

Malawi

## Companies Act

### Chapter 46:03

Legislation as at 31 December 2014

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Companies Act (Chapter 46:03)  
 Contents

Part I – Preliminary ..... 1

- 1. Short title ..... 1
- 2. Interpretation ..... 1
- 3. Local participation in companies ..... 4

Part II – Incorporation of companies and matters incidental thereto ..... 4

- 4. Mode of forming incorporated company ..... 4
- 5. Types of company ..... 5
- 6. Requirements with respect to memorandum ..... 5
- 7. Subscription of memorandum ..... 7
- 8. Alteration of memorandum ..... 7
- 9. Objects of existing companies ..... 7
- 10. Alteration of authorized business or objects ..... 8
- 11. Articles of association ..... 8
- 12. Requirements with respect to articles ..... 8
- 13. Alteration of articles ..... 9
- 14. Registration ..... 9
- 15. Certificate of incorporation: effect of certificate ..... 9
- 16. Conclusiveness of certificate of incorporation ..... 10
- 17. Contractual effect of memorandum and articles ..... 10
- 18. Copies of memorandum and articles ..... 10
- 19. Name of company ..... 10
- 20. Pre-incorporation contracts ..... 11
- 21. Capacity of company ..... 12
- 22. Unauthorized acts ..... 12
- 23. Companies limited by guarantee ..... 12
- 24. Conversion of company limited by shares to company limited by guarantee ..... 12
- 25. Conversion of limited company to unlimited company ..... 13
- 26. Conversion of unlimited company to limited company ..... 14
- 27. Conversion of public company to private company ..... 15
- 28. Conversion of private company to public company ..... 15
- 29. Consequences of default in complying with conditions constituting a company a private company ..... 16
- 30. Power to dispense with "limited" in name of charitable and other companies ..... 16

Part III – Shares and membership ..... 17

- 31. Membership of company ..... 17

|   |    |
|---|----|
| 32. Register of members .....   | 17 |
| 33. Inspection of register .....  | 18 |
| 34. Power to close register .....   | 18 |
| 35. Power of court to rectify register .....  | 18 |
| 36. No notice of trust .....  | 18 |
| 37. Register to be evidence .....   | 18 |
| 38. Power for company to keep branch register .....   | 19 |
| 39. Regulations as to branch register .....   | 19 |
| 40. Stamp duties in case of securities registered in branch register .....                      | 19 |
| 41. Branch registers kept in Malawi .....   | 19 |
| 42. Companies ceasing to have at least two members .....  | 20 |
| 43. Nature and transferability of shares .....  | 20 |
| 44. Numbering of shares .....   | 20 |
| 45. Issue of bearer securities .....  | 20 |
| 46. Shares not to be converted into stock .....   | 20 |
| 47. Classification of shares .....  | 21 |
| 48. Variation of class rights .....   | 21 |
| 49. Transfer of shares .....  | 22 |
| 50. Restrictions on transferability .....   | 22 |
| 51. Certification of transfers .....  | 23 |
| 52. Issue of share certificates .....   | 23 |
| 53. share certificates as evidence .....  | 23 |
| 54. Transmission of shares by operation of law .....  | 23 |
| 55. Evidence of grant of probate .....  | 24 |
| 56. Company's lien on shares .....  | 24 |
| 57. Membership of holding company .....   | 24 |
| 58. Rights and options to subscribe for shares issue to directors, officers and employees ..... | 25 |
| Part IV – Share capital .....   | 25 |
| 59. Return as to allotments .....   | 25 |
| 60. Payment of commissions and discounts .....  | 26 |
| 61. Application of premiums received on issue of shares .....                                   | 27 |
| 62. Power to issue redeemable preference shares .....   | 27 |
| 63. References to share capital .....   | 28 |
| 64. Power of company having shares to alter its capital .....                                   | 28 |
| 65. Notice to registrar of alteration of share capital .....                                    | 28 |

|   |    |
|---|----|
| 66. Notice of increase of share capital .....   | 29 |
| 67. Special resolution for reduction of share capital .....                           | 29 |
| 68. Application to court for confirming order .....                                   | 29 |
| 69. Order confirming reduction .....  | 30 |
| 70. Registration of order and minute of reduction .....                               | 30 |
| 71. Penalty for concealing name of creditor .....                                     | 31 |
| 72. Financial assistance by company for acquisition of shares .....                   | 31 |
| 73. Acquisition of company's own shares .....   | 31 |
| 74. Restriction on payment of dividends .....   | 32 |
| 75. Prohibition of dividends or distributions by companies limited by guarantee ..... | 32 |
| Part V – Debentures and charges .....   | 32 |
| 76. Issue of debentures or debenture stock .....                                      | 32 |
| 77. Documents of title to debentures .....  | 33 |
| 78. Trustees for debenture holders .....  | 33 |
| 79. Eligibility for appointment as trustee for debenture holder .....                 | 33 |
| 80. Right to copies of trust deed .....   | 34 |
| 81. Unsecured debentures to be so described .....                                     | 34 |
| 82. Register of debenture holders .....   | 34 |
| 83. Meetings of debenture-holders .....   | 34 |
| 84. Re-issue of redeemed debentures .....   | 35 |
| 85. Charge to secure fluctuating amount .....   | 35 |
| 86. Registration of charges created by companies .....                                | 35 |
| 87. Duty of company to register charges existing on property acquired .....           | 37 |
| 88. Certificate to be issued by registrar .....                                       | 37 |
| 89. Priorities .....  | 37 |
| 90. Entries of satisfaction and release of property from charge .....                 | 38 |
| 91. Variation of registered charge .....  | 38 |
| 92. Registration of enforcement of security .....                                     | 38 |
| 93. Endorsement of registration on debentures of a series .....                       | 39 |
| 94. Powers of the court .....   | 39 |
| 95. Payment of preferential creditors .....   | 39 |
| 96. Eligibility for appointment as receiver .....                                     | 39 |
| 97. Receivers appointed by the court .....  | 40 |
| 98. Receivers appointed out of court .....  | 40 |
| 99. Liabilities of receivers on contracts .....                                       | 41 |

|   |    |
|---|----|
| 100. Notification that receiver has been appointed .....                                  | 41 |
| 101. Statement of affairs and accounts where receiver of undertaking appointed .....      | 41 |
| 102. Delivery to registrar of accounts of receivers .....                                 | 41 |
| 103. Application of this Part to charges in favour of Government .....                    | 42 |
| Part VI – Meetings and resolutions .....  | 42 |
| 104. Annual general meeting .....   | 42 |
| 105. Extraordinary general meetings .....   | 42 |
| 106. Convening of extra-ordinary general meeting on requisition .....                     | 42 |
| 107. Notice of general meetings .....   | 43 |
| 108. Length of notice for calling meetings .....  | 43 |
| 109. Power of court to order meeting .....  | 44 |
| 110. Place of meetings .....  | 44 |
| 111. Attendance at meetings .....   | 44 |
| 112. General provisions as to meetings and votes .....                                    | 45 |
| 113. Proxies .....  | 45 |
| 114. Right to demand a poll .....   | 46 |
| 115. Voting on a poll .....   | 46 |
| 116. Representation of bodies corporate and unincorporated associations at meetings ..... | 46 |
| 117. Circulation of members' resolutions and supporting circulars .....                   | 46 |
| 118. Circulation of members' circulars .....  | 47 |
| 119. General provisions in regard to members' circulars .....                             | 47 |
| 120. Ordinary and special resolutions .....   | 47 |
| 121. Written resolutions .....  | 48 |
| 122. Registration of copies of certain resolutions .....                                  | 48 |
| 123. Resolutions passed at adjourned meetings .....                                       | 48 |
| 124. Application of sections 107 to 121 to class meetings .....                           | 49 |
| 125. Minutes of proceedings of meetings of company and of directors .....                 | 49 |
| 126. Inspection of minute books .....   | 49 |
| Part VII – Management and administration .....  | 49 |
| 127. Registered office .....  | 49 |
| 128. Records and registers .....  | 50 |
| 129. Inspection by members and others .....   | 50 |
| 130. Publication of name of company .....   | 51 |
| 131. Company contract .....   | 51 |
| 132. Execution of documents .....   | 51 |

|   |    |
|---|----|
| 133. Common seal .....  | 52 |
| 133A. Official seal for use abroad .....  | 52 |
| 133B. Official seal for share certificate .....   | 53 |
| 134. Execution of deed .....  | 53 |
| 135. Execution of deed or oilier documents by attorney .....                                    | 53 |
| 136. Bills of exchange and promissory notes .....   | 53 |
| 137. Service of documents on company .....  | 53 |
| 138. Services of documents by company .....   | 54 |
| 139. Liability of company not affected by officer s fraud or forgery .....                      | 54 |
| Part VIII – Directors and secretary .....   | 55 |
| 140. Meaning of "directors" .....   | 55 |
| 141. Number of directors .....  | 55 |
| 142. Eligibility and competence of directors .....  | 55 |
| 143. Residential requirements of directors .....  | 56 |
| 144. Directors' share qualification .....   | 56 |
| 145. Vacation of office of director .....   | 56 |
| 146. Removal of directors .....   | 57 |
| 147. Alternate directors .....  | 57 |
| 148. Resolution in lieu of meeting .....  | 58 |
| 149. Limitations on powers of directors .....   | 58 |
| 150. Contracts in which directors are interested .....  | 59 |
| 151. Prohibition of loans by companies to directors .....                                       | 60 |
| 152. Duties of directors in connexion with sales or purchases of the company's securities ..... | 61 |
| 153. Payments to directors for loss of office or on transfer of undertaking .....               | 61 |
| 154. Payments to directors in connexion with take-over bids .....                               | 61 |
| 155. Payments to directors: interpretation .....  | 63 |
| 156. Secretary .....  | 63 |
| 157. Register of directors and secretaries .....  | 64 |
| 158. Registration of particulars of directors and secretaries .....                             | 64 |
| 159. Avoidance of acts in dual capacity as director and secretary .....                         | 65 |
| 160. Restraining fraudulent persons from managing companies .....                               | 65 |
| 161. Prohibition of assignment of offices .....   | 66 |
| 162. Validity of acts of officers .....   | 66 |
| 163. Avoidance of provisions exempting officers .....   | 66 |

|  |    |
|--|----|
| Part IX – Public issues of shares, etc. ....   | 66 |
| 164. Control of invitations to the public .....  | 66 |
| 165. Meaning of "invitation to the public" .....   | 67 |
| 166. Offers for sale deemed to be made by the company .....  | 68 |
| 167. Prospectus invitations to the public .....  | 68 |
| 168. Contents of prospectus .....  | 69 |
| 169. Expert's consent .....  | 69 |
| 170. Registration of prospectuses .....  | 69 |
| 171. Waiting period .....  | 70 |
| 172. Withdrawal of applications after the waiting period .....                                       | 70 |
| 173. Civil remedy for misstatements or omissions in a prospectus .....                               | 70 |
| 174. Public invitations to deposit money with companies .....  | 72 |
| 175. Prohibition of waiver and notice clauses .....  | 73 |
| 176. Criminal liability for misstatements .....  | 73 |
| 177. Inducing persons to invest .....  | 73 |
| 178. Company not to issue prospectus unless all equity shares carry unrestricted voting rights ..... | 73 |
| 179. *** .....   | 74 |
| Part X – Accounts and audit .....  | 74 |
| 180. Keeping of accounting records .....   | 74 |
| 181. Annual return .....   | 75 |
| 182. Circulation of profit and loss account, balance sheet and reports .....                         | 75 |
| 183. Profit and loss account .....   | 76 |
| 184. Balance sheet .....   | 76 |
| 185. Good accounts .....   | 76 |
| 186. Accounts: interpretation, duties and penalties .....  | 78 |
| 187. Signing and publication of accounts .....   | 78 |
| 188. Particulars of directors' emoluments and pensions .....   | 79 |
| 189. Directors' report .....   | 80 |
| 190. Auditors' report .....  | 80 |
| 191. Appointment and remuneration of auditors .....  | 81 |
| 192. Qualification of auditors .....   | 82 |
| 193. Removal of auditors .....   | 82 |
| 194. Duties and powers of auditors .....   | 83 |
| 195. Powers of auditors in relation to subsidiaries .....  | 84 |
| 196. Documents to be annexed to annual return of a public company .....                              | 84 |

|   |    |
|---|----|
| 197. Documents to be annexed to the annual return of a private company .....            | 84 |
| Part XI – Schemes of arrangement, take-overs and the protection of minorities .....     | 85 |
| 198. Power to compromise with creditors and members .....                               | 85 |
| 199. Information as to compromises with creditors and members .....                     | 85 |
| 200. Provisions for facilitating reconstruction and amalgamation of companies .....     | 86 |
| 201. Power to acquire shares of minority on take-over .....                             | 87 |
| 202. Rights of minority on take-over .....  | 88 |
| 203. Remedy against oppression .....  | 88 |
| Part XII – Winding-up .....   | 89 |
| A—General .....   | 89 |
| 204. Modes of winding-up .....  | 89 |
| 205. Liability of members .....   | 89 |
| 206. Application of repealed Act .....  | 89 |
| 207. Liability of past members as contributors .....                                    | 89 |
| 208. Nature of liability of member .....  | 90 |
| 209. Liability in case of death of a member .....                                       | 90 |
| 210. Liability in case of bankruptcy of member .....                                    | 90 |
| B—Winding-up by the court .....   | 90 |
| 211. Winding-up by the court .....  | 90 |
| 212. Petition for winding-up .....  | 91 |
| 213. Circumstances in which company may be wound up by court .....                      | 91 |
| 214. Commencement of winding-up court .....   | 92 |
| 215. Payment of preliminary costs .....   | 92 |
| 216. Powers of court on hearing petition .....  | 92 |
| 217. Power to stay or restrain proceedings against company .....                        | 93 |
| 218. Avoidance of dispositions .....  | 93 |
| 219. Avoidance of attachments .....   | 93 |
| 220. Copy of order to be registered .....   | 93 |
| 221. Provisional liquidator .....   | 93 |
| 222. Stay of actions .....  | 94 |
| 223. Appointment and style of liquidators .....   | 94 |
| 224. Provisions where person other than official receiver is appointed liquidator ..... | 94 |
| 225. Control of unofficial liquidators by official receiver .....                       | 94 |
| 226. Remuneration of liquidators .....  | 95 |
| 227. Custody and vesting of company's property .....                                    | 95 |

|  |     |
|--|-----|
| 228. Statement of company's affairs .....  | 96  |
| 229. Report by liquidator .....  | 97  |
| 230. Powers of liquidator .....  | 97  |
| 231. Exercise and control of liquidator's powers .....                           | 98  |
| 232. Release of liquidator and dissolution of company .....                      | 98  |
| 233. Orders for release or dissolution .....                                     | 99  |
| 234. Meetings to determine whether committee of inspection to be appointed ..... | 99  |
| 235. Constitution and proceedings of committee of inspection .....               | 99  |
| 236. Power to stay winding-up .....  | 100 |
| 237. Appointment of special manager .....  | 100 |
| 238. Claims of creditors and distribution of assets .....                        | 101 |
| 239. Inspection of books by creditors and members .....                          | 101 |
| 240. Power to summon persons connected with company .....                        | 101 |
| 241. Power to order public examination .....                                     | 102 |
| 242. Power to arrest absconding member or officer .....                          | 103 |
| 243. Powers of court cumulative .....  | 103 |
| C—Voluntary winding-up .....   | 103 |
| 244. Voluntary winding-up .....  | 103 |
| 245. Circumstances in which company may be wound up voluntarily .....            | 103 |
| 246. Commencement of voluntary winding-up .....                                  | 103 |
| 247. Effect of voluntary winding-up .....  | 103 |
| 248. Declaration of solvency .....   | 104 |
| D—Provisions applicable only to members' voluntary winding-up .....              | 104 |
| 249. Provisions applicable only to members' voluntary winding-up .....           | 104 |
| 250. Appointment of liquidator .....   | 105 |
| 251. Duty of liquidator to call creditors' meeting in case of insolvency .....   | 105 |
| 252. Staying of members' voluntary winding-up .....                              | 105 |
| E—Provisions applicable only to creditors' voluntary winding-up .....            | 106 |
| 253. Provisions applicable only to creditors' voluntary winding up .....         | 106 |
| 254. Meeting of creditors .....  | 106 |
| 255. Appointment of liquidator .....   | 107 |
| 256. Appointment of committee of inspection .....                                | 107 |
| 257. Fixing of liquidator's remuneration and cesser of directors' powers .....   | 107 |
| 258. Stay of proceedings .....   | 108 |
| F—Provisions applicable to every voluntary winding-up .....                      | 108 |

|   |     |
|---|-----|
| 259. Provisions applicable to every voluntary winding-up .....  | 108 |
| 260. Distribution of property of company .....  | 108 |
| 261. Review by court of liquidator's appointment and remuneration .....                                 | 108 |
| 262. Powers and duties of liquidator .....  | 108 |
| 263. Power of liquidator to accept shares, etc., as consideration for sale of property of company ..... | 108 |
| 264. Annual meetings of members and creditors .....   | 109 |
| 265. Final meeting and dissolution .....  | 110 |
| 266. Arrangement when binding on creditors .....  | 110 |
| 267. Application to court to have questions determined or powers exercised .....                        | 110 |
| 268. Costs .....  | 111 |
| 269. Limitation on right to wind up voluntarily .....   | 111 |
| G—Provisions applicable to every mode of winding-up .....   | 111 |
| 270. Provisions applicable to every mode of winding-up .....  | 111 |
| 271. Eligibility for appointment as liquidator .....  | 111 |
| 272. Acts of liquidator valid .....   | 111 |
| 273. General provisions as to liquidators .....   | 112 |
| 274. Powers of official receiver where no committee of inspection .....                                 | 112 |
| 275. Appeal against decision of liquidator .....  | 112 |
| 276. Notice of appointment and address of liquidator .....  | 112 |
| 277. Liquidator's accounts .....  | 113 |
| 278. Notification that a company is in liquidation .....  | 113 |
| 279. Books of company .....   | 113 |
| 280. Payment by liquidator into bank .....  | 114 |
| 281. Investment of surplus funds .....  | 114 |
| 282. Unclaimed assets .....   | 115 |
| 283. Expenses of winding-up where assets insufficient .....   | 115 |
| 284. Resolutions passed at adjourned meetings .....   | 116 |
| 285. Meetings to ascertain wishes of members or creditors .....   | 116 |
| 286. Proof of debts .....   | 116 |
| 287. Preferential debts .....   | 116 |
| 288. Avoidance of preference .....  | 118 |
| 289. Avoidance of floating charge .....   | 118 |
| 290. Liquidator's right to recover in respect of certain sales to or by company .....                   | 118 |
| 291. Disclaimer of onerous property .....   | 119 |
| 292. Restriction of rights of creditor as to execution or attachment .....                              | 120 |

|  |     |
|--|-----|
| 293. Duties of sheriff as to goods taken in execution .....                        | 121 |
| 294. Offences by officers of companies in liquidation .....                        | 121 |
| 295. Inducement be appointed liquidator .....                                      | 123 |
| 296. Penalty for falsification of books .....                                      | 123 |
| 297. Liability where proper accounts not kept .....                                | 123 |
| 298. Liability for contracting debt .....  | 123 |
| 299. Power of court to assess damages against delinquent officers .....            | 123 |
| 300. Prosecution of delinquent officers and members .....                          | 124 |
| 301. Frauds by officers of companies which have gone into liquidation .....        | 125 |
| H—Dissolution and defunct companies .....  | 125 |
| 302. Power of court to declare dissolution company void .....                      | 125 |
| 303. Power of registrar to strike defunct company off register .....               | 125 |
| 304. Registrar to act as representative of defunct company in certain events ..... | 126 |
| I—Winding-up of other bodies corporate .....                                       | 127 |
| 305. Winding-up of other bodies corporate .....                                    | 127 |
| Part XIII – External companies .....   | 127 |
| 306. Application and interpretation .....  | 127 |
| 307. Documents to be delivered by external company .....                           | 128 |
| 308. Returns required on alteration of registered particulars .....                | 128 |
| 309. Power of external company to hold lands .....                                 | 129 |
| 310. Local directors' qualifications and authority .....                           | 129 |
| 311. Service on external company .....   | 129 |
| 312. Accounts of external company .....  | 130 |
| 313. Keeping of accounting records by external company .....                       | 131 |
| 314. Provisions as to local directors and local manager .....                      | 132 |
| 315. Name of external company .....  | 133 |
| 316. Obligation to state name, etc., of external company .....                     | 133 |
| 317. Registration of charges by external company .....                             | 133 |
| 318. Notification of winding up of external company .....                          | 134 |
| 319. Winding-up of external company in Malawi .....                                | 134 |
| 320. Cessation of business of external company .....                               | 135 |
| 321. Penalties and disabilities .....  | 135 |
| 322. Control of public invitations relating to external companies .....            | 136 |
| 323. Control of public invitations relating to other non-Malawian company .....    | 136 |

|  |     |
|--|-----|
| Part XIV – Administration of Act .....                                     | 137 |
| 324. Registrar of Companies: Deputy Registrars: Assistant Registrars ..... | 137 |
| 325. Registration of documents .....                                       | 137 |
| 326. Extension of time for registration .....                              | 138 |
| 327. Documents to be in approved language .....                            | 138 |
| 328. Prescribed forms .....  | 138 |
| 329. Inspection, copies and evidence .....                                 | 139 |
| 330. Authentication of documents issued by registrar or Minister .....     | 139 |
| 331. Enforcement of duty to make returns .....                             | 139 |
| 332. Registrar's power to obtain directions of the court .....             | 139 |
| 333. Fees .....  | 139 |
| 334. No stamp duty payable on registered documents .....                   | 140 |
| Part XV – Supplementary .....  | 140 |
| 335. Penalty for false statements .....                                    | 140 |
| 336. Penalty for improper use of "Incorporated" or "Limited " .....        | 140 |
| 337. Responsibility for fraudulent trading .....                           | 140 |
| 338. Meaning of "in default" .....   | 141 |
| 339. Costs in actions by limited companies .....                           | 141 |
| 340. Contribution between joint wrongdoers .....                           | 141 |
| 341. Power to grant relief .....   | 141 |
| 342. Prohibitions of partnerships exceeding fifty members .....            | 142 |
| 343. No constructive notice .....  | 142 |
| 344. Companies formed for special purposes .....                           | 142 |
| 345. Regulations .....   | 142 |
| 346. Rules of Court .....  | 143 |
| 347. Extension to other bodies corporate .....                             | 143 |
| 348. Application of Act to existing companies .....                        | 143 |
| First Schedule .....   | 143 |
| Second Schedule .....  | 171 |
| Third Schedule .....   | 172 |
| Fourth Schedule .....  | 184 |
| Fifth Schedule .....   | 184 |
| Sixth Schedule .....   | 191 |
| Seventh Schedule .....   | 192 |

# Malawi

## Companies Act

### Chapter 46:03

Commenced on 1 April 1986

*[This is the version of this document at 31 December 2014.]*

*[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]*

**An Act to amend and consolidate the law relating to companies, and to provide for matters connected therewith and incidental thereto**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Companies Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

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

"**alternate director**" has the meaning assigned to it by [section 147](#);

"**annual general meeting**", in relation to a company, means a meeting of the company required to be held by [section 104](#);

"**annual return**" means the return required to be made by [section 181](#), and includes any document accompanying the return;

"**approved auditor**" means a person qualified in accordance with [section 192](#) to be appointed as auditor of a company, or a person so qualified who has been appointed its auditor;

"**articles**" means the articles of association of a company, as originally framed or as altered pursuant to this Act, including, so far as they apply to the company, the regulations contained (as the case may be) in Table A or Table C in the First Schedule to this Act, or the corresponding Table in the repealed Act;

*[First Schedule]*

"**authorized unit trust**" has the meaning assigned to it by [section 179](#);

"**basic accounts requirements**", in relation to an external company, has the meaning assigned to it by [section 312](#);

"**body corporate**" means any company or corporation incorporated under or by virtue of the laws of Malawi or of any other State, but does not include a corporation sole;

"**book**" includes account, deed, writing, document, accounting record, and any other record of information however compiled, recorded or stored, whether in written or printed form or by electronic or photographic process or otherwise;

"**branch register**" has the meaning assigned to it by [section 38](#);

"**calendar year**" means a period of twelve months commencing on the first day of January;

"**chairman of local directors**", in relation to an external company, means the local director thereof designated as chairman of local directors pursuant to [section 314](#);

"**company**" means a company incorporated under this Act or an existing company;

"**company limited by guarantee**" and "company limited by shares" have the meanings assigned to them respectively by paragraphs (1) (b) and (1) (a) of [section 5](#);

"**court**" means the High Court;

"**creditors' voluntary winding-up**" has the meaning assigned to it by [section 248](#);

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

"**debenture holder**" includes debenture stockholder;

"**default**", in the expression "officer in default" or "person in default", has the meaning assigned to it by [section 338](#);

"**director**" has the meaning assigned to it by [section 140](#);

"**document**" includes book, notice and register and summons, order and other legal process;

"**documentary agent**", in relation to an external company, means a person resident in Malawi authorized by such company to accept service of writs and other documents, pursuant to [section 307](#);

"**end of the company's financial year**" has the meaning assigned to it by [section 183](#);

"**equity share capital**", in relation to a body corporate, means its issued share capital excluding any part thereof which neither as respects dividends nor as respects capital carries any right to participate beyond a specified amount in a distribution; and

"**equity share**" means a share comprised in the equity share capital of a body corporate;

"**established place of business**", in relation to an external company, has the meaning assigned to it by [section 306](#);

"**existing company**" means any body corporate which immediately prior to the commencement of this Act was a company under the provisions of any written law repealed by this Act;

"**external company**" has the meaning assigned to it by [section 306](#);

"**financial year**" means, in relation to any company, the period covered by the company's profit and loss account in accordance with [section 183](#), whether that period is a year or not;

"**group accounts**" has the meaning assigned to it by [section 185](#);

"**group body corporate**" or "group company" means that, in relation to any other body corporate, the body corporate or company so described is—

- (a) the subsidiary of that other; or
- (b) the holding company of that other; or
- (c) a subsidiary of that other's holding company; or
- (d) a holding company of that other's subsidiary;

"**holding company**", as regards a company or other body corporate, means that in relation to any other body corporate that other is its subsidiary;

"**invitation to the public**" has the meaning assigned to it by [section 165](#);

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

"**liquidator**" includes a provisional liquidator;

"**local directors**" in relation to an external company, has the meaning assigned to it by [section 314\(1\)](#);

"**local manager**" in relation to an external company, has the meaning assigned to it by [section 314](#);

"**majority**", in relation to votes, means the greater number or part of the votes cast, and not the number by which the votes cast on the one side exceed those cast on the other;

"**Malawian company**" means a company as defined by this section;

"**managing director**" means a director to whom has been delegated any of the powers of the board of directors to direct and administer the business and affairs of the company;

"**member**" has the meaning assigned to it by [section 31](#), and for the purposes of Part XII, includes a past member in the circumstances set out in [section 207](#);

"**members' voluntary winding-up**" has the meaning assigned to it by [section 248](#);

"**memorandum**" means the memorandum of association of a company, as originally framed or as altered in pursuance of any enactment;

"**non-Malawian company**", for the purposes of Part XIII, has the meaning assigned to it by [section 323](#);

"**number**" in relation to shares, includes an amount of stock;

"**officer**" in relation to a body corporate, includes—

- (a) any director or secretary of the body corporate;
- (b) any receiver and manager of any part of the undertaking of the body corporate appointed under a power contained in any instrument; and
- (c) any liquidator of a body corporate appointed by the members in a voluntary winding-up, but does not include—
- (d) any receiver of any part of the undertaking of the body corporate who is not also a manager;
- (e) any receiver and manager of any part of the undertaking of the body corporate appointed by the court; or
- (f) any liquidator of the body corporate appointed by the court or by the creditors; or
- (g) any auditor of the body corporate;

"**official receiver**" means the official receiver appointed under the Bankruptcy Act or, if there is more than one such official receiver, then such one of them as the Minister may designate, or, if there is no such official receiver, then an officer appointed for the purpose by the Minister;

[Cap. 11:01 s. 71]

"**ordinary resolution**" has the meaning assigned to it by [section 120](#);

"**private company**" has the meaning assigned to it by [section 5](#);

"**profit and loss account**" includes, in relation to a company limited by guarantee or other body corporate not trading for profit, an income and expenditure account in accordance with [section 186 \(2\)](#);

"**public company**" has the meaning assigned to it by [section 5](#);

"**receiver**" includes an official receiver, and any person appointed as both receiver and manager, and any reference to a receiver of the property of a company includes a reference to a receiver of part only of that property and to a receiver only of the income arising from that property, or from part thereof;

"**register of external companies**" means the register of external companies kept and maintained by the registrar for the purposes of Part XIII;

"**registered**" means registered under this Act or under the repealed Act;

"**registrar**" means the public officer for the time being holding the office of Registrar of Companies established by [section 324](#), and includes a Deputy or Assistant Registrar;

"**registration**" has the meaning assigned to it by [section 325](#);

"**the repealed Act**" means the Companies Act in force immediately prior to the commencement of this Act;

"**resolution for reducing share capital**" has the meaning assigned to it by [section 67](#);

"**seal**" means the common seal of a company or other body corporate;

"**secretary**", in relation to a company, means the person appointed secretary of the company in accordance with [section 156](#) and, in relation to any other body corporate, includes any person occupying the position of secretary by whatever name called;

"**share**" means share in the share capital of a body corporate, and includes stock except where a distinction between stock and shares is expressed or implied, and a reference to a number of shares shall be construed as including an amount of stock;

"**special business**" has the meaning assigned to it by [section 113](#);

"**special resolution**" has the meaning assigned to it by [section 120](#);

"**subsidiary**", as regards a company or other body corporate, has the meaning assigned to it in the Seventh Schedule;

*[Seventh Schedule]*

"**Table A**" means Table A in the First Schedule to this Act;

*[First Schedule]*

"**unlimited company**" has the meaning assigned to it by paragraph (1) (c) of [section 5](#);

"**variation**" includes cancellation and abrogation;

"**waiting period**" has the meaning assigned to it by [section 171](#);

"**wholly owned subsidiary**", as regards a company or other body corporate, means that, in relation to another body corporate, it has no members except that other and that other's wholly owned subsidiaries and its or their nominees.

*[17 of 1990]*

### 3. Local participation in companies

Whenever he is satisfied that it is necessary in the economic interests of Malawi so to do, it shall be the duty of the Minister to encourage by all reasonable means the maximum practicable participation by persons in Malawi, both corporate and unincorporate, in the capital structure of companies incorporated or registered under this Act, and for that purpose the Minister shall be empowered to enter into negotiations with any such company with a view to agreeing and giving effect to a scheme whereby such participation may be effected.

## Part II – Incorporation of companies and matters incidental thereto

### 4. Mode of forming incorporated company

Any two or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company.

## 5. Types of company

- (1) A company may be either—
  - (a) a company having the liability of its members limited to the amount, if any, unpaid on the shares respectively held by them (in this Act termed "a company limited by shares"); or
  - (b) a company having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed "a company limited by guarantee"); or
  - (c) a company not having any limit on the liability of its members (in this Act termed "an unlimited company").
- (2) A company may be either a private company or a public company.
- (3) A private company is one which by its memorandum or articles—
  - (a) restricts the right to transfer its shares, if any;
  - (b) limits the total number of its members to fifty, not including persons who are *bona fide* in the employment of the company and persons who, having been formerly bonafide in the employment of the company, were while in that employment, and have continued after the determination of that employment to be, members of the company; and
  - (c) prohibits the company from making any invitation to the public to acquire any shares or debentures of the company except where an exemption in respect of that company has been granted under [section 164](#) for the public issue of shares and debentures.

[17 of 1990]

For the purposes of this subsection, where two or more persons hold one or more shares jointly, they shall be treated as a single member.

- (4) Where the articles of an existing company contain provisions which constituted the company a private company immediately prior to the commencement of this Act, the company shall continue to be a private company and its articles shall be deemed to include the limitations and prohibitions in paragraphs (b) and (c) of subsection (3), until it shall alter the same.
- (5) Any company other than a private company is a public company.
- (6) A company limited by guarantee shall not be registered with shares and shall not create or issue shares.

[17 of 1990]

## 6. Requirements with respect to memorandum

- (1) The memorandum of association of a company limited by shares shall be in accordance with the form in Table B in the First Schedule, and shall state—
  - (a) the name of the company;
  - (b) the restrictions, if any, upon the business to be carried on by the company;
  - (c) the amount of share capital with which the company is to be registered, and the division thereof into shares of a fixed amount;
  - (d) if there are two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares;
  - (e) that the company is a public or a private company, as the case may be;
  - (f) that the liability of the members is limited; and

- (g) the full name, address and occupation of each subscriber.
- (2) The memorandum of association of a company limited by guarantee shall be in accordance with the form in Table C in the First Schedule, and shall state—
- (a) the name of the company;
  - (b) the nature of the object or objects for which it is established;
  - (c) that the income and property of the company shall be applied solely towards the promotion of its objects, and that no portion thereof shall be paid or transferred directly or indirectly to the members of the company except as may be permitted by law;
  - (d) that each member undertakes to contribute to the assets of the company in the event of its being wound-up while he is a member, for payment of the debts and liabilities of the company, and of the costs of winding-up, and for adjustment of the rights of the members among themselves, such amount as may be required not exceeding a specified amount;
  - (e) that if, upon the winding-up of the company, there remains after the discharge of all its debts and liabilities any property of the company, such property shall not be distributed among the members but shall be transferred to some other company limited by guarantee having objects similar to the objects of the company or applied to some charitable object, such other company or charity to be determined by the members prior to the dissolution of the company;
  - (f) the maximum number, if any, of members with which the company proposes to be registered;
  - (g) that the company is a public or a private company, as the case may be;
  - (h) that the liability of the members is limited; and
  - (i) the full name, address and occupation of each subscriber.

*[First Schedule]*

- (3) The memorandum of association of an unlimited company shall state—
- (a) the name of the company;
  - (b) the restrictions, if any, on the business to be carried on by the company or (if it is not intended that the company shall carry on business) the nature of the object or objects for which it is established;
  - (c) the number of shares with which the company is to be registered;
  - (d) if there are two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares;
  - (e) that the company is a public or a private company, as the case may be;
  - (f) that the liability of the members is unlimited; and
  - (g) the full name, address and occupation of each subscriber.
- (4) The memorandum of association may contain any other lawful provisions relating to the constitution of the company; and where the memorandum of a company contains any provision which might instead have been contained in the articles of that company, any reference in this Act to a provision in the articles shall, where the context admits, be construed as a reference to such a provision in the memorandum.

*[First Schedule]*

## 7. Subscription of memorandum

- (1) The memorandum shall be dated, and shall be signed by each subscriber in the presence of a witness who shall attest the signature.
- (2) In the case of a company limited by shares and an unlimited company, each subscriber shall write opposite to his name the number of shares for which he subscribes.

## 8. Alteration of memorandum

- (1) A company may by special resolution alter its memorandum:  
Provided that—
  - (a) the name of the company may be altered in accordance with [section 19](#), but not otherwise;
  - (b) the company's share capital may be altered in accordance with [sections 64](#) to [70](#), but not otherwise;
  - (c) the rights attached to any class of shares may be altered, and new classes of shares may be created, in accordance with [section 48](#), but not otherwise; and
  - (d) the restrictions upon the business to be carried on by the company and the objects for which it is established may be altered in accordance with [section 10](#), but not otherwise.
- (2) Where the memorandum contains provisions which restrict or exclude the company's power to alter all or any of the terms contained therein or impose conditions for such alteration, the memorandum may not be altered otherwise than in accordance with such provisions, except with the sanction of the court under a scheme of arrangement pursuant to [section 198](#).
- (3) Except in accordance with [section 198](#), no member of the company shall be bound by an alteration made in the memorandum after the date on which he became a member, if and so far as the alteration requires him to take more shares than the number held by him on the date on which the alteration is made or in any way increases his liability as at that date to pay money to the company, or increases or imposes any restrictions on the right to transfer the shares held by him at the date of the alteration, unless he agrees in writing, either before or after the alteration is made to be bound thereby.
- (4) No alteration shall be made which would have the effect of changing the status of the company as a private or a public company, or as a company limited by shares or by guarantee, or as an unlimited company, except in accordance with [sections 24](#) to [28](#).
- (5) No alteration shall be made which conflicts with any order of the court under [section 203](#); and an alteration may be restrained or cancelled by the court in accordance with [section 203](#).

