a subsidiary of the same holding company of which that other company is a subsidiary;

(o) "financing activities" are those activities which result in changes in the size and composition of the capital funding, comprising debt and equity, of the reporting entity;

(p) "group annual financial statements" means the annual financial statements in respect of groups of companies as prescribed by section 297 of the Act;

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(q) "group of companies or group" means a holding company, not itself being a wholly owned subsidiary, together with all the companies being its subsidiaries;

(r) "intangible assets" are non-monetary assets without physical substance and include but are not restricted to goodwill, patents, trademarks, brand names, copyrights, franchises, licences, know-how and publication titles;

(s) "investing activities" are those activities relating to the acquisition and disposal of fixed assets and investments, including advances not falling within the definition of cash;

(t) "listed investment" means an investment in regard to which permission has been granted to deal therein on a recognised stock exchange or on any stock exchange of repute outside Namibia, and "unlisted investment" shall be construed accordingly;

(u) "market value" is the amount for which an asset could be bought or sold between a knowledgeable, willing buyer and a knowledgeable, willing seller in an arm's length transaction;

(v) "material" means anything that is significant in relation to the circumstances applicable to each company, and "materially" shall have a corresponding meaning;

(w) "provision" means any amount written off or retained by way of providing for depreciation or diminution in value of assets or retained by way of providing for any known liability, the amount of which cannot be determined with substantial accuracy;

(x) "retained equity income or deficit of an associated company" is the investor's effective interest in the retained income or loss (net of dividends received) of the investee for the accounting period, before extraordinary items and prior year adjustments;

(y) "sale and leaseback transaction" involves a company selling its assets to a lessor who, in turn, leases the same assets back to the company, which then becomes a lessee;

(z) "standard tax rates" are the rates of tax as determined from time to time by tax legislation, at which companies pay tax on taxable income;

(aa) "stock" means any tangible property which the company buys, or manufactures, or processes, or develops or sells in the ordinary course of its business;

(ab) "the Act" means the Companies Act, 2004;

(ac) "timing differences" are the differences between taxable income and reported income that arise because certain items of income and expense are included in taxable income in periods different from those in which they are included in reported income.

PART I (paras 5-51)

A GENERAL

Departure from accounting concepts

5. If it appears to the directors of a company that there are reasons for departing from any of the accounting concepts stated in Statements of Generally Accepted Accounting Practice accepted and applied by the Institute of Chartered Accountants of Namibia, where such appropriate Statements exist, in preparing the company's financial statements in respect of any accounting period they may do so, but particulars of the departure, the effects and the reasons for it shall be given.

Disclosure of accounting policies

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6. The accounting policies adopted by the company in determining the carrying amounts of the assets and liabilities and the resulting net income of the company, shall be stated.

B BALANCE SHEET

Corresponding amounts of preceding year

7. Except in the case of the first balance sheet, the corresponding amounts at the end of the immediately preceding financial year in respect of all items shown in the balance sheet, shall be stated.

SHARE CAPITAL AND SHARES

8. (1) There shall be stated-

(a) the authorised and issued share capital;

(b) the classes of shares, the respective number and nominal value into which the authorised share capital is divided and in the case of shares of no par value, the number of such shares;

(c) the number of the issued shares and the amount of the issued share capital in respect of each class of shares;

(d) the amount of the share premium account; and

(e) the preliminary expenses, commission and expenses of share issue charged against the share premium account during the accounting period.

(2) In respect of shares issued during the accounting period, there shall be stated-

(a) the classes of shares issued;

(b) as regards each class of shares, the number issued, their aggregate nominal or stated value and the consideration received by the company for such allotment;

(c) as regards no par value shares, the preliminary expenses, commission and expenses of the creation or issue of any such shares charged against the stated capital account during the accounting period; and

(d) details of shares issued during the year to a director or a member of his or her immediate family.

9. (1) In respect of any part of the issued share capital that consists of redeemable preference shares, there shall be stated-

(a) the earliest and latest dates on which the company has the power to redeem those shares;

(b) whether those shares must be redeemed in any event or are liable to be redeemed at the option of the company or of the preference shareholders;

(c) the premium, if any, payable on redemption; and

(d) the dividend rights of such redeemable preference shareholders.

(2) In respect of any part of the issued share capital that consists of preference shares convertible into ordinary shares, the following information shall be given:

(a) The conditions and rights of conversion; or

(b) a note specifying where these conditions and rights may be inspected.

10. With respect to any contingent right to the allotment of shares in the company, the following particulars shall be given:

(a) The number and description of the shares in relation to which the right is exercisable;

(b) the period during which it is exercisable; and

(c) the price to be paid for the shares allotted.

RESERVES

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11. There shall be stated-

(a) the amount of each of the reserves as at the date of the beginning of the accounting period and as at the accounting date;

(b) the source and the amount of any transfers to reserves; and

(c) the application and the amount of any transfers from reserves.

ACTUARIAL LIABILITIES AND PROVISIONS IN RESPECT OF LONG TERM INSURERS

12. In the case of a long term insurer, a report by the valuator appointed in terms of the Long-term Insurance Act, 1998 (Act 5 of 1998), shall be included in the financial statements which shall include, among others, information relating to liabilities under unmatured policies, in accordance with guidelines accepted and applied by the Institute of Chartered Accountants of Namibia.

LIABILITIES

General

13. The liabilities shall be summarised with such particulars as are necessary to disclose their general nature and shall be classified under headings and subheadings appropriate to the company's business.

Convertible instruments and debentures

14. There shall be stated-

(a) the amount and classes of convertible instruments and debentures issued and the nature of the consideration received when issued otherwise than for cash in the year of issue, the conditions of conversion and the dates on which convertible instruments or debentures may, or shall, be redeemed, or where the conditions of conversion are numerous, a note where these conditions may be inspected;

(b) if any of the company's convertible instruments and debentures are held by a nominee of, or trustee for, the company, the nominal amount of the convertible instruments and debentures and the amount at which they are stated in the books of the company;

(c) particulars of any redeemed convertible instruments and debentures which the company has the power to re-issue; and

(d) details of convertible instruments and debentures granted during the year to, or exercised by, a director or a member of his or her immediate family.

Borrowings and obligations

15. There shall be shown under separate headings-

(a) the amounts of current borrowings, bank overdrafts and obligations including those arising from the capitalisation of leased assets, where the date of settlement, repayment or renewal is not more than one year after the accounting date;

(b) the amounts of long term borrowings and obligations including those arising from the capitalisation of leased assets, where the date of settlement, repayment or renewal is more than one year after the accounting date and the rates of interest in respect thereof, the respective dates of repayment or of renewal and, if repayable in instalments, the amounts thereof; and

(c) the aggregate of all interest bearing borrowings and obligations analysed between current and long term.

Other liabilities

16. There shall be shown under separate headings-

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(a) the amount which has been declared or which has been recommended for distribution by way of dividend;
(b) the liability for income tax payable;
(c) the liability for deferred taxation analysed by major category of timing difference; and
(d) the aggregate amounts of provisions (other than provisions for depreciation or diminution in value of current assets).

Secured liabilities

17. Where any liability is secured by an encumbrance over any assets, that fact shall be stated, specifying the amount of the liability and the nature of the encumbrance and amount of the assets by which it is secured.

Indebtedness to companies in the group

18. There shall be shown under separate headings the aggregate amount of indebtedness to-
(a) the company's subsidiaries; and
(b) all bodies corporate of which it is a subsidiary or a fellow subsidiary.

ASSETS

General

19. The assets shall be summarised with such particulars as are necessary to disclose their general nature and shall be classified under headings and subheadings appropriate to the company's business.

20. Fixed assets, capitalised leased assets, current assets and assets that are neither fixed nor current shall be separately identified.

21. The method or methods used to arrive at the amount of the fixed assets and the assets that are neither fixed nor current under each heading, shall be stated.

Fixed assets

22. (1) The method of arriving at the amount of any fixed asset whether tangible or intangible or any asset which is neither fixed nor current shall be to take the difference between-
(a) its cost, or if it has been revalued, the amount of the valuation; and
(b) the aggregate amounts provided or written off since the date of acquisition or valuation, as the case may be, for depreciation or diminution of value.

(2) In respect of the assets under each heading whose amounts are arrived at in accordance with subparagraph (1) of this paragraph, there shall be shown-
(a) the aggregate of the amounts referred to in subparagraph (1)*(a)* of this paragraph; and
(b) the aggregate of the amounts referred to in subparagraph (1)*(b)* of this paragraph.