## 9. Objects of existing companies

- (1) A statement contained in the memorandum of a company incorporated before the commencement of this Act which specified the objects for which the company is established shall, insofar as such objects relate to the carrying on of any business, be deemed to be a statement that the business which the company is permitted to carry on is restricted to the objects so specified, and shall be subject in all respects to the provisions of this Act.
- (2) A memorandum of association shall not be construed more restrictively by virtue of this section than it would have been if this Act had not been passed.

## 10. Alteration of authorized business or objects

- (1) A company may, by special resolution, alter its memorandum by changing, imposing or removing any restriction upon the business which it is authorized to carry on or by altering the objects for which it is established:

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

- (2) Within twenty-eight days of the passing of any such resolution notice thereof shall be given to the holders of all debentures secured by a floating charge over any of the company's property and to the trustees, if any, for such debenture holders.
- (3) Application to the court under this section shall be made within sixty days after the passing of the resolution.
- (4) An application to the court under this section may be made—
  - (a) in the case of a private company, by any member or by anyone to whom notice has been given under subsection (2); or
  - (b) in the case of a public company, by—
    - (i) the holders of not less than five per cent in the aggregate of the company's issued shares or of any class thereof or, if the company has no shares, by not less than five per cent of the company's members;
    - (ii) by the trustees for the holders of any debentures secured by a floating charge over any of the company's property; or
    - (iii) by the holders of not less than five per cent of the company's debentures secured by a floating charge over any of the company's property.
- (5) If an application to the court is made under this section the company shall forthwith deliver to the registrar for registration notice of that fact.
- (6) On an application under this section the court may make an order confirming the alteration in whole or in part and on such terms and conditions as it thinks fit and may adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentients and may give such directions and make such orders as it may think expedient for facilitating and carrying into effect any such arrangement. If the court shall refuse to confirm the alteration it shall make an order annulling the alteration.
- (7) The company shall within twenty-one days of the making by the court of any order under this section deliver a copy thereof to the registrar for registration.
- (8) If a company makes default in giving or publishing any notice or delivering any document as required by this section, the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues.

## 11. Articles of association

There may be registered with the memorandum articles of association prescribing regulations for the conduct of the company's affairs.

## 12. Requirements with respect to articles

- (1) Articles of a company limited by shares shall be in accordance with the form in Table A of the First Schedule, and may adopt all or any of the regulations contained in Table A.

- (2) Articles of a company limited by guarantee shall be in accordance with the form in Table C of the First Schedule, and may adopt all or any of the regulations contained in Table C.
- (3) In the case of a company registered after the commencement of this Act, if articles are not registered, or if articles are registered, insofar as the articles do not exclude or modify the regulations contained in Table A or Table C, as the case may be, the regulations contained in Table A shall, so far as applicable, be the regulations of the company (if limited by shares), and the regulations contained in Table C shall, so far as applicable, be the regulations of the company (if limited by guarantee), in the same manner and to the same extent as if they were contained in duly registered articles.
- (4) Articles shall be dated and shall be signed by each subscriber to the memorandum in the presence of a witness who shall attest the signature.

*[First Schedule]*

### **13. Alteration of articles**

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

### **14. Registration**

- (1) The memorandum and the articles, if any, shall be delivered to the registrar for registration.
- (2) With every memorandum registered there shall be delivered to the registrar for registration a statement in the prescribed form (hereinafter in this section referred to as "the statement") containing the following particulars—
  - (a) the full name (together with any former or other names), residential and postal address, and occupation of each of the first directors of the company;
  - (b) the full name (together with any former or other names), residential and postal address, and occupation of the secretary of the company;
  - (c) the situation of the company's registered office, and its postal address; and
  - (d) such further particulars as may be prescribed.
- (3) The statement shall be signed by or on behalf of the subscribers of the memorandum and shall contain a consent signed by each of the persons named in it as directors and secretary to act in the relevant capacity.
- (4) Where the memorandum is delivered by a person as agent for the subscribers of the memorandum, the statement required by this section shall specify that fact and the name and residential and postal address of that person.
- (5) The persons named in the statement as directors and secretary shall, on the incorporation of the company, be deemed respectively to have been appointed as first directors and secretary of the company; and any appointment of a person as director or secretary of the company by any articles delivered with the memorandum shall be void unless he is named as a director or as secretary in the statement.

### **15. Certificate of incorporation: effect of certificate**

- (1) On the registration of the memorandum of a company the registrar shall issue a certificate of incorporation in the prescribed form.

- (2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, having perpetual succession and power to hold land.

## 16. Conclusiveness of certificate of incorporation

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

## 17. Contractual effect of memorandum and articles

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

## 18. Copies of memorandum and articles

- (1) A company shall, on being so required by any member, send to him a copy of its memorandum and articles on payment of the sum of ten Kwacha or such less sum as the company may prescribe.
- (2) Where an alteration is made to the memorandum or articles, every copy thereof issued after the date of the alteration and whether to a member or otherwise shall be in accordance with the alteration.
- (3) Where the articles of any company include without express repetition all or any or the provisions of Table A or C, a copy of the appropriate Table or of the appropriate part thereof shall be attached to every copy of such articles.
- (4) If a company makes default in complying with this section the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day after the seventh day from such request during which the default continues

## 19. Name of company

- (1) The last word of the name of a limited company shall be "Limited":  
Provided that such a company may use, and may be legally designated by, the abbreviation "Ltd." for any purpose.
- (2) No company shall be registered by a name which in the opinion of the registrar is misleading or undesirable.
- (3) A company may by special resolution, and with the approval of the registrar signified in writing, change its name.
- (4) The decision of the registrar under this section shall be final, and not subject to appeal to, or question by, any court.
- (5) If the Minister is of the opinion that the name under which a company is registered is misleading or undesirable he may direct such company to change its name, and the company shall change its name within six weeks of such direction or such longer period as the Minister may think fit to allow.
- (6) If a company makes default in complying with a direction under subsection (5), it and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues.

- (7) Within twenty-one days after the date of the special resolution referred to in subsection (3), the company shall deliver to the registrar—
- (a) the company's certificate of incorporation; and
  - (b) a copy of the said resolution for registration in accordance with [section 122](#).

The registrar shall enter the new name on the register in place of the former name, and shall issue a new certificate of incorporation worded to meet the circumstances of the case.

- (8) A certificate under this section shall be conclusive evidence of the alteration to which it relates.
- (9) A change of name by a company shall not affect any rights or obligations of the company nor render defective any legal proceedings that may be or have been continued or commenced against it by its former name; and any such legal proceedings may be continued or commenced against it by its new name.
- (10) The registrar may on written application and on payment of the prescribed fee reserve a name pending registration of a company or a change of name by a company. Such reservation shall be for such period as the registrar shall think fit and may be renewed; and during the period of reservation no other company may be registered under the reserved name or under any name which in the opinion of the registrar bears too close a resemblance to the reserved name.
- (11) The registrar shall determine and assign to each company a designating number. A company may, if it has no other registered name, use its designating number (together, in the case of a limited company, with the word "Limited") as its name.
- (12) If a company has been directed under subsection (5) to change its name and fails to do so within six weeks of such direction, the registrar may revoke the name of the company, and its designating number (together, in the case of a limited company, with the word "Limited") shall thereupon become its name; and subsections (7) to (9) shall, with any necessary modifications, apply in such a case.

## 20. Pre-incorporation contracts

- (1) Any person who purports to enter into a contract in the name of or on behalf of a company before it comes into existence shall be personally bound by the contract and entitled to the benefits thereof, except as provided in this section.
- (2) A company may within a reasonable time after it comes into existence, expressly, or by any action or conduct signifying its intention to be bound thereby, adopt a written contract made before it came into existence in its name or on its behalf, and upon such adoption, subject to subsection (3)—
- (a) the company shall for all purposes be bound by the contract and entitled to the benefits thereof as if the company had been in existence at the date of such contract and had been a party thereto; and
  - (b) the person who purported to act in the name of or on behalf of the company shall, except as provided in subsection (3), cease to be bound by or entitled to the benefits of the contract.
- (3) Except as provided in subsection (4), whether or not a contract made before the coming into existence of a company is adopted by the company, the other party to the contract may apply to the court for an order fixing obligations under the contract as joint or joint and several, or apportioning liability between or among the company and the person who purported to act in the name of or on behalf of the company, and upon such application the court may make any order it thinks fit.
- (4) If expressly so provided in the written contract, the person who purported to act in the name of or on behalf of the company before it came into existence shall not in any event be bound by the contract nor entitled to the benefits thereof.

## 21. Capacity of company

- (1) A company shall have and shall be deemed always to have had the capacity of a natural person of full capacity, subject only to such limitations as are inherent in its corporate nature.
- (2) A company shall have and shall be deemed always to have had the capacity to carry on its business and exercise its powers in any jurisdiction outside Malawi to the extent that the laws of such jurisdiction permit.

## 22. Unauthorized acts

- (1) A company shall not carry on any business or pursue any object or exercise any power that it is restricted by its memorandum or articles from carrying on or pursuing or exercising, nor exercise any of its powers in a manner inconsistent with its memorandum or articles:  
  
Provided that (subject to subsections (2), (3) and (4)), no act of a company and no transfer of property to or by a company shall be invalid by reason only that the act or transfer may contravene or have contravened this subsection.
- (2) On the application of—
  - (a) any member of the company; or
  - (b) the holder of any debenture secured by a floating charge over all or any of the company's property or by a trustee for the holders of any such debentures,the court may prohibit by injunction the doing of any act or the conveyance or transfer of any property in breach of subsection (1).
- (3) Where the act or transaction sought to be prohibited in any proceedings under subsection (2) is being or is to be performed, or made under a contract to which the company is a party, all parties to the contract shall be made parties to the proceedings, and the court may make any order as to compensation or otherwise as it may consider equitable.
- (4) Any breach of subsection (1) may be asserted in any proceedings under section [203](#) or [213](#) and in any action against a director or other officer of the company for breach of duty or breach of trust.

## 23. Companies limited by guarantee

- (1) A company limited by guarantee may not lawfully be incorporated with the object of carrying on business for the purpose of making profits for its members or for anyone concerned in its promotion or management.
- (2) If any company limited by guarantee shall carry on business for the purpose of making such profits all officers and members thereof who shall be cognizant of the fact that it is so carrying on business shall be jointly and severally liable for the payment and discharge of all the debts and liabilities of the company incurred in carrying on such business, and the company and every such officer and member shall be liable to a fine of ten Kwacha for every day during which it shall carry on such business.
- (3) Subsection (2) shall not apply to any existing company for a period of six months after the commencement of this Act.

## 24. Conversion of company limited by shares to company limited by guarantee

- (1) A company limited by shares may be converted into a company limited by guarantee if—
  - (a) there is no unpaid liability on any of its shares;
  - (b) all its members agree in writing to such conversion and to the voluntary surrender to the company for cancellation of all the shares held by them immediately prior to the conversion;

- (c) a new memorandum and articles, appropriate to a company limited by guarantee, are adopted by the company pursuant to sections [8](#), [10](#) and [13](#); and
  - (d) each member agrees in writing to contribute to the assets of the company, in the event of its being wound up, such sum, if any, as may be required.
- (2) Upon delivery to the registrar of—
- (a) the company’s certificate of incorporation; and
  - (b) a copy of the said new memorandum and articles and of the special resolutions adopting the same, together with a statutory declaration by a director and the secretary of the company confirming that the conditions of subsection (1) have been complied with,
- the registrar shall issue a new certificate of incorporation worded to meet the circumstances of the case; and as from the date mentioned in such certificate the company shall be converted into a company limited by guarantee and the shares therein shall be validly surrendered and cancelled notwithstanding the provision of [section 67](#):
- Provided that—
- (i) except in accordance with [section 19](#), the company may not change the name under which it was registered prior to the conversion; and
  - (ii) until a new certificate of incorporation is issued the former memorandum and articles shall continue to apply and neither the surrender of the shares of the company nor the agreement to contribute to the assets of the company in the event of its being wound up shall take effect.
- (3) The conversion of the company pursuant to this section shall not alter the identity of the company, nor affect any rights or obligations of the company except as mentioned in this section or render defective any legal proceedings by or against the company.
- (4) The registrar shall make all such entries in the appropriate register as are necessary to give effect to and evidence such conversion.

## 25. Conversion of limited company to unlimited company

- (1) A company limited by shares or limited by guarantee may be converted into an unlimited company if—
- (a) all its members agree in writing to its conversion; and
  - (b) a new memorandum and articles, appropriate to an unlimited company, are adopted by the company pursuant to sections [8](#) and [13](#).
- (2) Upon delivery to the registrar of—
- (a) the company’s certificate of incorporation;
  - (b) a copy of the said new memorandum and articles and of the special resolutions adopting the same; and
  - (c) a statutory declaration by a director and the secretary of the company confirming that the conditions of subsection (1) have been complied with,

the registrar shall issue a new certificate of incorporation worded to meet the circumstances of the case, and as from the date mentioned in such certificate the company shall be converted into an unlimited company:

Provided that—

- (i) except in accordance with [section 19](#), the company may not change the name under which it was registered prior to conversion, otherwise than by the omission of the word "Limited"; and
  - (ii) until a new certificate of incorporation is issued, the former memorandum and articles shall continue to apply, and no change in the liability of the members shall take effect.
- (3) The conversion of the company pursuant to this section shall not alter the identity of the company, or affect any rights or obligations of the company or render defectively any legal proceedings by or against the company.
- (4) The registrar shall make all such entries in the appropriate registers as are necessary to give effect to and evidence such conversion.

## 26. Conversion of unlimited company to limited company

- (1) An unlimited company may be converted into a company limited by shares or a company limited by guarantee if—
- (a) all its members agree in writing to its conversion; and
  - (b) a new memorandum and articles, appropriate to a company limited by shares or a company limited by guarantee, as the case may be, are adopted by the company pursuant to [sections 8 and 13](#).
- (2) Upon delivery to the registrar of—
- (a) the company's certificate of incorporation;
  - (b) a copy of the said new memorandum and articles and of the special resolutions adopting the same; and
  - (c) a certificate by the auditor or auditors of the company, made not more than three months before the date of the application, that they have investigated the affairs of the company, and that the company is at the date of the certificate a solvent company; and
  - (d) a statutory declaration by a director and the secretary of the company confirming that the conditions of subsection (1) have been complied with, and that they are satisfied that the company is solvent,

the registrar shall issue a new certificate of incorporation worded to meet the circumstances of the case, and as from the date mentioned in such certificate the company shall be converted into a company limited by shares or limited by guarantee, as the case may be:

Provided that—

- (i) except in accordance with [section 19](#), the company may not change the name under which it was registered prior to conversion, otherwise than by the addition of the word "Limited"; and
  - (ii) until a new certificate of incorporation is issued, the former memorandum and articles shall continue to apply, and no change in the liability of the members shall take effect.
- (3) Where a company which has been converted pursuant to this section is wound up, and the commencement of the winding-up is within three years from the date of such conversion, every person who was a member of the company at the date of such conversion shall be liable to contribute without limit to the assets of the company in respect of debts and liabilities contracted or incurred before that date.
- (4) Any officer of a company who makes a statutory declaration, or any auditor of a company who gives a certificate, under this section without having reasonable grounds for the opinion that the company is solvent shall be liable to imprisonment for a term of six months and to a fine of One thousand Kwacha

- (5) The conversion of the company pursuant to this section shall not alter the identity of the company, nor affect any rights or obligations of the company or render defective any legal proceedings by or against the company.
- (6) The registrar shall make all such entries in the appropriate registers as are necessary to give effect to and evidence such conversion.

## 27. Conversion of public company to private company

- (1) Upon compliance with [section 5](#) (3) and this section and with the other requirements of this Act in respect of private companies, a public company may by special resolution be converted into a private company.
- (2) Within twenty-one days after the date of the special resolution referred to in subsection (1), the company shall deliver to the registrar—
  - (a) a copy of the said resolution for registration in accordance with [section 122](#);
  - (b) its certificate of incorporation; and
  - (c) a statutory declaration by a director and the secretary of the company confirming that the conditions of subsection (1) have been complied with, and that they are satisfied that the company is solvent.
- (3) Upon compliance with the requirements of the foregoing provisions of this section, the registrar shall issue a new certificate of incorporation worded to meet the circumstances of the case; and thereupon the same consequences shall follow as to the rights, powers, and duties of the company as if it had originally been incorporated as a private company; but the conversion shall not alter the identity of the company, nor affect any rights or obligations of the company or render defective any legal proceedings by or against the company.
- (4) The registrar shall make all such entries in the appropriate registers as are necessary to give effect to and evidence such conversion.
- (5) If default is made in complying with subsection (2), the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues.

## 28. Conversion of private company to public company

- (1) Upon compliance with this section and with the requirements of this Act in respect of public companies, a private company may by special resolution be converted into a public company.
- (2) A private company shall be deemed to have resolved to be converted into a public company if it has by special resolution altered its articles in such a manner that they no longer comply with [section 5](#)(3).
- (3) Within twenty-one days after the date of the special resolution referred to in subsection (1) or (2), the company shall deliver to the registrar—
  - (a) a copy of the said resolution for registration in accordance with [section 122](#);
  - (b) its certificate of incorporation; and
  - (c) if the company has been incorporated for a period of eighteen months or more, a copy, certified by a director and the secretary of the company to be a true copy, of every balance sheet, profit and loss account, group accounts, directors' report (if any) and auditors' report sent to the members of the company in the preceding year.
- (4) Upon compliance with the requirements of the foregoing provisions of this section, the registrar shall issue a new certificate of incorporation worded to meet the circumstances of the case; and thereupon the same consequences shall follow as to the rights, powers, and duties of the company

as if it had originally been incorporated as a public company; but the conversion shall not alter the identity of the company, nor affect any rights or obligations of the company or render defective any legal proceedings by or against the company.

- (5) The registrar shall make all such entries in the appropriate registers as are necessary to give effect to and evidence such conversion.
- (6) If default is made in complying with subsection (3), the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues.

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

Where the memorandum or articles of a company include the provisions which under [section 5](#) (3) are required to be included in order to constitute it a private company but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under this Act:

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

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

- (1) Where it is proved to the satisfaction of the Minister that a company has been incorporated or is about to be incorporated as a company limited by guarantee for promoting charity, education, art, science, religion or any other useful object, the Minister may by licence direct that the company be registered without the addition of the word "Limited" to its name, and the company may be registered accordingly.
- (2) A licence under this section may be granted on such conditions as the Minister may think fit, and those conditions shall be binding on the company and shall, if the Minister so directs, be inserted in the memorandum or the articles of the company.
- (3) A company to which a licence is granted under this section shall be exempt from the provisions of this Act relating to the use of the word "Limited" as part of its name, and from the provisions of [section 130](#), and from the provisions of the Second Schedule regarding the sending of lists of members to the registrar.

*[Second Schedule]*

- (4) A licence under this section may at any time be revoked by the Minister, and upon revocation the registrar shall enter the word "Limited" upon the register as part of the name of the company, and the company shall cease to enjoy the exemptions and privileges granted by this section:

Provided that before any licence under this section is so revoked, the Minister shall give to the company notice in writing of his intention, and shall afford it an opportunity of being heard in opposition to the revocation.

- (5) Where a company in respect of which a licence under this section is in force alters the provisions of its memorandum with respect to its objects, it shall give notice thereof to the Minister within twenty-one days after the date on which the resolution altering the company's objects was passed.
- (6) If a company has so altered the provisions of its memorandum the Minister may revoke or vary the licence as he may think fit.

- (7) If a company makes default in complying with subsection (5), the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues.
- (8) Any such license granted to an existing company under the repealed Act shall remain in force, but may be revoked or varied under this section.

### **Part III – Shares and membership**

#### **31. Membership of company**

- (1) The subscribers of the memorandum of a company shall be members of the company, and shall be entered as members in its register of members.
- (2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.
- (3) In the case of a company limited by shares and an unlimited company, each member shall be a shareholder of the company and shall hold at least one share, and every holder of a share shall be a member of the company.

#### **32. Register of members**

- (1) Every company shall keep a register of its members and enter therein the following particulars—
  - (a) the full name, address and occupation of each member; and in the case of a company limited by shares or an unlimited company a statement of the shares held by each member, distinguishing each share by its number so long as the share has a number, and of the amount paid or agreed to be considered as paid on the shares of each member;
  - (b) the date at which each person was entered in the register as a member; and
  - (c) the date at which any person ceased to be a member.
- (2) The register of members shall be kept at the registered office of the company:  
Provided that—
  - (a) if the work of making it up is done at another office of the company, it may be kept at that other office; and
  - (b) if the company arranges with some other person for the making up of the register to be undertaken on behalf of the company by that other person, it may be kept at the office of that other person at which the work is done, so, however, that it shall not be kept at any place outside Malawi.
- (3) Every company shall send notice to the registrar of companies of the place where its register of members is kept and of any change in that place:  
Provided that a company shall not be bound to send notice under this subsection where the register has, at all times, been kept at the registered office of the company.
- (4) Where a company has more than fifty members the register shall contain an index of the names of the members in such a form as to enable the account of each member to be readily found.
- (5) Where a company makes default in complying with this section the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues.
- (6) If by reason of the default of the person mentioned in subsection (2) (b), the company makes default in complying with this Act, he shall be liable to the same penalties as if he were an officer

of the company, and the power of the court under [section 129](#) shall extend to the making of orders against that person and his officers and servants.

### 33. Inspection of register

Except when the register of members is closed in accordance with [section 34](#), the register and index of the names of the members of the company shall be available for inspection by any member of the company or other person in accordance with [section 129](#).

### 34. Power to close register

A company may, on giving notice by advertisement in a newspaper circulating generally throughout Malawi, close for any time or times not exceeding in the whole thirty days in each year the register of members of the company or the part thereof relating to members holding shares of any class.

### 35. Power of court to rectify register

- (1) If—
  - (a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or
  - (b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

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

- (2) Where an application is made under this section, the court may order rectification of the register and, if it deems fit, may order payment by the company of compensation for any loss sustained by the person aggrieved.
- (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 name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.
- (4) The court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the registrar.

### 36. No notice of trust

- (1) Subject to [section 54](#), no notice of any trust, express, implied or constructive, need be entered on the register of members, or be received by the company or the registrar.
- (2) A company shall not be bound to see to the execution of any trust, whether express, implied or constructive, in respect of any of its shares.
- (3) The receipt by a member in whose name a share stands in the register of members shall be a valid and binding discharge of the company for any dividend or other money payable in respect of such share, whether or not notice of any such trust has been given to or received by the company.
- (4) A company shall not be bound to see to the application of the money paid upon such receipt.

### 37. Register to be evidence

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

### **38. Power for company to keep branch register**

- (1) A company limited by shares or an unlimited company may, subject to its articles, cause to be kept in any country outside Malawi a branch register of members resident in that country or in any other country outside Malawi (in this Act called a "branch register").
- (2) The company shall give to the registrar notice of the situation of the office where any branch register is kept, and of any change in its situation, and if it is discontinued of its discontinuance, and any such notice shall be given within twenty-one days of the initial keeping of the register in that office or of the change or discontinuance, as the case may be.
- (3) If default is made in complying with subsection (2) the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues.

### **39. Regulations as to branch register**

- (1) A branch register shall be deemed to be part of the company's register of members (in this section called "the principal register").
- (2) It shall be kept and shall be open for inspection in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating generally in the country or State where the branch register is kept.
- (3) The company shall transmit to its registered office a copy of every entry in its branch register as soon as may be after the entry is made.
- (4) The company shall cause to be kept at the place where the company's principal register is kept a duplicate of its branch register duly entered up from time to time. Every such duplicate shall for all the purposes of this Act be deemed to be part of the principal register.
- (5) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a branch register shall be distinguished from those registered in the principal register, and no transaction with respect to any shares registered in a branch register shall, during the continuance of that registration, be registered in any other register.
- (6) A company may discontinue a branch register, and thereupon all entries in that register shall be transferred to the principal register.
- (7) Subject to the provisions of this Act, any company may, by its articles, make such provisions as it may think fit respecting the keeping of branch registers.
- (8) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues; and where the principal register is kept at the office of some person other than the company and by reason of any default of his the company fails to comply with subsection (4), he shall be liable to the same penalty as if he were an officer of the company who was in default.

### **40. Stamp duties in case of securities registered in branch register**

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

### **41. Branch registers kept in Malawi**

- (1) if, by virtue of the law in force in any other country, companies incorporated under that law have power to keep in Malawi branch registers of their shareholders or debenture holders, the

Minister may, by Order published in the *Gazette*, direct that sections 33 and 35 shall, subject to any modifications and adaptations specified in the order, apply to and in relation to any such branch registers kept in Malawi as they apply to and in relation to the registers of companies within the meaning of this Act.

- (2) The Minister may, by Order published in the *Gazette*, cancel or modify any order made under subsection (1).

#### **42. Companies ceasing to have at least two members**

- (1) If at any time the number of members of a company is reduced below two and it carries on business for more than six months without at least two members, every person who is a member or director of the company during the time that it so carries on business after those six months and is cognizant of the fact that it is carrying on business with fewer than two members shall be severally liable for the payment of all the debts and liabilities of the company incurred during that period.
- (2) The court, in any proceeding against such a member or on application being made to it by any person interested, if satisfied that it is just and reasonable to do so, may relieve any such member either wholly or partly from liability under subsection (1) on such terms as it deems fit.

#### **43. Nature and transferability of shares**

- (1) The shares or other interest of any member in a company shall be personal estate and movable property, transferable by a written transfer in manner provided by the articles of the company or by this Act.
- (2) Notwithstanding any provision in the articles, fully-paid shares in a company limited by shares may be transferred by means of an instrument under hand in the form set out in the Sixth Schedule to this Act, executed by both the transferor and the transferee, or by some other person duly authorized on behalf of the transferor or the transferee.

*[Sixth Schedule]*

- (3) Nothing in subsection (2) shall be construed as affecting the validity of any instrument which would be effective to transfer shares apart from this section, or as affecting the powers of directors to accept in their discretion an instrument in any other form which may seem to them sufficient.
- (4) Nothing in this section shall affect any right of the directors to refuse to register a person as the holder of shares on any ground other than the form in which those shares purport to be transferred to him.

#### **44. Numbering of shares**

Each issued share in a company shall be distinguished by a definitive number:

Provided that if all the issued shares of the company or all the issued shares therein of a particular class are fully paid, none of those shares need thereafter have a distinguishing number.

#### **45. Issue of bearer securities**

No company shall, after the commencement of this Act, issue any share warrants to bearer.

*[17 of 1990]*

#### **46. Shares not to be converted into stock**

- (1) No company shall, after the commencement of this Act, convert any of its shares into stock.
- (2) A company which has before the commencement of this Act converted shares into stock may reconvert such stock or any part thereof into shares in accordance with [section 64](#).

#### 47. Classification of shares

A company may provide for different classes of shares by attaching to certain of the shares preferred, deferred or other special rights or restrictions, whether in regard to dividend, voting, repayment or otherwise. Shares shall not be deemed to be of the same class unless they rank *pari passu* for all purposes.

#### 48. Variation of class rights

- (1) If at any time the shares of a company are divided into different classes, the rights attached to any class may not be varied except to the extent and in the manner provided by this section.
- (2) If the memorandum shall expressly forbid any variation of the rights of a class, or shall contain provision for such variation and shall expressly forbid any alteration of such provision, the rights or the provision for variation may not be altered except in accordance with such provision, or with the written consent of all the members of that class, or with the sanction of the court under a scheme of arrangement in accordance with [section 198](#).
- (3) Except where subsection (2) applies, the rights attached to any class of shares may be varied with the written consent of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of shares of that class.
- (4) Any resolution of a company the implementation of which would have the effect of diminishing the proportion of the total votes exercisable at a general meeting of the company by the holders of the existing shares of a class, or of reducing the proportion of the dividends or other distributions payable at any time to the holders of the existing shares of a class, shall be deemed to be a variation of the rights of that class:  
  
Provided that this subsection shall not apply to a resolution for the creation or issue of further shares.
- (5) If the rights of any class of shares are varied the holders of not less in the aggregate than five per cent of the issued shares of that class may apply to the court to have the variation cancelled, and where such application is made the variation shall not have effect unless and until it is confirmed by the court.
- (6) An application to the court under subsection (5) shall be made within twenty-eight days of the date on which the variation was effected. If such an application is made the company shall forthwith deliver to the registrar for registration notice of that fact. The court after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application shall, if it is satisfied that the variation would unfairly prejudice the shareholders of any class, cancel the variation and shall, if not so satisfied, confirm the variation.
- (7) The company shall within twenty-one days after the making of an order by the court on such application deliver a copy thereof to the registrar for registration.
- (8) If a company makes default in delivering to the registrar the notice or order referred to in subsection (6) or (7), the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues.
- (9) In this section, references to the variation of rights attached to a class of shares shall be deemed to include references to their abrogation.
- (10) Nothing in this section shall affect or derogate from the powers of the court under [sections 198 and 203](#).

#### 49. Transfer of shares

- (1) Notwithstanding anything in the articles of a company it shall not be lawful for the company to register a transfer of shares unless a proper instrument of transfer duly stamped (if chargeable to stamp duty) has been delivered to the company:  

Provided that nothing herein contained shall prejudice any power of the company to register any person to whom the right to any shares has been transmitted by operation of law.
- (2) Unless otherwise provided in the company's articles or the terms of issue of the shares, the company may refuse to register any transfer unless it is accompanied by the appropriate share certificate, or the company is bound to issue a renewal or copy thereof in accordance with [section 52](#).
- (3) Transfers may be lodged for registration by either the transferor or transferee.
- (4) If a company refuses to register a transfer the company shall, within two months after the date on which the transfer was lodged with the company, send to the transferee and transferor notice in writing of the refusal, together with a statement of the facts which are considered to justify refusal.
- (5) If default is made in complying with subsection (1), the company and every officer of the company who is in default shall be liable to a fine of two hundred Kwacha.
- (6) If default is made in complying with subsection (4), the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues, and the transferee shall be entitled to registration.

#### 50. Restrictions on transferability

- (1) Save as expressly provided in the company's articles and in this Act, shares shall be transferable without restriction by a written transfer in accordance with [section 43](#).
- (2) No restriction shall be imposed on the transferability of shares after they have been issued unless the holders thereof shall consent in writing:  

Provided that nothing in this subsection shall derogate from the powers of the court under [sections 198](#) and [203](#).
- (3) Subject to subsection (4), the articles of a public company shall not impose any restriction on the right to transfer any shares of the company, and if the articles purport to impose any such restriction it shall be ineffective:  

Provided that this subsection shall not—

  - (a) prohibit any restriction on the right to transfer any shares on which there is unpaid liability; or
  - (b) prohibit any restriction on the right to transfer, or prohibit any provision for the compulsory acquisition or rights of first refusal, in favour of other members of the company or the trustees appointed under any scheme, of shares issued to directors or other officers or employees in pursuance of the exercise of any rights or options granted, or in pursuance of any scheme adopted, under the provisions of [section 58](#).
- (4) Notwithstanding subsections (1) and (3), a company may refuse to register a transfer of shares to any person who is an infant or to any person found by a court of competent jurisdiction to be a person of unsound mind.

### 51. Certification of transfers

- (1) When the holder of any shares wishes to transfer to any person part only of the shares represented by one or more certificates, the instrument of transfer together with the relative certificates may be delivered to the company with a request to certify the instrument of transfer.
- (2) If a company endorses on an instrument of transfer the words "certificate lodged", or words to the like effect, this shall be taken as a representation to anyone acting on the faith of the certification that there has been produced to and retained by the company such certificates as show a *prima facie* title to the shares in the transferor named in the instrument of transfer but not as a representation that the certificates are genuine or that the transferor has any title to the shares.
- (3) Where any person acts on the faith of a false certification made by the company, the company shall be liable to compensate such person for any loss suffered as a result of so acting.
- (4) For the purposes of this section the certification of an instrument of transfer shall be deemed to be made by a company if—
  - (i) the person issuing the instrument is the secretary, or any other person apparently authorized to issue certificated instruments of transfer on the company's behalf; or
  - (ii) the certification is signed by the secretary, or any other person apparently authorized to certify transfers on the company's behalf.

### 52. Issue of share certificates

- (1) Every company shall, within two months after the allotment of any of its shares or after the registration of the transfer of any shares, deliver to the registered holder thereof a certificate under the common seal of the company stating—
  - (a) the number and class of shares held by him, and the definitive numbers thereof (if any);
  - (b) the amount paid on such shares and the amount (if any) remaining unpaid; and
  - (c) the full name, address, and occupation of the registered holder.
- (2) If a share certificate is defaced, lost or destroyed the company, at the request of the registered holder of the shares, shall renew the same on payment of a fee not exceeding one Kwacha and on such terms as to evidence and indemnity and the payment of the company's expenses of investigating evidence as the company may reasonably require.
- (3) If default is made in complying with this section the company and any officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues.

### 53. share certificates as evidence

A share certificate shall be *prima facie* evidence of the title to the shares of the person named therein as the registered holder and of the amounts paid and payable thereon.

### 54. Transmission of shares by operation of law

- (1) In the case of the death of a shareholder the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder or last survivor of joint holders, shall be the only persons recognized by the company as shareholders.
- (2) A person upon whom the ownership of a share devolves by reason of his being the legal personal representative, receiver, or trustee in bankruptcy of the holder, or by operation of law may, upon such evidence being produced as the company may properly require, be registered himself as the holder of the share or transfer the same to some other person and such transfer shall be as valid as if he had been registered as a holder at the time of execution of transfer. The company shall have

the same right, if any, to decline registration of a transfer by such person as it would have had in the case of a transfer by the registered holder but shall have no right to refuse registration of the person himself.

- (3) A person upon whom the ownership of a share devolves by reason of his being the legal personal representative, receiver, or trustee in bankruptcy of the holder, or by operation of law shall, prior to registration of himself or a transferee, be entitled to the same dividends and other advantages as if he were the registered holder and to the same rights and remedies as if he were a member of the company, except that he shall not, before being registered as a member in respect of the share, be entitled to vote at any meeting of the company:

Provided that the company may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within three months the company may thereafter suspend payment of all dividends or other moneys payable in respect of the share until the requirements of the notice have been complied with.

- (4) Notwithstanding the provisions of subsection (3), where an order is made under [section 109](#), the court may direct that any such person as is specified in subsection (3) (whether or not he is the applicant for the order) shall be entitled to exercise at the meeting the voting rights that would have been exercisable by the registered holder, and that any such person present in person or by proxy shall be deemed to constitute a meeting.

## 55. Evidence of grant of probate

The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, or confirmation as executor, of a deceased person having been granted to some person shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of the grant.

## 56. Company's lien on shares

Notwithstanding any provision in the articles, a company shall not have or claim a lien on shares on which there is no unpaid liability, nor shall any such lien extend to any sums due from the shareholder except in respect of the unpaid liability on the shares.

## 57. Membership of holding company

- (1) Except in the cases hereinafter in this section mentioned a body corporate shall not be a member of a company which is its holding company, and any allotment or transfer of shares in a company to its subsidiary shall be void.
- (2) Nothing in this section shall apply where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary thereof is beneficially interested under the trust otherwise than by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.
- (3) This section shall not prevent a subsidiary which is, at the commencement of this Act, or which was, before it became a subsidiary, a member of its holding company from continuing to be a member, but—
  - (a) such subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof; and
  - (b) such subsidiary shall not acquire further shares in the holding company except upon a general issue of fully-paid bonus shares.
- (4) Subject to subsection (2), subsections (1) and (3) shall apply in relation to a nominee for a body corporate which is a subsidiary, as if references in the said subsections (1) and (3) to such a body corporate included references to a nominee for it.