(3) As regards any land and buildings which are fixed assets there shall also be stated-
(a) a description of such land and buildings and the situation thereof;
(b) the date of their acquisition by the company;
(c) their purchase price; and
(d) the costs of additions or improvements since the date of acquisition or valuation,

subject thereto that where there are more than five different items of land and buildings, the information may be included in a schedule or register and shall in that event state in a note to the balance sheet that the said schedule or register shall be open for inspection in terms of section 120 of the Act, and subject further thereto

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that the requirements of subparagraph 3*(b)*, *(c)* and *(d)* shall not apply to land and buildings acquired or used solely for the purpose of carrying on mining operations, including housing for mine employees.

(4) As regards any fixed assets referred to in subparagraph (3), the amount of which is arrived at by reference to a valuation, subparagraphs *(b)* and *(c)* thereof shall not apply, but there shall be stated-

(a) the most recent year in which the assets were severally valued;

(b) in the case of assets valued in the current year, the names and qualifications of the persons who valued them;

(c) the basis of valuation; and

(d) the policy regarding the frequency of valuation,

subject thereto that where there are more than five different items of land and buildings, the information required by subparagraph 4*(a)*, *(b)* and *(c)* may be included in a schedule or register and shall in that event state in a note to the balance sheet that the said schedule or register shall be open for inspection in terms of section 120 of the Act.

Interests in subsidiaries

23. The aggregate amount of the interest in subsidiaries consisting of shares of, or amounts owing by, its subsidiaries, distinguishing shares from indebtedness, shall be set out in the balance sheet separately from the other assets or the company.

Indebtedness of holding company and fellow subsidiaries

24. The aggregate amount of the indebtedness to the company of all holding companies and fellow subsidiaries, shall be set out.

Loans to, and security for, directors, managers and employees

25. The aggregate amounts of any outstanding loans under section 44(2)*(b)* and *(c)* of the Act and the particulars required by sections 302 and 303 of the Act shall be shown under separate headings.

Investments

26. (1) The company's investments shall be analysed between listed and unlisted investments.

(2) In respect of investments there shall be shown-

(a) in respect of listed investments, the aggregate market value where it differs from the amount of the investments as stated; and

(b) in respect of unlisted investments, the aggregate of the directors' valuation of such investments.

27. There shall be shown the names of all companies (excluding subsidiary companies) in which the company has investments and in each case the number of shares and classes of shares so held in a listed investment or the percentage of the issued share capital and voting power held, if different, in a listed or unlisted investment, subject thereto that where there are more than five different listed or unlisted investments, the information may be included in a schedule or register and shall in that event state in a note to the balance sheet that the said schedule or register shall be open for inspection in terms of section 120 of the Act.

28. Where the carrying amount of unlisted investments is arrived at by reference to a valuation there shall be stated-

(a) the policy regarding the frequency of revaluations;

(b) the basis of valuation; and

(c) the date of the latest revaluation.

Stock

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29. (1) There shall be stated the amounts in respect of the following categories of stock:

(a) Raw materials (including component parts);
(b) finished goods;
(c) merchandise which may itself be shown under appropriate subheadings;
(d) consumable stores (including maintenance spares);
(e) work in progress (including standing crops); and
(f) contracts in progress.

(2) There shall be stated for contracts in progress, whether profits or losses have been taken into account and, if so, on what basis.

PRELIMINARY EXPENSES, COMMISSIONS AND DISCOUNTS

30. There shall be stated under separate subheadings so far as they are not written off-

(a) the preliminary expenses;
(b) any expenses incurred in connection with any issue of shares or debentures;
(c) any sums paid by way of commission in respect of any shares or debentures; and
(d) any sums allowed by way of discount in respect of any issued shares and debentures.

OTHER

Shares, convertible instruments or debentures held by subsidiary

31. There shall be stated the percentage held, description and amount of shares, convertible instruments and debentures of the company held by its subsidiaries or their nominees, but excluding any such shares, convertible instruments or debentures in respect of which the subsidiary is concerned in a representative capacity or as a trustee under a trust in which neither the company nor any subsidiary thereof is beneficially interested otherwise than 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.

Directors 'authority to issue shares

32. The amount of any share capital or the number of shares which the directors are authorised to issue, the terms of such authority and the period for which it was granted, shall be stated.

Arrear dividends

33. The amount of any arrears of cumulative dividends on each class of the company's shares and the period for which the dividends are in arrear, shall be stated.

ENCUMBRANCES, CONTINGENCIES AND COMMITMENTS

Encumbrances

34. Particulars of any encumbrance on the assets of the company to secure the liabilities of any other person, including where practicable, the amount secured, shall be stated.