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

## **58. Rights and options to subscribe for shares issue to directors, officers and employees**

- (1) Save as is otherwise provided by this section, or by its articles, a company may create and issue, whether or not in connexion with the issue of any of its shares, rights or options in favour of such persons as are referred to in subsection (3), entitling the holders thereof to acquire from the company, upon such consideration, terms and conditions as may be fixed by the board of directors, shares of any class.
- (2) The terms and conditions of such rights or options, including the time or times at or within which and the price or prices at which they may be exercised and any limitations on transferability, shall be set forth or incorporated by reference in the instrument or instruments evidencing such rights or options.
- (3) Where a company proposes to issue such rights or options to one or more directors, officers or employees of the company or of any subsidiary thereof as an incentive to service or continued service with the said company or any such subsidiary, or where it proposes to issue such rights or options to a trustee on behalf of such directors, officers or employees, such issue shall be authorized at a general meeting by special resolution, or shall be authorized by and consistent with a scheme adopted by special resolution. If, however, under the articles of association there exist any pre-emptive rights in any of the shares to be thus subject to rights or options, either such issue or such scheme, as the case may be, shall also be approved by the vote or written consent of the holders of a majority of the shares entitled to exercise preemptive rights with respect to such shares, and such vote or written consent shall operate to release the pre-emptive rights with respect thereto of the holders of all of the shares that were entitled to exercise such pre-emptive rights.
- (4) The scheme adopted by the shareholders for the issue of such rights or options or, where there is no such scheme, the special resolution authorizing the issue thereof, shall include the material terms and conditions upon which such rights or options are to be issued, such as (but without limitation thereof) any restrictions on the number of shares that eligible individuals may have the right or option to acquire, the method of administering the scheme (if any), the terms and conditions of payment for shares in full or by instalments, any limitations on the transferability of such shares, and the voting and dividend rights to which the holders of such shares may be entitled:

Provided that under this subsection no certificate for shares shall be delivered to a shareholder, and no right to vote in respect of such shares shall be conferred on a shareholder, prior to full payment therefor.

- (5) In the absence of fraud in the transaction, the decision of the board of directors (or, where the directors or a sufficient quorum thereof are not themselves disinterested in the issue or scheme, the decision of the general meeting) shall be conclusive as to the adequacy of the consideration, tangible or intangible, received or to be received by the company for the issue of rights or options and for the acquisition pursuant thereto of shares in the company.
- (6) The provisions of this section shall not apply to the rights of holders of convertible debentures to acquire shares upon the exercise of a conversion option.

## **Part IV – Share capital**

### **59. Return as to allotments**

- (1) Whenever a company makes any allotment of its shares, the company shall within one month thereafter deliver to the registrar for registration a return of the allotments, stating the number and amount of the shares comprised in the allotment and the full names, addresses and occupations of the allottees.

- (2) Where shares are allotted as paid up otherwise than wholly in cash, there shall also be delivered to the registrar for registration a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contract being duly stamped, and a return stating the number and nominal amount of shares so allotted, and the consideration for which they have been allotted:

Provided that no such contract need be delivered where the company has made an issue to its members of fully-paid bonus shares.

- (3) Where a contract as mentioned in subsection (2) is not reduced to writing, the company shall within one month after the allotment deliver to the registrar for registration particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing.
- (4) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues.

## 60. Payment of commissions and discounts

- (1) A company may, subject to its memorandum and articles, pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company if—
  - (a) the commission paid or agreed to be paid does not exceed ten per cent of the price at which the shares are issued or the amount or rate authorized by the articles, whichever is less;
  - (b) the amount or rate per cent of the commission paid or agreed to be paid is—
    - (i) in the case of shares offered to the public for subscription, disclosed in the prospectus; or
    - (ii) in the case of shares not offered to the public for subscription, disclosed in a statement signed and delivered to the registrar for registration before payment of the commission; and
  - (c) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in manner aforesaid.
- (2) Save as aforesaid, and as provided by [section 72](#), no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.
- (3) Nothing in this section shall affect the power of any company to pay reasonable brokerage.
- (4) A vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company would have been legal under this section.
- (5) If default is made in complying with the provisions of subsection (1), regarding disclosure and registration, the company and every officer of the company who is in default shall be liable to a fine of one hundred Kwacha.

## 61. Application of premiums received on issue of shares

- (1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account, to be called "the share premium account", and the provisions of this Act relating to the reduction of the share capital of a company and to distribution of profits shall, except as provided in this section, apply as if the share premium account were paid up share capital of the company.
- (2) The share premium account may, notwithstanding anything 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 bonus shares;
  - (b) in writing off—
    - (i) the preliminary expenses of the company; or
    - (ii) the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company; or
  - (c) in providing for the premium payable on redemption of any redeemable preference shares or of any debentures of the company.
- (3) Where a company has before the commencement of this Act issued any shares at a premium, this section shall apply as if the shares had been issued after the commencement of this Act:

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

## 62. Power to issue redeemable preference shares

- (1) Subject to this section, and to its memorandum and articles, a company may issue preference shares which are, or at the option of the company are to be, liable to be redeemed, and may convert existing shares (whether issued or not) into such redeemable preference shares:

Provided that—

- (a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;
  - (b) no such shares shall be redeemed unless they are fully paid;
  - (c) the premium, if any, payable on redemption, must have been provided for out of the profits of the company or out of the company's share premium account before the shares are redeemed; and
  - (d) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called "the capital redemption reserve fund", a sum equal to the nominal amount of the shares redeemed, and the provisions of this Act relating to the reduction of the share capital of a company and to distribution of profits shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company.
- (2) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.
  - (3) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of the company's authorized share capital.

- (4) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not be deemed to be increased by the issue of shares in pursuance of this subsection.
- (5) The capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company in paying-up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

### **63. References to share capital**

- (1) No company having a share capital shall publish or issue or cause to be published or issued a statement of the amount of its authorized or issued share capital unless there is also contained in the same document an equally prominent statement of the amount of its paid-up share capital.
- (2) If a company acts in contravention of subsection (1), the company and every officer of the company who is in default shall be liable to a fine of four hundred Kwacha.
- (3) Nothing in this section shall make it unlawful to publish or issue or cause to be published or issued any statement which refers solely to the amount of the company's paid-up share capital, or to describe the same as the company's "share capital".

### **64. Power of company having shares to alter its capital**

- (1) A company having a share capital may, subject to its memorandum and articles, alter the conditions of its memorandum as follows, that is to say, it may—
  - (a) increase its share capital by new shares of such amount as it thinks expedient;
  - (b) consolidate and divide all or any of its share capital into shares of larger amount;
  - (c) subdivide its shares, or any of them, into shares of smaller amount;
  - (d) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so called.
- (2) A company limited by shares which has before the commencement of this Act converted any of its shares into stock may re-convert that stock into paid-up shares of any denomination.
- (3) The powers conferred by this section shall be exercised by the company in general meeting.
- (4) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

### **65. Notice to registrar of alteration of share capital**

- (1) If a company has—
  - (a) consolidated and divided its share capital into shares of larger amount;
  - (b) re-converted stock into shares;
  - (c) subdivided its shares or any of them;
  - (d) redeemed any redeemable preference shares; or

- (e) cancelled any shares, otherwise than in connexion with a reduction of share capital under [section 67](#) of this Act,

it shall within twenty-one days after so doing deliver to the registrar for registration notice thereof, specifying, as the case may be, the shares consolidated, divided, subdivided, redeemed or cancelled, or the stock re-converted.

- (2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues.

## 66. Notice of increase of share capital

- (1) Where a company having a share capital has increased its share capital beyond the registered capital, it shall, within twenty-one days after the passing of the resolution authorizing the increase, deliver to the registrar for registration notice of the increase.
- (2) The notice shall include particulars with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued, and there shall be delivered to the registrar together with the notice a copy of the resolution authorizing the increase.
- (3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues.

## 67. Special resolution for reduction of share capital

- (1) Subject to [sections 68 to 70](#) inclusive and to its memorandum and articles a company having a share capital may, by special resolution, reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may—
- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid-up;
  - (b) cancel any paid-up share capital which is lost or unrepresented by available assets; or
  - (c) pay-off any paid-up share capital which is in excess of the wants of the company,
- and may, if and so far as is necessary, alter memorandum by reducing the amount of its share capital and of its shares accordingly.
- (2) A special resolution under this section is in this Act referred to as "a resolution for reducing share capital".
- (3) If a resolution for reducing share capital shall vary the rights attached to any class of shares, the resolution shall not be effective unless the provisions of [section 48](#) have also been complied with.
- (4) No company having a share capital shall reduce its share capital, share premium account or capital redemption reserve fund except as provided by this Act.
- (5) If a company acts in contravention of subsection (4), every officer of the company who is in default shall be liable to imprisonment for two years and to a fine of one thousand Kwacha.

## 68. Application to court for confirming order

- (1) Where a company has passed a resolution for reducing share capital, it shall apply to the court for an order confirming the reduction and the resolution shall not be effective until so confirmed.
- (2) Subject to subsection (3), where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up

share capital, and in any other case if the court so directs, the following provisions shall have effect

- (a) every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction;
  - (b) the court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction; and
  - (c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the court may direct, the following amount—
    - (i) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim; or
    - (ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound-up by the court.
- (3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if, having regard to any special circumstances of the case, it deems it proper so to do, direct that subsection (2) shall not apply as regards any class or any classes of creditors.

## 69. Order confirming reduction

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

## 70. Registration of order and minute of reduction

- (1) The registrar, on production to him of an order of the court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute approved by the court showing, with respect to the share capital of the company as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount, if any, at the date of the registration deemed to be paid-up on each share, shall register the order and minute.
- (2) On the registration of the order and minute the resolution for reducing share capital as confirmed by the order so registered shall take effect.
- (3) Notice of the registration shall be published in such manner as the court may direct.
- (4) The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.
- (5) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum, and shall be as valid and alterable as if it had been originally contained therein.

- (6) The substitution of any such minute as aforesaid for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning of [section 8](#).

### 71. Penalty for concealing name of creditor

If any officer of the company—

- (a) wilfully conceals the name of any creditor entitled to object to the reduction;
- (b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or
- (c) aids, abets or is privy to any such concealment or misrepresentation as aforesaid,

he shall be personally liable to pay to the creditor the amount of his debt or claim to the extent that it is not paid by the company, and he shall be liable to imprisonment for six months and to a fine of one thousand Kwacha.

### 72. Financial assistance by company for acquisition of shares

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

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

- (a) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business;
  - (b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully paid shares in the company or a group company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company; or
  - (c) the making by a company of loans to persons, other than directors, *bona fide* in the employment of the company with a view to enabling those persons to purchase or subscribe for fully paid shares in the company or a group company to be held by themselves by way of beneficial ownership.
- (2) If a company acts in contravention of this section, every officer of the company who is in default shall be liable to imprisonment for one year and to a fine of two thousand Kwacha.
- (3) Notwithstanding the contravention of this section, a loan, guarantee, security or other transaction may be enforced—
- (a) by the company; and
  - (b) by any lender or other party who has acted *bona fide* and without notice of such contravention,

against any person other than the company.

### 73. Acquisition of company's own shares

- (1) Subject to the provisions of this Act, no company having a share capital shall acquire or hold any interest in its own shares, either directly or indirectly through nominees or otherwise:

Provided that where such an interest arises as a result of the acquisition of a controlling interest in the shares of another company or as a result of the enforcement of any security the shares or

interest in shares shall be disposed of at the earliest practicable date, not being later than twelve months from the date the company acquired or held such interest.

- (2) If a company acts in contravention of subsection (1), every officer of the company who is in default shall be liable to imprisonment for one year and to a fine of two thousand Kwacha, and any transfer or allotment of shares pursuant to a transaction prohibited by that subsection shall be void.

#### **74. Restriction on payment of dividends**

No dividend approved by a company in general meeting shall exceed the unappropriated profits shown in the most recent audited accounts of the company, and any unrealized capital profits shall not be dealt with in the profit and loss account of a company, but all foreseeable future losses, whether of a capital nature or of a revenue nature, shall be provided for in the profit and loss account of a company, except as otherwise provided by this Act.

#### **75. Prohibition of dividends or distributions by companies limited by guarantee**

- (1) A company limited by guarantee shall not pay any dividend or make any distribution or return of its assets to its members:

Provided that any such company may—

- (a) pay reasonable and proper remuneration to any of its officers or members for services actually rendered to the company; and
  - (b) pay reasonable interest on money lent to the company.
- (2) If any payment, distribution or return shall be made in contravention of this section, any member to whom it is made shall make restitution to the company with interest at 10 per cent per annum, and every officer of the company who is in default shall be liable to a fine of two hundred Kwacha.
  - (3) Nothing in this section contained shall prevent a company limited by guarantee, in pursuance of or incidentally to its lawful objects, *bona fide* from making any reasonable concession or gift, or awarding any prize, scholarship or grant, to any one or more of its members.

### **Part V – Debentures and charges**

#### **76. Issue of debentures or debenture stock**

- (1) A company may raise loans by the issue of a debenture or of a series of debentures or of debenture stock.
- (2) Debentures may either be secured by a charge over the company's property or be unsecured by any charge.
- (3) All debentures which by their terms, or by the terms of any resolution authorizing their creation, or by the terms of any trust deed, are declared to be of the same series shall rank *pari passu* in all respects notwithstanding that they may be issued on different dates.
- (4) Instead of issuing debentures acknowledging separate loans to the company, the loans may be funded by the creation of debenture stock of a specified total amount parts of which, represented by debenture stock certificates, are issued to separate holders. Debenture stock shall be created by deed under the common seal of the company in favour of trustees for the debenture stockholders.
- (5) A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.
- (6) A condition contained in any debenture or in any trust deed for securing any debenture shall not be invalid by reason of the fact that the debenture is thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period however long.

## 77. Documents of title to debentures

- (1) Every company shall, within two months after the allotment of any of its debentures or after the registration of the transfer of any debentures, deliver to the registered holder thereof the debentures or a certificate of the debenture stock under the common seal of the company.
- (2) The provisions of sections [49](#), [51](#), [52](#) (2) and [53](#) to [55](#), shall apply to debentures and debenture stock certificates *mutatis mutandis*.
- (3) If any restriction is imposed on the right to transfer any debenture, notice of the restriction shall be endorsed on the face of the debenture or debenture stock certificate and, in the absence of such endorsement, the restriction shall be ineffective as regards any transferee for value whether or not he has notice of the restriction.
- (4) If default is made in complying with subsection (1), the company and any officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues.

## 78. Trustees for debenture holders

- (1) Any provision contained in a trust deed or in any contract with the holders of debentures secured by a trust deed shall be void insofar as it would have the effect of exempting a trustee thereof from, or indemnifying him against, liability for any breach of trust or failure to show the degree of care and diligence required of him as trustee having regard to the powers, authorities or discretions conferred on him by the trust deed:

Provided that nothing herein contained shall be deemed to invalidate any release otherwise validly given in respect of anything done or omitted to be done by a trustee on the agreement to such release of a majority in number holding not less than three-fourths in value of the debenture holders present in person or by proxy at a meeting summoned for the purpose.

- (2) Notwithstanding any provisions in the debentures or trust deed the court may, on the application of any debenture holder, remove any trustee and appoint another in his place if satisfied that such trustee has interests which conflict or may conflict with those of the debenture holders or that for any reason it is undesirable that such trustee should continue to act:

Upon any such application the court may order the applicant to give security for the payment of the costs of the trustee.

## 79. Eligibility for appointment as trustee for debenture holder

- (1) None of the following persons shall be eligible for appointment or competent to act as trustee for the holders of debentures of a company—
  - (a) an infant or any other person under legal disability;
  - (b) any person prohibited or disqualified from so acting by any order of a court of competent jurisdiction;
  - (c) save with the leave of the court, an undischarged bankrupt;
  - (d) save with the leave of the court, a director or other officer or auditor of the company, or any group company, or any person who has been such a director or officer or auditor within the preceding two years;
  - (e) any person who has been convicted, within ten years last past, of an offence involving fraud or dishonesty; or
  - (f) any person who has been removed, within ten years last past, from an office of trust by a court of competent jurisdiction.

- (2) No invitation shall be made to the public to acquire debentures of a company unless the issue of debentures is secured by a trust deed under which the trustee, or one of the trustees, is approved for the purpose by the Minister.
- (3) Any appointment made in contravention of subsection (1) shall be void, and any person who in contravention of subsection (1) knowingly acts or continues to act as a trustee for debenture holders shall be liable to imprisonment for six months and to a fine of one thousand Kwacha.
- (4) If an invitation is made in contravention of subsection (2), the company shall be liable to a fine of two thousand Kwacha and every officer of the company who is in default shall be liable to a fine of two thousand Kwacha and to imprisonment for two years.

#### **80. Right to copies of trust deed**

- (1) A copy of any trust deed for securing any issue of debentures shall be forwarded by the company to every holder of any such debentures at his request on payment of the sum of five Kwacha or such less sum as may be prescribed by the company.
- (2) If a copy is not forwarded as provided by subsection (1), the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day after the seventh day from such request during which the default continues.

#### **81. Unsecured debentures to be so described**

- (1) No unsecured debenture, or debenture stock certificate or prospectus relating to unsecured debentures, shall be issued by a company unless the term "debenture" or such other term denoting a debenture used therein is qualified by the word "unsecured".
- (2) If any company acts in contravention of this section, the company and every officer of the company who is in default shall be liable to a fine of four hundred Kwacha.

#### **82. Register of debenture holders**

- (1) A company which issues or has issued debentures in a series shall maintain a register of the holders thereof.
- (2) The provisions of [sections 32 to 41](#) shall apply to such register, *mutatis mutandis*.
- (3) A company shall, upon the demand of any trustee for its debenture holders, within seven days furnish to him the names, addresses and other particulars of such debenture holders appearing on such register.
- (4) If a company contravenes subsection (3), it and every officer who is in default shall be liable to a fine of ten Kwacha for every day after the seventh day from such demand during which the default continues.

#### **83. Meetings of debenture-holders**

- (1) The terms of any debentures or trust deed may provide for the convening of general meetings of the debenture holders and for the passing, at such meetings, of resolutions binding on all the holders of the debentures of the same class.
- (2) Whether or not the debentures or trust deed contain such provisions as are referred to in subsection (1), the court may at any time direct a meeting of the debenture holders of any class to be held and conducted in such manner as it thinks fit to consider such matters as it shall direct, and may give such ancillary or consequential directions as it shall think fit.
- (3) Subject to any provision in the debentures or trust deeds, the provisions of [sections 112 to 116](#), inclusive, shall apply to all meetings of debenture holders, but so that the votes of debenture holders shall be reckoned in proportion to the value of debentures held.

#### 84. Re-issue of redeemed debentures

- (1) A company shall not after the commencement of this Act re-issue any debenture which has been redeemed.
- (2) A company shall not, after the commencement of this Act, issue a new debenture in place of a redeemed debenture on terms that the new debenture shall have the same priorities as the redeemed debenture.
- (3) The issue of a new debenture in place of a redeemed debenture shall not be treated as the issue of a new debenture for the purposes of any provision limiting the amount or number of debentures which may be issued.

#### 85. Charge to secure fluctuating amount

Where a charge is expressed to be made to secure an indeterminate amount, or a fluctuating amount advanced on current account by, or due and owing to, the person entitled to the charge, the charge shall not be deemed to be redeemed by reason only of the current account having ceased to be in debit or by reason only of there being no amount due or owing, as the case maybe.

#### 86. Registration of charges created by companies

- (1) Where a company creates any charge to which this section applies, it shall be the duty of the company within twenty-one days after the date of the creation thereof to cause the prescribed particulars of the charge (together with a certified copy of instrument, if any, by which the charge is created or evidenced) to be delivered to the registrar for registration:

Provided that if the instrument by which the charge is created or evidenced is registered under any Act other than this Act it shall be sufficient compliance with the requirements of this subsection if, within twenty-one days as aforesaid, particulars of the instrument sufficient to identify it, and such other particulars as may be prescribed, are delivered to the registrar for registration.

- (2) This section applies to the following charges—
  - (a) a charge for the purpose of securing any issue of a series of debentures;
  - (b) a charge on uncalled share capital of the company;
  - (c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration under the Bills of Sale Act or the Farmers Stop-Order Act:  
*[Cap. 48:03; Cap. 69:03]*
  - (d) a floating charge on the whole or part of the undertaking or property of the company;
  - (e) a charge on land, wherever situate, or any interest therein;
  - (f) a charge on any present or future book debts of a company;
  - (g) a charge on calls made but not paid;
  - (h) a charge on a ship or aircraft or any share in a ship or aircraft;
  - (i) a charge on goodwill, on a patent or a licence under a patent, on a trade mark, or on a copyright or a licence under a copyright; and
  - (j) a charge over shares in another body corporate, not being—
    - (i) a charge in favour of a broker who has paid for share-purchased or applied for on behalf of the company; or
    - (ii) a charge created by or accompanied by delivery of the certificates for those shares.

- (3) Where a charge comprises property outside Malawi, the prescribed particulars together with a certified copy of the instrument, if any, creating or evidencing or purporting to create or evidence the charge must be delivered for registration in accordance with subsection (1) notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situated.
- (4) Where a negotiable instrument has been given to secure the payment of any book debts of a company the deposit of the instrument for the purposes of securing an advance to the company shall not for the purposes of this section be treated as a charge on those book debts.
- (5) The holding of debentures entitling the holder to a charge on land shall not for the purposes of this section be deemed to be an interest in land.
- (6) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall for the purposes of this section be sufficient if there are delivered to the registrar within twenty-one days after the execution of the document containing the charge, or, if there is no such document, after the execution of any debenture of the series, the following particulars—
- (a) the total amount secured by the whole series;
  - (b) the date of the resolution authorizing the issue of the series and the date of the document, if any, by which the security is created or defined;
  - (c) a general description of the property charged; and
  - (d) the names of the trustees, if any, for the debenture holders, together with a certified copy of the document containing the charge, or, if there is no such document, a certified copy of one of the debentures of the series:
- Provided that, where more than one issue is made of debentures in the series, there shall be sent to the registrar for registration particulars of the date and amount of each issue.
- (7) Where any commission, allowance, or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent of the commission, discount, or allowance so paid or made.
- The deposit of any debentures as security for any debt of the company shall not for the purposes of this subsection be treated as the issue of such debentures at a discount.
- (8) Registration of any charge under this section may be effected on the application of any person interested therein. Where registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.
- (9) If any company makes default in sending to the registrar for registration a copy of the instrument creating or evidencing any charge created by the company, or the particulars requiring registration as aforesaid, then, unless the instrument or particulars have been duly delivered for registration by some other person, the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues.
- (10) For the purposes of this Part—
- (a) the expression "charge" includes "mortgage"; and
  - (b) land occupied by a company under or pursuant to an agreement for sale and purchase shall be deemed to be the property of the company subject to a charge created by the agreement, securing the balance of purchase money for the time being unpaid.

- (11) For the purposes of subsections (1) and (6) and of [section 87](#), a certified copy is one which has endorsed thereon or annexed thereto a declaration to the effect that it is a true and complete copy of the original, made by an officer of the company or by some person interested therein otherwise than on behalf of the company. Where the original is in a language other than English the copy shall also contain an English translation similarly certified to the effect that it is an accurate translation of the original.
- (12) Nothing in this Part shall affect the provisions of any other written law relating to the registration of charges.

### **87. Duty of company to register charges existing on property acquired**

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

Provided that if the instrument by which the charge is created or evidenced has already been registered with the registrar, or is registered under any written law other than this Act, it shall be sufficient compliance with the requirements of this subsection if, within twenty-one days, particulars of the instrument sufficient to identify it, and such other particulars, if any, as may be prescribed, are delivered to the registrar for registration.

- (2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues unless it is proved to the satisfaction of the court that a copy of the instrument required to be registered was not obtainable by the company.

### **88. Certificate to be issued by registrar**

The registrar shall issue a certificate of the registration of any charge registered in pursuance of this Part stating the date of registration and, if applicable, the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Part as to registration have been complied with.

### **89. Priorities**

- (1) Subject to any consent (express or implied) given by the person who would otherwise be entitled to priority, charges created by a company, and other charges required to be registered pursuant to [sections 86](#) and [87](#), shall in relation to one another have priority in accordance with the times at which they are respectively registered under this Act.
- (2) Where a charge (other than a floating charge) is of such a kind that it would require registration under some other written law (being a written law which by its terms accords priority as between successive charges affecting the same property), subsection (1) shall not apply in respect of the property affected by such written law.
- (3) For the purposes of this section, "charge" means a charge of a kind to which [section 86](#) applies, as set out in subsection (2) thereof.
- (4) Subject to subsection (2) where a charge (other than a floating charge) gives security over property of such a kind that the charge would require registration, and also over other property, subsection (1) shall apply in respect of the first-mentioned property, but not in respect of the other property.

## 90. Entries of satisfaction and release of property from charge

- (1) Where there is delivered to the registrar a statement in the prescribed form signed on behalf of the company and by the person entitled to the charge to the effect—
  - (a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or
  - (b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking,the registrar shall enter that statement in the register.
- (2) Any statement delivered to the registrar under this section signed by the person entitled to a charge shall, in favour of the liquidator and any creditor of the company, be binding on that person and any other person claiming under him.

## 91. Variation of registered charge

- (1) Where in the case of any charge registered pursuant to this Act any variation is made in the terms of the charge, other than a satisfaction or release to which [section 90](#) applies, particulars of such variation in the prescribed form shall be delivered to the registrar for registration within twenty-one days of the making of such variation.
- (2) Such particulars shall identify the terms of the original charge that have been varied and shall indicate the nature of the variation made in each such term.
- (3) Where the effect of the variation is to increase the extent of the security or the amount for which security is available, the priority accorded to a registered charge by virtue of [section 89](#) shall be available in respect of such increase as from the date on which particulars have been delivered for registration in accordance with this section.
- (4) Where by its terms a registered charge secures a fluctuating amount, or an initial sum together with "further advances", the making of a further advance to the company shall not, for the purposes of this section, constitute a variation in the terms of the charge.
- (5) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues.

## 92. Registration of enforcement of security

- (1) If any person obtains an order for the appointment of a receiver or manager of any of the property of a company, or appoints such a receiver or manager or enters into possession of such property as mortgagee under any powers contained in any charge, he shall, within seven days from the date of the order or of the appointment under the said powers, deliver notice to that effect in the prescribed form to the registrar for registration together with, where applicable, a certified copy of the order.
- (2) Where any person appointed receiver or manager of the property of a company under the powers contained in any charge ceases to act as such receiver or manager, he shall, within fourteen days of so ceasing, deliver notice to that effect in the prescribed form, if any, to the registrar for registration.
- (3) Where a person who is in possession of the property of a company as mortgagee goes out of possession, he shall, within fourteen days thereof, deliver notice to that effect in the prescribed form, if any, to the registrar for registration.
- (4) If any person makes default in complying with the requirements of this section he shall be liable to a fine of ten Kwacha for every day during which the default continues.

### 93. Endorsement of registration on debentures of a series

- (1) The company shall cause to be endorsed on every debenture forming one of a series of debentures, and every certificate of debenture stock, which is issued by the company and the payment of which is secured by a charge particulars of which are registered under section 86 or 87—
  - (a) a copy of the certificate of registration; or
  - (b) a statement that registration has been effected and the date of registration:

Provided that nothing in this subsection shall be construed as requiring to be so endorsed any debenture or certificate of debenture stock issued by the company before the charge was created or before the commencement of this Act.
- (2) Every person who knowingly authorizes or permits the delivery of any debenture or certificate of debenture stock which is required to be endorsed under the provisions of this section and which is not so endorsed shall be liable to a fine of one hundred Kwacha.
- (3) If any person shall cause to be endorsed on any debenture or certificate of debenture stock any purported copy of a certificate of registration or statement that registration has been effected which he knows to be false in any material particular or shall authorize or permit the delivery of any debenture or certificate of debenture stock bearing an endorsement purporting to be a copy of a certificate of registration or statement that registration has been effected which he knows to be false in any material particular he shall be liable to imprisonment for three months and to a fine of five hundred Kwacha.

### 94. Powers of the court

- (1) Whenever a charge has become enforceable the court shall have power to appoint a receiver, or a receiver and manager, of the assets subject to the charge.
- (2) In the case of a floating charge, the court may, notwithstanding that the charge has not become enforceable, appoint a receiver if satisfied that the security of the debenture holder is in jeopardy. The security of the debenture holder shall be deemed to be in jeopardy if the court is satisfied that events have occurred or are about to occur which render it unreasonable in the interests of the debenture holder that the company should retain power to dispose of its assets.
- (3) A receiver may not be appointed as a means of enforcing debentures not secured by any charge.

### 95. Payment of preferential creditors

- (1) Where a receiver is appointed on behalf of the holder of any debenture of the company secured by a floating charge, or possession is taken by or on behalf of such debenture holder of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound-up, the debts which in every winding up are under section 287, relating to preferential payments, to be paid in priority to all other debts, shall be paid out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.
- (2) The periods of time mentioned in the said section 287 shall be reckoned from the date of the appointment of the receiver or of possession being taken, as the case may be.

### 96. Eligibility for appointment as receiver

- (1) None of the following persons shall be eligible for appointment or competent to act or to continue to act as a receiver, or receiver and manager, of the property or undertaking of a company on behalf of its debenture holders or other creditors—
  - (a) a body corporate;

- (b) an infant or any other person under legal disability;
  - (c) any person prohibited or disqualified from so acting by any order of a court of competent jurisdiction for the time being in force;
  - (d) save with the leave of the court, an undischarged bankrupt;
  - (e) save with the leave of the court, a director or officer of the company or any group company, or any person who has been such a director or officer within the preceding two years;
  - (f) save with the leave of the court, a trustee under any trust deed for the benefit of debenture holders to which the company is a party;
  - (g) any person who has been convicted, within ten years last past, of an offence involving fraud or dishonesty; or
  - (h) any person who has been removed, within ten years last past, from an office of trust by a court of competent jurisdiction.
- (2) Where a company is being wound up, the liquidator may not be appointed receiver.
- (3) Any person who in contravention of subsection (1) or (2) knowingly acts or continues to act as a receiver or receiver and manager shall be liable to a fine of one thousand Kwacha and to imprisonment for six months.

#### **97. Receivers appointed by the court**

A receiver of any property or undertaking of a company appointed by the court shall be an officer of the court and shall not be deemed to be an officer of the company, and shall act in accordance with the directions and instructions of the court.

#### **98. Receivers appointed out of court**

- (1) A receiver of any property or undertaking of a company appointed out of court under a power contained in any instrument shall, subject to [section 99](#), be deemed in relation to such property to be an agent and officer of the company and not an agent of the persons by or on behalf of whom he is appointed, and he shall act in accordance with the instrument under which he is appointed and under any directions of the court made under this section.
- (2) Any such receiver may apply to the court for directions in relation to any matter arising in connexion with the performance of his functions, and on any such application the court may give such directions, or make such order declaring the rights of persons before the court or otherwise, as the court thinks fit.
- (3) The court may, on the application of the company or any liquidator of the company, by order fix the amount to be paid by way of remuneration to any such receiver and may from time to time on application made by the company or liquidator or by the receiver vary or amend the order.
- (4) The power of the court under subsection (3) shall—
- (a) extend to fixing the remuneration for any period before the making of the order or the application therefor;
  - (b) be exercisable notwithstanding that the receiver has died or ceased to act before the making of the order or the application therefor; and
  - (c) where the receiver has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extend to requiring him or his personal representatives to account for the excess or such part thereof as may be specified in the order:

Provided that the power conferred by this paragraph shall not be exercised as respects any period before the making of the application for the order unless, in the opinion of the court, there are special circumstances making it proper for the power to be so exercised.

### **99. Liabilities of receivers on contracts**

- (1) A receiver of any property or undertaking of a company shall be personally liable on any contract entered into by him except insofar as the contract otherwise expressly provides.
- (2) As regards contracts entered into by him in the proper performance of his functions a receiver shall, subject to the rights of any prior incumbrancers, be entitled to an indemnity in respect of liability thereon out of the property in respect of which he has been appointed to act as receiver.
- (3) A receiver appointed out of court under a power contained in any instrument shall also be entitled, as regards contracts entered into by him with the express or implied authority of those appointing him, to an indemnity in respect of liability thereon from those appointing him to the extent to which he is unable to recover in accordance with subsection (2).

### **100. Notification that receiver has been appointed**

- (1) Where a receiver of any property or undertaking of a company has been appointed, notice shall be given to the registrar in accordance with [section 92](#), and every invoice, order or business letter issued by or on behalf of the company or the receiver or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver has been appointed.
- (2) If default is made in complying with the requirements of this section relating to invoices, orders or business letters the company and every officer, liquidator or receiver of the company who is in default shall be liable to a fine of fifty Kwacha in respect of each default.

### **101. Statement of affairs and accounts where receiver of undertaking appointed**

- (1) Where a receiver is appointed of the whole or substantially the whole of the undertaking of any company on behalf of the holders of any debentures secured by a floating charge, the provisions of [sections 228](#) and [277](#) shall apply as regards the submission of a statement of affairs and of periodical accounts by the receiver as if the company had been ordered to be wound up under this Act and as if the receiver had been appointed liquidator.
- (2) If any person makes default in complying with the requirements of this section he shall be liable to a fine of ten Kwacha for every day during which the default continues.

### **102. Delivery to registrar of accounts of receivers**

- (1) Except where [section 101](#) applies, every receiver of any property of a company shall—
  - (a) within one month, or such longer period as the registrar may allow, after expiration of the period of twelve months from the date of his appointment and of every subsequent period of twelve months until he ceases to act, deliver to the registrar for registration an abstract showing his receipts and payments during that period of twelve months;
  - (b) within one month, or such longer period as the registrar may allow, after he ceases to act as receiver deliver to the registrar for registration an abstract showing his receipts and payments during the period from the end of the twelve months to which the last abstract (if any) related, and the aggregate of his receipts and payments during the whole period of his appointment.
- (2) Every receiver who makes default in complying with the requirements of this section shall be liable to a fine of ten Kwacha for every day during which the default continues.

### 103. Application of this Part to charges in favour of Government

This Part shall bind the Government in respect of all charges to which the Government is entitled that are created, or acquired by or on behalf of the Government, after the commencement of this Act.

## Part VI – Meetings and resolutions

### 104. Annual general meeting

- (1) Except as provided in subsection (6), every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

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

- (2) If default is made in holding a meeting of the company in accordance with subsection (1), the registrar may, on the application of any member of the company, call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as the registrar thinks expedient, including directions modifying or supplementing, in relation to the calling, holding and conducting of the meeting, the operation of the company's articles; and may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.
- (3) A general meeting held in pursuance of subsection (2) shall, subject to any directions of the registrar, be deemed to be an annual general meeting of the company; but, where a meeting so held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the company resolves that it shall be so treated.
- (4) Where a company resolves that a meeting shall be so treated a copy of the resolution shall, within twenty-one days after the passing thereof, be delivered to the registrar for registration.
- (5) If default is made in holding a meeting of the company in accordance with subsection (1), or in complying with any directions of the registrar under subsection (2), the company and every officer of the company who is in default shall be liable to a fine of one hundred Kwacha, and if default is made in complying with subsection (4), the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day, during which the default continues.
- (6) If all the members of the company entitled to attend and vote at any annual general meeting agree in writing that an annual general meeting shall be dispensed with in any year, it shall not be necessary for that company to hold an annual general meeting that year.

### 105. Extraordinary general meetings

Extraordinary general meetings may be convened by the directors whenever they think fit, or, if the articles so provide, by any other person in accordance with such provisions.

### 106. Convening of extra-ordinary general meeting on requisition

- (1) The directors of a company, notwithstanding anything in its articles, shall, on the requisition of any member or members of the company holding at the date of the deposit of the requisition not less than one-twentieth of the total voting rights of all the members having a right to vote at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

- (2) The requisition must state the nature of the business to be transacted at the meeting, and must be signed by the requisitionists and sent to or deposited 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 twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting the requisitionists or any of them may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from the said date.
- (4) A meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.
- (5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.
- (6) For the purposes of this section the directors shall be treated as having failed duly to convene a meeting if they do not convene it for a day not more than twenty-eight days after the date on which the notice convening the meeting is given and shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by [section 120](#).

#### 107. Notice of general meetings

Notwithstanding any contrary provision in the company's, articles, the following persons shall be entitled to receive notice of general meetings—

- (a) every member having the right to vote at such meeting;
- (b) every person upon whom the ownership of a share devolves by reason of his being a legal personal representative, receiver or trustee in bankruptcy of such a member;
- (c) every director of the company; and
- (d) every auditor for the time being of the company.

#### 108. Length of notice for calling meetings

- (1) Any provision in a company's articles shall be void insofar as it provides for the calling of a meeting of the company (other than an adjourned meeting or a meeting called in accordance with subsection (3)) by a shorter notice than—
  - (a) in the case of the annual general meeting, twenty-one days' notice in writing; and
  - (b) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution, fourteen days' notice in writing.
- (2) Save insofar as the articles of a company make other provision in that behalf a meeting of the company (other than an adjourned meeting) may be called—
  - (a) in the case of the annual general meeting, by twenty-one days' notice in writing; and
  - (b) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution, by fourteen days' notice in writing.

- (3) A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in subsection (2) or in the company's articles, as the case may be, be deemed to have been duly called if it is so agreed—
- (a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and
  - (b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority holding not less than ninety-five per cent of the total voting rights at that meeting of all the members:

Provided that where any members are entitled to vote only on some resolutions to be moved at the meeting and not on others, those members shall be taken into account for the purposes of this subsection in respect of the former resolutions and not in respect of the latter.