Contingencies

35. Particulars of any contingencies not already recognised in the financial statements shall be stated, including-

(a) the nature of the contingency;
(b) the uncertain factors that may affect the future outcome; and

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(c) the estimated amount and its effect, before and after taxation.

Commitments

36. (1) Where practicable the aggregate amount or estimated amount of contracts for capital expenditure, not otherwise provided for and the aggregate amount or estimated amount of capital expenditure authorised by the directors which has not been contracted for, shall be stated.

(2) There shall also be stated the source from which funds to meet such expenditure will be provided.

LOANS AND SECURITY TO BE DISCLOSED BY SUBSIDIARY

37. The following particulars in respect of any funds employed in a loan or security provided by a company shall, if section 43 of the Act apply to such loan or security, be stated:

(a) The name of the company or other body corporate to which the loan was directly or indirectly made, or in connection with an obligation of which security was directly or indirectly provided to another person;

(b) the group relationship between the subsidiary and the company or other body corporate contemplated in subparagraph *(a)*;

(c) when funds of the subsidiary have been employed in a loan-

(i) the date of the loan;

(ii) the name of the intermediary concerned if the loan was made indirectly;

(iii) the amount of the loan outstanding at the end of the financial year;

(iv) the highest outstanding balance under the loan during the financial year;

(v) the rate at which interest was or is to be paid, the amount paid as interest, and any other consideration which was or is to be given by the borrowing company or other body corporate, in respect of all transactions transacted during the whole financial year;

(vi) the security, if any, obtained in respect of the loan, and if no security was obtained, a statement of that fact; and

(vii) the terms upon which the loan is being or is to be repaid, and, if such terms have not been complied with, the extent of such noncompliance,

subject thereto that, if more than one loan was made by the subsidiary to any particular company or other body corporate on identical terms, such loans may, for purposes of this paragraph, be combined;

(d) when security has been provided by the subsidiary-

(i) the name of the person to whom the security was provided;

(ii) the nature of the security;

(iii) the date upon which the security was provided;

(iv) the amount for which the security was provided;

(v) the period for which the security will subsist or, if terminated, the date of such termination;

(vi) the obligation in connection with which security was provided;

(vii) the consideration, if any, which was or is to be received by the subsidiary for providing the security; and

(viii) the payments, if any, made by the subsidiary under or by virtue of its liability in terms of the security, and the amounts, if any, recovered thereafter under or by virtue of any right of recourse.

FOREIGN CURRENCY DENOMINATED ITEMS

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38. There shall be stated the nature, the exchange rates used on conversion and amounts of uncovered foreign currency monetary items at the balance sheet date.

RETIREMENT BENEFIT INFORMATION

39. There shall be stated sufficient information concerning retirement benefit plans to provide a broad understanding of the significance of retirement benefit costs in the accounting period and of actual and contingent liabilities and commitments at the accounting date.

40. There shall be stated-

(a) whether or not the retirement benefit plan is governed by the Pension Funds Act, 1956 (Act 24 of 1956);

(b) the nature of the retirement benefit plan whether it is a defined contribution plan or a defined benefit plan;

(c) any commitment of the company formal or otherwise, to meet unfunded benefits;

(d) an indication of the proportion of the company's employees covered by retirement benefit plans;

(e) the effective date of the most recent actuarial valuation;

(f) the opinion of the actuary as to whether or not the plan was in a sound financial position;

(g) any alteration as to the contribution rate recommended by the actuary specifying the nature, amount and duration of the alteration and whether or not the recommendation is being implemented; and

(h) the year of the next actuarial valuation.

C. INCOME STATEMENT

41. Except in the case of the first income statement, the corresponding amounts for the immediately preceding financial year for all items shown in the income statement, shall be stated.

42. There shall be shown separately-

(a) the amount of income from investments, distinguishing between listed and unlisted investments and between interest, dividends, and other specified income;

(b) the aggregate amount of income from subsidiaries, stating whether dividends, interest, fees or other specified income;

(c) the aggregate amount of the dividends paid and proposed, and if such dividends are provided partly or wholly from capital profits, a statement to that effect;

(d) the amount provided or paid for taxation (specifying, where material, the origin and different classes of taxes) in respect of the financial year concerned and the amount, if any, so provided or paid in respect of any other financial year;

(e) the amount provided for current and deferred taxation, significant adjustments to prior period provisions and adjustments to deferred taxation arising from changes in the standard tax rate;

(f) the amount of interest (or other consideration) on any loans, including debentures and bank overdrafts made to the company identifying the portion, if any, capitalised during the period;