### 109. Power of court to order meeting

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

### 110. Place of meetings

- (1) Unless the company's articles otherwise provide, all general meetings shall be held in Malawi.
- (2) Notwithstanding subsection (1), a general meeting of a company may be held outside Malawi if all the shareholders entitled to vote at that meeting so agree.

### 111. Attendance at meetings

- (1) Notwithstanding any contrary provision in the company's articles, the following persons shall be entitled to attend and to speak at any general meeting of the company—
  - (a) every member of the company having the right to vote at such meeting;
  - (b) every person upon whom the ownership of a share devolves by reason of his being a legal personal representative, receiver or trustee in bankruptcy of such a member;
  - (c) every director of the company;
  - (d) the secretary of the company; and
  - (e) every auditor for the time being of the company:
- (2) Nothing herein contained shall be deemed to preclude other persons from attending any general meeting with the permission of the chairman thereof.

Provided that if the company's articles so provide a member shall not be entitled to attend unless all sums presently payable by him in respect of shares in the company have been paid.

## 112. General provisions as to meetings and votes

The following provisions shall have effect insofar as the articles of the company do not make other provision in that behalf—

- (a) two persons being members or holding proxies from members shall be a quorum;
- (b) any member elected by the members present at a meeting may be chairman thereof; and
- (c) in the case of a company limited by shares, every member shall have one vote in respect of each share held by him; and in any other case every member shall have one vote.

## 113. Proxies

- (1) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as his proxy to attend and vote instead of him, and such proxy shall have the same right as the member to speak at the meeting.
- (2) The right of a member of a company to appoint a proxy shall include the right to appoint separate proxies to represent respectively such number of the shares held by him as may be specified in their instruments of appointment.
- (3) The instrument appointing a proxy shall be in writing under the hand of the appointer or his agent duly authorized in writing or, if the appointor is a body corporate, either under seal or under the hand of an officer or agent duly authorized.
- (4) An instrument appointing a proxy shall be in the form prescribed by Table A or Table C or in such form as the company's articles may provide but, notwithstanding any provision in the company's articles, an instrument in the form prescribed by Table A or Table C shall be sufficient, as regards a company limited by shares and a company limited by guarantee, respectively.
- (5) Any form issued to a member of a company by the directors for use by him for appointing a proxy to attend and vote at a meeting of the company shall be such as to enable him to instruct the proxy to vote in favour of or against (or, in default of instructions, to exercise his discretion in respect of) each resolution dealing with any special business to be transacted at the meeting.
- (6) In subsection (5) "special business" means—
  - (a) all business transacted at an extraordinary general meeting; and
  - (b) all business transacted at an annual general meeting except the declaration of a dividend, the consideration of the accounts and the reports of the directors and auditors, the election of directors in place of those retiring, the fixing of the remuneration of the directors and the appointment of, and the fixing of the remuneration of, the auditors.
- (7) In every notice calling a meeting of a company having shares there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint one or more proxies to attend and vote instead of him, and (where such is the case) that a proxy need not also be a member; and if default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be liable to a fine of one hundred Kwacha.
- (8) Any provision contained in a company's articles shall be void insofar as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than forty-eight hours before a meeting or adjourned meeting in order that the appointment may be effective thereat.
- (9) If for the purpose of any meeting of a company invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy, every officer

of the company who knowingly authorizes or permits their issue as aforesaid shall be liable to a fine of one hundred Kwacha:

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

#### **114. Right to demand a poll**

- (1) Any provision contained in a company's articles shall be void insofar as it would have the effect either—
  - (a) of excluding the right to demand a poll at a general meeting on any question other than the election of the chairman of the meeting or the adjournment of the meeting; or
  - (b) of making ineffective a demand for a poll on any such question which is made either—
    - (i) by not less than three members having the right to vote at the meeting; or
    - (ii) by a member or members representing not less than onetwentieth of the total voting rights of all the members having the right to vote at the meeting.
- (2) The instrument appointing a proxy to vote at a meeting of a company shall be deemed also to confer authority to demand or join in demanding a poll, and for the purposes of subsection (1) a demand by a person as proxy for a member shall be the same as a demand by the member.

#### **115. Voting on a poll**

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

#### **116. Representation of bodies corporate and unincorporated associations at meetings**

- (1) A body corporate or an unincorporated association may—
  - (a) if it is a member of a company, by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company; and
  - (b) if it is a creditor (including a debentureholder) of a company, by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.
- (2) A person authorized as aforesaid shall be entitled to exercise the same powers on behalf of the body corporate or unincorporated association which he represents as it could exercise if it were an individual shareholder, creditor or holder of debentures of the company.

#### **117. Circulation of members' resolutions and supporting circulars**

- (1) A company shall at its own expense, on the request in writing of any member entitled to attend and vote at a general meeting, include in the notice of that general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting and, at the like request, include with such notice a statement of not more than five hundred words with respect to the matter referred to in the proposed resolution or any other business to be dealt with at that meeting:

Provided that if the proposed resolution is not passed at that meeting the same resolution or one substantially to the same effect shall not be moved at any general meeting within three years

thereafter unless the directors shall otherwise agree or unless the request within three years is supported in writing by members of the company representing between them not less than one-twentieth of the total voting rights of all the members having at the date of the request a right to vote on the resolution to which the request relates.

- (2) A company shall not be bound to give notice of any such resolution or to circulate such statement unless the written request or requests, signed by the member or members concerned, together with the resolution and statement, are deposited at the registered office of the company not less than six weeks before the meeting:

Provided that if, after such documents have been deposited, a general meeting is called for a date six weeks or less thereafter, the documents shall be deemed to have been properly deposited for the purposes of this subsection.

### **118. Circulation of members' circulars**

- (1) A company shall, at the request in writing of any member entitled to attend and vote at a general meeting but (unless the company otherwise resolves) at the expense of that member, circulate to members of the company a statement of not more than one thousand words with respect to any business to be dealt with at that meeting.
- (2) Such statement shall be circulated to members of the company in any manner permitted for service of notice of the meeting and, so far as practicable, at the same time as notice of the meeting, or, if that is impracticable, as soon as practicable thereafter.
- (3) A company shall not be bound to circulate such statement unless—
  - (a) the written request, signed by the member concerned, together with the statement, is deposited at the registered office of the company not less than ten days before the meeting; and
  - (b) there is also deposited with the request a sum reasonably sufficient to meet the company's expenses in giving effect thereto.

### **119. General provisions in regard to members' circulars**

- (1) A company shall not be bound under section [117](#) or [118](#) to circulate any resolution or statement if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by those sections are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this section to be paid in whole or in part by the member making the request, notwithstanding that he is not a party to the application.
- (2) A company shall not incur liability to any person by reason only that it has circulated a resolution or statement in compliance with section [117](#) or [118](#).
- (3) In the event of any default in complying with section [117](#) or [118](#) every officer of the company who is in default shall be liable to a fine of one hundred Kwacha.

### **120. Ordinary and special resolutions**

- (1) A resolution shall be an ordinary resolution when it has been passed by a simple majority of votes cast by such members of the company as, being entitled so to do, vote in person or by proxy at a general meeting.
- (2) A resolution shall be a special resolution when it has been passed by a majority of not less than three-fourths of the votes cast by such members of the company as, being entitled so to do, vote in person or by proxy at a general meeting of which not less than twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given:

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

- (3) Any reference in this Act or in the memorandum or articles of any company, or in any debentures or debenture trust deed, to an ordinary or special resolution of a meeting of creditors or debentureholders or of any class of shareholders, creditors or debentureholders shall, unless a contrary intention appears, bear a like meaning to that specified in subsection (1) or (2), as the case may be, with the substitution of the members of the appropriate category or class for the members of the company.
- (4) Any reference in the memorandum or articles of any company or any other document to an extraordinary resolution of a company or of a meeting of creditors or debentureholders or of any class of members or creditors or debentureholders of a company shall, unless a contrary intention appears, as respects anything to be done after the commencement of this Act, be construed as a reference to a special resolution of the company or meeting.

### 121. Written resolutions

- (1) Except as provided in subsection (2), a resolution in writing signed by all the members for the time being entitled to attend and vote on such resolution at a general meeting (or being bodies corporate by their duly authorized representatives) shall be as valid and effective for all purposes as if it had been passed at a general meeting of the company duly convened and held, and if described as a special resolution shall be deemed to be a special resolution within the meaning of this Act. Such resolution shall be deemed to have been passed on the date on which the same was signed by the last member to sign, and where the resolution states a date as being the date of his signature thereof by any member such statement shall be *prima facie* evidence that it was signed by that member on that date.
- (2) Subsection (1) shall not apply to a resolution to remove an auditor or to remove a director.

### 122. Registration of copies of certain resolutions

- (1) A certified true copy of every special resolution of a general meeting or of a class of members and of every resolution deemed to be a special resolution under [section 121](#) shall, within twenty-one days after the passing or making thereof, be delivered to the registrar for registration.
- (2) A copy of every special resolution of a general meeting of the company for the time being in force shall be embodied in or annexed to every copy of the memorandum or articles issued after the passing of the resolution:

Provided that, where the sole effect of the special resolution is to amend the memorandum or articles, this subsection shall be sufficiently complied with if every copy of the memorandum or articles issued thereafter embodies the effect of the amendment and refers to the date of the passing of the special resolution.

- (3) If a company fails to comply with subsection (1), the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues.
- (4) If a company fails to comply with subsection (2), the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for each default.

### 123. Resolutions passed at adjourned meetings

Where a resolution is passed at an adjourned meeting of—

- (a) a company;
- (b) the holders of any class of shares in a company; or

- (c) the directors of a company,

the resolution shall for all purposes be deemed to have been passed on the date on which it was in fact passed at the adjourned meeting, and where a resolution is passed on a poll it shall for all purposes be deemed to have been passed on the day on which the result of the poll is declared, and not on any earlier day.

#### 124. Application of sections 107 to 121 to class meetings

- (1) Subject to this section, [sections 107 to 121](#) shall apply to meetings of any class of members in like manner as they apply to general meetings of companies.
- (2) Where a class has only one member, that member shall constitute a meeting.
- (3) Subject to the company's articles, at any meeting of any class of members other than an adjourned meeting the necessary quorum shall be—
  - (a) if there are not more than two members of that class, one member present in person or by proxy; and
  - (b) in any other case, two members, present in person or by proxy, holding not less than one-third of the total voting rights of that class.
- (4) Subject to the company's articles, at any adjourned meeting of any class of members the necessary quorum shall be one member of that class.

#### 125. Minutes of proceedings of meetings of company and of directors

- (1) Every company shall cause minutes of all proceedings of general meetings and meetings of any class of members and meetings of its directors and of any committee of directors held after the commencement of this Act to be entered in books kept for that purpose.
- (2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings took place or of a subsequent meeting, shall be *prima facie* evidence of the proceedings.
- (3) Where minutes have been made in accordance with the provisions of this section, then, until the contrary is proved, the meeting shall be deemed to have been duly convened, held and conducted and all appointments of directors, officers, auditors and liquidators shall be deemed to be valid.
- (4) If a company fails to comply with subsection (1), the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues.

#### 126. Inspection of minute books

The books containing the minutes of proceedings of any general meeting or class meeting of a company shall be kept at the registered office of the company or such other place in Malawi as the company shall advise the registrar, and shall be open to inspection in accordance with the provisions of [section 129](#), by any member, officer, auditor, receiver or liquidator of the company, and by the registrar.

### Part VII – Management and administration

#### 127. Registered office

- (1) A company shall have in Malawi a registered office and a registered postal address.
- (2) Notice of any change in the situation of the registered office or in the registered postal address shall be given in the prescribed form to the registrar for registration within twenty-one days of the change.

- (3) If default is made in complying with this section the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues.
- (4) An existing company which has not before the commencement of this Act given notice to the registrar of the situation of its registered office or of its registered postal address shall give such notice, in a form acceptable to the registrar, in or with its first annual return made after the commencement of this Act.

## 128. Records and registers

- (1) Any record, register or book required by this Act to be kept by a company may be kept either in a bound or loose-leaf form, or by a system of mechanical or electronic recording or otherwise.
- (2) A company and its officers shall take adequate precautions to prevent loss or destruction of such records, registers and books, and to prevent the falsification of entries and to facilitate the detection and correction of inaccuracies therein.
- (3) Where any system of mechanical or electronic recording is adopted, adequate arrangements shall be made for making the information therein available in an intelligible form to anyone lawfully inspecting the record, register or book.
- (4) Where any system of electronic recording is adopted a company shall for the purposes of this Act be deemed to keep any such record, register, or book at the place where the information therein is made available for inspection.
- (5) If default is made in complying with subsection (2) or (3) the company and every officer of the company who is in default shall be liable to a fine of one hundred Kwacha.

## 129. Inspection by members and others

- (1) Subject to the provisions of this Act, any record, register or book required by this Act to be kept by a company and made available for inspection by any member of the company or other person shall, during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in any normal working day be allowed for inspection), be open to the inspection of any member without charge and of any other person on payment of twenty tambala, or such less sum as the company may prescribe, for each inspection.
- (2) Any member or other person who is entitled to inspect any such record, register or book may require a copy of the whole or any part thereof on payment of twenty tambala, or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied.

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

- (3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period, the company and every officer of the company who is in default shall be liable in respect of each default to a fine of one hundred Kwacha.
- (4) In the case of any such refusal or default, the court may by order compel an immediate inspection or direct that the copies required shall be sent to the persons requiring them, and may order that the company and every officer of the company who is in default, or any one or more of such persons, shall be liable to pay all costs of and incidental to the application for such order.

**130. Publication of name of company**

- (1) Every company shall—
  - (a) paint or affix, and keep painted or affixed, its name, in easily legible Roman letters above or adjacent to the principal entrance to its registered office and to every office or place in which its business is carried on;
  - (b) have its name accurately mentioned in legible Roman letters in all business letters, invoices, receipts, notices, or other publications of the company, and in all negotiable instruments or orders for money, goods or services purporting to be signed or endorsed by or on behalf of the company.
- (2) If any company makes default in complying with subsection (1), the company and every officer of the company who is in default shall be liable to a fine of one hundred Kwacha.
- (3) If any officer of the company or other person shall sign or endorse or authorize the signing or endorsement on behalf of the company of any negotiable instrument or order for money, goods or services wherein the name of the company is not accurately mentioned in accordance with subsection (1) (6), such person shall be personally liable to discharge the obligation thereby incurred unless it is duly discharged by the company or otherwise, but without prejudice to any right of indemnity which such person may have against the company or any other person.

**131. Company contract**

- (1) A contract may be made—
  - (a) by a company, by writing under its common seal; or
  - (b) on behalf of a company, by a person acting under its authority, express or implied.
- (2) Any formalities required by law in the case of a contract made by an individual shall, unless a contrary intention appears, apply to a contract made by or on behalf of a company.

*[26 of 2012]*

**132. Execution of documents**

- (1) A document shall be executed by a company—
  - (a) by the affixing of its common seal; or
  - (b) by signature in accordance with this section.
- (2) A document shall be validly executed by a company if it is signed on behalf of the company—
  - (a) by two authorised signatories; or
  - (b) by a director of the company in the presence of a witness who attests to the signature.
- (3) For the purposes of subsection (2), the following shall be authorised signatories—
  - (a) every director of the company; and
  - (b) in the case of a private company or a public company, the secretary, or any joint secretary of the company.
- (4) A document signed in accordance with subsection (2) and expressed, in whatever words, to be executed by the company shall have the same effect as if executed under the common seal of the company.
- (5) A document shall be deemed to have been executed by a company in favour of a purchaser if it purports to be signed in accordance with subsection (2).

- (6) In this section, "purchase" means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who, for valuable consideration acquires an interest in property.
- (7) Where a document is to be signed by a person on behalf of more than one company, it shall not be duly signed by that person for the purposes of this section unless the person signs it separately in each capacity.
- (8) Reference in this section to a document being, or purporting to be, signed by a director or secretary, shall be read, in a case where that office is held by a firm, as references to its being, or purporting to be, signed by an individual authorised by the firm to sign on its behalf.
- (9) This section applies to a document that is, or purports to be, executed by a company in the name of, or on behalf of, another person, whether or not that person is also a company.

*[26 of 2012]*

### **133. Common seal**

- (1) A company may have a common seal.
- (2) Where a company elects to have a common seal, the company shall have its name engraved in legible characters on the seal.
- (3) A company which elects to have a common seal which fails to comply with subsection (2) commits an offence, and shall be liable, upon conviction, to a fine of K100,000.
- (4) The offence under this section shall be committed by—
  - (a) the company; and
  - (b) every officer of the company who is in default.
- (5) An officer of a company, or a person acting on behalf of a company who uses or authorises the use of, a seal purporting to be a seal of the company on which its name is not engraved as required by subsection (2) commits an offence and shall be liable, upon conviction, to a fine of K100,000.

*[26 of 2012]*

### **133A. Official seal for use abroad**

- (1) A company that has a common seal may have an official seal for use outside Malawi.
- (2) The official seal shall be a facsimile of the company's common seal, with the addition on its face of the place or places where it is to be used.
- (3) The official seal when duly affixed to a document shall have the same effect as the company's common seal.
- (4) A company having an official seal for use outside Malawi may, by writing under its common seal, authorise any person appointed for the purpose to affix the official seal to any deed or other document to which the company is party.
- (5) As between the company and a person dealing with such an agent, the agent's authority continues—
  - (a) during the period mentioned in the instrument conferring the authority; or
  - (b) if no period is mentioned, until notice of the revocation or termination of the agent's authority has been given to the person dealing with him.

- (6) The person affixing the official seal under this section shall certify in writing on the deed, or other document to which the seal is affixed, the date on which, and place at which, it is affixed.

*[26 of 2012]*

### **133B. Official seal for share certificate**

- (1) A company that has a common seal may have an official seal for use—
  - (a) for sealing securities issued by the company; or
  - (b) for sealing documents creating or evidencing securities so issued.
- (2) The official seal—
  - (a) shall be a facsimile of the company's common seal, with the addition on its face of the word "Securities"; and
  - (b) when duly affixed to the document shall have the same effect as the company's common seal.

*[26 of 2012]*

### **134. Execution of deed**

- (1) A document shall be validly executed by a company as a deed for the purposes of any written law if —
  - (a) it is duly executed by the company; and
  - (b) it is delivered as a deed.
- (2) For the purposes of subsection (1) (b), a document is presumed to be delivered upon its being executed, unless a contrary intention is proved.

*[26 of 2012]*

### **135. Execution of deed or oilier documents by attorney**

- (1) A company may, by instrument executed as a deed, empower a person, either generally or in respect of specified matters, as its attorney to execute a deed or other documents on its behalf.
- (2) A deed or other document so executed, whether in Malawi c elsewhere, shall have the effect as if executed by the company.

*[26 of 2012]*

### **136. Bills of exchange and promissory notes**

A bill of exchange or promissory note shall be deemed to have been made, accepted or endorsed on behalf of a company if made accepted or endorsed in the name of, or by, or on behalf of, or on account of, the company, by a person acting under its authority

*[26 of 2012]*

### **137. Service of documents on company**

- (1) A document may be served on a company by leaving it at the registered office of the company, or sending it by post to the registered postal address of the company.
- (2) Any document to be served by post on a company shall be posted in such time as to admit of its being delivered in due course of deliver within the time, if any, prescribed for the service thereof;

and in proving service it shall be sufficient to prove that a letter containing such document was properly addressed, prepaid and posted, whether or not by registered post.

- (3) If a company has no registered office or no registered post! address, service upon any director or the secretary of the company or, if the company has no director or secretary or if no director or secretary can be traced in Malawi, upon any member of the company, shall be deemed good and effectual service upon such company.
- (4) If it shall be proved that any document was in fact received by any director or the secretary of a company such document shall be deemed to have been served on the company notwithstanding that service may not have been effected in accordance with the foregoing subsections.
- (5) Nothing in this section shall derogate from any provision in this Act relating to the service of any document, or from the power of an court to direct how service shall be effected of any document relating to legal proceedings before that court.
- (6) Where a document is sent by post service shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the document and to have been effected at the expiration of seven days or, if it is sent to an address outside Malawi, fourteen days after the letter containing the same is posted. The letter need not be despatched by registered post but where it is sent to an address outside Malawi it shall be despatched by airmail.

### **138. Services of documents by company**

- (1) A document may be served by a company on any member, debentureholder or director or secretary of the company either personally or by sending it through the post in a prepaid letter addressed to him at his address on the register of members, debentureholders or directors and secretaries, as the case may be, or (if he has no registered address) at the address, if any, supplied by him to the company for the giving of notices to him, or by leaving it for him with some person apparently over the age of eighteen years at such address.
- (2) A document may be served by a company on the joint holders of any share or debenture of the company by serving it on the joint holder named first in the register of members or debentureholders in respect of the share or debenture.
- (3) A document may be served by a company upon the person upon whom the ownership of any share or debenture has devolved by reason of his being a legal personal representative, receiver, or trustee in bankruptcy of a member or debentureholder either personally or by sending it through the post in a prepaid letter addressed to him by name, or by the title of representative of the deceased, receiver, or trustee of the bankrupt, or by any like description, at or to the address, if any, supplied for the purpose by such person or by leaving it for him with some person apparently over the age of eighteen years at any such address, or (until any such address has been supplied) by serving the document in any manner in which the same might have been served if the death, receivership or bankruptcy had not occurred.
- (4) Where a document is sent by post service shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the document and to have been effected at the expiration of seven days or, if it is sent to an address outside Malawi, fourteen days after the letter containing the same is posted. The letter need not be despatched by registered post but where it is sent to an address outside Malawi it shall be despatched by airmail.

### **139. Liability of company not affected by officer's fraud or forgery**

Where a company would be liable for the acts of any officer or agent, the company shall be liable notwithstanding that the officer or agent has acted fraudulently or forged a document purporting to be sealed by or signed on behalf of the company.

## Part VIII – Directors and secretary

### 140. Meaning of "directors"

- (1) For the purposes of this Act the expression "directors" means those persons, by whatever name called, who are appointed to direct and administer the business and affairs of the company.
- (2) Any person, not being a duly appointed director of a company—
  - (a) who shall hold himself out or knowingly allow himself to be held out as a director of that company, or
  - (b) on whose directions or instructions the duly appointed directors are accustomed to act, shall be subject to the same duties and liabilities as if he were a duly appointed director of the company:

Provided that nothing in this subsection contained shall be deemed to derogate from the duties or liabilities of the duly appointed directors.

- (3) If any person, not being a duly appointed director of the company, shall hold himself out, or knowingly allow himself to be hold out, as a director of the company, or if the company shall hold out such person, or knowingly allow such person to hold himself out, as a director of the company, such person or the company, as the case may be, shall be liable to a fine of two hundred Kwacha.
- (4) No limitation upon the authority of directors, whether imposed by the memorandum or articles or otherwise, shall be effective against a person who does not have knowledge of such limitation.
- (5) A person shall not be, deemed to be within the meaning of any provision in this Act, a person in accordance with whose directions or instructions the directors of a company are accustomed to act, by reason only that the directors of the company act on advice given by him in a professional capacity.

### 141. Number of directors

- (1) Every company shall have at least three directors.
- (2) If at any time the number of directors is less than three and the company continues to carry on business for more than two months thereafter, the company and every director and member of the company who is in default shall be liable to a fine not exceeding ten Kwacha for every day during which it so carries on business after the expiration of such two months without having at least three directors and every director and member of the company who is cognizant of the fact that it is carrying on business with fewer than three directors shall be jointly and severally liable for all the debts and liabilities of the company incurred during that time.
- (3) Subject as aforesaid the number of directors shall be fixed by or in accordance with the company's articles.
- (4) No contravention of this section shall invalidate any transaction entered into by a company.

### 142. Eligibility and competence of directors

- (1) None of the following persons shall be eligible for appointment, or competent to act, or to continue to act, as a director of a company—
  - (a) a body corporate;
  - (b) an infant or any other person under legal disability;
  - (c) any person prohibited or disqualified from so acting by any order of a court for the time being in force; and

- (d) save with the leave of the court, an undischarged bankrupt.
- (2) A director of any company shall cease to hold office as such if—
  - (a) he is adjudged bankrupt; or
  - (b) he is removed by a court from an office of trust on account of misconduct.
- (3) Any person who knowingly, in contravention of subsection (1) or (2), directly or indirectly takes office, or acts, as a director of a company shall be liable to a fine of one thousand Kwacha and to imprisonment for a term of six months.
- (4) Nothing in this section shall prevent any company from applying under its articles any further limitation on, or disqualification for, the appointment of or the retention of office by a director.
- (5) No person shall be appointed a director of a company unless he shall prior to such appointment have consented in writing to be so appointed.
- (6) No contravention of this section shall invalidate any transaction entered into by a company.

#### 143. Residential requirements of directors

- (1) The majority of the directors of every company (including at least one of the managing directors, if the company has managing directors) shall be resident in Malawi:  
Provided that in no circumstances shall the number of directors resident in Malawi be less than three.
- (2) Any contravention of subsection (1) which continues for more than two months shall constitute grounds for the winding-up of the company by the court on the application of the Attorney General.

#### 144. Directors' share qualification

- (1) Unless the company's articles otherwise provide, a director need not be a member of the company or hold any shares therein.
- (2) Where the articles require a director to hold a specified share qualification, every director shall obtain his qualification within two months after his appointment or such shorter period as may be fixed by the articles, and his office shall be vacated if he shall fail to do so or if at any time after the expiration of that period he ceases to hold his qualification:  
Provided that if the company amends its articles so as to introduce or increase the requirement of a share qualification every director holding office at the date of such alteration shall have two months thereafter to obtain his qualification and shall not vacate office under this section unless he fails to do so.
- (3) A person vacating office under this section shall be incapable of being reappointed a director of the company until he has obtained his qualification.

#### 145. Vacation of office of director

- (1) The office of director shall be vacated if the director becomes incompetent to act as a director by virtue of the provisions of [section 142](#), or if he ceases to hold office by virtue of [section 144](#), or if he resigns his office by notice in writing to the company.
- (2) The company's articles may provide for the termination or vacation of office in circumstances additional to those specified in subsection (1).

## 146. Removal of directors

- (1) Subject to subsection (7) a company may, by ordinary resolution at any general meeting, remove from office all or any of the directors notwithstanding anything in its articles or in any agreement with any director.
- (2) A resolution to remove a director shall not be moved at any general meeting unless notice of the intention to move it has been given to the company not less than thirty-five days before the meeting.
- (3) On receipt of notice of an intended resolution to remove a director under this section the company shall forthwith send a copy thereof to the director concerned and such director (whether or not he is a member of the company) shall be entitled—
  - (a) to be heard on the resolution at the meeting; and
  - (b) to send to the company a written statement, copies of which the company shall send with every notice of the general meeting or, if the statement is received too late, shall forthwith circulate to every person entitled to notice of the meeting in the same manner as notices of meetings are required to be given:

Provided that the company need not send or circulate such statement—

- (i) if it is received by the company less than seven days before the meeting; or
  - (ii) if the court, on application by the company or any other person who claims to be aggrieved, so orders upon being satisfied that the statement is unreasonably long or that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the costs of the applicant to be paid in whole or in part by the director notwithstanding that he is not a party to the application.
- (4) Without prejudice to the director's right to be heard orally on such resolution, he may, unless the court shall have made an order under subsection (3), also require that the written statement by him be read to the meeting.
- (5) On a resolution to remove a director no share shall, on a poll, carry a greater number of votes than it would carry in relation to the generality of matters to be voted on at a general meeting of the company.
- (6) A vacancy created by the removal of any director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.
- (7) Nothing in this section shall be taken as depriving any director who has a service agreement with the company of any right to compensation to which he may lawfully be entitled under such agreement on the termination of his directorship or of any right to damages if his removal from his directorship constitutes a breach of such service agreement.

## 147. Alternate directors

- (1) Unless prohibited by the articles a director may either generally or in respect of any period in which he is absent from Malawi or unable for any reason to act as a director, appoint another director, or any other person approved by a resolution of the board of directors, as an alternate director. Such appointment shall be in writing signed by the appointor and appointee and lodged with the company.
- (2) Every alternate director so appointed shall during the currency of such appointment be deemed for all purposes to be a director and officer of the company and not the agent of his appointor, but he shall not be required to hold any share qualification notwithstanding that, under the articles, directors may be so required, nor shall he be entitled to appoint an alternate director.

- (3) The company shall not be liable to pay additional remuneration by reason of the appointment of an alternate director. The articles may provide that the alternate director shall be entitled to receive from the company during the currency of his appointment the remuneration to which his appointor, but for such appointment, would have been entitled and that his appointor shall not be entitled to such remuneration, but, in the absence of such provision in the articles the alternate shall not be entitled to be remunerated otherwise than by the director appointing him.
- (4) An alternate director who is himself a director shall have an additional vote for each director for whom he acts as alternate at every meeting of the directors.
- (5) The appointment of an alternate director shall cease at the expiration of the period, if any, for which he was appointed, or if his appointor gives written notice to that effect to the company, or if his appointor ceases for any reason to be a director, or if the alternate resigns by notice in writing to the company.
- (6) Until the cessation of the appointment of an alternate director both the appointor and appointee shall be and may act as directors of the company, but no alternate, unless a director in his own right, shall attend or vote at any meeting of the directors or any committee of directors at which his appointor is present.

#### 148. Resolution in lieu of meeting

- (1) Except where this Act or the articles expressly require a meeting to be held, a resolution in writing, signed by all the doctors entitled to vote on that resolution at a meeting of directors or committee of directors, shall be as valid as if it had been passed at a meeting of directors or committee of directors.
- (2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the proceedings of the directors or committee of directors.

#### 149. Limitations on powers of directors

- (1) Notwithstanding any provision in the company's articles the directors of a company shall not, without the approval of an ordinary resolution of the company—
  - (a) sell, lease or otherwise dispose of the whole, or substantially the whole, of the undertaking or of the assets of the company;
  - (b) issue any new or unissued shares in the company; or
  - (c) create or grant any rights or options entitling the holders thereof to acquire shares of any class in the company:

Provided that—

- (i) no resolution of the company shall be effective as approving of such transaction as is referred to in paragraph (a) unless it authorizes in terms the specific transaction proposed by the directors; and
    - (ii) no resolution of the company shall be effective as approving of such a transaction as is referred to in paragraph (b) if passed more than one year before the issue of the said shares unless such issue is in accordance with a scheme for the time being in force relating to the issue of shares to or for the benefit of persons bonafide in the employment of the company or any of its group companies.
- (2) Nothing in this section shall prohibit—
  - (a) the issue of any shares under a *bona fide* underwriting agreement; or
  - (b) the issue to a director of such shares, if any, as, under the articles of the company, he is required to hold by way of share qualification.

- (3) No person dealing with the company in good faith or registering any disposition of, or title to, property shall be concerned to see whether the conditions of this section have been fulfilled.
- (4) Nothing in this section shall be taken to limit the powers of any liquidator or receiver of the property of a company.

### 150. Contracts in which directors are interested

- (1) Unless otherwise provided in the company's articles, a director shall be entitled, subject to the provisions of this Act and to compliance with this section, to enter into a contract with the company, and such contract shall not be liable to be avoided nor shall any director be liable to account for any profit made thereby by reason of such director holding that office or of the fiduciary relationship thereby established.
- (2) Every director who is in any way, whether directly or indirectly, materially interested in any contract or proposed contract entered into or to be entered into by or on behalf of the company shall declare the nature and extent of his interest at a meeting of the directors or shareholders of the company.
- (3) In the case of a proposed contract the declaration required by this section to be made by a director shall be made at the meeting at which the question of entering into the contract is first taken into consideration or, if the director was not at the date of that meeting interested in the proposed contract, at the next meeting after he became so interested, and in a case where the director becomes interested in a contract after it is made the said declaration shall be made at the first meeting held after the director becomes so interested.
- (4) For the purposes of this section, a general notice in writing given to the company by a director to the effect that he has an interest in a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm, shall be deemed to be a sufficient declaration of interest in relation to any contract or proposed contract so made or to be made:

Provided that—

- (a) there is stated in the said notice the nature and extent of the interest of the said director in such company or firm;
  - (b) at the time the question of confirming or entering into any contract is first taken into consideration the extent of his interest in such company or firm is not greater than is stated in the notice; and
  - (c) no such general notice shall be of any effect unless either it is given at a meeting of the directors or shareholders, or the director giving the notice takes all reasonable steps to secure that it is brought up and read at the next meeting of directors or shareholders after it is given.
- (5) Subject to the company's articles, a director shall not vote in respect of any contract or arrangement in which he is materially interested, and if he shall do so his vote shall not be counted, nor shall he be counted in the quorum required for that business, but neither of these prohibitions shall apply to —
    - (a) any arrangement for giving any director any security and indemnity in respect of money lent by him to or obligations undertaken by him for the benefit of the company;
    - (b) any arrangement for the giving by the company of any security to a third party in respect of a debt or obligation of the company for which the director himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or
    - (c) any contract by a director to subscribe for or underwrite shares or debentures of the company.

- (6) Any director who fails to comply with any of the provisions of this section shall be liable to a fine of two hundred Kwacha.
- (7) For the purposes of this section an interest merely as holder of debentures, or of not more than five per cent of the shares or any class of shares, of a public company shall not be deemed to be a material interest.

### **151. Prohibition of loans by companies to directors**

- (1) It shall not be lawful for any company—
  - (a) to make a loan to any person who is its director or a director of any group company, or to enter into any guarantee or provide any security in connexion with a loan made to such a person by any other person; or
  - (b) to make a loan to another body corporate or to enter into any guarantee or provide any security in connexion with a loan made by any other person to another body corporate, if a director or directors of the company are interested in shares in the body corporate of a nominal value equal together to one-third or more of the nominal value of its issued share capital.
- (2) Nothing in this section shall apply—
  - (a) to the making of a loan to a group body corporate, or the entering into any guarantee or the providing of any security in connexion with a loan made by any other person to a group body corporate; or
  - (b) subject to subsection (3), in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connexion with loans made by other persons, to anything done by the company in the ordinary course of that business; or
  - (c) subject to subsection (4), to anything done to provide any such person as aforesaid with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purposes of enabling him properly to perform his duties as an officer or employee of the company.
- (3) Subsection (2) (b) shall not authorize the making of any loans or the entering into any guarantee or the providing of any security, unless the total amount lent, guaranteed, and secured in respect of loans to such persons as aforesaid does not exceed one per cent of the net assets of the company; and for the purpose of this subsection the expression "net assets" means the assets less, the liabilities of the company as shown in the last audited balance sheet of the company.
- (4) Subsection (2) (c) shall not authorize the making of any loans or the entering into any guarantee or the providing of any security except either—
  - (a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed; or
  - (b) on condition that, if the approval of the company is not given as aforesaid at or before the next annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within six months from the conclusion of that meeting.
- (5) If any company shall make default in complying with the provisions of this section the company and every officer of the company who is in default shall be liable to a fine of two hundred Kwacha and the directors authorizing the making of the loan or the entering into the guarantee or the providing of the security shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

- (6) This section shall apply to a public company and any group company of a public company, and to such further classes of company as the Minister may from time to time prescribe by notice published in the *Gazette*, but shall not apply to any loan made prior to the commencement of the Act.

#### **152. Duties of directors in connexion with sales or purchases of the company's securities**

- (1) If a director of a company, having acquired as such director any special information which may substantially affect the value of the shares or debentures of the company or any group company, shall buy or sell any such shares or debentures without disclosing such information to the seller or purchaser thereof the purchase or sale shall be voidable at the option of the seller or purchaser within twelve months after the date of the agreement to sell or buy.
- (2) For the purposes of this section any shares or debentures brought or sold shall be deemed to have been bought or sold by a director if he has, or has had, directly or indirectly, any beneficial interest therein, unless it is proved that the sale or purchase was not made by him or on his instructions or advice or on the instructions or advice of any other person to whom he had imparted any special information affecting the value of the shares or debentures obtained by him in his capacity of director.
- (3) Nothing in this section shall derogate from any right or remedy which may be available under any other law.

#### **153. Payments to directors for loss of office or on transfer of undertaking**

- (1) It shall not be lawful for a company to make to any director or former director of the company or any group company any payment by way of compensation for loss of any office in the company or any group company, or as consideration for or in connexion with his retirement from office, without particulars with respect to the proposed payment (including the amount thereof) being disclosed to the members of the company and the proposal being approved by an ordinary resolution of the company.
- (2) It shall not be lawful for any payment to be made, whether by the company or otherwise, to any director or former director of a company in connexion with the transfer of the whole or any part of the undertaking or property of the company or any group company, whether such payment is expressed to be by way of compensation for loss of office or otherwise, unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal approved by an ordinary resolution of the company.
- (3) If any payment is made in contravention of this section the amount thereof shall be deemed to have been received in trust for the company.

#### **154. Payments to directors in connexion with take-over bids**

- (1) Where an offer is made for the acquisition of any shares of a company on the terms that it is available for acceptance—
  - (a) by all the shareholders of the company or by all the holders of shares of the class to which the offer relates; or
  - (b) by the holders of shares which, together with any shares already owned beneficially by the person making the offer or by any body corporate in which he is the controlling shareholder, confer the right to exercise or control the exercise of not less than one-third of the voting power at any general meeting of the company,

and in connexion with such an offer a payment has been made or it is proposed that a payment shall be made to any director or former director of the company or any group company (over and above the receipt by him in respect of any shares in the company held by him of the same price as may be receivable by other holders of the shares of the same class), it shall be the duty of that

director to take all reasonable steps to secure that particulars of the payment are included in or sent with any notice of the offer made for their shares which is given to any shareholders.

- (2) If—
- (a) any such director fails to take reasonable steps as aforesaid; or
  - (b) any person who has been properly required by any such director to include the said particulars in or send them with any such notice fails to do so,
- he shall be liable to a fine of one hundred Kwacha.
- (3) Unless—
- (a) the requirements of subsection (1) are complied with; and
  - (b) the making of the payment is, before the transfer of any shares in pursuance of the offer, approved by an ordinary resolution—
    - (i) agreed to by all the holders of the shares to which the offer relates; or
    - (ii) passed at a meeting of such holders, summoned for the purpose by notice complying with subsection (5),

such payment shall be distributed in the manner provided by subsection (4).

- (4) Where a payment is to be distributed in accordance with subsection (3), the person making or proposing to make such payment and the director or former director to whom it is made or proposed to be made shall be jointly and severally liable to distribute the same among any persons who have sold their shares as a result of the offer in proportion to the number of shares sold by them, and if any director or former director shall receive any such payment he shall hold the same on trust for such persons:

Provided that—

- (a) the expenses incurred in distributing such payment shall be borne by the persons liable to make the distribution and not retained out of the payment; and
  - (b) if, in proceedings instituted prior to the expiration of three months from the first transfer of any shares in pursuance of the offer, the court shall award or approve the payment of damages to such director or former director for breach of any valid service agreement, the amount of any such damages, and of any costs awarded in such proceedings, shall be paid to or retained by the director or former director out of such payment and only the balance thereof, if any, shall be distributable as aforesaid.
- (5) The notice of any meeting summoned for the purposes of subsection (3) shall be convened, held and conducted as nearly as may be in accordance with the provisions of this Act and the company's articles relating to meetings of the company, and the notices convening the meeting shall state that if the resolution approving the payment is not passed the payment will be distributable among the persons who have sold their shares in pursuance of the offer, except to the extent that the court may award or approve the payment to the director or former director concerned of damages for breach of a valid service agreement.
- (6) It shall not be lawful for any such offer as is referred to in subsection (1) to be made conditional upon approval of a payment or proposed payment to any director or former director and, if an offer is expressed to be made subject to such a condition, the condition shall be void and of no effect.
- (7) For the purpose of subsection (1)(b)—
- (a) when the offer is made by a body corporate, shares shall be deemed to be owned beneficially by such body corporate if they are owned beneficially by it or by any of its group companies or by any controlling shareholders of it; and

- (b) a person shall be deemed to be a controlling shareholder of a body corporate if such body corporate or its directors are accustomed to act in accordance with the directions or instructions of such person or his nominee or if, at a general meeting of such body corporate, such person is entitled to exercise or control the exercise of one-third or more of the voting power.

### 155. Payments to directors: interpretation

- (1) For the purposes of sections 153 and 154 and of this section the expression "payment" includes any benefit or advantage whether in cash or in kind.
- (2) Sections 153 and 154 shall not render unlawful or apply to the payment of damages awarded or approved by any court for breach of any valid service agreement or the *bona fide* payment of any pension or superannuation benefit in respect of past services in accordance with a valid service agreement.
- (3) For the purposes of section 154 and subsection (2) of this section, a service agreement shall not be deemed to be valid if it has been entered into in contemplation of such a transfer as is referred to in subsection (2) of section 153 or such an offer as is referred to in section 154, and unless the contrary is proved the service agreement shall be deemed to have been entered into in contemplation of such transfer or offer if it has been made within one year before or contemporaneously with, or at any time after the date of the agreement to transfer or the making of the offer.
- (4) For the purposes of sections 153 and 154 if—
  - (a) any payment (not being remuneration properly payable) is received by a director or former director within a period of one year before or two years after the date of the agreement to make such transfer as is referred to in section 153 or of the date of making such an offer as is referred to in section 154; and
  - (b) the company or the person to whom such transfer or by whom such offer was made was privy to the making of the payment,

such payment shall be deemed to have been received by him in connexion with the transfer or offer unless he proves that the payment would have been received by him whether or not the transfer or offer had been made.

### 156. Secretary

- (1) Every company shall have a secretary.
- (2) Unless the articles otherwise provide, the secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit, and may be removed by them, subject however to his right to claim damages from the company if removed in breach of contract.
- (3) The secretary may be a body corporate.
- (4) Two or more persons may act jointly as the secretary of a company.
- (5) The secretary of every company shall be resident in Malawi.
- (6) Anything required or authorized to be done by or to the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or to any officer of the company authorized generally or specially in that behalf by the directors.
- (7) If any company shall carry on business for more than two months without a secretary or with a secretary not resident in Malawi, the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day thereafter that the company continues so to carry on business.

### 157. Register of directors and secretaries

- (1) Every company shall keep at its registered office a register of its directors (excluding alternate directors and) secretaries.
- (2) The said register shall contain the following particulars with respect to each director—
  - (a) his present forenames and surname;
  - (b) any former forename and surname;
  - (c) his residential and his postal address; and
  - (d) his business occupation, if any.
- (3) The said register shall contain the following particulars with respect to the secretary or, where there are joint secretaries, with respect to each of them—
  - (a) in the case of an individual, the particulars required by subsection (2); and
  - (b) in the case of a body corporate, its corporate name and registered or principal office, and where such registered or principal office is outside Malawi, the address of the body corporate in Malawi shall also be given:

Provided that when all the partners in a firm are joint secretaries the name and address of the principal office of the firm may be stated instead of the name and address of each partner. Where the principal office of the firm is outside Malawi, the address of the principal office of the firm in Malawi must also be stated.
- (4) The said register shall be available for inspection by any member of the company or other person as provided by [section 129](#).
- (5) If default is made in complying with this section the company and every officer of the company who is in default shall be liable to a fine of two hundred Kwacha.
- (6) For the purposes of this section and [section 158](#)—
  - (a) in the case of a person usually known by a title different from his surname, the expression "surname" means that title; and
  - (b) references to a former name do not include—
    - (i) in the case of a person usually known by a title, the name by which he was known prior to his succession to that title;
    - (ii) a name changed or disused before the person bearing the name attained the age of eighteen years or changed or disused for a period of not less than twenty years; and
    - (iii) in the case of a married woman, the name by which she was known prior to her marriage.
- (7) It shall be the duty of a director or secretary of a company to give notice in writing to the company of such matters relating to himself as may be necessary for the purposes of this section; and any person who makes default in complying with this subsection shall be liable to a fine of two hundred Kwacha.

### 158. Registration of particulars of directors and secretaries

- (1) Every company shall send to the registrar for registration a return in the prescribed form containing the particulars specified in the register referred to in [section 157](#).
- (2) An existing company which has not before the commencement of this Act given notice to the registrar of the particulars referred to in subsection (1) shall be deemed to satisfy the requirements

of subsection (1) if it gives such notice, in a form acceptable to the registrar, in or with its first annual return made after the commencement of this Act.

- (3) Every company shall, within twenty-one days of any change occurring among its directors or in its secretary or in any of the particulars contained in the register, send to the registrar for registration notification in the prescribed form of the change, specifying the date of the change.
- (4) Any notification of a person having become a director or secretary of the company shall state that the person has consented in writing to act in the relevant capacity.
- (5) If default is made in complying with this section the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues.

### **159. Avoidance of acts in dual capacity as director and secretary**

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

### **160. Restraining fraudulent persons from managing companies**

- (1) Where—
  - (a) a person is convicted, whether in Malawi or elsewhere, on an indictment, or on any other process analogous to or in substitution of indictment—
    - (i) of any offence involving fraud or dishonesty; or
    - (ii) of any offence in connexion with the promotion, formation or management of a body corporate; or
  - (b) in the course of winding-up a body corporate a person has been found guilty of—
    - (i) any fraud in relation to the body corporate; or
    - (ii) any breach of duty in relation to the body corporate,

the court, on its own motion or on the application of any of the persons referred to in subsection (3), may order that the person shall not, without 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, or act as secretary, auditor or liquidator of any company, or as receiver of the property or as trustee for the debenture holders of any company, for such period not exceeding five years as may be specified in the order.

- (2) In subsection (1), the expression "the court" means—
  - (a) in relation to the making of an order against a person by virtue of paragraph (a) thereof, the court before which he was convicted, if that court was in Malawi, being the High Court or the court of a Resident Magistrate, and also any court having jurisdiction to wind up the body corporate;
  - (b) in relation to the making of an order against a person by virtue of paragraph (b) thereof, the court having jurisdiction to wind up the body corporate; and
  - (c) in relation to the granting of leave, any court having jurisdiction to wind up the company as respects which leave is sought.
- (3) An application for an order under this section may be made by the Attorney General, or by the trustee in bankruptcy of the person concerned or by the liquidator of any body corporate or, in the case of a person who was a director or an executive officer of a company registered under the

Banking Act, by the Reserve Bank of Malawi; and in this subsection "executive officer" has the meaning ascribed thereto in the Banking Act.

[22 of 1989; Cap. 44:01]

- (4) A person intending to apply for the making of an order under this section shall give not less than twenty-eight days' written notice of his intention to the person against whom the order is sought.
- (5) On the hearing of any application under this section the applicant and the person against whom the order is sought may appear and give evidence and call witnesses and draw the attention of the court to any relevant matters, and may be represented by a legal practitioner.
- (6) A person against whom an order has been made under this section who intends to apply for leave to act as a director or in any other capacity in relation to the property or affairs of a company shall, unless the court otherwise orders, give at least twenty-eight days' written notice of his intention to any person on whose application the order was made, and such person may appear and give evidence and call witnesses and draw the attention of the court to any relevant matters, and may be represented by a legal practitioner.
- (7) Where any order is made or leave is granted under this section the applicant shall cause a summary thereof to be published in the *Gazette*.
- (8) If any person acts in contravention of an order made under this section he shall, in respect of each offence, be liable to imprisonment for two years and to a fine of five thousand Kwacha.

#### **161. Prohibition of assignment of offices**

A provision in the articles of any company or in any agreement purporting to empower a director or other officer to assign his office to another person and any purported assignment of the office shall be void.

#### **162. Validity of acts of officers**

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

#### **163. Avoidance of provisions exempting officers**

No provision, whether contained in the memorandum or articles of a company, or in any contract with the company, shall exempt any director or other officer of a company, or indemnify him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company.

### **Part IX – Public issues of shares, etc.**

#### **164. Control of invitations to the public**

- (1) It shall not be lawful for any person to make any invitation to the public—
  - (a) to acquire any shares or debentures of a company; or
  - (b) to deposit money with any company for a fixed period or payable at call, whether bearing or not bearing interest,

unless the company concerned is a public company and the appropriate provisions contained in this Part of this Act are duly complied with:

Provided that nothing contained in this subsection shall render unlawful—

- (a) the sale of any shares or debentures by or under the supervision of the court; or

- (b) the making of an invitation to the public to acquire debentures of a company limited by guarantee.
- (c) the sale of shares and debentures by a private company in respect of which an exemption under subsection (4) has been granted.

*[17 of 1990]*

- (d) the sale of shares and debentures of a private company in pursuit of the provisions and purposes of the Public Enterprises (Privatization) Act.

*[17 of 1998; Cap. 46:07]*

- (2) If any invitation to the public is made in breach of subsection (1), all persons making the invitation and every officer of any body corporate making the invitation which is in default shall be liable on conviction in the case of a body corporate to a fine of K2,000 and in case of an individual to imprisonment for two years and to a fine of K2,000.
- (3) If as a result of any invitation to the public in breach of subsection (1) any person acquires any shares or debentures or deposits money with any company such transaction shall be voidable at his option, and he shall be entitled to recover compensation for any loss sustained by him from any person who is liable (whether convicted or not) in respect of the breach.
- (4) The Minister, upon the recommendation of the Bank made in pursuit of the provisions and purpose of the Capital Market Development Act, 1990, may grant exemption from the provisions of subsection (1) in respect of sale of shares and debentures by a private company.

*[17 of 1990]*

- (5) An application for the grant of an exemption under subsection (4) shall be submitted through the Bank and shall be accompanied with a prospectus issued in accordance with the requirements of this Part.
- (6) In this section "Bank" means the Reserve Bank of Malawi incorporated under the Reserve Bank of Malawi Act.

*[Cap. 44:02; 17 of 1990; 17 of 1998]*

## **165. Meaning of "invitation to the public"**

- (1) For the purposes of this Act an invitation shall be deemed to be made to the public if an offer or invitation to make an offer is—
  - (a) published, advertised or disseminated in Malawi by newspaper, broadcasting, cinematograph, prospectus, advertisement, circular or any other means whatsoever;
  - (b) made to or circulated among any section of the public comprising more than fifteen persons, whether selected as members or debentureholders of the company concerned or as clients of the persons making or circulating the invitation or in any other manner; or
  - (c) made to any one or more persons upon the terms that the persons to whom it is made may renounce or assign the benefit thereof or of any shares or debentures to be obtained thereunder in favour of any other person:

Provided that—

- (i) nothing contained in this section shall be taken as requiring any invitation to be treated as made to the public if it can properly be regarded in all the circumstances as being a domestic concern of the persons making and receiving it; and
- (ii) an invitation made by or on behalf of a company exclusively to its existing shareholders and debentureholders and its existing employees shall not be deemed

to be an invitation to the public unless the invitation is of the type referred to in paragraph (c).

- (2) For the purpose of this section the issue of any form of application for shares or debentures or of any form to be completed on the deposit of money with a company shall be deemed to be an invitation to acquire those shares or debentures or to deposit money.

#### **166. Offers for sale deemed to be made by the company**

- (1) Where any company allots or agrees to allot any of its shares or debentures to any person with a view to the public being invited to acquire any of those shares or debentures, then, for all the purposes of this Act, any invitation so made shall be deemed to be an invitation to the public made by the company as well as by the person actually making the same, and any person who acquires any such shares or debentures in response to the invitation shall be deemed to be an allottee from the company of those shares or debentures.

- (2) Where—

- (a) an invitation to the public is made in respect of any such shares or debentures within six months after the allotment or agreement to allot; or
- (b) at the date when, the invitation to the public was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received,

it shall be assumed, unless the contrary is shown, that the allotment or agreement to allot was made by the company with a view to an invitation to the public being made in respect of those shares or debentures.

#### **167. Prospectus invitations to the public**

- (1) It shall be lawful to make an invitation to the public to acquire shares or debentures of a company if —
  - (a) within six months prior to the making of the invitation there has been delivered to the registrar and registered by him in accordance with [section 170](#) a prospectus relating to such shares or debentures complying in all respects with the relevant provisions of sections [168](#) and [169](#);
  - (b) every person to whom the invitation is made is supplied with a true copy of such prospectus at the time when the invitation is first made to him; and
  - (c) every copy of the prospectus states on its face that it has been registered by the registrar and the date of registration.
- (2) It shall be lawful to publish a newspaper advertisement summarizing the contents of a prospectus, duly registered in accordance with [section 170](#), so long as such summary—
  - (a) does not contain or accompany any form of application for any shares or debentures;
  - (b) states with reasonable prominence where copies of the full prospectus may be obtained and the fact that it has been registered and the date of registration; and
  - (c) is in terms previously approved by the registrar.

[17 of 1990]

## 168. Contents of prospectus

- (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, shall state the matters specified in the Fifth Schedule and set out the reports specified in the Fifth Schedule.

*[Fifth Schedule]*

- (2) This section shall not apply to the issue to existing members or debentureholders of a company of a prospectus relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but in such case the prospectus shall—
  - (a) not contain any untrue or misleading statement; and
  - (b) be approved by the registrar prior to its being issued.

## 169. Expert's consent

- (1) If any prospectus includes a statement purporting to be made by an expert, such prospectus shall not be delivered for registration unless—
  - (a) such expert has given his written consent, and has not, before delivery of the prospectus for registration, withdrawn such consent, to the publication of the prospectus with the inclusion of the statement in the form and context in which it is included; and
  - (b) a statement that he has given and not withdrawn his consent appears in the prospectus.
- (2) If, after delivery of the prospectus for registration but prior to registration thereof, any such expert withdraws his consent the person who has delivered the prospectus for registration shall immediately notify the registrar.
- (3) In this section the expression "expert" includes engineer, valuer, accountant, assayer, and any other person whose profession or calling gives authority to a statement by him.

## 170. Registration of prospectuses

- (1) Where an invitation is being made by or on behalf of a company in respect of its shares or debentures, the copy of the prospectus delivered to the registrar shall be signed by every person who is named therein as a director or proposed director of the company or by his agent authorized in writing as well as being signed, in the manner referred to in subsection (3), by or on behalf of any other person also making the invitation.
- (2) In every case the copy of the prospectus so delivered shall be signed by the person making the invitation or by his agent authorized in writing. Where the person making the invitation is a firm or body corporate it shall be sufficient if the prospectus is signed by or on behalf of the firm or body corporate by not less than half the partners or by not less than two directors of the body corporate, and any such partner or director may sign by his agent authorized in writing.
- (3) The copy of the prospectus so delivered shall have endorsed thereon or attached thereto—
  - (a) the consent of any expert required by [section 169](#); and
  - (b) a certified copy or translation of each of the documents required to be available for inspection in accordance with paragraph 44 of the Fifth Schedule:

Provided that if a copy or translation of any such document has already been delivered by the company to the registrar for registration, the registrar may dispense with the need to

endorse or attach a further copy thereof if, in the opinion of the registrar, the copy originally delivered is readily identifiable and accessible.

*[Fifth Schedule]*

- (4) Every copy of any prospectus which has been delivered for registration in accordance with the provisions of this section shall state at its head:

A copy of this prospectus has been delivered to the Registrar of Companies for registration. The registrar accepts no responsibility for the accuracy of any statements made or for the financial soundness of the company or the value of the securities concerned.

- (5) Until the contrary is shown, the first publication of the prospectus shall be assumed to have occurred on the date of registration thereof.

### **171. Waiting period**

- (1) For the purposes of this Act the expression "the waiting period" means the period of ten days after the first publication of a registered prospectus or such longer period as may be stated in the prospectus as the period prior to the expiration of which applications, offers or acceptances in response thereto will not be accepted or treated as binding.
- (2) No binding contract or legally enforceable obligation shall be entered into in response to any invitation to the public in respect of any shares or debentures of any public company until after the expiration of the waiting period, and any application, offer or acceptance by any person in response to the invitation shall be revocable by such person at any time prior to the expiration of the waiting period:

Provided that nothing in this subsection shall invalidate any *bona fide* underwriting agreement in respect of any such shares or debentures.

### **172. Withdrawal of applications after the waiting period**

Where an invitation is made to the public in respect of any shares or debentures, an application for such shares or debentures shall not be revocable during the period of seven days immediately after the expiration of the waiting period unless, prior to the expiration of such period of seven days, some person responsible for the prospectus has in accordance with [section 173](#) given public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.

### **173. Civil remedy for misstatements or omissions in a prospectus**

- (1) Where a prospectus contains any untrue or misleading statement or omits to state any of the particulars or to set out any of the reports which, under this Act, it is required to state or set out, then, subject to the provisions of this section, every person specified in subsection (2), shall be liable to pay compensation to any persons who acquire any shares or debentures on the faith of the prospectus for any loss they may have sustained by reason of such untrue statement or omission.
- (2) Subject to the provisions of this section, the following persons shall be liable to pay compensation in accordance with subsection (1)—
- (a) every person making the invitation to which the prospectus relates;
  - (b) every person who was a director of a body corporate making the invitation at the time when the prospectus was published;
  - (c) where the invitation was made by the company to whose shares or debentures the invitation relates—
    - (i) every person who has authorized himself to be named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time; and

- (ii) every promoter of the company who was a party to the preparation of the prospectus; and
  - (d) every person who, pursuant to [section 169](#), has consented to the publication of the prospectus containing a statement by him as an expert.
- (3) No person shall be liable under this section if he proves—
  - (a) that as regards every untrue statement, not purporting to be made on the authority of an expert (other than himself) or of a public official document or statement, he had reasonable ground to believe and did believe up to the time of the publication of the prospectus or, where the waiting period applies, up to the expiration of the waiting period, that the statement was true;
  - (b) that as regards any omission, he was not cognizant thereof up to the time of the publication of the prospectus or, where the waiting period applies, up to the expiration of the waiting period;
  - (c) that as regards every untrue statement purporting to be a statement by an expert (other than himself) or contained in what purports to be a copy of or extract from a report or valuation of an expert, if fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and that he had reasonable ground to believe and did believe up to the time of the publication of the prospectus that the person making the statement was competent to make it and had given the consent required by [section 169](#) and had not withdrawn that consent before the date of registration of the prospectus;
  - (d) that as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document;
  - (e) that after the publication of the prospectus but before the expiration of the waiting period, he, on becoming aware of any untrue statement therein or omission therefrom, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor; or
  - (f) that the prospectus was published without his knowledge and that, on becoming aware of its publication, he forthwith gave reasonable public notice that it was published without his knowledge.
- (4) A person specified in subsection (2)(c)(i) shall not be liable under this section if he proves that having consented to being named as a director or as having agreed to become a director he withdrew his consent before the registration of the prospectus and that it was published without his authority or consent.
- (5) A person specified in subsection (2)(d) shall not be liable under this section—
  - (a) if the untrue statement or omission was not made by him; or
  - (b) if he proves—
    - (i) that as regards any untrue statement made by him, he was competent to make the statement and that he had reasonable ground to believe and did believe, up to the date of publication of the prospectus or, where the waiting period applies, up to the expiration of the waiting period, that the statement was true;
    - (ii) that having given his consent under [section 169](#) he withdrew it in writing before delivery of the prospectus for registration; or
    - (iii) that, after delivery of the prospectus for registration but before publication thereof, or, where the waiting period applies, before the expiration of the waiting period, he, on becoming aware of the untrue statement or omission, withdrew his consent

in writing and gave reasonable public notice of the withdrawal, and of the reason therefor.

- (6) Where—
- (a) any person is named in a prospectus as a director of a company or as having agreed to become a director of a company, and he has not consented to become a director or has withdrawn his consent before the publication of the prospectus and has not authorized or consented to the publication thereof; or
  - (b) the consent of a person is required under [section 169](#) to the publication of the prospectus and he either has not given that consent or has withdrawn it before the publication of the prospectus,

every person making the invitation to which the prospectus relates and every person who was a director of any body corporate making the invitation at the time when the prospectus was published (except any person without whose knowledge or consent the prospectus was published) shall be liable to indemnify the person referred to in paragraph (a) or (b) against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, or in defending himself against any legal proceeding brought against him in respect thereof.

#### 174. Public invitations to deposit money with companies

- (1) Notwithstanding the provisions of [section 164](#) it shall be lawful to make an invitation to the public to deposit money with a company if—
  - (a) the company is authorized, under the Banking Act, to carry on banking business; or  
*[Cap. 44:01]*
  - (b) prior to the making of the invitation the written consent of the Minister has been obtained to the making thereof and the invitation is made in accordance with such conditions and restrictions as he has imposed.
- (2) The Minister may, in his absolute discretion, grant or withhold such consent as is referred to in paragraph (b) of subsection (1) and, without prejudice to the generality of the foregoing, may require the approval by him and the registration with the registrar of any advertisement or circular to be used in connexion with the invitation.
- (3) If any such advertisement or circular used in connexion with the invitation contains any untrue or misleading statement then, subject to subsection (4), any person who made the invitation and every person who was a director of a body corporate making the invitation at the time when the advertisement or circular was published shall be liable to pay compensation to any persons who deposited money with the company on the faith of the advertisement or circular for any loss they may have sustained by reason of such statement.
- (4) No person shall be liable under subsection (3) if he proves—
  - (a) that he had reasonable ground to believe and did believe up to the time of publication of that advertisement or circular that the statement was true; or
  - (b) that the advertisement or circular was published without his knowledge and that on becoming aware of its publication he forthwith gave reasonable public notice that it was published without his knowledge.
- (5) If any person deposits any money with a company as a result of an untrue or misleading statement of a material fact made (whether innocently or fraudulently) in any advertisement or circular published in connexion with any invitation to the public made by or on behalf of that company such person shall be entitled to require the company immediately repay such money with interest at the rate of ten per cent per annum or such higher rate as may have been agreed to be paid on the deposit.

**175. Prohibition of waiver and notice clauses**

A condition purporting to require or bind any person to waive compliance with this Part of this Act or purporting to affect him with notice of any contract, document or matter, not specifically referred to in any prospectus, advertisement or circular, shall be void.

**176. Criminal liability for misstatements**

- (1) Where any prospectus, advertisement or circular published in relation to any invitation to the public to acquire shares or debentures of a company or to deposit money with a company contains any untrue statement or omits truthfully to state any of the matters which, under this Act, it is required to state, any person who authorized the publication of the prospectus, advertisement or circular shall be liable to imprisonment for seven years and to a fine of ten thousand Kwacha unless he proves either that the untrue or omitted statement was immaterial or that he had reasonable ground to believe and did believe, up to the time of publication of the prospectus, that the statement was true.
- (2) For the purposes of this section a person shall not be deemed to have authorized the publication of a prospectus by reason only of his having given the consent required by [section 169](#) and the Minister shall not be deemed to have authorized the publication of an advertisement or circular by reason of his having given the consent referred to in [section 174](#) (1) (b).

**177. Inducing persons to invest**

- (1) Any person who by any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making (dishonestly or otherwise) of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person to enter into or offers to enter into—
  - (a) any agreement for or with a view to acquiring, disposing of, or underwriting, securities, or lending or depositing money to or with any body corporate; or
  - (b) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities,shall be liable to imprisonment for seven years and to a fine of ten thousand Kwacha.
- (2) Any person who goes from house to house inviting the public or any member of the public to enter into any such agreement as is mentioned in paragraph (a) or (b) of subsection (1), shall be liable to imprisonment for two years and to a fine of two thousand Kwacha:

Provided that—

- (a) for the purposes of this subsection "house" shall not include an office used for business purposes, or any other premises used by the occupier wholly or partly for the purpose of carrying on any trade or business; and
- (b) nothing in this subsection shall apply with respect to the offering for subscription of debentures by a company limited by guarantee.

**178. Company not to issue prospectus unless all equity shares carry unrestricted voting rights**

- (1) Subject to subsections (2) and (3), no prospectus shall be issued, circulated or distributed in respect of any equity shares in a company unless all the equity shares in the company already issued and all those to which the prospectus relates carry an unrestricted right to vote at general meetings of the company and, on a poll, a constant number of votes which, in proportion to nominal value, is the same in the case of every share.

- (2) Subsection (1) shall not preclude the issue of a share which at the time of issue does not comply with that subsection if—
  - (a) the rights making it an equity share are expressed by the terms of issue to be conditional upon the exercise by the holder of an option in that behalf; and
  - (b) the share will comply with that subsection if the option is exercised.
- (3) Nothing in this section applies to any share issued by a company in pursuance of an obligation entered into by the company before the commencement of this Act.
- (4) Any person responsible for issuing, circulating or distributing a prospectus in contravention of this section shall be liable to a fine of five hundred Kwacha.

179. \*\*\*

*[deleted by 17 of 1990]*

## Part X – Accounts and audit

### 180. Keeping of accounting records

- (1) Every company shall cause to be kept proper accounting records with respect to—
  - (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
  - (b) all sales (except ordinary retail sales) and purchases by the company; and
  - (c) the assets and liabilities of the company, including specifically details of the identity, location, cost and valuation of all assets classified as fixed assets in the accounting records of the company.
- (2) For the purposes of subsection (1), proper accounting records shall not be deemed to be kept with respect to the matters aforesaid unless there are kept such records as are necessary—
  - (a) to give a true and fair view of the state of the company's affairs;
  - (b) to prepare proper balance sheets and profit and loss accounts in accordance with this Act; and
  - (c) to explain its operations and transactions.
- (3) The accounting records shall be kept at the registered office of the company or at such other place in Malawi as the directors think fit, and shall at all reasonable times be open to inspection by the Minister, the registrar, the directors, the secretary, and the auditors of the company, and such other person as is entitled to inspect the same under any written law.
- (4) Where the accounting records are kept at a place other than the registered office of the company, the company shall send to the registrar for registration notice of that place and of any change in that place.
- (5) Any accounting records (other than vouchers) which a company is required by this section to keep shall be preserved by it for seven years from the date on which they are made.
- (6) If a company makes default in complying with subsection (4), the company and every officer who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues.

## 181. Annual return

- (1) Every company shall once at least in every calendar year deliver to the registrar for registration an annual return in the prescribed form relating to the matters set out in the Second Schedule:

Provided that a company need not make a return under this section—

- (a) in the year of its incorporation; or
- (b) in any year ending less than eighteen months after the date of its incorporation, so long as it makes a return within six weeks after the first despatch to its members and debentureholders of the statements, accounts, and reports referred to in [section 182](#).

*[Second Schedule]*

- (2) The annual return shall be completed and made within six weeks of the date on which the statements, accounts, and reports of the company are sent to the members and debentureholders pursuant to [section 182](#), and shall be signed by a director and the secretary of the company.
- (3) The return shall state the position as at the date of the annual general meeting of the company or, if the holding of an annual general meeting is waived in accordance with [section 104](#), as at the twenty-first day after the despatch of the documents referred to in subsection (2).
- (4) In the case of a private company the annual return shall be accompanied with the documents specified in [section 197](#), and in the case of a public company with the documents specified in [section 196](#).
- (5) If a company makes default in complying with this section, the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues.

## 182. Circulation of profit and loss account, balance sheet and reports

- (1) The directors of every company shall, at a date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year at intervals of not more than fifteen months, cause to be prepared and sent to every member of the company and to every holder of debentures of the company a copy of each of the following documents—
  - (a) a profit and loss account and balance sheet prepared and signed in accordance with [sections 183 to 186](#);
  - (b) in the case of a public company or a group company of a public company, a report by the directors thereon in accordance with [section 189](#); and
  - (c) a report by the auditors in accordance with [section 190](#):

Provided that this subsection shall not require a copy of such documents to be sent to a member or debentureholder of whose address the company is unaware, but such person shall be entitled to be furnished on demand without charge with a copy of the last such profit and loss account and balance sheet and directors' and auditors' reports.

- (2) Unless the holding of an annual general meeting is waived by the members in accordance with [section 104](#), the documents referred to in subsection (1) shall be laid before the company in general meeting.
- (3) The registrar, if for any reason he thinks fit so to do, may extend the periods of eighteen and fifteen months referred to in subsection (1), and, in the circumstances referred to in [section 185](#) (11), may waive the requirements of this section in respect of any calendar year.

### 183. Profit and loss account

- (1) The profit and loss account referred to in [section 182](#) shall, in the case of the first account since the incorporation of the company, cover the period since the incorporation of the company and, in any other case, cover the period since the preceding account and shall be made up to a date not earlier by more than nine months from the date on which it is to be sent to members and debentureholders pursuant to [section 182](#):

Provided that—

- (i) in the case of an existing company which has not previously prepared a profit and loss account and which was not required under its articles to prepare one, the first account need not cover a period commencing earlier than the date of commencement of this Act; and
  - (ii) the registrar, if for any reason he thinks fit so to do, may extend the period of nine months.
- (2) The date to which the profit and loss account is to be made up in accordance with subsection (1) is in this Act referred to as "the end of the company's financial year."
- (3) The profit and loss account shall, subject to [section 185](#) (5), relating to consolidated profit and loss accounts—
  - (a) give a true and fair view of the profit or loss of the company for the period to which it relates; and
  - (b) comply with the requirements of [sections 185 to 188](#) and the Third Schedule.

*[Third Schedule]*

- (4) The registrar may, on the application or with the consent of the company's directors, modify in relation to that company any of the requirements in the Third Schedule for the purpose of adapting them to the circumstances of the company, but no such modification shall derogate from the obligation imposed by paragraph (a) of subsection (3) to give a true and fair view of the profit or loss of the company.

*[Third Schedule]*

### 184. Balance sheet

- (1) The balance sheet referred to in [section 182](#) shall give a true and fair view of the state of affairs of the company as at the end of the company's financial year and shall comply with the requirements of [sections 185 to 188](#) and the Third Schedule.

*[Third Schedule]*

- (2) The registrar may, on the application or with the consent of the company's directors, modify any of the requirements in the Third Schedule for the purpose of adapting them to the circumstances of the company, but no such modification shall derogate from the obligation imposed by subsection (1) to give a true and fair view of the state of affairs of the company.

*[Third Schedule]*

### 185. Good accounts

- (1) The provisions of this section shall apply where, at the end of the company's financial year, a company has subsidiaries.
- (2) Accounts and statements dealing, as hereinafter mentioned, with the profit or loss and the state of affairs of the company and the subsidiaries (in this Act called "group accounts") shall, subject to subsection (3), be sent to the members and debentureholders of the company with the company's own profit and loss account and balance sheet pursuant to [section 182](#).

- (3) Notwithstanding anything in subsection (2)—
- (a) group accounts shall not be required where the company at the end of the company's financial year is the wholly owned subsidiary of another Malawian company; and
  - (b) subject to the approval of the registrar, group accounts need not deal with a subsidiary of the company if the company's directors are of opinion that—
    - (i) it is impracticable or would be of no real value to the members and debentureholders of the company in view of the insignificance of the amount involved;
    - (ii) it would involve expense or delay out of proportion to the value to members and debentureholders of the company;
    - (iii) the result would be misleading or harmful to the business of the company or any of its subsidiaries or to the national interest; or
    - (iv) the business of the holding company and that of the subsidiaries are so different that they cannot reasonably be treated as a single undertaking.
- (4) Subject to subsection (5), the group accounts shall be consolidated accounts comprising—
- (a) a consolidated profit and loss account dealing with the profit or loss of the company and all subsidiaries to be dealt with in the group accounts; and
  - (b) a consolidated balance sheet dealing with the state of affairs of the company and those subsidiaries.
- (5) If the company's directors are of opinion that it is better for the purpose of presenting the same or equivalent information in a form which may be more readily appreciated by the members and debentureholders, the group accounts may be prepared in a form other than that required by subsection (4) and, in particular, may consist of more than one set of consolidated accounts dealing respectively with the company and various groups of subsidiaries or of separate accounts, dealing with each of the subsidiaries, attached to the company's accounts or of statements expanding the information about the subsidiaries in the company's own accounts, or any combination of those forms.
- (6) The group profit and loss account may be wholly or partly incorporated in the company's own profit and loss account and a consolidated profit and loss account dealing with the company and all or any of its subsidiaries shall be deemed to be a profit and loss account of the company complying with [section 183 \(3\)](#) so long as it complies with the requirements of this section and shows how much of the consolidated profit or loss for the financial year is dealt with in the accounts of the company.
- (7) The group accounts shall give a true and fair view of the profit or loss and of the state of affairs of the company and the subsidiaries dealt with thereby as a whole, so far as concerns the members of the company.
- (8) The accounts of the company and the group accounts, if any, shall comply with the requirements of the Third Schedule.
- [Third Schedule]*
- (9) The Minister may, on the application or with the consent of the company's directors, modify in relation to that company any of the requirements in the Third Schedule for the purpose of adapting them to the circumstances of the company but no such modification shall derogate from the obligation imposed by subsection (7) to give a true and fair view of the profit or loss and the state of affairs of the company and the subsidiaries as a whole.
- [Third schedule]*
- (10) A holding company's directors shall secure that, except where in their opinion there are good reasons against it (in which case their reasons shall be stated in a note on the company's accounts), the financial year of each of its subsidiaries shall coincide with the company's own financial year,

and the group accounts shall deal with the affairs of the holding company and the subsidiaries for the same financial year.