(g) the amount of interest on share capital paid out of capital during the financial period concerned and the rate of such interest;

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(h) the respective amounts paid as remuneration for managerial, technical, administrative or secretarial services, however described, other than to the *bona fide* employees of the company;

(i) the amount paid to the auditors;

(j) the amounts respectively set aside for redemption of shares and of loans;

(k) the amount transferred or proposed to be transferred to or from reserves;

(l) earnings per share and dividends per share in respect of listed companies for each class of equity shares;

(m) profits or losses on share transactions;

(n) the aggregate amount of profits and losses on the realisation, scrapping or other disposal of non-trading, fixed and other non-current assets;

(o) the amount charged to income by way of provisions (other than provisions for diminution in values of current assets) specifying the nature of each provision or the amount withdrawn from such provisions and not applied for the purpose thereof;

(p) the amount of any credit or charge arising in consequence of an event in a preceding financial year;

(q) the amount of foreign exchange gains and losses taken to the income statement which relate to foreign currency denominated loans;

(r) the amount of operating lease charges distinguishing between the major categories of assets held under operating lease;

(s) items of income and expense which, in the accounting period, are abnormal in amount and result from occurrences the underlying nature of which is typical of the ordinary trading or operating activities of the enterprise;

(t) the profit or loss arising from the sale of an asset after adjustment for any difference between the sale price and fair value when there has been a sale and lease back transaction which gives rise to an operating lease; and

(u) where group accounts are not presented, in respect of investments in associates, the dividend received, the investor's interest in the retained equity income or deficit and the investor's effective interest in extraordinary items and prior period adjustments.

43. There shall be stated the aggregate amount of turnover for the accounting period concerned and the basis upon which turnover has been determined.

44. If provision for depreciation or for the diminution in value of fixed assets is made by some method other than a depreciation charge or provision for diminution in value, or is not provided for, the method by which it is provided for or the fact that it is not provided for, shall be stated.

45. If no provision for taxation has been made, that fact and the reason therefor, shall be stated.

46. There shall be stated the amount of extraordinary items including the nature and amount of taxation and the extent of outside owners' interest relating to these items.

47. There shall be stated sufficient information on forward exchange contracts entered into which do not relate to specific balance sheet items to enable an assessment to be made of the foreign currency exposure.

48. There shall be stated-

(a) the estimated tax effect of tax losses available for set off against future taxable income, before and after they have been applied to reduce deferred taxation; and

(b) the total unprovided net timing differences separately stating those relating to the current year.

D. STATEMENT OF CASH FLOW INFORMATION

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49. Except in the case of the first statement of cash flow information, the corresponding amounts for the preceding period for all items shown in the statement of cash flow information, shall be stated.

50. Annual financial statements shall include a cash flow statement showing, where applicable, the following items:

(a) Cash generated by operations;
(b) investment income;
(c) changes in the non cash components of working capital;
(d) cash effects of finance costs and taxation;
(e) cash effects of dividends paid;
(f) cash effects of investing activities; and
(g) cash effects of financing activities.

51. A reconciliation shall be provided between operating income for the period as shown in the income statement and cash generated by operations stating adjustment for non cash items included in income for the period.

PART II
GROUP ANNUAL FINANCIAL STATEMENTS (paras 52-65)

Preliminary

52. The provisions contained in paragraphs 53 to 56, inclusive, shall apply to all forms of group annual financial statements and shall also apply in respect of the requirements of paragraphs 62 to 65, inclusive, in relation to subsidiaries not dealt with in group annual financial statements.

53. Any net income or loss arising from transactions within the group, in so far as this net income or loss may not have been realised or incurred in respect of a transaction with a person or company outside the group, shall be excluded in determining the total group net income or loss, or the interest of the holding company in the net income or loss of any subsidiary.

54. Intra-group balances shall be excluded in determining the total assets and liabilities of the group.

55. (1) Dividends declared by a subsidiary out of income accrued prior to the date on which the holding company acquired its interest in the subsidiary, being pre-acquisition income so far as it is reasonably ascertainable, shall be shown separately unless-

(a) such holding company is itself the subsidiary of another body corporate;
(b) the shares of the subsidiary were acquired from that other body corporate or a subsidiary of it; and
(c) the income out of which the divided is declared accrued after the company became a subsidiary of that other body corporate or of a subsidiary of it.

(2) For the purpose of establishing whether any income accrued prior to the acquisition of the shares of the subsidiary, the income or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reference to the facts, be treated as if it accrued from day to day during that year and be apportioned accordingly.

56. There shall be stated any qualifications contained in the report of the auditors of the subsidiaries on their annual financial statements and any note or saving contained in those financial statements to call attention to the matter which, apart from the note or saving, would properly have been referred to in such a qualification, note or saving, in so far as the matter which is the subject of the qualification is not covered by the holding company's own annual financial statements or the annual group financial statements.

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Group annual financial statements in the form of consolidated financial statements

57. Subject to paragraphs 58 to 60, inclusive, the consolidated financial statements shall combine the information contained in the separate financial statements of the holding company and of the subsidiaries dealt with in such consolidated financial statements, but with such adjustments as may be necessary fairly to present the state of affairs and the financial position as at the accounting date, and the results of operations during the accounting period of the group.

58. Subject to paragraphs 58 to 60, inclusive, the consolidated financial statements shall, in giving the said information, comply, so far as practicable, with the requirements of the Act and this Schedule as if they were the financial statements of an actual company.

59. Section 304 of the Act (concerning the disclosure of directors' remuneration) shall not, by virtue of the requirements of paragraphs 57 and 58, apply for the purposes of consolidated financial statements.

60. In relation to any subsidiaries of the holding company not dealt with in the consolidated financial statements-

(a) paragraph 18(concerning indebtedness to companies in the group), paragraph 23(concerning interests in subsidiaries), paragraph 24(concerning indebtedness of the holding company and fellow subsidiaries) and paragraph 31(concerning shares, convertible instruments or debentures held by a subsidiary), shall apply for the purposes of such consolidated financial statements as if those statements were the statements of an actual company of which they were the subsidiaries; and

(b) there shall be annexed the information required by paragraphs 62 to 65, inclusive, in respect of subsidiaries not dealt with in group annual financial statements.

Group annual financial statements in a form other than consolidated financial statements

61. Where group annual financial statements are prepared in a form other than consolidated statements they shall, as far as practicable, present the same or equivalent information concerning the state of affairs and the financial position and results of operations of the group as would be contained in the consolidated financial statements, including the aggregate amounts of-

(a) the excess (if any) of the cost of the shares of the subsidiaries in the group over the fair value of the identifiable net assets at the date of acquisition and the non-distributable reserve (if any) arising in consequence of the excess of the fair value of the identifiable assets at the date of acquisition over the cost of the shares of the subsidiaries, subject thereto that non-distributable reserves arising on the acquisition of shares in a subsidiary may be set off against any excess of cost of shares of other subsidiaries over the fair value of the identifiable net assets of such other subsidiaries;

(b) the holding company's share of the post-acquisition non-distributable reserves of subsidiaries;

(c) the net interest of outside shareholders, being shareholders other than the holding company and its subsidiaries or their nominees, in the subsidiaries in the group; and

(d) the interest of the holding company, in so far as it has not been disclosed in such group annual financial statements, in-

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(i) the accumulated distributable reserves of subsidiaries for the period after the dates on which they respectively became subsidiaries to the preceding accounting date; and

(ii) the net income of subsidiaries for the accounting period.

Requirements in respect of subsidiaries not dealt with in group annual financial statements

62. (1) Where a subsidiary is not dealt with in group annual financial statements in terms of section 299 of the Act and the interest in such subsidiary is material in relation to the financial position or the results of the holding company, there shall be included in the annual financial statements of the holding company the information required to be stated in terms of paragraphs 63 to 65 inclusive, and, if any such information is not obtainable, the reason therefor, shall be stated.

(2) This paragraph shall not apply to a holding company which is a wholly owned subsidiary of another company.

63. The reasons shall be stated why the subsidiaries or any of them are not dealt with in group annual financial statements.

64. In regard to the shareholders' equity, liabilities and assets of the subsidiaries not dealt with in annual group financial statements there shall be stated the aggregate amounts of-

(a) the cost of the holding company's investment in shares of subsidiaries;

(b) the excess (if any) of the cost of the shares of the subsidiaries over the fair value of the identifiable net assets at the date of acquisition, and the non-distributable reserve (if any) arising in consequence of the excess of the fair value of the identifiable net assets at the date of acquisition over the cost of the shares of subsidiaries, subject thereto that non-distributable reserves arising on the acquisition of shares in a subsidiary may be set off against any excess of cost of shares of other subsidiaries over the fair value of the identifiable net assets of such other subsidiaries;

(c) the holding company's share of the post-acquisition non-distributable reserves of subsidiaries;

(d) the interest of outside shareholders, being shareholders other than the holding company and its subsidiaries or their nominees, in the subsidiaries;

(e) long-term loans owing by companies in the group;

(f) fixed assets;

(g) net current assets;

(h) goodwill, if any, shown in the books of the subsidiaries in so far as it has not already been absorbed in the calculation referred to in subparagraph *(b)*; and

(i) separately stated assets not included in subparagraphs *(f)*, *(g)* and *(h)*.