- (11) Where it appears to the registrar desirable for a holding company or subsidiary company to extend its financial year so that the subsidiary's financial year may end with that of the holding company, and for that purpose to postpone the despatch of the accounts and reports referred to in [section 182](#) from one calendar year to another, the registrar may direct that the despatch thereof by one or other of these companies shall not be required in the earlier of the said calendar years.
- (12) If the financial year of a subsidiary does not coincide with that of the holding company the group accounts shall, unless the Minister shall otherwise direct, deal with the subsidiary's profit or loss for, and the state of affairs as at the end of, its financial year ending last before that of the holding company.

### 186. Accounts: interpretation, duties and penalties

- (1) Any reference in this Act to a profit and loss account, or balance sheet or to the accounts of a company shall include any notes thereto and any document annexed thereto giving information which is required by this Act.
- (2) Any reference in this Act to a profit and loss account shall be taken, in the case of a company limited by guarantee or other company not trading for profit, as referring to its income and expenditure account, and references to profit and loss and to a consolidated profit and loss account shall be construed accordingly.
- (3) If any person, being an officer of a company, fails to take all reasonable steps to secure compliance with the provisions of [sections 180 to 185](#) he shall, in respect of each offence, be liable to imprisonment for a term of six months and to a fine of one thousand Kwacha:

Provided that—

- (a) in any proceedings against a person for any such offence it shall be a defence to prove that he had reasonable cause to believe and did believe that a competent and reliable person was charged with the duty of seeing that the said provisions were complied with and was in a position to discharge that duty; and
  - (b) a person shall not be sentenced to imprisonment for any such offence unless, in the opinion of the court, the offence was committed wilfully.
- (4) It shall be the duty of every director and former director of the company to give notice in writing to the company of such matters relating to himself as may be necessary to enable the company to comply with [section 188](#).
  - (5) Any person who makes default in complying with subsection (4), shall be liable to a fine of two hundred Kwacha.
  - (6) It shall be the duty of every company to give such written notice to any group company relating to any transaction entered into by the first-named company as may be necessary to enable the group company to comply with [section 188](#).
  - (7) If any company shall make default in complying with subsection (6), the company and every officer of the company who is in default shall be liable to a fine of two hundred Kwacha.

### 187. Signing and publication of accounts

- (1) A company shall not issue, publish or circulate a copy of any profit and loss account or balance sheet unless—
  - (a) it has attached thereto a copy of each of the other documents referred to in paragraphs (a), (b) and (c) of [section 182](#) (1) and of any group accounts required under [section 185](#); and

- (b) the said accounts and balance sheet have been approved by the board of directors and, after such approval, signed on their behalf by two directors.
- (2) Nothing in subsection (1) shall prohibit the publication of—
- (a) a fair and accurate summary of any profit and loss account and balance sheet and the auditors' report thereon after such profit and loss account and balance sheet have been approved by and signed on behalf of the board of directors; or
  - (b) a fair and accurate summary of the profit and loss figures for part of the company's financial year.
- (3) In the event of any breach of subsection (1), the company and every officer of the company who is in default shall be liable to a fine of one hundred Kwacha.

### 188. Particulars of directors' emoluments and pensions

- (1) In a note on the accounts of a company there shall be shown in accordance with the provisions of this section the following information insofar as it is contained in the company's books or papers or the company has obtained the information from the persons concerned or has the right to obtain it under [section 186](#)—
- (a) the aggregate amount of the directors' emoluments;
  - (b) the aggregate amount of the directors' or past directors' pensions; and
  - (c) the aggregate amount of any compensation to the directors or past directors in respect of loss of office.
- (2) The amount to be shown under subsection (1) (a) shall include fees, salaries and percentages, expense allowances, sums paid by way of interest, contributions paid under any pension scheme, and the estimated value of benefits in kind (except benefits of such character and value as are customarily afforded to employees other than directors) paid to or receivable by any director in respect of his services as an officer of the company or any associated company, but need not include sums paid in reimbursement of expenses properly incurred as such director.
- (3) The amount to be shown under subsection (1) (b) shall include any pension paid or receivable in respect of services as a director or past director of the company, or in respect of services, while a director of the company, in connexion with the management, or as an officer, of the company or any group company, whether that pension is paid to or receivable by the director or past director or any other person:
- Provided that it shall not be necessary to include a pension paid or receivable under a pension scheme which is such that the contributions thereunder are substantially adequate for the maintenance of the scheme.
- (4) The amount to be shown under subsection (1) (c) shall include any sums paid to or receivable by a director or past director by way of compensation for loss of office as director of the company or for the loss, while a director of the company or in connexion with his ceasing to be a director of the company, of any other office in the company or of any office in any group company; and any sum and the value of any other valuable consideration paid or receivable in connexion with retirement from office or as damages for breach of a contract of service shall be deemed to be paid or receivable by way of compensation for loss of office.
- (5) The amounts to be shown under each paragraph of subsection (1) shall include all relevant sums paid by or receivable from the company or any other person.
- (6) The amounts to be shown under this section for any financial year shall be the sums receivable in respect of that year whenever paid or, in the case of sums not receivable in respect of a period, the sums paid during that year:

Provided that any sums paid in advance of the financial year to which they are expressed to relate shall be shown in the accounts for the financial year in which they are paid.

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

### 189. Directors' report

- (1) The report of the directors referred to in [section 182](#) shall consist of a report by the directors on the state of the company's affairs and, if the company is a holding company, on the state of affairs of the company and its subsidiaries as a group, and the amount, if any, which they recommend should be paid by way of dividend.
- (2) The report shall be approved by the board of directors and signed on behalf of the board by two directors.
- (3) The report shall deal, so far as is material for the appreciation of the state of the company's affairs, with any change during the financial year in the nature of the business of the company or of the company's group companies, or in the classes of business in which the company has an interest, whether as member of another company or otherwise.
- (4) The report shall contain a list of bodies corporate in relation to which either of the following conditions is fulfilled at the end of the company's financial year—
  - (a) the body corporate is a subsidiary of the company; or
  - (b) although the body corporate is not a subsidiary of the company, the company is beneficially entitled to equity shares of the body corporate conferring the right to exercise more than twenty-five per cent of the votes exercisable at a general meeting of the body corporate.
- (5) The list referred to in subsection (4) shall distinguish between bodies corporate falling within paragraph (a) and paragraph (b) thereof and shall state as regards each such company—
  - (a) its name;
  - (b) its country of incorporation; and
  - (c) the nature of the business carried on by it.
- (6) If the company is, at the end of its financial year, the subsidiary of another, the report shall also state the name and country of incorporation of its holding company, and of the company which the directors understand to be its ultimate holding company.
- (7) If, on application by the directors, the Minister is satisfied that mention of any of the matters referred to in subsections (3), (4), (5) and (6) would be harmful to the business of the company or any of its group companies or to the national interest he may direct that such matter need not be mentioned in the report of a financial year.
- (8) Subject to [section 190](#) (2), any information which is required by this Act to be given in the profit and loss account or balance sheet of a company or in group accounts may be given in the report, in which case the report shall be deemed to form part of the accounts and this Act shall apply thereto accordingly.
- (9) If any director fails to take all reasonable steps to comply with the provisions of this section he shall be liable to a fine of two hundred Kwacha.

### 190. Auditors' report

- (1) The report by the auditors referred to in [section 182](#) shall consist of a report, addressed to the members of the company, by an auditor or auditors, duly qualified and appointed as auditors of the company in accordance with sections [191](#) and [192](#), on the books of account of the company and

on every balance sheet, profit and loss account and all group accounts and, where applicable, the directors' report to be sent to the members and debentureholders of the company in accordance with sections [182](#) and [185](#) and shall contain statements as to the matters mentioned in the Fourth Schedule.

*[Fourth Schedule]*

- (2) It shall be the duty of the auditors to satisfy themselves that the statements made in the directors' report do not distort the meaning or conflict with a fair interpretation of the company's accounts, and where information given in the directors' report is deemed to form part of the accounts by virtue of [section 189](#) (8), the auditors shall report thereon, but only so far as it gives that information.
- (3) The report shall at all times be open to inspection by any member or debentureholder of the company at the registered office of the company in accordance with [section 129](#), and shall be read at the next annual general meeting of the company held after it is sent to members and debentureholders in accordance with [section 182](#).

### **191. Appointment and remuneration of auditors**

- (1) Every company shall within three months after its incorporation and at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.
- (2) No person shall be appointed, or act, as auditor of a company unless—
  - (a) he shall prior to such appointment have consented in writing to be appointed; and
  - (b) he is duly qualified in accordance with the provisions of [section 192](#).
- (3) A partnership firm may be appointed, in the name of the firm, as auditors of a company, but such appointment shall be deemed to be an appointment of such partners of the firm as are, at the time of the appointment, or at any relevant time during the continuance thereof, duly qualified pursuant to [section 192](#). The consent provided for by paragraph (a) of subsection (2) shall be required only in respect of and upon the appointment of such firm as auditors of the relevant company.
- (4) Notwithstanding any contrary provision in the company's articles auditors shall be appointed by ordinary resolution of the company and not otherwise:

Provided that—

- (a) the subscribers to the memorandum, or if the subscribers have made no appointment within one month of incorporation, the directors, may appoint the first auditors of a company;
  - (b) the directors may fill any casual vacancy in the office of auditor; and
  - (c) if a company has no auditor for a continuous period of three months the registrar may appoint auditors.
- (5) Every auditor shall continue in office until—
    - (a) he ceases to be qualified for appointment;
    - (b) he resigns his office by notice in writing to the company; or
    - (c) an ordinary resolution is duly passed at an annual general meeting in accordance with [section 193](#) removing him from office or appointing some other person in his place as from the conclusion of the annual general meeting,

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

- (6) Within twenty-one days after the appointment of auditors or the occurrence of any change in the auditors of any company, the company shall give notice thereof in the prescribed form to the registrar for registration:

Provided that an existing company shall be deemed to satisfy this requirement if it gives such notice, in a form acceptable to the registrar, in or with its first annual return made after the commencement of this Act.

- (7) The remuneration of the auditors—
- (a) in the case of an auditor appointed by the subscribers to the memorandum or by the directors or by the registrar may be fixed by the subscribers to the memorandum or by the directors or the registrar, as the case may be, for the period expiring at the conclusion of the next annual general meeting of the company; and
  - (b) subject as aforesaid shall be fixed by an ordinary resolution of the company or in such manner as the company by ordinary resolution may determine.

For the purposes of this subsection, any sums paid or payable by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration".

- (8) If any company shall commit a breach of any of the provisions of this section or describe as auditor of the company any person who has not been duly appointed, the company and any officer of the company who is in default shall be liable to a fine of two hundred Kwacha.
- (9) For the purposes of subsection (6), where a partnership firm is appointed as auditors in the name of the firm the firm name and business address shall be given to the registrar and, for the purposes of such subsection a change in the constitution of the firm or of the partners therein who are auditors of the company shall not be deemed to be a change in the auditors.

## 192. Qualification of auditors

- (1) No person shall be qualified for appointment as auditor of a company, nor shall he act as such, unless he is eligible and entitled so to act under the Public Accountants and Auditors Act.
- [Cap. 53:06]*
- (2) A person who acts as auditor of a company in contravention of this Act shall be liable to a fine of two thousand Kwacha.

## 193. Removal of auditors

- (1) A resolution to remove any auditor or to appoint any other person in his place shall not be effective unless—
- (a) it is passed at a general meeting of the company;
  - (b) written notice has been given to the company of the intention to move it not less than thirty-five days before the general meeting at which it is to be moved and on its receipt the company has forthwith sent a copy thereof to the auditor concerned;
  - (c) the company has given its members notice of such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, has given them notice thereof, in the same manner as notices of meetings are required to be given, not less than twenty-one days before the meeting; and
  - (d) in the case of a company registered under the Banking Act, 1989, the resolution has been approved by the Reserve Bank of Malawi:

Provided that—

- (i) if, after notice of the intention to move the resolution is given to the company, a general meeting is called for a date thirty-five days or less after the notice has been given to the company the notice shall be deemed to have been properly given for the purposes of this subsection; and

- (ii) in the case of a resolution to remove any auditor appointed by the subscribers to the memorandum or the directors in accordance with [section 191](#) (4) (a) or appointed by the directors in accordance with [section 191](#) (4) (b) or to appoint any other person in place of an auditor so appointed this subsection shall have effect with the substitution of fourteen days for thirty-five days in paragraph (b) and seven days for twenty-one days in paragraph (c).

*[22 of 1989]*

- (2) The auditor concerned shall be entitled—
  - (a) to be heard on the resolution at the meeting; and
  - (b) to send to the company a written statement, copies of which the company shall send with every notice of the general meeting or, if the statement is received too late, shall forthwith circulate to every person entitled under [section 107](#) to notice of the meeting in the same manner as notices of meetings are required to be given:
 

Provided that the company need not send or circulate such statement—

    - (i) if it is received by the company less than seven days before the meeting; or
    - (ii) if the court, on application by the company or any other person who claims to be aggrieved, so orders upon being satisfied that the statement is unreasonably long or that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the costs of the applicant to be paid in whole or in part by the auditor notwithstanding that he is not a party to the application.
- (3) Without prejudice to the auditor's right to be heard orally on such resolution he may, unless the court shall have made an order under subsection (2), also require that the written statement by him be read to the meeting.
- (4) If the resolution is passed it shall not take effect until the conclusion of the general meeting.
- (5) Nothing in this section shall deprive an auditor of any right in respect of remuneration to which he shall be entitled up to the termination of his appointment.

*[22 of 1989]*

#### **194. Duties and powers of auditors**

- (1) The auditors of a company while acting in performance of their duties under this Act shall act in such manner as faithful, diligent, careful and ordinarily skilful auditors would act in the circumstances.
- (2) No provision, whether contained in the memorandum or articles of a company, or in any contract with a company, shall exempt any auditor from the duty to act in accordance with subsection (1) or indemnify him against any liability incurred as a result of any breach thereof.
- (3) Every auditor shall have a right to access at all times to the places of business and the books and accounts and vouchers of the company and shall be entitled to require from the officers of the company such information and explanation as he thinks necessary for the performance of his duties.
- (4) The auditors of a company shall be entitled to attend any general meeting of the company and to receive all notices of and other communications relating to any general meeting and to be heard at any general meeting on any part of the business of the meeting which concerns them as auditors.
- (5) The auditors of a company may apply to the court for directions in relation to any matter arising in connexion with the performance of their functions under this Act, and on any such application the

court may give such directions as the court thinks just. Unless the court shall otherwise direct the costs of any such application shall be paid by the company.

### 195. Powers of auditors in relation to subsidiaries

- (1) In the case of any company which is a holding company—
  - (a) If the subsidiary is a body corporate incorporated in Malawi, it shall be the duty of the subsidiary and its auditors to give to the auditors of the holding company such information and explanations as those auditors think necessary for the purposes of their duties as auditors of the holding company; and
  - (b) in any other case, it shall be the duty of the holding company, if required by its auditors to do so, to take all such steps as are reasonably open to it to obtain from the subsidiary such information and explanations as aforesaid.
- (2) If a subsidiary or holding company fails to comply with subsection (1) the subsidiary or holding company and every officer thereof who is in default shall be liable to a fine of two hundred Kwacha; and if an auditor fails without reasonable excuse to comply with paragraph (a) of that subsection he shall be liable to a fine of two hundred Kwacha.

### 196. Documents to be annexed to annual return of a public company

- (1) The annual return of every public company (other than a company limited by guarantee) required by [section 181](#) shall be accompanied with a copy, certified both by a director and the secretary of the company to be a true copy, of every balance sheet, profit and loss account, group accounts, directors report and auditor' report sent to members and debentureholders of the company in accordance with [section 182](#), during the period to which the return relates.
- (2) An unlimited company shall be exempted from the requirements of subsection (1) if the annual return is accompanied with a certificate, signed by a director and by the secretary of the company, that it is not, and has not at any time during the period to which the return relates between, a group company.

### 197. Documents to be annexed to the annual return of a private company

- (1) With the annual return required by [section 181](#), a private company and a company limited by guarantee shall deliver to the registrar for registration—
  - (a) a certificate that the company has not, since the date of the last return, or, in the case of the first return, since the date of incorporation of the company, issued any invitation to the public to acquire any shares or debentures of the company;
  - (b) a certificate that the number of members of the company does not exceed fifty or that any excess over fifty consists solely of persons who are *bona fide* in the employment of the company and persons who, having been formerly *bona fide* in the employment of the company were while in that employment, and have continued after the determination of that employment to be, members of the company; and
  - (c) either—
    - (i) a copy of every profit and loss account, balance sheet, and group accounts circulated to the members and debentureholders pursuant to [section 182](#) during the period to which the return relates, and a copy of the report of the directors if any, and of the report of the auditors accompanying such accounts; or
    - (ii) a certificate that the company is not a group company of a public company.
- (2) The certificates required by paragraphs (a), (b) and (c) (ii) of subsection (1) shall be signed by a director and by the secretary of the company.

- (3) The copies required by paragraph (c) of subsection (1) shall be certified by a director and by the secretary of the company to be true copies.

## Part XI – Schemes of arrangement, take-overs and the protection of minorities

### 198. Power to compromise with creditors and members

- (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them, the court may, on the application in a summary way of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.
- (2) If a majority in number representing three-fourths in value of the creditors or class of creditors or three-fourths in nominal value of the members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by order of the court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company.
- (3) Any order made under subsection (2) shall have no effect until a copy of the order has been delivered to the registrar for registration, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made.
- (4) Upon the hearing by the court of the application to sanction the compromise or arrangement any member or creditor of the company claiming to be affected thereby shall be entitled to be represented and to object.
- (5) The court may prescribe such terms as it thinks fit as a condition of its sanction including a condition that any members shall be given rights to require the company to purchase their shares at a price fixed by the court or to be determined in manner provided in the order.
- (6) If a company makes default in complying with subsection (3), the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha.
- (7) In this section and [section 199](#) the expression "arrangement" includes a reorganization of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

### 199. Information as to compromises with creditors and members

- (1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under [section 198](#) there shall—
  - (a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement, insofar as it is different from the effect on the like interests of other persons; and
  - (b) in every notice summoning the meeting which is given by advertisement, be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement.
- (2) Where the compromise or arrangement affects the rights of debentureholders of the company, the statement shall give the like explanation as respects the debentureholders of the company or

any trustees of any instrument for securing the issue of the debentures as it is required to give as respects the company's directors.

- (3) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice be furnished by the company free of charge with a copy of the statement.
- (4) Where a company makes default in complying with any requirement of this section, the company and every officer of the company who is in default shall be liable to a fine of one thousand Kwacha; and for the purpose of this subsection any liquidator of the company and any trustee of an instrument for securing the issue of debentures of the company shall be deemed to be an officer of the company:

Provided that a person shall not be liable under this subsection if that person shows that the default was due to the refusal of any other person to supply the necessary particulars as to his interests.

- (5) It shall be the duty of any director of the company and of any trustee for debentureholders of the company to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section, and any person who makes default in complying with this subsection shall be liable to a fine of two hundred Kwacha.

## 200. Provisions for facilitating reconstruction and amalgamation of companies

- (1) Where an application is made to the court under [section 198](#) for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the court that the compromise or arrangement has been proposed for the purposes of or in connexion with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as "a transferor company") is to be transferred to another company (in this section referred to as "the transferee company"), the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters—
  - (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;
  - (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
  - (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
  - (d) the dissolution, without winding-up, of any transferor company;
  - (e) the provision to be made for any persons who, within such time and in such manner as the court directs, dissent from the compromise or arrangement; and
  - (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.
- (2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, be freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.
- (3) Where an order is made under this section, every company in relation to which the order is made shall cause a copy thereof to be delivered to the registrar for registration within twenty-one days

after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues.

- (4) In this section the expression "property" includes property rights and powers of every description and the expression "liabilities" includes duties of every description notwithstanding that such rights, powers and duties are of a personal character which could not under the general law be assigned or performed vicariously.

## 201. Power to acquire shares of minority on take-over

- (1) Where a body corporate, whether a company within the meaning of this Act or not (in this section referred to as "the transferee company"), has made an offer to the holders of shares in a company (in this section referred to as "the transferor company") then, provided that the conditions specified in subsection (2) are duly fulfilled, the transferee company may compulsorily acquire the shares in the transferor company in the manner specified in this section.
- (2) This section shall apply if—
- (a) the offer by the transferee company is made to the holders of the whole of the shares in the transferor company, other than those already held by the transferee company or any of its group companies or by nominees for the transferee company or any of its group companies;
  - (b) the consideration for the acquisition or a substantial part thereof is either—
    - (i) the allotment of shares in the transferee company; or
    - (ii) the allotment of shares in the transferee company or, at the option of the holders, a payment of cash;
  - (c) the same terms are offered to all the holders of the shares to whom the offer is made or, where there are different classes of shares, to all the holders of shares of the same class; and
  - (d) within four months after the making of the offer it has been accepted in respect of not less than nine-tenths of the whole of the shares and of not less than nine-tenth of the shares of each class (other than shares already held as aforesaid).
- (3) Where the conditions specified in subsection (2) are fulfilled, the transferee company may, within two months thereafter, give notice to any shareholder who has not accepted the offer in respect of all his shares that it desires to acquire his shares and when such notice is given the transferee company shall, unless on an application made by the shareholder in accordance with subsection (4) the court otherwise, orders be entitled and bound to acquire those shares on the terms of the offer.
- (4) At any time within the period of two months referred to in subsection (3), any shareholder to whom notice has been given in accordance with such subsection may apply to the court, and the court may order, that the transferee company shall not be titled to acquire the shares of such holder or that the transferee company shall be bound to acquire those shares upon such other terms as the court may order.
- (5) Where the court makes an order under subsection (4) that the transferee company shall be bound to acquire the shares concerned upon terms different from those of the original offer then, unless the court shall otherwise order, the transferee company shall give notice of such amended terms to all other holders of shares of the same class and to all former holders of shares of the same class who accepted the original offer, and at any time within two months of the giving of such notice any shareholder shall be entitled to require the transferee company to acquire his shares upon the same terms as those ordered by the court and any such former holder shall be entitled to require the transferee company to pay or transfer to him any additional consideration to which he would have been entitled, had his shares been acquired, on the terms ordered by the court.
- (6) Where a notice has been given by the transferee company under subsection (3) and the court has not, on an application by the shareholder under subsection (4), ordered to the contrary, the transferee company shall, on the expiration of two months from the date on which notice has

been given, or, if an application by the shareholder under subsection (4) is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company, and transfer to the transferor company the shares (or if the shareholder has exercised the cash option, if any, pay to the transferor company the cash) representing the consideration payable by the transferee company for the shares which by virtue of this section the transferee company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

- (7) Any sums received by the transferor company under subsection (6) shall be paid into a separate bank account and any such sums and all shares so received shall be held by the transferor company in trust for the several persons entitled to the shares in respect of which the said sums and shares were received.

## 202. Rights of minority on take-over

- (1) Where, as a result of an offer to the shareholders of a company or any of them, shares in that company are transferred to another body corporate, whether a company within the meaning of this Act or not (in this section called "the transferee company") or its nominee and those shares, together with any other shares in the first mentioned company held by, or by a nominee for, the transferee company, or by, or by a nominee for, any of its group companies at the date of the transfer, comprise or include three-fourths of the shares in the first named company or any class of those shares, then—
- (a) the transferee company shall within one month from the date of the transfer (unless on a previous transfer it has already complied with this requirement) give notice of that fact to the holders of the remaining shares or of the remaining shares of that class, as the case may be; and
  - (b) any such holder may within three months from the giving of the notice to him require the transferee company to acquire all or any of his shares.
- (2) Where a shareholder under subsection (1) requires the transferee company to acquire any shares, the transferee company shall be entitled and bound to acquire those shares on the terms of the offer or on such other terms as may be agreed or as the court, on the application of either the transferee company or the shareholder, thinks fit to order.

## 203. Remedy against oppression

- (1) Any member of a company may apply to the court for an order under this section on the ground—
- (a) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or in disregard of his or their proper interests as members of the company; or
  - (b) that some act of the company has been done or is threatened or that some resolution of the members or any class of them has been passed or is proposed which unfairly discriminates against, or is otherwise unfairly prejudicial to, one or more of the members.
- (2) If on such application the court is of opinion that either of such grounds is established, the court may, with a view to bringing to an end or remedying the matters complained of, make such order as it thinks fit and, without prejudice to the generality of the foregoing, may by order—
- (a) direct or prohibit any act or cancel or vary any transaction or resolution;
  - (b) regulate the conduct of the company's affairs in future; or
  - (c) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly.

- (3) Where an order under this section makes any alteration in or addition to any of the company's memorandum or articles then, notwithstanding anything in any other provision of this Act but subject to any provisions of the order, the company shall not have power without the leave of the court to make any further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order.
- (4) A copy of any order under this section altering or adding to the company's memorandum or articles shall, within twenty-one days after the making thereof, be delivered by the company to the registrar for registration, and if a company makes default in complying with this subsection the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues.

## Part XII – Winding-up

### A—General

#### 204. Modes of winding-up

- (1) The winding-up of a company may be either—
  - (a) by the court; or
  - (b) voluntary.
- (2) Unless the context otherwise requires, the provisions of this Act with respect to winding-up apply to the winding-up of a company in either of those modes.

#### 205. Liability of members

On a company being wound up, every member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding-up and for the adjustment of the rights of the members among themselves, subject to the following qualifications—

- (a) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a member;
- (b) in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up; and
- (c) a sum due to any member in his capacity as a member by way of dividends, profits or otherwise shall not be a debt of the company payable to that member in a case of competition between himself and any other creditor not a member, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the members among themselves.

#### 206. Application of repealed Act

The provisions of this Act relating to the winding-up of a company shall not apply to any company if its winding-up was commenced before the commencement of this Act, and the winding-up of any such company shall be continued as if this Act had not been passed.

#### 207. Liability of past members as contributors

- (1) On a company being wound up, any past member shall subject to the provisions of this section be liable to contribute to the assets of the company to an amount sufficient for payment of its debts

and liabilities, and the costs, charges and expenses of the winding-up and for the adjustment of the rights of the members among themselves.

- (2) This section shall apply only in the case of a company limited by guarantee, an unlimited company and a company having shares which are not fully paid-up.
- (3) A past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member.
- (4) A past member shall not be liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding-up.
- (5) A past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act.
- (6) In the case of a company limited by shares, no contribution shall be required from any past member exceeding the amount unpaid on the shares in respect of which he is liable.
- (7) Nothing in subsections (1) to (6) shall affect the liability under section 26 (3) of a past member of a company which has been converted from an unlimited company to a limited company pursuant to [section 26](#).
- (8) For the purposes of this Part, any reference to a member shall, unless the context otherwise requires, be deemed to include a past member who is liable by virtue of this section or [section 26](#) to contribute to the assets of the company; and for the purpose of all proceedings for determining, and of all proceedings prior to the final determination of, the persons who are deemed to be so liable (including the presentation of a winding-up petition), includes any person claiming or alleged to be so liable.

#### **208. Nature of liability of member**

The liability of a member shall create debt in the nature of a specialty accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

#### **209. Liability in case of death of a member**

If a member dies either before or after he has been placed on the list of those liable to contribute to the assets of the company, his personal representatives shall be so liable in due course of administration and, if they make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased member and for compelling payment thereout of the money due.

#### **210. Liability in case of bankruptcy of member**

If a member becomes bankrupt, either before or after he has been placed on the list of those liable to contribute to the assets of the company—

- (a) his trustee in bankruptcy shall represent him for all the purposes of the winding-up, and shall be liable to contribute accordingly; and
- (b) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as to calls already made.

### **B—Winding-up by the court**

#### **211. Winding-up by the court**

The provisions of [sections 212](#) to [243](#) shall apply in the case of the winding-up of a company by the court.

## 212. Petition for winding-up

(1) A company (whether or not it is being wound-up voluntarily) may be wound up under an order of the court on the petition of—

- (a) the company;
- (b) any creditor, including contingent or prospective creditor, of the company;
- (c) a member or any person who is the personal representative of a deceased member or the trustee in bankruptcy of a bankrupt member;
- (d) the Attorney General; or
- (e) any liquidator of the company appointed in a voluntary liquidation:

Provided that—

- (i) in the case of a company limited by shares a member shall not be entitled to present a winding-up petition unless his shares, or some of them, were originally allotted to him or have been held by him, and registered in his name, for at least six months or have devolved on him by operation of law; and
  - (ii) the court shall not give a hearing to a winding-up petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and a *prima facie* case for winding-up has been established to the satisfaction of the court.
- (2) Where a company is being wound up voluntarily, the court shall not make a winding-up order unless it is satisfied that the voluntary winding-up cannot be continued with due respect to the interests of the creditors or members.

## 213. Circumstances in which company may be wound up by court

(1) The court may order the winding-up of a company if—

- (a) the company has by special resolution resolved that it be wound up by the court;
- (b) the company does not commence its business (if any) within a year from its incorporation or suspends its business for a whole year;
- (c) the number of members is reduced below two;
- (d) the company is unable to pay its debts;
- (e) the period, if any, fixed for the duration of the company by the memorandum or articles expires or the event, if any, occurs on the occurrence of which the memorandum or articles provide that the company is to be dissolved; or
- (f) the court is of opinion that it is just and equitable that the company be wound up.

(2) The court may order the winding-up of a company on the petition of the Attorney General if the court is of opinion that the business or objects of the company or any of them are unlawful or that the company is being operated for any illegal purposes or has persistently failed to comply with any of the provisions of this Act.

(3) A company shall be deemed to be unable to pay its debts if—

- (a) a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding one hundred Kwacha then due has served on the company a written demand under his hand requiring the company to pay the sum so due, and the company has for twenty-one days thereafter neglected to pay the sum or to secure or compound it to the reasonable satisfaction of the creditor;

- (b) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (c) it is proved to the satisfaction of the court that the company is unable to pay its debts, and in determining whether a company is unable to pay its debts the court shall take into account the contingent and prospective liabilities of the company.

#### **214. Commencement of winding-up court**

- (1) Where before the presentation of the petition a resolution has been passed by the company for voluntary winding-up, the winding-up of the company shall be deemed to have commenced at the time of the passing of the resolution, and, unless the court deems it fit otherwise to direct, all proceedings taken in the voluntary winding-up shall be deemed to have been validly taken.
- (2) In any other case the winding-up shall be deemed to have commenced at the time of the presentation of the petition for the winding-up.

#### **215. Payment of preliminary costs**

- (1) The person, other than the company itself or the liquidator thereof, on whose petition any winding-up order is made, shall at his own cost prosecute all proceedings in the winding-up until a liquidator has been appointed.
- (2) The liquidator shall, unless the court orders otherwise, reimburse the petitioner out of the assets of the company the taxed costs incurred by the petitioner in any such proceedings.
- (3) Where the company has no assets or not sufficient assets, and in the opinion of the Minister any fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since the formation thereof, which in the opinion of the Minister substantially contributed to the insolvency thereof, the taxed costs or so much of them as is not so reimbursed may, with the approval in writing of the Minister, to an extent specified by the Minister, be reimbursed to the petitioner out of moneys provided by Parliament.
- (4) Where any winding-up order is made upon the petition of the company or the liquidator thereof, the costs incurred shall, subject to any order of the court, be paid out of the assets of the company in like manner as if they were the costs of any other petitioner.

#### **216. Powers of court on hearing petition**

- (1) On hearing a winding-up petition the court may dismiss it with or without costs or adjourn the hearing conditionally or unconditionally or make any interim or other order that it thinks fit, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets or, in the case of a petition by a member, that there will be no assets available for distribution amongst the members.
- (2) The court may on the petition coming on for hearing or at any time on the application of the petitioner, the company, or any person who has given notice that he intends to appear on the hearing of the petition—
  - (a) direct that any notices be given or any steps taken before or after the hearing of the petition;
  - (b) dispense with any notices being given or steps being taken which are required by or under this Act, or by any prior order to the court;
  - (c) direct that oral evidence be taken on the petition or any matter relating thereto;
  - (d) direct a speedy hearing or trial of the petition or any issue or matter;
  - (e) allow the petition to be amended or withdrawn; and

- (f) give such directions as to the proceedings as the court deems fit.
- (3) Where the petition is presented by members on the ground that it is just and equitable that the company should be wound up, the court, if it is of opinion that—
- (a) the petitioners are entitled to relief either by winding-up the company or by some other means; and
  - (b) in the absence of any other remedy it would be just and equitable that the company should be wound up,
- shall make a winding-up order unless it is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

### **217. Power to stay or restrain proceedings against company**

At any time after the presentation of a winding-up petition and before a winding-up order has been made, the company or any creditor or member may, where any action or proceeding against the company is pending, apply to the court to stay or restrain further proceedings in the action or proceeding, and the court may stay or restrain the proceeding accordingly on such terms as it thinks fit.

### **218. Avoidance of dispositions**

Any disposition of the property of the company including things in action and any transfer of shares or alteration in the status of the members of the company made after the commencement of winding-up by the court shall, unless the court otherwise orders, be void.

### **219. Avoidance of attachments**

Any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of a winding-up by the court shall be void.

### **220. Copy of order to be registered**

- (1) Within seven days after the making of a winding-up order the petitioner shall—
  - (a) deliver a copy of the order to the registrar for registration;
  - (b) cause a copy to be served upon the secretary of the company or upon such other person or in such manner as the court directs;
  - (c) if the official receiver has not been appointed as liquidator, or if no liquidator has been appointed, deliver a copy to the official receiver; and
  - (d) deliver a copy to the liquidator (if any) with a statement that the requirements of this subsection have been complied with.
- (2) Within fourteen days after the receipt by him of a copy of a winding-up order pursuant to subsection (1) (a) the registrar shall cause notice of the making of such order to be published in the *Gazette*.
- (3) If default is made in complying with subsection (1) the petitioner shall be liable to a fine of ten Kwacha for every day during which the default continues.

### **221. Provisional liquidator**

The court may appoint the official receiver or any other person to be liquidator provisionally at any time after the presentation of a winding-up petition and before the making of a winding-up order and the provisional liquidator shall have and may exercise all the functions and powers of a liquidator subject to

such limitations and restrictions as may be prescribed or as the court may specify in the order appointing him.

## 222. Stay of actions

When a winding-up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose.

## 223. Appointment and style of liquidators

The following provisions with respect to liquidators shall have effect on a winding-up order being made—

- (a) where a provisional liquidator has been appointed, he shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;
- (b) where no provisional liquidator has been appointed, the official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;
- (c) the court may appoint a liquidator, or may give directions as to the appointment of a liquidator, by the members or creditors of a company or otherwise, as it thinks fit;
- (d) in any case where a liquidator is not appointed by the court, the official receiver shall be the liquidator of the company;
- (e) the official receiver shall by virtue of his office be the liquidator during any vacancy or at any time when there is no liquidator capable of acting;
- (f) any vacancy in the office of liquidator appointed by the court may be filled by the court;
- (g) a liquidator appointed by the court may resign or on cause shown be removed by the court;
- (h) a liquidator shall be described, where a person other than the official receiver is liquidator, by the style of "the liquidator", and where the official receiver is liquidator, by the style of "the official receiver and liquidator", of the particular company in respect of which he is appointed, and not by his individual name; and
- (i) if more than one liquidator is appointed by the court, the court shall declare whether anything by this Act required or authorized to be done by the liquidator is to be done by all or any one or more of the persons appointed.

## 224. Provisions where person other than official receiver is appointed liquidator

- (1) Where in the winding-up of a company by the court a person other than the official receiver is appointed liquidator, that person—
  - (a) shall not be capable of acting as liquidator until he has notified his appointment to the registrar and given such security as may be directed by the court, or by the official receiver, to the satisfaction of the official receiver; and
  - (b) shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling the official receiver to perform his duties under this Act.
- (2) Subsection (1) (a) shall not apply in the case of a provisional liquidator unless the court so orders.

## 225. Control of unofficial liquidators by official receiver

- (1) Where in the winding-up of a company by the court a person other than the official receiver is the liquidator the official receiver shall take cognizance of his conduct and if the liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by any written

law or otherwise with respect to the performance of his duties, or if any complaint is made to the official receiver by any creditor or member in regard thereto, the official receiver shall inquire into the matter, and take such action thereon as he may deem expedient.

- (2) The official receiver may at any time require any liquidator of a company which is being wound up by the court to answer any inquiry in relation to any winding-up in which he is engaged, and may, if the official receiver thinks fit, apply to the court to examine him or any other person on oath concerning the winding-up.
- (3) The official receiver may direct an investigation to be made of the books and vouchers of a liquidator.