65. In regard to net income or loss and distributable reserves of the subsidiaries not dealt with in group annual financial statements, there shall be stated the aggregate interest of the holding company in-

(a) the accumulated distributable reserves of subsidiaries for the period from the dates on which they respectively became subsidiaries to the preceding accounting date;

(b) the net income and distributable reserves attributable to any shares of subsidiaries disposed of during the accounting period:

(c) the net income of subsidiaries for the accounting period;

(d) dividends paid or declared by subsidiaries during the accounting period; and

(e) the distributable reserves at the accounting date not dealt with in the annual financial statements of the holding company.

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PART III
DIRECTORS' REPORT (paras 66-72)

Preliminary

66. (1) The directors' report shall deal in narrative form with all descriptive matters under appropriate headings and amounts or statistics shall be set out as far as practicable in tabular form.

(2) Any matter not prescribed by this Schedule but which is material for the appreciation of the state of affairs of the company and its subsidiaries, if any, shall be dealt with in the directors' report under appropriate headings.

(3) Where any amounts are stated, the corresponding amounts, if any, in respect of the immediately preceding accounting period, shall be stated.

General review

67. (1) The directors' report shall generally review the business and operations of the company during the accounting period and the results thereof and shall deal with every fact or circumstance material to the appreciation of the state of affairs and financial position of the company by its members including a statement of the estimated proportion of net income or loss attributable to the various classes of business of the company.

(2) The directors' report shall deal with any material fact or circumstance which has occurred between the accounting date and the date of the report.

Specific matters

68. Unless such information is already given in any document annexed to the annual financial statements, the directors' report shall state-

(a) the nature of the business of the company and of its subsidiaries, if any, and any major change therein during the accounting period;

(b) in aggregate figures the amounts and particulars of any shares, convertible instruments and debentures issued during the accounting period and the purposes for and circumstances in which such shares, convertible instruments and debentures have been issued;

(c) any major change in the nature of the fixed assets of the company and of its subsidiaries, if any, during the accounting period or any change in policy relating to the use of fixed assets;

(d) the amount, if any, already paid or declared or proposed to be paid by way of dividends in respect of each class of shares;

(e) the fact that the business of the company or any part thereof or of a subsidiary has been managed by a third person or a company in which a director has an interest, under any agreement during the accounting period (if it has been so managed) and the names of such third person or company and the director's interest in such company, if material;

(f) the names of the directors and the secretary, the secretary's business and postal address, and any changes during the accounting period; and

(g) the name of the company's holding company and its ultimate holding company, if any, and if any such holding company has been incorporated in a foreign country, the name of that country.

MATTERS TO BE STATED WHERE COMPANY IS A HOLDING COMPANY

A GENERAL INFORMATION

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69. If the company is at the accounting date a holding company and if it is not itself a wholly owned subsidiary, the directors' report shall in respect of each principal subsidiary state-

(a) the name and, if incorporated in a foreign country, the name of that country;

(b) if any of the businesses, or part thereof, of any subsidiary controlled by the holding company, have been managed during the accounting period by any third person under an agreement, that fact and the name of such third person; and

(c) if the financial year of any subsidiary did not end with that of the company-

(i) the reasons for that fact; and

(ii) the accounting period of such subsidiary in respect of which the information has been included in the annual financial statements of the holding company.

B FINANCIAL INFORMATION IN RESPECT OF SUBSIDIARIES

Interest in each subsidiary

70. In respect of each subsidiary and any company which was a subsidiary at the preceding accounting date but which is no longer a subsidiary at the accounting date to which the report refers, and where the interest in the subsidiary is material to the financial position or the results of the holding company, there shall be stated-

(a) the amount of its issued capital of any class, the percentage thereof held by the holding company, either in its own name or through a nominee or a subsidiary, and any changes in such holdings during the accounting period; and

(b) the amount of the interest of the holding company consisting of shares in the subsidiary or amounts owing to the holding company (whether on account of loan or otherwise) distinguishing shares from indebtedness and any change in such interest during the accounting period.