## 226. Remuneration of liquidators

- (1) A provisional liquidator other than the official receiver shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is determined by the court.
- (2) A liquidator other than the official receiver shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is determined—
  - (a) by agreement between the liquidator and the committee of inspection (if any);
  - (b) failing such agreement or where there is no committee of inspection, by a resolution passed at a meeting of creditors by a majority in number representing not less than three-fourths in value of the creditors present in person or by proxy and voting at the meeting and whose debts have been admitted to vote, which meeting shall be convened by the liquidator by a notice to each creditor to which notice shall be attached a statement of all receipts and expenditure by the liquidator and the amount of remuneration sought by him; or
  - (c) failing a determination in a manner referred to in paragraph (a) or (b), by the court.
- (3) Where the salary or remuneration of a liquidator is determined in the manner specified in subsection (2) (a) the court may, on the application of one or more members whose shareholdings represent in the aggregate not less than one-twentieth of the issued capital of the company (or who, in the case of a company having no share capital, constitute not less than one-twentieth of the members), confirm or vary the determination.
- (4) Where the salary or remuneration of a liquidator is determined in the manner specified in subsection (2) (b) the court may, on the application of the liquidator or one or more members as described in subsection (3), confirm or vary the determination.
- (5) Subject to any order of the court the official receiver when acting as a liquidator or provisional liquidator of a company shall be entitled to receive such salary or remuneration by way of percentage or otherwise as may be prescribed.

## 227. Custody and vesting of company's property

- (1) Where a winding-up order has been made or a provisional liquidator has been appointed, the liquidator or provisional liquidator shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled.
- (2) The court may, on the application of the liquidator, by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator, and thereupon the property to which the order relates shall vest accordingly and the liquidator may, after giving such indemnity, if any, as the court directs, bring or defend any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding-up the company and recovering its property.
- (3) Where an order is made under this section the liquidator of a company in relation to which the order is made shall within fourteen days of the making of the order—
  - (a) deliver a copy of the order to the registrar for registration; and

- (b) in the case of property vested in the liquidator in respect of the transfer of which any written law provides for registration, deliver a copy of the order to the proper officer of the appropriate authority for the registration of such transfer, together with a written application to such officer for the registration of the order,

and every liquidator who makes default in complying with this subsection shall be liable to a fine of ten Kwacha for every day during which the default continues.

- (4) No vesting order referred to in this section shall have any effect or operation in transferring or otherwise vesting any such property as is referred to in subsection 3 (b) until delivered to the appropriate authority as required by the written law.

## 228. Statement of company's affairs

- (1) Unless the court deems fit to order otherwise, there shall be prepared and submitted to the liquidator a statement as to the affairs of the company as at the date of the winding-up order showing—
  - (a) the particulars of its assets, debts and liabilities;
  - (b) the names and addresses of its creditors;
  - (c) the securities held by each of the creditors;
  - (d) the dates when the securities were respectively given; and
  - (e) such further information as may be prescribed or as the liquidator requires.
- (2) The statement shall be verified by the statutory declaration of one or more of the persons who at the date of the winding-up order are directors, and of secretary of the company at that date, and of such of the persons hereinafter mentioned as the liquidator, subject to the direction of the court, by notice in writing requires, that is to say, persons—
  - (a) who are or have been officers of the company;
  - (b) who have taken part in the formation of the company, at any time within two years before the date of the winding-up order; or
  - (c) who are or have been within the said period officers of or in the employment of a corporate body which is, or within that period was, an officer of the company to which the statement relates.
- (3) The liquidator may serve a notice on a person under subsection (2) either personally or by sending it by post to the address of that person last known to the liquidator.
- (4) A person required to submit a statement shall submit it within fourteen days after the liquidator has served notice of the requirement or within such extended time as the liquidator or the court for special reasons specifies, and the liquidator shall within seven days after its receipt cause a copy of the statement to be filed with the court and a copy to be delivered to the registrar for registration and where the official receiver is not the liquidator shall cause a copy to be delivered to the official receiver.
- (5) Any person making the statement required by this section may be allowed, and be paid, out of the assets of the company such costs and expenses incurred in and about the preparation and making of the statement as the liquidator considers reasonable subject to an appeal to the court.
- (6) Subject to subsection (8), every person who without reasonable excuse makes default in complying with the requirements of this section shall be liable to imprisonment for three months and to a fine of one thousand Kwacha.
- (7) A statement made under this section may be used in evidence against any person making it.

- (8) A liquidator who contravenes the provisions of subsection (4) regarding filing and delivery of the statement shall be liable to a fine of ten Kwacha for every day during which the default continues.

### 229. Report by liquidator

- (1) The liquidator shall as soon as practicable after receipt of the statement of affairs submit a preliminary report to the court—
- (a) as to the amount of capital issued, subscribed and paid-up and the estimated amount of assets and liabilities;
  - (b) if the company has failed, as to the causes of the failure; and
  - (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of the business thereof.
- (2) The liquidator may also, if he thinks fit, make further reports stating the manner in which the company was formed and whether in his opinion any fraud has been committed or any material fact has been concealed by any person in its promotion or formation or by any officer in relation to the company since its formation, and whether any officer of the company has contravened or failed to comply with any of the provisions of this Act, and specifying any other matter which in his opinion it is desirable to bring to the notice of the court.

### 230. Powers of liquidator

- (1) The liquidator may with the authority either of the court or of the committee of inspection—
- (a) carry on the business of the company so far as is necessary for the beneficial winding-up thereof, but the authority shall not be necessary to carry on the business during the four weeks next after the date of the winding-up order;
  - (b) subject to the provisions of [section 287](#), pay any class of creditors in full;
  - (c) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable; and
  - (d) compromise any debts and liabilities capable of resulting in debts and any claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a member or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding-up of the company, on such terms as are agreed, and take any security for the discharge of any such debt, liability or claim, and give a complete discharge in respect thereof.
- (2) The liquidator may—
- (a) bring or defend any action or other legal proceeding in the name and on behalf of the company;
  - (b) compromise any debt due to the company other than a debt due from a member and other than a debt where the amount claimed by the company to be due to it exceeds five hundred Kwacha;
  - (c) sell the real and personal property and things in action of the company by public auction, public tender or private contract with power to transfer the whole thereof to any person or company or to sell the same in parcels;
  - (d) do all acts and execute in the name and on behalf of the company all deeds, receipts and other documents and for that purpose use when necessary the company's seal;

- (e) prove, rank and claim in the bankruptcy of any member or debtor for any balance against his estate, and receive dividends in the bankruptcy in respect of that balance as a separate debt due from the bankrupt and rateably with the other separate creditors;
  - (f) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;
  - (g) raise on the security of the assets of the company any money requisite;
  - (h) take out letters of administration of the estate of any deceased member or debtor, and do any other act necessary for obtaining payment of any money due from a member or debtor or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall for the purposes of enabling the liquidator to take out the letters of administration or recover the money be deemed due to the liquidator himself;
  - (i) appoint a legal practitioner to assist him in his duties;
  - (j) appoint an agent to do any business which the liquidator is unable to do himself; and
  - (k) do all such other things as are necessary for winding-up the affairs of the company and distributing its assets.
- (3) The exercise by the liquidator of the powers conferred by this section shall be subject to the control of the court, and any creditor or member may apply to the court with respect to any exercise or proposed exercise of any of these powers.

### **231. Exercise and control of liquidator's powers**

- (1) Subject to the provisions of this Act the liquidator shall in the administration of the assets of the company and in the distribution thereof among its creditors have regard to any directions given by resolution of the creditors or members at any general meeting or by the committee of inspection, and any directions so given by the creditors or members shall in case of conflict override any directions given by the committee of inspection.
- (2) The liquidator may summon general meetings of the creditors or members for the purpose of ascertaining their wishes, and he shall summon meetings at such times as the creditors or members by resolution direct or whenever requested in writing to do so by not less than either—
  - (a) one-twentieth in number or one-twentieth in value of the members; or
  - (b) one-twentieth in value of the creditors.
- (3) The liquidator may apply to the court for directions in relation to any particular matter arising under the winding-up.
- (4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the affairs and property of the company and the distribution of its assets.

### **232. Release of liquidator and dissolution of company**

When the liquidator—

- (a) has realized all the property of the company or so much thereof as can in his opinion be realized without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors and adjusted the rights of the members among themselves and made a final return, if any, to the members; or
- (b) has resigned or has been removed from his office, he may apply to the court for an order—
  - (i) that he be released; or

- (ii) that he be released and that the company be dissolved.

### 233. Orders for release or dissolution

- (1) Where an application has been made under [section 232](#), the court—
  - (a) may cause a report on the accounts of a liquidator (not being the official receiver) to be prepared by the official receiver or by an auditor appointed by the court;
  - (b) on the liquidator complying with all the requirements of the court, shall take into consideration the report and any objection which is urged by the official receiver, auditor or any creditor or member or other person interested against the release of the liquidator; and
  - (c) shall either grant or withhold the release accordingly.
- (2) Where the release of a liquidator is withheld, the court may on the application of any creditor or member or person interested make such order as it thinks just charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.
- (3) An order of the court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.
- (4) Where the liquidator has not previously resigned or been removed his release shall operate as a removal from office.
- (5) where the court has made—
  - (a) an order that the liquidator be released; or
  - (b) an order that the liquidator be released and that the company be dissolved,a copy of the order shall within twenty-one days after the making thereof be delivered by the liquidator to the registrar for registration and if the liquidator is not the official receiver to the official receiver, and a liquidator who makes default in complying with the requirements of this subsection shall be liable to a fine of ten Kwacha for every day during which the default continues.
- (6) Where the court has made an order that the company be dissolved the registrar shall, upon delivery to him of a copy of the order, strike the name of the company off the register and notify the same in the *Gazette*, and the company shall thereupon be dissolved as at the date of the publication of the notification in the *Gazette*.

### 234. Meetings to determine whether committee of inspection to be appointed

- (1) The liquidator may, and if requested by any creditor or member shall, summon separate meetings of the creditors and members for the purpose of determining whether or not the creditors or members require the appointment of a committee of inspection to act with the liquidator, and if so who are to be members of the committee.
- (2) If there is a difference between the determinations of the meetings of the creditors and members the court shall decide the difference and make such order as it thinks fit.

### 235. Constitution and proceedings of committee of inspection

- (1) The committee of inspection shall consist of creditors and members of the company or persons holding—
  - (a) general powers of attorney from creditors or members; or

- (b) special authorities from creditors or members authorizing the persons named therein to act on such a committee—
- and shall be appointed by the meetings of creditors and members in such proportions as are agreed or in case of difference as are determined by the court.
- (2) The committee shall meet at such times and places as they from time to time appoint, and the liquidator or any member of the committee may also call a meeting of the committee as he thinks necessary.
  - (3) The committee may act by a majority of members present at a meeting, but shall not act unless a majority of the committee is present.
  - (4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.
  - (5) If a member of the committee becomes bankrupt or assigns his estate for the benefit of his creditors or makes an arrangement with his creditors pursuant to any written law relating to bankruptcy or is absent from five consecutive meetings of the committee without the prior leave or subsequent consent of a majority of those members who together with himself represent the creditors or members, as the case may be, his office shall thereupon become vacant.
  - (6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of members, if he represents members, of which meeting seven days' notice in writing has been given stating the object of the meeting.
  - (7) A vacancy in the committee may be filled by the appointment by the committee of the same or another creditor or member or person holding a general power or special authority as specified in subsection (1).
  - (8) The liquidator may at any time of his own motion and shall within seven days after the request in writing of a creditor or member summon a meeting of creditors or of members, as the case requires, to consider any appointment made pursuant to subsection (7) and the meeting may confirm the appointment or revoke the appointment and appoint another creditor or member or person holding a general power or special authority as specified in subsection (1), as the case requires, in his stead.
  - (9) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

### **236. Power to stay winding-up**

- (1) At any time after an order for winding-up has been made the court may, on the application of the liquidator or of any 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, make an order staying the proceedings either altogether or for a specified time on such terms and conditions as the court thinks fit.
- (2) On any such application the court may, before making an order, require the liquidator to furnish a report with respect to any facts or matters which are in his opinion relevant.
- (3) A copy of every order made under this section shall be delivered by the company to the registrar for registration and to the official receiver within twenty-one days after the making of the order.
- (4) If a company fails to comply with subsection (3), it and any officer who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues.

### **237. Appointment of special manager**

- (1) The liquidator may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or members generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court which may appoint

a special manager of the estate or business to act during such time as the court directs with such powers, including any of the powers of a receiver or receiver and manager, as are entrusted to him by the court.

- (2) The special manager—
  - (a) shall give such security and account in such manner as the court directs;
  - (b) shall receive such remuneration as is fixed by the court; and
  - (c) may at any time resign after giving not less than one month's notice in writing to the liquidator of his intention to resign, or on cause shown be removed by the court.

### **238. Claims of creditors and distribution of assets**

- (1) The court may fix a date on or before which creditors are to prove their debts or claims or after which they will be excluded from the benefit of any distribution made before those debts are proved.
- (2) The court shall adjust the rights of the members among themselves and distribute any surplus among the persons entitled thereto.
- (3) The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding-up in such order of priority as the court deems fit.

### **239. Inspection of books by creditors and members**

- (1) The court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and members as the court deems just, and any books and papers in the possession of the company may be inspected by creditors or members accordingly, but not further or otherwise.
- (2) Nothing in this section shall be taken as excluding or restricting any statutory rights of the Government or of any person acting in the name of, or under the authority of, the Government.
- (3) Subsection (1) shall not apply in the case of a company registered under the Banking Act, 1989.

*[22 of 1989]*

### **240. Power to summon persons connected with company**

- (1) The court may summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.
- (2) The court may examine him on oath concerning the matters mentioned in subsection (1) either by word of mouth or on written interrogatories and may reduce his answers to writing and require him to sign them, and any writing so signed may be used in evidence in any legal proceedings against him.
- (3) The court may require him to produce any books and papers in his custody or power relating to the company, but where he claims any lien on books or papers the production shall be without prejudice to that lien, and the court shall have jurisdiction to determine all questions relating to that lien.
- (4) An examination under this section may, if the court so directs, be held before the Registrar of the High Court.

- (5) Any person summoned for examination under this section may at his own cost employ a legal practitioner who shall be at liberty to put to him such questions as the court deems just for the purpose of enabling him to explain or qualify any answers given by him.
- (6) If any person so summoned after being tendered a reasonable sum for his expenses refuses to come before the court at the time appointed not having a lawful excuse, made known to the court at the time of its sitting and allowed by it, the court may cause him to be apprehended and brought before the court for examination.

#### **241. Power to order public examination**

- (1) Where the liquidator has made a report stating that, in his opinion, a fraud has been committed or that any material fact has been suppressed or concealed by any person in the promotion or formation of the company or by any officer in relation to the company since its formation or that any officer of the company has failed to act honestly or diligently or has been guilty of any impropriety or recklessness in relation to the affairs of the company the court may after consideration of the report direct that the person or officer, or any other person who was previously an officer of the company, or who is known or suspected to have in his possession any property of the company or is supposed to be indebted to the company or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company, shall attend before the court on a day appointed and be publicly examined as to the promotion or formation or the conduct of the business of the company, and in the case of an officer or former officer as to his conduct and dealings as an officer thereof.
- (2) The liquidator and any creditor or member may take part in the examination either personally or by a legal practitioner.
- (3) The court may put or allow to be put such questions to the person examined as the court thinks fit.
- (4) The person examined shall be examined on oath and shall answer all such questions as the court puts or allows to be put to him.
- (5) Where a person directed to attend before the court under subsection (1) applies to the court to be exculpated from any charges made or suggested against him the liquidator shall appear on the hearing of the application and call the attention of the court to any matters which appear to him to be relevant and if the court, after hearing any evidence given or witnesses called by the liquidator, grants the application the court may allow the applicant such costs as in its discretion it deems fit.
- (6) A person ordered to be examined under this section—
  - (a) shall before his examination be furnished with a copy of the liquidator's report; and
  - (b) may at his own cost engage a legal practitioner who shall be at liberty to put to him or any other person giving evidence such questions as the court deems just.
- (7) Notes of the examination—
  - (a) shall be reduced to writing;
  - (b) shall be read over to or by and signed by the person examined;
  - (c) may thereafter be used in evidence in any legal proceedings against him; and
  - (d) shall at all reasonable times, be open to the inspection of any creditor or member.
- (8) The court may if it deems fit adjourn the examination from time to time.
- (9) An examination under this section may, if the court so directs, be held before the Registrar of the High Court.
- (10) For the purposes of this section, "officer" shall include a banker, legal practitioner or auditor of the company.

**242. Power to arrest absconding member or officer**

- (1) The court, at any time before or after making a winding-up order, on proof of probable cause for believing that a member or officer or former member or officer of the company is about to quit Malawi or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of any money due to the company or of avoiding examination respecting the affairs of the company, may cause the member, officer or former member or officer to be arrested and his books and papers and movable personal property to be seized and him and them to be safely kept until such time as the court orders.
- (2) For the purposes of this section, "officer" shall include a banker, legal practitioner or auditor of the company.

**243. Powers of court cumulative**

Any powers by this Act conferred on the court shall be in addition to and not in derogation of any power of instituting proceedings against any member or debtor of the company or the estate of any member or debtor for the recovery of any debt or other sum.

## **C—Voluntary winding-up**

**244. Voluntary winding-up**

The provisions of [sections 245 to 248](#) shall apply to every voluntary winding-up.

**245. Circumstances in which company may be wound up voluntarily**

- (1) A company may be wound up voluntarily—
  - (a) when the period, if any fixed for the duration of the company by the memorandum or articles expires, or the event, if any, occurs, on the occurrence of which the memorandum or articles provide that the company is to be dissolved, and the company in general meeting passes an ordinary resolution that the company shall be wound up voluntarily; or
  - (b) if the company so resolves by special resolution.
- (2) Upon the passing of a resolution for voluntary winding-up, the company shall—
  - (a) within seven days deliver a copy of the resolution to the registrar for registration; and
  - (b) within fourteen days cause notice thereof to be published in the *Gazette*.
- (3) If the company fails to comply with the provisions of subsection (2) the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues.

**246. Commencement of voluntary winding-up**

A voluntary winding-up shall commence at the time of the passing of the resolution for voluntary winding-up.

**247. Effect of voluntary winding-up**

- (1) The company shall from the commencement of the winding-up cease to carry on its business, except so far as in the opinion of the liquidator is required for the beneficial winding-up thereof, but the corporate state and corporate powers of the company shall continue until it is dissolved.

- (2) Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members made after the commencement of the winding up, shall be void.

## 248. Declaration of solvency

- (1) Where it is proposed to wind up a company voluntarily the directors of the company or the majority of them may, before the date on which notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, at a meeting of directors make a written declaration to the effect that they have made a full inquiry into the affairs of the company, and have formed the opinion that the company will be able to pay its debts and liabilities in full within such period not exceeding twelve months after the commencement of the winding up as may be specified in the declaration.
- (2) There shall be attached to the declaration a statement of affairs of the company showing—
  - (a) the assets of the company, and the total amount expected to be realized therefrom;
  - (b) the liabilities of the company; and
  - (c) the estimated expenses of winding-up,made up to the latest practicable date before the making of the declaration.
- (3) A declaration made pursuant to subsection (1) shall have no effect for the purposes of this Act unless—
  - (a) it is made at the meeting of directors referred to in subsection (1);
  - (b) it is made within five weeks immediately preceding the date of the passing of the resolution for voluntary winding up; and
  - (c) it is delivered to the registrar for registration on or before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out.
- (4) A director who makes a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period stated in the declaration shall be liable to imprisonment for six months and to a fine of one thousand Kwacha.
- (5) If the company is wound up in pursuance of a resolution for voluntary winding up passed within a period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.
- (6) A winding-up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as a "members' voluntary winding-up", and a winding-up in the case of which a declaration has not been made and delivered as aforesaid is in this Act referred to as a "creditors' voluntary winding-up".

## D—Provisions applicable only to members' voluntary winding-up

### 249. Provisions applicable only to members' voluntary winding-up

The provisions of [sections 250 to 252](#) shall apply to every members' voluntary winding-up.

## 250. Appointment of liquidator

- (1) The company in general meeting shall appoint one or more liquidators for the purposes of winding-up the affairs and distributing the assets of the company and may fix the remuneration to be paid to him or them.
- (2) On the appointment of liquidator all the powers of the directors shall cease except so far as the liquidator or the company in general meeting with the consent of the liquidator approves the continuance thereof.
- (3) The company, in general meeting convened by any member, may, by special resolution of which the requisite notice has been given not only to the members but also to the creditors and the liquidators, remove any liquidator:

Provided that the court, on the application of any member or creditor or liquidator, may prohibit such removal.

- (4) If a vacancy occurs by death, resignation, removal or otherwise in the office of a liquidator the company in general meeting may fill the vacancy by the appointment of a liquidator and fix the remuneration to be paid to him, and for that purpose a general meeting may be convened by any member, or if there were more liquidators than one by the continuing liquidators.
- (5) Any meeting under this section shall be held in the manner provided by this Act or by the articles or in such manner as is on application by any member or by the continuing liquidators determined by the court.

## 251. Duty of liquidator to call creditors' meeting in case of insolvency

- (1) If the liquidator is at any time of the opinion that the company will not be able to pay or provide for the payment of its debts in full within the period stated in the declaration made under [section 248](#) he shall forthwith summon a meeting of the creditors and lay before the meeting a statement of the assets and liabilities of the company.
- (2) The notice summoning the meeting shall draw the attention of the creditors to the right conferred upon them by subsection (3).
- (3) The creditors may, at the meeting summoned under subsection (1), appoint some other person to be liquidator of the company instead of the liquidator appointed by the company.
- (4) Within seven days after a meeting has been held pursuant to subsection (1) the liquidator or if some other person has been appointed by the creditors to be the liquidator the person so appointed shall deliver to the registrar for registration and to the official receiver a notice that the meeting has been held, stating the decision, if any, taken at such meeting.
- (5) Where the liquidator has convened a meeting under subsection (1) the winding-up shall thereafter proceed as if the winding-up were a creditors' voluntary winding-up, but the liquidator shall not be required to summon an annual meeting of creditors at the end of the first year from the commencement of the winding-up if the meeting held under subsection (1) was held less than three months before the end of that year.
- (6) If default is made in complying with subsection (1) or (4) the liquidator (or other person referred to in subsection (4)) shall be liable to a fine of ten Kwacha for every day during which the default continues.

## 252. Staying of members' voluntary winding-up

- (1) At any time during the course of a voluntary winding up prior to the dissolution of the company the company in general meeting may, by special resolution, resolve that, subject to the confirmation of the court, the winding-up proceedings shall be stayed.

- (2) After the passing of such special resolution application may be made to the court by the liquidator or any member of the company and the court may, in its discretion and subject to such terms and conditions as it deems fit, order that the winding-up be stayed, that the liquidator be discharged, and that the directors resume the management of the company.
- (3) Not less than twenty-eight days' written notice of the hearing of any application to the court under subsection (2) shall be given by the applicant to the official receiver, to every director of the company, and to any liquidator of the company, and the applicant shall cause a copy of such notice to be published in the *Gazette* not later than seven days prior to such hearing. The official receiver and any director, liquidator, member or creditor of the company shall be entitled to appear on the hearing of the application and to call witnesses and give evidence.
- (4) If an order confirming the resolution is made by the court the company shall within twenty-one days send a copy thereof to the registrar for registration, and shall cause a copy to be published in the *Gazette*. Thereupon the winding up shall be deemed to have ceased and the company shall continue as a going concern subject to any terms or conditions in the said order.
- (5) If a company fails to comply with subsection (4), the company and every officer of the company who is in default shall be liable to a fine of ten Kwacha for every day during which the default continues.

### **E—Provisions applicable only to creditors' voluntary winding-up**

#### **253. Provisions applicable only to creditors' voluntary winding up**

The provisions of [sections 254 to 258](#) shall apply to every creditors' voluntary winding-up.

#### **254. Meeting of creditors**

- (1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding-up is to be proposed, and shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.
- (2) The company shall—
  - (a) give to each creditor at least seven clear days' notice in writing of the meeting; and
  - (b) send to each creditor with the notice a statement showing the names of all creditors and the amounts of their claims.
- (3) The company shall cause notice of the meeting of the creditors to be published at least seven days before the date of the meeting in the *Gazette* and in any newspaper circulating generally in Malawi.
- (4) The directors of the company shall—
  - (a) cause a full statement of the company's affairs showing in respect of assets the method and manner in which the valuation of the assets was arrived at, together with a list of the creditors and the estimated amount of their claims, to be laid before the meeting of creditors; and
  - (b) appoint one of their number to attend the meeting.
- (5) The director so appointed and the secretary shall attend the meeting and disclose to the meeting the company's affairs and the circumstances leading up to the proposed winding-up.
- (6) The creditors may appoint one of their number, or the director appointed under subsection (4), to preside at the meeting.

- (7) If the meeting of the company is adjourned and the resolution for winding up is passed at an adjourned meeting, any resolution passed at the meeting of the creditors shall have effect as if it had been passed immediately after the passing of the resolution for winding-up.
- (8) If default is made in complying with subsection (1), (2) or (3), the company and any officer of the company who is in default shall be liable to a fine of two hundred Kwacha.
- (9) If default is made in complying with subsection (4) or (5), every officer who is in default shall be liable to a fine of two hundred Kwacha.

### **255. Appointment of liquidator**

- (1) The company shall and the creditors may at their respective meetings nominate a person to be liquidator for the purpose of winding-up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person nominated by the company shall be liquidator.
- (2) Notwithstanding the provisions of subsection (1), where different persons are nominated any director, member or creditor may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors.
- (3) If a liquidator, other than a liquidator appointed by or by the direction of the court, dies, resigns or otherwise vacates that office the creditors may fill the vacancy and for the purpose of so doing a meeting of the creditors may be summoned by any two of their number.

### **256. Appointment of committee of inspection**

- (1) The creditors at the meeting summoned pursuant to section [251](#) or [254](#) or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons, whether creditors or not, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding-up is passed or at any time subsequently in general meeting, appoint such number of persons but not more than five as it thinks fit to act also as members of the committee.
- (2) Notwithstanding the provisions of subsection (1) the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this subsection the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.
- (3) Subject to this section, [section 235](#) shall apply with respect to a committee of inspection appointed under this section.

### **257. Fixing of liquidator's remuneration and cesser of directors' powers**

- (1) The committee of inspection, or if there is no such committee the creditors, may fix the remuneration to be paid to the liquidator.
- (2) On the appointment of a liquidator, all the powers of the board of directors shall vest in the liquidator, and the powers and authority of every director shall cease, except so far as the committee of inspection, or if there is no such committee the creditors, sanction the continuance thereof.

**258. Stay of proceedings**

- (1) Any attachment, sequestration, distress or execution put in force against the estate of effects of the company after the commencement of a creditors' voluntary winding-up shall be void.
- (2) After the commencement of the winding-up no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court directs.

**F—Provisions applicable to every voluntary winding-up****259. Provisions applicable to every voluntary winding-up**

The provisions of [sections 260 to 269](#) shall apply to every voluntary winding-up.

**260. Distribution of property of company**

Subject to the provisions of this Act as to preferential payments the property of a company shall, on its winding-up, be applied *pari passu* in satisfaction of its liabilities, and subject to that application shall unless the memorandum or articles otherwise provide be distributed among the members according to their rights and interests in the company.

**261. Review by court of liquidator's appointment and remuneration**

- (1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator.
- (2) The court may on cause shown remove a liquidator and appoint another liquidator.
- (3) Any member or creditor or the liquidator may at any time before the dissolution of the company apply to the court to review the amount of the remuneration of the liquidator, and the decision of the court shall be final and conclusive.

**262. Powers and duties of liquidator**

- (1) The liquidator may—
  - (a) in the case of a members' voluntary winding-up, with the approval of a resolution of the company and, in the case of a creditors' voluntary winding-up, with the approval of the court or the committee of inspection, exercise any of the powers given by [section 230](#) to a liquidator in a winding-up by the court;
  - (b) exercise any of the other powers by this Act given to the liquidator in a winding-up by the court; and
  - (c) summon general meetings of the company for the purpose of obtaining the sanction of the company in respect of any matter or for any other purpose he thinks fit.
- (2) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as is determined at the time of their appointment, or in default of such determination by any number not less than two.

**263. Power of liquidator to accept shares, etc., as consideration for sale of property of company**

- (1) Where it is proposed that the whole or part of the business or property of a company (in this section called "the company") be transferred or sold to another body corporate (in this section called "the corporation"), the liquidator of the company, may, with the sanction of a special resolution of the company conferring either a general authority on the liquidator or an authority in respect of any

particular arrangement, receive in compensation or part compensation for the transfer or sale fully-paid shares, debentures or other like interests in the corporation for distribution among the members of the company or may enter into any other arrangement whereby the members of the company may, in lieu of receiving cash, shares, debentures or other like interests or in addition thereto, participate in the profits of or receive any other benefit from the corporation.

- (2) Any transfer or sale and distribution or arrangement in pursuance of a special resolution under this section shall be binding on the company and all the members thereof and each member shall be deemed to have agreed with the corporation to accept the fully-paid shares, debentures or other like interests to which he is entitled under such distribution or arrangement:

Provided that if within one year from the date of the passing of any such special resolution an order is made by the court under [section 213](#) for the winding-up of the company the transfer or sale and distribution or arrangement shall not be valid unless sanctioned by the court.

- (3) If any member of the company in respect of any shares held by him expresses his dissent in writing addressed to the liquidator and served upon the liquidator within twenty-eight days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase such shares at a price to be determined by agreement or by arbitration in the manner provided by subsection (6).
- (4) If the liquidator elects to purchase the member's interest, the purchase money shall be paid before the company is dissolved and be raised by the liquidator in such manner as is determined by special resolution.
- (5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators.
- (6) For the purposes of an arbitration under this section the Arbitration Act shall apply as if there were a submission for reference to two arbitrators, one to be appointed by each party; and the appointment of an arbitrator may be made under the hand of the liquidator, or if there is more than one liquidator then under the hands of any two or more of the liquidators, and the court may give any directions necessary for the initiation and conduct of the arbitration and such direction shall be binding on the parties.

*[Cap. 6:03]*

- (7) In the case of a creditors' voluntary winding-up the powers of the liquidator under this section shall not be exercised except with the approval of the court or the committee of inspection.
- (8) Nothing in this section contained shall authorize any variation or abrogation of the rights of any creditors of the company.

## **264. Annual meetings of members and creditors**

- (1) If the winding-up continues for more than one year, the liquidator shall summon a general meeting of the company in the case of a members' voluntary winding-up, and separate meetings of the creditors and of the company in the case of a creditors' voluntary winding-up, at the end of the first year from the commencement of the winding-up and of each succeeding year or not more than three months thereafter, and shall lay before every such meeting an account of his acts and dealings and of the conduct of the winding-up during the preceding year.
- (2) In the case of a creditors' voluntary winding-up, the meeting of the company shall be held after, but not more than one month after, the meeting of the creditors.
- (3) Any liquidator who fails to comply with this section shall be liable to a fine of ten Kwacha for every day during which the default continues.

## 265. Final meeting and dissolution

- (1) As soon as the affairs of the company are fully wound up the liquidator shall make up an account showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company, or in the case of a creditors' voluntary winding-up separate meetings of the creditors and the company, for the purpose of laying before such meetings the account and giving any explanation thereof. In the case of a creditors' voluntary winding-up, the meeting of the company shall be held after, but not more than one month after, the meeting of the creditors.
- (2) The meetings shall be called by notice published in one issue of the *Gazette* and in one issue of a newspaper in general circulation throughout Malawi, which notice shall specify the time, place and object of each meeting and shall be published one month at least before each such meeting.
- (3) The liquidator shall within seven days after the meeting or the later of such meetings deliver to the registrar for registration and to the official receiver a return of the holding of the meeting or meetings and of the date or dates thereof with a copy of the account attached to such return.
- (4) The quorum at a meeting of the company shall be two members and at a meeting of the creditors shall be two creditors and if a quorum is not present at any such meeting, the liquidator shall in lieu of the return mentioned in subsection (3) deliver to the registrar for registration and to the official receiver a return (with account attached) that such meeting was duly summoned and that no quorum was present thereat, and the provisions of subsection (3) shall thereupon be deemed to have been complied with.
- (5) Upon the delivery to him of the return, the registrar shall strike the name of the company off the register and cause notice thereof to be published in the *Gazette*, and the company shall thereupon be dissolved as at the date of the publication of the notification in the *Gazette*.
- (6) A liquidator who fails to comply with any of the requirements of this section shall be liable to a fine of ten Kwacha for every day during which the default continues.

## 266. Arrangement when binding on creditors

- (1) Any arrangement entered into between a company about to be or in the course of being wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by a special resolution, and on the creditors if acceded to by three-fourths in value and a majority in number of the creditors.
- (2) A creditor shall be accounted a creditor for value for such sum as upon an account fairly stated, after allowing the value of security or liens held by him and the amount of any debt or set-off owing by him to the company, appears to be the balance due to him.
- (3) Any dispute with regard to the value of any such security or lien or the amount of such debt or set-off may be settled by the court on the application of the company, the liquidator, or the creditor.
- (4) Any creditor or member may within twenty-one days from the completion of the arrangement appeal to the court against it, and the court may thereupon as it deems just amend, vary or confirm the arrangement.

## 267. Application to court to have questions determined or powers exercised

- (1) The liquidator or any member or creditor may apply to the court—
  - (a) to determine any question arising in the winding-up of a company; or
  - (b) to exercise all or any of the powers which the court might exercise if the company were being wound up by the court.

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

#### **268. Costs**

All proper costs, charges and expenses of and incidental to the winding-up including the remuneration of the liquidator shall be payable out of the assets of the company in priority to all other claims.

#### **269. Limitation on right to wind up voluntarily**

Where a petition has been presented to the court to wind up a company on the ground that it is unable to pay its debts the company shall not without the leave of the court resolve that it be wound up voluntarily.

### **G—Provisions applicable to every mode of winding-up**

#### **270. Provisions applicable to every mode of winding-up**

The provisions of [sections 271 to 301](#) shall apply to every mode of winding-up.

#### **271. Eligibility for appointment as liquidator**

- (1) None of the following persons shall be eligible for appointment or competent to act or to continue to act as liquidator of a company—
  - (a) a body corporate;
  - (b) an infant or any other person under legal disability;
  - (c) any person prohibited or disqualified from so acting by any order of a court for the time being in force;
  - (d) save with the leave of the court, an undischarged bankrupt;
  - (e) save with the leave of the court, a director or secretary of the company or any group company, or any person who has been such a director or secretary within the preceding two years;
  - (f) any person who has at any time been convicted of an offence involving fraud or dishonesty; and
  - (g) any person who has at any time been removed from an office of trust by a court.
- (2) An auditor of a company may be appointed as liquidator of that company.
- (3) Any appointment made in contravention of this section shall be void and if any person declared by subsection (1) to be ineligible or incompetent shall knowingly act or continue to act as liquidator of a company he shall be liable to imprisonment for six months and to a fine of one thousand Kwacha.

#### **272. Acts of liquidator valid**

- (1) Subject to this Act, the acts of a liquidator shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.
- (2) Any conveyance, assignment, transfer, mortgage, charge or other disposition of a company's property made by a liquidator shall, notwithstanding any defect or irregularity affecting the validity of the winding-up or the appointment of the liquidator, be valid in favour of any person taking such property *bona fide* and for value and without notice of such defect or irregularity.

- (3) Every person making or permitting any disposition of property to any liquidator shall be protected and indemnified in so doing notwithstanding any defect or irregularity affecting the validity of the winding-up or the appointment of the liquidator not then known to such person.
- (4) For the purposes of this section a disposition of property shall be deemed to include a payment of money.

### **273. General provisions as to liquidators**

- (1) Every liquidator shall keep proper books in which he shall cause to be made entries or minutes of proceedings at meetings and of such other matters, if any, as may be prescribed and any creditor or member may, subject to the control of the court, personally or by his agent inspect them in accordance with [section 129](#).
- (2) The court shall take cognizance of the conduct of liquidators, and if a liquidator does not faithfully perform his duties and observe the prescribed requirements or the requirements of the court or if any complaint is made to the court by any creditor or member or by the official receiver in regard thereto, the court shall inquire into the matter and take such action as it thinks fit.
- (3) The registrar or the official receiver may report to the court any matter which in his opinion is a misfeasance, neglect or omission on the part of the liquidator and the court may order the liquidator to make good any loss which the estate of the company has sustained thereby and make such other order as it thinks fit.
- (4) The court may at any time require any liquidator to answer any inquiry in relation to the winding-up and may examine him or any other person on oath concerning the winding-up and may direct an investigation to be made of the books and vouchers of the liquidator.
- (5) The court may require any member, trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer to the liquidator or provisional liquidator forthwith or within such time as the court directs any money, property, books and papers in his hands to which the company is *prima facie* entitled.