Net income of subsidiaries

71. In so far as concerns the interest of the holding company in its subsidiaries, there shall be stated the aggregate amount of income after tax and the aggregate amount of the losses (after taking into account taxation, if any, paid by subsidiaries reporting losses).

C GENERAL REVIEW OF GROUP

72. The directors' report shall-

(a) generally review the business and operations of the group during the accounting period and the results thereof and shall deal with every fact or circumstance material to the appreciation of the state of affairs and financial position of the group by the members of the holding company; and

(b) deal with any material fact or circumstance which has occurred in the group between the accounting date and the date of the report.

PART IV
INTERIM REPORT AND PROVISIONAL ANNUAL FINANCIAL STATEMENTS (paras 73-79)

Preliminary

73. (1) Where the information appearing in the interim report and the provisional annual financial statements are not audited, this fact shall be stated.

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(2) Where amounts are not available from the accounting records in respect of information to be shown in the interim report and the provisional annual financial statements, any such amount may be stated by way of estimate, provided the fact that it is an estimate is stated.

Interim report

74. (1) The interim report shall deal in narrative form with all descriptive matters under appropriate headings, and amounts or statistics shall be set out as far as practicable in tabular form.

(2) Any matter not prescribed by Part IV of this Schedule but which is material to the appreciation of the financial position and the results of the operations during the interim accounting period of the company and its subsidiaries (if any) shall be dealt with in the interim report under appropriate headings, and in particular there shall be stated any material change, as compared with the book value, in the net realisable value or replacement value of any of the assets, of which the directors are aware.

(3) Where any amounts are given, the corresponding amounts (if any) in respect of the immediately preceding corresponding interim period and the corresponding audited amounts (if any) in respect of the most recent completed financial period, shall be stated.

Provisional annual financial statements

75. (1) Any matter not prescribed by Part IV of this Schedule but which is material to the appreciation of the financial position and results of the company and its subsidiaries (if any) shall be dealt with in the provisional annual financial statements under appropriate headings.

(2) Where any amounts are given, the corresponding audited amounts (if any) in respect of the previous financial period, shall be stated.

Minimum contents of interim reports and provisional annual financial statements

76. The interim report and the provisional annual financial statements, shall consist of-

(a) an income statement, which shall include at least the following items, where applicable:
- (i) Turnover;
- (ii) net income before interest paid and taxation;
- (iii) net interest paid;
- (iv) taxation;
- (v) retained equity income from associates and non consolidated subsidiaries;
- (vi) net income attributable to ordinary shareholders;
- (vii) ordinary and preference dividends;
- (viii) earnings per share;
- (ix) dividends per share; and
- (x) any other information that is material to the appreciation of the affairs of the company;

(b) a balance sheet in summary form which shall include at least the following items, where applicable:
- (i) Total assets;
- (ii) shareholders' funds;
- (iii) non interest bearing debt;
- (iv) interest bearing debt;

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(v) net asset value per share;
(vi) number of ordinary shares in issue; and
(vii) any other information that is material to the appreciation of the affairs of the company.

77. The interim report and the provisional annual financial statements shall include sufficient information on the cash position of the company.

78. Any comments on any facts or circumstances relevant to the financial position of the company, and where applicable, of the group, which are necessary to appreciate better the information given, including information regarding contingencies, capital commitments, acquisitions and disposals of subsidiaries and changes in the relative holding in any subsidiary, shall be stated.

79. The extent, if any, to which any change in the accounting policies applied has materially affected the report as compared with previous reports, shall be stated.

Schedule 5
REPEAL OF LAWS

Number and Year of Act	Title	Extent of Repeal
Act 61 of 1973	Companies Act, 1973	The whole
Act 76 of 1974	Companies Amendment Act, 1974	The whole
Act 111 of 1976	Companies Amendment Act, 1976	The whole
Act 114 of 1977	Revenue Laws Amendment Act, 1977	Sections 21, 22 and 23
Act 59 of 1978	Companies Amendment Act, 1978	The whole
Proclamation 234 of 1978	Registration and Incorporation of Companies in South West Africa Proclamation, 1978	The whole
Proclamation 23 of 1979	Registration and Incorporation of Companies in South West Africa Amendment Proclamation, 1979	The whole
Act 3 of 1989	Companies Amendment Act, 1989	The whole
Act 1 of 1996	Married Persons Equality Act, 1996	Sections 31 and 32

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