### **274. Powers of official receiver where no committee of inspection**

- (1) Where a person other than the official receiver is the liquidator and there is no committee of inspection the official receiver may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorized or required to be done or given by the committee.
- (2) Where the official receiver is the liquidator and there is no committee of inspection the official receiver may in his discretion do any act or thing which is by this Act required to be done by, or subject to any direction or permission given by, the committee.

### **275. Appeal against decision of liquidator**

Any person aggrieved by any act or decision of the liquidator may apply to the court which may confirm, reverse or modify the act or decision complained of and make such order as it deems just.

### **276. Notice of appointment and address of liquidator**

- (1) A liquidator shall within fourteen days after his appointment deliver to the registrar for registration and to the official receiver notice of his appointment and of the situation of his office and of his postal address and in the event of any change in the situation of his office or in his postal address shall within twenty-one days after the change deliver to the registrar for registration and to the official receiver notice of the change.
- (2) Service made by leaving any document at the office of the liquidator given in any notice so registered, or by sending it in a properly addressed and prepaid letter posted to the postal address

given in any notice so registered, shall be deemed to be good service upon the liquidator and upon the company.

- (3) A liquidator shall within twenty-one days after his resignation or removal from office deliver to the registrar for registration and to the official receiver notice thereof.
- (4) If a liquidator fails to comply with any of the provisions of this section he shall be liable to a fine of ten Kwacha for every day during which the default continues.

### 277. Liquidator's accounts

- (1) Every liquidator shall, within one month after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months and in any case within one month after ceasing to act as liquidator or obtaining an order of release, deliver to the registrar for registration and, if the liquidator is not the official receiver, to the official receiver an account of his receipts and payments and a statement of the position in the winding up, verified by statutory declaration.
- (2) The official receiver may cause the account of any liquidation to be audited by an auditor approved by him, and for the purpose of the audit the liquidator shall furnish the auditor with such vouchers and information as he requires, and the auditor may at any time require the production of and inspect any books or accounts kept by the liquidator.
- (3) A copy of the account or, if audited, a copy of the audited account shall be kept by the liquidator at his office and shall there be open to the inspection of any member or creditor or of any other person interested in accordance with [section 129](#).
- (4) The liquidator shall, when he is next forwarding any report or notice to the creditors and members generally—
  - (a) give notice to every member and creditor that the account has been prepared; and
  - (b) in such notice inform members and creditors that the account may be inspected at his office and state the times during which inspection may be made.
- (5) The costs of an audit under this section shall be fixed by the official receiver and be part of the expenses of winding up.
- (6) A liquidator other than the official receiver who fails to comply with this section shall be liable to a fine of ten Kwacha for every day during which the default continues.

### 278. Notification that a company is in liquidation

- (1) Where a company is being wound up every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company or a receiver of any property of the company, being a document on or in which the name of the company appears, shall have the words "in liquidation" added after the name of the company where it first appears therein.
- (2) If default is made in complying with this section the company, and every officer of the company or liquidator or receiver who is in default, shall be liable to a fine of fifty Kwacha in respect of each default.

### 279. Books of company

- (1) Where a company is being wound up all books and papers of the company and of the liquidator that are relevant to the affairs of the company at or subsequent to the commencement of the winding up of the company shall as between the members and creditors of the company be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

- (2) When a company has been wound up the liquidator shall retain the books and papers referred to in subsection (1) (other than vouchers) for a period of seven years from the date of dissolution of the company and at the expiration of that period may destroy them.
- (3) Notwithstanding subsection (2), when a company has been wound up the books and papers referred to in subsection (1) may be destroyed within a period of seven years after dissolution of the company—
  - (a) in the case of a winding up by the court, in accordance with the directions of the court;
  - (b) in the case of a members' voluntary winding-up, as the company by resolution directs; and
  - (c) in the case of a creditors' voluntary winding-up, as the committee of inspection, or, if there is no such committee, as the creditors of the company direct.
- (4) A liquidator who fails to comply with subsection (2) shall be liable to a fine of five hundred Kwacha.
- (5) No responsibility shall rest on the company or the liquidator by reason of any such book or paper not being forthcoming to any person claiming to be interested therein if such book or paper has been destroyed in accordance with the provisions of this section.

#### **280. Payment by liquidator into bank**

- (1) A Companies Liquidation Account shall be kept by the official receiver with a bank approved by the Minister or with the Accountant General, and all money received by him in respect of proceedings under this Act shall be paid into that account.
- (2) Every liquidator (not being the official receiver) shall pay the money received by him into such bank account as may be specified by the court or by the official receiver.
- (3) If any liquidator (not being the official receiver) retains for more than ten days a sum exceeding one hundred Kwacha, or such other amount as the court in any particular case authorizes him to retain, then unless he explains the retention to the satisfaction of the court he shall pay interest on the amount so retained in excess computed from the expiration of the ten days until he has complied with the provisions of subsection (1) at the rate of twenty *per centum* per annum, and shall be liable —
  - (a) to disallowance of all or such part of his remuneration as the court thinks just;
  - (b) to be removed from his office by the court; and
  - (c) to pay any expenses occasioned by reason of his default.
- (4) Any liquidator (not being the official receiver) who pays any sums received by him as liquidator into any bank or account other than the bank or account specified under subsection (2) shall be liable to pay interest and subject to the other penalties and liabilities specified in subsection (3).

#### **281. Investment of surplus funds**

- (1) Whenever the cash balance standing to the credit of any company in liquidation is in excess of the amount which, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, is required for the time being to answer demands in respect of the estate of the company, the liquidator, if authorized by the committee of inspection, or, if there is no committee of inspection, the liquidator himself, may, unless the court on application by any creditor thinks fit to direct otherwise and so directs, invest the sum or any part thereof in securities issued by the Government of Malawi or place it on deposit at interest with any bank or with the Accountant General, and any interest received in respect thereof shall form part of the assets of the company.
- (2) Whenever any part of the money so invested is, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, required to answer any demands in respect

of the company's estate, the committee of inspection may direct or, if there is no committee of inspection, the liquidator may arrange for the sale or realization of such part of the said securities as is necessary.

## 282. Unclaimed assets

- (1) Where a liquidator has in his hands or under his control—
  - (a) any unclaimed dividend or other moneys which have remained unclaimed for more than six months from the date when the dividend or other moneys became payable; or
  - (b) after making final distribution, any unclaimed or undistributed moneys arising from the property of the company,he shall forthwith pay those moneys to the official receiver to be placed to the credit of the Companies Liquidation Account and shall be entitled to a certificate of receipt for the money so paid and that certificate shall be an effectual discharge to him in respect thereof.
- (2) The court may at any time on the application of the official receiver order any liquidator to submit to it an account of any unclaimed or undistributed funds, dividends or other moneys in his hands or under his control verified by affidavit and may direct an audit thereof and may direct him to pay those moneys to the official receiver to be placed to the credit of the Companies Liquidation Account.
- (3) For the purposes of this section the court may exercise all the powers conferred by this Act with respect to the discovery and realization of the property of the company and the provisions of this Act with respect thereto shall with such adaptations as are prescribed apply to proceedings under this section.
- (4) The provisions of this section shall not except as expressly declared in this Act deprive any person of any other right or remedy to which he is entitled against the liquidator or any other person.
- (5) If any claimant makes any demand for any money placed to the credit of the Companies Liquidation Account, the official receiver upon being satisfied that the claimant is the owner of the money shall authorize payment thereof to be made to him out of the Account.
- (6) Any person dissatisfied with the decision of the official receiver in respect of a claim made in pursuance of subsection (5) may appeal to the court which may confirm, disallow or vary the decision.
- (7) Where any unclaimed moneys paid to any claimant are afterwards claimed by any other person that other person shall not be entitled to any payment out of the Account, but such person may have recourse against the claimant to whom the unclaimed moneys have been paid.
- (8) Any unclaimed moneys paid to the credit of the Companies liquidation Account to the extent to which the said moneys have not been under this section paid out of the Account shall, on the lapse of six years from the date of the payment of the moneys to the credit of the account, be paid into the Consolidated Fund.

## 283. Expenses of winding-up where assets insufficient

- (1) Unless expressly directed to do so by the official receiver pursuant to subsection (2), a liquidator shall not be liable to incur any expense in relation to the winding up of a company unless there are sufficient available assets.
- (2) The official receiver may on the application of any creditor or member direct a liquidator to incur a particular expense on condition that the creditor or member indemnifies the liquidator in respect of the recovery of the amount expended and, if the official receiver so directs, gives such security to secure the amount of the indemnity as the official receiver thinks reasonable.

#### 284. Resolutions passed at adjourned meetings

Subject to [section 254](#), where a resolution is passed at an adjourned meeting of any members or creditors of a company, the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and not on any earlier date.

#### 285. Meetings to ascertain wishes of members or creditors

- (1) The court may as to all matters relating to the winding up of a company have regard to the wishes of the members or creditors as proved to it by any sufficient evidence, and may if it thinks fit for the purpose of ascertaining those wishes direct meetings of the members or creditors to be called, held and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.
- (2) In the case of creditors regard shall be had to the value of each creditor's debt.
- (3) In the case of members regard shall be had to the number of votes conferred on each member by the articles.

#### 286. Proof of debts

- (1) In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this section of the law relating to bankruptcy in force for the time being), all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made so far as possible of the value of such debts or claims as are subject to any contingency or sound only in damages or for some other reason do not bear a certain value.
- (2) Subject to [section 287](#), in the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and debts provable and the valuation of annuities and future and contingent liabilities as are in force for the time being under the law relating to bankruptcy in relation to the estates of bankrupt persons, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding-up and make such claims against the company as they respectively are entitled to by virtue of this section.

#### 287. Preferential debts

- (1) Subject to the provisions of this Act, in a winding-up there shall be paid in priority to all other unsecured debts—
  - (a) the costs and expenses of the winding-up including the taxed costs of a petitioner payable under [section 215](#), the remuneration of the liquidator and the costs of any audit carried out pursuant to [section 277](#);
  - (b) all wages of any labourer or workman not exceeding one hundred Kwacha whether payable for time or for piece work, in respect of services rendered to the company during twelve months before the commencement of the winding-up:

Provided that where any labourer or workman has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the period of hiring the priority shall extend to the whole of such sum, or such part thereof as the Court may decide to be due under the contract proportionate to the time of service up to the commencement of the winding-up, as the case may be;
  - (c) all wages or salary (whether earned or not wholly or in part by way of commission) of any clerk or servant in respect of services rendered to the company during twelve months before the commencement of the winding-up, not exceeding two hundred Kwacha;

- (d) all amounts due in respect of workers' compensation under any written law relating to workers' compensation accrued before the commencement of the winding-up;
  - (e) any tax, duty or rate payable by the company to the Government in respect of any period prior to the commencement of the winding-up, whether or not payment has become due after that date;
  - (f) all Government rents not more than five years in arrears;
  - (g) all rates due from the company to a local authority at the commencement of the winding-up, having become due and payable within a period of three years next before that date.
- (2) (a) Debts having priority shall rank as follows—
- (i) first, the debts referred to in subsection (1) (a);
  - (ii) secondly, the debts referred to in subsection (1) (b), (c) and (d);
  - (iii) thirdly, the debts referred to in subsection (1) (e) and (f);
  - (iv) fourthly, the debts referred to in subsection (1) (g).
- (b) Debts having the same priority shall rank equally between themselves, and shall be paid in full, unless the property of the company is insufficient to meet them, in which case they shall abate in equal proportions between themselves.
- (3) Where any payment has been made to any employee of the company on account of wages or salary out of money advanced by a person for that purpose, the person by whom the money was advanced shall, in a winding-up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee would have been entitled to priority in the winding-up has been diminished by reason of the payment, and shall have the same right of priority in respect of that amount as the employee would have had if the payment had not been made.
- (4) So far as the assets of the company available for payment of general creditors are insufficient to meet any preferential debts specified in subsection (1) and any amount payable in priority by virtue of subsection (3), those debts shall have priority over the claims of the holders of debentures under any floating charge created by the company, and shall be paid accordingly out of any property comprised in or subject to that charge.
- (5) Where the company is under a contract of insurance (entered into before the commencement of the winding-up) insured against liability to third parties, then if any such liability is incurred by the company (either before or after the commencement of the winding-up) and an amount in respect of that liability is or has been received by the company or the liquidator from the insurer the amount shall, after deducting any expenses of or incidental to getting in such amount, be paid by the liquidator to the third party in respect of whom the liability was incurred to the extent necessary to discharge that liability or any part of that liability remaining undischarged in priority to all payments in respect of the debts referred to in subsection (1).
- (6) If the liability of the insurer to the company is less than the liability of the company to the third party nothing in subsection (5) shall limit the rights of the third party in respect of the balance.
- (7) The provisions of subsection (5) and subsection (6) shall have effect notwithstanding any agreement to the contrary entered into after the commencement of this Act.
- (8) Notwithstanding anything in subsection (1)—
- (a) paragraph (d) of that subsection shall not apply in relation to the winding-up of a company in any case where the company is being wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company and the right to the compensation has on the reconstruction or amalgamation been preserved to the person entitled thereto,

or where the company has entered into a contract with an insurer in respect of any liability under any law relating to workmen's compensation; and

- (b) where a company has given security for the payment or repayment of any amount to which paragraph (e), (f) or (g) of that subsection relates, that paragraph shall apply only in relation to the balance of any such amount remaining due after deducting therefrom the net amount realized from such security.
- (9) Where in any winding-up assets have been recovered under an indemnity for costs of litigation given by certain creditors, or have been protected or preserved by the payment of moneys or the giving of indemnity by creditors, or where expenses in relation to which a creditor has indemnified a liquidator have been recovered, the court may make such order as it deems just with respect to the distribution of those assets and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risk run by them in so doing.
- (10) Subject to this Act, all debts proved in the winding-up shall be paid *pari passu*.

### **288. Avoidance of preference**

- (1) Any conveyance, transfer, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company which, had it been made or done by or against an individual, would in his bankruptcy under the law of bankruptcy for the time being in force be void or voidable shall in the event of the company being wound up be void or voidable in like manner.
- (2) For the purposes of this section the date which corresponds with the date of presentation of the bankruptcy petition in the case of an individual shall be—
  - (a) in the case of a winding-up by the court—
    - (i) the date of the presentation of the petition; or
    - (ii) where before the presentation of the petition a resolution has been passed by the company for voluntary winding up the date upon which the resolution to wind up the company voluntarily is passed,whichever is the earlier; and
  - (b) in the case of a voluntary winding-up the date upon which the winding-up is deemed by this Act to have commenced.
- (3) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

### **289. Avoidance of floating charge**

A floating charge on the undertaking or property of the company created within twelve months before the commencement of the winding-up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid except to the amount of any cash paid to the company at the time of or subsequently to the creation of and in consideration for the charge together with interest on that amount at the rate fixed by the terms of the charge.

### **290. Liquidator's right to recover in respect of certain sales to or by company**

- (1) Where any property, business or undertaking has been acquired by a company within a period of two years before the commencement of the winding-up of the company—
  - (a) from a person who was at the time of the acquisition a director of the company; or

- (b) from a company of which, at the time of the acquisition, a person was a director who was also a director of the first mentioned company,

the liquidator may recover from the person or company from which the property, business or undertaking was acquired any amount by which the value of the consideration given exceeded the value of the property, business or undertaking at the time of its acquisition.

- (2) Where any property, business or undertaking has been sold by a company within a period of two years before the commencement of the winding-up of the company—
  - (a) to a person who was at the time of the sale a director of the company; or
  - (b) to a company of which at the time of the sale a person was a director who was also a director of the company first mentioned in this subsection,

the liquidator may recover from the person or company to which the property, business or undertaking was sold any amount by which the value of the property, business or undertaking at the time of the sale exceeded the value of the consideration received.

- (3) For the purposes of this section the value of the property, business or undertaking includes the value of any goodwill or profits which might have been made from the business or undertaking or any similar consideration.

## 291. Disclaimer of onerous property

- (1) Where any part of the property of a company consists of—
  - (a) any estate or interest in land which is burdened with onerous covenants;
  - (b) shares in any body corporate;
  - (c) unprofitable contracts; or
  - (d) any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money,

the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may, with the leave of the court or the committee of inspection and subject to this section, by writing signed by him, at any time within twelve months after the commencement of the winding-up or such extended period as is allowed by the court, disclaim the property; but where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding-up, the power of disclaiming may be exercised at any time within twelve months after he has become aware thereof or such extended period as is allowed by the court.

- (2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests and liabilities of the company and the property of the company in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.
- (3) The court or committee before or on granting leave to disclaim may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter, as the court or committee thinks just.
- (4) The liquidator shall not be entitled to disclaim if an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as is allowed by the court, given notice to the applicant that he intends to apply to the court or the committee for leave to disclaim, and, in the case of a contract, if the liquidator after such an application in writing does not within that period or further period disclaim the contract the liquidator shall be deemed to have adopted it.

- (5) The court may, on the application of a person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as the court thinks just, and any damages payable under the order to that person may be proved by him as a debt in the winding-up.
- (6) The court may, on the application of a person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any person entitled thereto, or to whom it seems just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just, and on any such vesting order being made and a copy thereof being delivered to the registrar for registration and to the official receiver and if the order relates to land to the appropriate authority concerned with the recording or registration of dealings in that land (as the case may require) the property comprised therein shall vest accordingly in the person therein named in that behalf without any further conveyance, transfer or assignment.
- (7) Notwithstanding anything in subsection (6), where the property disclaimed is of a leasehold nature the court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee, except upon the terms of making that person—
  - (a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding-up; or
  - (b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event, if the case so requires, as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the court may vest the estate and interest of the company in the property in any person liable personally or in a representative capacity and either alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

- (8) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding-up.

## 292. Restriction of rights of creditor as to execution or attachment

- (1) Where a creditor has issued execution against the goods or land of a company or has attached any debt due to the company and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator unless he has completed the execution or attachment before the date of the commencement of the winding-up, but—
  - (a) where any creditor has had notice of a meeting having been called at which a solution for voluntary winding-up is to be proposed, the date on which the creditor so had notice shall for the purposes of this section be substituted for the date of the commencement of the winding-up;
  - (b) a person who purchases in good faith under a sale by the sheriff any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator; and
  - (c) the rights conferred by this subsection on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.

- (2) For the purposes of this section—
  - (a) an execution against goods is completed by seizure and sale;
  - (b) an attachment of a debt is completed by receipt of the debt; and
  - (c) an execution against land is completed by sale or, in the case of an equitable interest, by the appointment of a receiver.
- (3) For the purposes of this section—
  - (a) "goods" includes all chattels personal; and
  - (b) "sheriff" includes any officer charged with the execution of a writ or other process.

### 293. Duties of sheriff as to goods taken in execution

- (1) Subject to the provisions of subsection (3), where any goods of a company are taken in execution and, before the sale thereof or the completion of the execution by the receipt of recovery of the full amount of the levy, notice is served on the sheriff that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding-up has been passed, the sheriff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or moneys so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.
- (2) Subject to the provisions of subsection (3), where under an execution in respect of a judgment for a sum exceeding one hundred Kwacha the goods of a company are sold or money is paid in order to avoid sale, the sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on him of a petition for the winding-up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding-up and an order is made or a resolution is passed for the winding-up, the sheriff shall pay the balance to the liquidator which shall be entitled to retain it as against the execution creditor.
- (3) The rights conferred by this section on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court deems fit.
- (4) For the purposes of this section—
  - (a) "goods" includes all chattels personal; and
  - (b) "sheriff" includes any officer charged with the execution of a writ or other process.

### 294. Offences by officers of companies in liquidation

- (1) Every person who, being a past or present officer or a past or present member of a company which is being wound up—
  - (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property real and personal of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company;
  - (b) does not deliver up to the liquidator, or as he directs—
    - (i) all the real and personal property of the company in his custody or under his control and which he is required by law to deliver up; or
    - (ii) all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up;

- (c) within twelve months next before the commencement of the winding-up or at any time thereafter—
- (i) has concealed any part of the property of the company to the value of twenty Kwacha or upwards, or has concealed any debt due to or from the company;
  - (ii) has fraudulently removed any part of the property of the company to the value of twenty Kwacha or upwards;
  - (iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company;
  - (iv) has made or has been privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company;
  - (v) has fraudulently parted with, altered or made any omission in, or has been privy to fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company;
  - (vi) by any false representation or other fraud, has obtained any property for or on behalf of the company on credit which the company has not subsequently paid for;
  - (vii) has obtained on credit, for or on behalf of the company, under the false pretence that the company is carrying on business, any property which the company has not subsequently paid for; or
  - (viii) has pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing was in the ordinary way of the business of the company;
- (d) makes any material omission in any statement relating to the affairs of the company;
- (e) knowing or believing that a false debt has been proved by any person fails for a period of one month to inform the liquidator thereof;
- (f) prevents the production of any book or paper affecting or relating to the property or affairs of the company;
- (g) within twelve months next before the commencement of the winding-up or at any time thereafter has attempted to account for any part of the property of the company by fictitious losses or expenses; or
- (h) within twelve months next before the commencement of the winding-up or at any time thereafter has been guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding-up,

shall be liable to imprisonment for two years and to a fine of five thousand Kwacha

- (2) It shall be a good defence to a charge under paragraph (a), (b) or (d) or subparagraph (i), (vii) or (viii) of paragraph (c) of subsection (1) if the accused proves that he had no intent to defraud, and to a charge under paragraph f or subparagraph (iii) or (iv) of paragraph (c) of subsection (1) if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.
- (3) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under subparagraph (viii) of paragraph (c) of subsection (1) every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances shall be liable to imprisonment for six months and to a fine of one thousand Kwacha.

**295. Inducement be appointed liquidator**

Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator shall be liable to imprisonment for six months and to a fine of one thousand Kwacha.

**296. Penalty for falsification of books**

Every officer or member of any company being wound up who destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register or book of account or document belonging to the company with intent to defraud or deceive any person shall be liable to imprisonment for two years and to a fine of five thousand Kwacha.

**297. Liability where proper accounts not kept**

- (1) If, where a company is wound up, it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding-up or the period between the incorporation of the company and the commencement of the winding-up (whichever is the less) every officer who is in default, unless he acted honestly and shows that in the circumstances in which the business of the company was carried on the default was excusable, shall be liable to imprisonment for one year and to a fine of two thousand Kwacha.
- (2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified or if such books or accounts have not been kept in such manner as to enable them to be conveniently and properly audited, whether or not the company has appointed an auditor.

**298. Liability for contracting debt**

If in the course of the winding-up of a company or in any proceedings against a company it appears that an officer of the company who was knowingly a part to the contracting of a debt had, at the time the debt was contracted, no reasonable or probable ground of expectation, after taking into consideration the other liabilities, if any, of the company at the time, of the company being able to pay the debt, the officer shall be liable to imprisonment for three months and to a fine of five hundred Kwacha.

**299. Power of court to assess damages against delinquent officers**

- (1) If in the course of winding-up it appears that any person who has taken part in the formation or promotion of the company or any past or present liquidator or officer has misapplied or retained or become liable or accountable for any money or property of the company or been guilty of any misfeasance or breach of trust or duty in relation to the company, the court may on the application of the liquidator or of any creditor or member inquire into the conduct of such person, liquidator or officer and compel him to repay or restore the money or property or any part thereof with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust or duty as the court deems just.
- (2) This section shall extend and apply to and in respect of the receipt of any money or property by any officer of the company during the two years preceding the commencement of the winding-up whether by way of salary or otherwise appearing to the court to be unfair or unjust.

- (3) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender is criminally liable.

### **300. Prosecution of delinquent officers and members**

- (1) If it appears to the court, in the course of a winding-up by the court, that any past or present officer, or any member, of the company has been guilty of an offence in relation to the company for which he is criminally liable, the court may, either on the application of any person interested in the winding-up or of its own motion, direct the liquidator to refer the matter to the Attorney General.
- (2) If it appears to the liquidator, in the course of a voluntary winding-up, that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Attorney General and shall, in respect of information or documents in his possession or under his control which relate to the matter in question, furnish the Attorney General with such information and give to him such access to and facilities for inspecting and taking copies of any documents as he may require.
- (3) Where any report is made under subsection (1) or (2) the Attorney General may, if he thinks fit, refer the matter to the Minister for further inquiry and the Minister shall thereupon investigate the matter and may, if he thinks it expedient, apply to the court for an order conferring on any person designated by the court for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding-up by the court.
- (4) If it appears to the court in the course of a voluntary winding-up that any past or present officer, or any member, of the company has been guilty as aforesaid and that no report with respect to the matter has been made by the liquidator to the Attorney General, the court may, on the application of any person interested in the winding-up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section shall have effect as though the report has been made in pursuance of subsection (2).
- (5) If, where any matter is reported, or referred to the Attorney General under this section, he considers that the case is one in which a prosecution ought to be instituted, he may institute proceedings accordingly, and the liquidator and every officer and agent of the company past and present, other than the defendant in the proceedings, shall give the Attorney General all assistance in connexion with the prosecution which he is reasonably able to give.
- (6) For the purpose of subsection (5) "agent of the company" includes any banker or solicitor of the company and any person appointed by the company as auditor.
- (7) If any person fails or neglects to give assistance in the manner required by subsection (5) the court may on the application of the Attorney General direct that person to comply with the requirements of that subsection, and where any application is made under this subsection with respect to a liquidator the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.
- (8) The Minister may direct that the whole or any part of any costs and expenses properly incurred by the liquidator under this section shall be defrayed out of moneys provided by Parliament.
- (9) Subject to any direction given under subsection (8) and to any charges on the assets of the company and any debts to which priority is given by this Act, all such costs and expenses shall be payable out of those assets as part of the costs of winding-up.

### 301. Frauds by officers of companies which have gone into liquidation

Every person who, while an officer of a company which is subsequently ordered to be wound up by the court or which subsequently passes a resolution for voluntary winding-up—

- (a) has, by false pretences or by means of any other fraud, induced any person to give credit to the company;
- (b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charges on, or has caused or connived at the levying of any execution against, the property of the company; or
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against the company,

shall be liable to a fine of five thousand Kwacha and to imprisonment for a term of two years.

## H—Dissolution and defunct companies

### 302. Power of court to declare dissolution company void

- (1) Where a company has been dissolved under the provisions of sections [232](#) and [233](#) or [section 265](#), the court may at any time within two years after the date of dissolution, on application by the liquidator of the company or by any other person who appears to the court to be interested, make an order upon such terms as the court deems fit declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved, except that for the purposes of any period of limitation time shall not be deemed to run during the period between dissolution and restoration. The court may by the order give such directions and make such provisions as it deems just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had never been struck off.
- (2) The person on whose application the order is made shall within seven days after the making of the order or such further time as the court may allow deliver to the registrar for registration and to the official receiver a copy of the order, and shall cause notice thereof to be published in the *Gazette* or otherwise as the court may direct; and if he fails so to do shall be liable to a fine of ten Kwacha for every day during which the default continues.

### 303. Power of registrar to strike defunct company off register

- (1) Where the registrar has reasonable cause to believe that a company is not carrying on business or is not in operation he may send to the company by post a letter to that effect and stating that if an answer showing cause to the contrary is not received within one month from the date thereof a notice will be published in the *Gazette* with a view to striking the name of the company off the register.
- (2) Unless the registrar receives an answer within one month from the date of the letter to the effect that the company is carrying on business or is in operation he may at any time thereafter cause to be published in the *Gazette* and send to the company by registered post a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will unless cause is shown to the contrary be struck off the register and the company will be dissolved.
- (3) If in any case where a company is being wound up the registrar has reasonable cause to believe that —
  - (a) no liquidator is acting;

- (b) the affairs of the company are fully wound up and for a period of six months the liquidator has been in default in lodging any return required to be made by him;
- (c) the affairs of the company have been fully wound up under [section 232](#) and there are no assets or the assets available are not sufficient to pay the costs of obtaining an order of the court dissolving the company; or
- (d) the affairs of the company have been fully wound up under [section 232](#) and that it is not necessary in the circumstances of the case to obtain an order of the court dissolving the company,

he may cause to be published in the *Gazette* and send to the company or the liquidator, if any, a notice to the same effect as that referred to in subsection (2).

(4) Where a company—

- (a) by ordinary resolution requests the registrar to strike it off the register; and
- (b) files with the registrar a copy of the resolution and a statutory declaration of two or more directors showing what disposition the company has made of its assets and that the company has no debts or liabilities,

the registrar shall cause to be published in the *Gazette* a notice that at the expiration of three months from the date thereof the name of the company will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(5) At or after the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown, strike the name of the company off the register, and shall cause notice thereof to be published in the *Gazette*, and on the publication in the *Gazette* of this notice the company shall be dissolved, but—

- (a) the liability, if any, of every officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and
- (b) nothing in this subsection shall affect the power of the court to wind up a company the name of which has been struck off the register.

(6) When the name of a company has been struck off the register under this section, at any time within twenty years after the publication in the *Gazette* in accordance with subsection (5) the court may, on application being made for this purpose by the Attorney General or by the liquidator or by any other person who appears to the court to be interested, make an order upon such terms as the court deems fit declaring the dissolution to have been void and ordering the name of the company to be restored to the register and all the provisions of [section 302](#) shall apply as if the order was one made under such section.

(7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to such company at its registered office or, if no office has been registered, to the care of some officer of the company, or if there is no officer of the company whose name and address are known to the registrar may be sent to each of the persons who subscribed the memorandum of the company addressed to him at the address mentioned in the memorandum.

(8) The fees of the registrar in respect of the dissolution of a company under this section and the costs incurred by him in publishing notices in the *Gazette* shall be payable by the company and recoverable from it.

### 304. Registrar to act as representative of defunct company in certain events

(1) Where after a company has been dissolved it is proved to the satisfaction of the registrar—

- (a) that the company if still existing would be legally or equitably bound to carry out, complete or give effect to some dealing, transaction or matter; and

- (b) that in order to carry out, complete or give effect thereto some purely administrative and not discretionary act should have been done by or on behalf of the company, or should be done by or on behalf of the company if still existing,

the registrar may as representing the company or its liquidator under the provisions of this section do or cause to be done any such act.

- (2) The powers of the registrar under subsection (1) shall include the power to execute or sign any relevant instrument or document, and the registrar shall, when so executing or signing an instrument or document endorse thereon a note or memorandum to the effect that he has done so in pursuance of this section, and such execution or signature shall have the same force, validity and effect as if the company had been in existence and had duly executed such instrument or document.
- (3) Neither the registrar nor the Government shall incur any liability to any person by reason of any act done or caused to be done by the registrar under this section.

## I—Winding-up of other bodies corporate

### 305. Winding-up of other bodies corporate

- (1) Subject to the provisions of this Act, any body corporate, not being a company or an external company or a body corporate specified in subsection (2), which has assets situate in Malawi may be wound up under this Act, and all the provisions of this Part shall apply to such body corporate as if it were a company.
- (2) This section shall not apply to any body corporate incorporated by or under any written law for the time being in force in Malawi, which law makes specific provision for the winding-up of bodies corporate formed by or under it.
- (3) The provisions of [section 319](#) shall apply, *mutatis mutandis*, to a winding-up under this section, as if the body corporate were an external company.

## Part XIII – External companies

### 306. Application and interpretation

- (1) The provisions of this Part shall apply to all external companies as defined in this section.
- (2) An "external company" is a body corporate formed outside Malawi which establishes or maintains an established place of business in Malawi.
- (3) For the purposes of this Part, the expression "established place of business", in relation to a body corporate, means a branch, management, share transfer, or registration office or a factory, mine, or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of the body corporate or maintains a stock of merchandize belonging to that body corporate from which he regularly fills orders on its behalf:

Provided that—

- (a) a body corporate shall not be deemed to have an established place of business in Malawi merely because it carries on business dealings in Malawi through a broker or general commission agent acting in the ordinary course of his business as such; and
- (b) the fact that the body corporate has a subsidiary which is incorporated, resident or carrying on business in Malawi, whether through an established place of business or otherwise, shall not of itself constitute the place of business of that subsidiary an established place of business of that body corporate.

### 307. Documents to be delivered by external company

- (1) Any external company which establishes a place of business in Malawi shall, within twenty-eight days after the establishment of the said place of business, deliver to the registrar for registration—
  - (a) a certified copy of the charter, statutes, regulations memorandum and articles, or other instrument constituting or defining the constitution of the company;
  - (b) a statement in the prescribed form giving the following particulars regarding the company—
    - (i) its name;
    - (ii) the nature of its business or businesses or other main objects;
    - (iii) the following particulars with respect to each of its local directors (identifying the chairman of local directors appointed pursuant to [section 314](#), or of the local manager of the company if it has been exempted by the Minister pursuant to [section 314](#))—
      - (A) his present forenames and surname;
      - (B) any former forename or surname;
      - (C) his residential and postal address; and
      - (D) his business occupation (if any);
    - (iv) if the company has shares, the number and nominal value, if any, of its authorized and issued shares, the amount paid thereon, distinguishing between the amounts paid and payable in cash and the amounts paid and payable otherwise than in cash;
    - (v) the address of its registered or principal office in the country of its incorporation;
    - (vi) the address of its principal place of business in Malawi and the number of its post office box; and
    - (vii) the full name, and the residential and postal address in Malawi of a person (in this Act referred to as a "documentary agent") authorized by the company to accept service of process and other documents on its behalf; and
  - (c) such particulars, and copies, of any changes on the property of the company as are required to be delivered for registration in accordance with sections 86 and 87, as applied to such company by [section 317](#), or, if there are no such charges, a statement in the prescribed form to that effect.
- (2) The registrar shall register the said documents in the Register of External Companies, which he shall maintain for the purposes of this Part.
- (3) The provisions of subsections (6) and (7) of [section 157](#) shall apply for the purposes of subsection (1)(b)(iii).
- (4) A statement delivered pursuant to subsection (1) (b) after the commencement of this Act shall contain a consent signed by each local director, chairman of local directors or local manager named therein to act in that capacity.

### 308. Returns required on alteration of registered particulars

- (1) If any alteration is made in the charter, statutes, regulations, memorandum and articles, or other instrument referred to in [section 307](#) (1) (a), the company shall, within two months after the effective date of the alteration, deliver to the registrar for registration notice, in the prescribed form, giving details of the alteration.
- (2) If any alteration is made in any of the particulars contained in the statement referred to in [section 307](#) (1) (b) the company shall, within the time prescribed by subsection (3) or subsection (4), as the

case may be, of this section, deliver to the registrar for registration notice, in the prescribed form, giving details of the alteration.

- (3) In the case of any alteration in any of the particulars referred to in subparagraphs (i), (ii), (iv) or (v) of [section 307](#) (1) (b), the notice required by subsection (2) of this section shall be delivered to the registrar within two months after the effective date of the alteration.
- (4) In the case of any alteration in any of the particulars referred to in subparagraphs (iii), (vi) or (vii) of [section 307](#) (1) (b), the notice required by subsection (2) of this section shall be delivered to the registrar within twenty-eight days after the date of the alteration.
- (5) Where the particulars delivered pursuant to this section include the name of any person appointed a local director, chairman of local directors or local manager, the notice shall also contain a consent signed by each person to act in that capacity.

### 309. Power of external company to hold lands

Any external company shall have the same powers to hold lands in Malawi as if it were a company incorporated under this Act.

### 310. Local directors' qualifications and authority

- (1) An external company shall not appoint any person as one of its local directors, or cause any person to be named as such in any statement or notice delivered to the registrar pursuant to [section 307](#) (1) (b) or to [section 308](#) (2), unless such person is capable, in accordance with [section 142](#), of being appointed a director of a company formed and incorporated in Malawi pursuant to this Act.
- (2) The acts of any person registered as a local director of an external company ostensibly done on behalf of the said company in the course of carrying on the business in Malawi of that company shall bind the company unless such local director has no authority so to act and the person with whom he is dealing has actual knowledge of the absence of authority, or, having regard to his position with, or relationship to, the company, ought to know of such absence of authority.

### 311. Service on external company

- (1) Any writ or document shall be sufficiently served on an external company if delivered or sent by post to the person last registered as the documentary agent of the company, pursuant to subparagraph (vii) of [section 307](#) (1) (b), at his last known registered address, even if the documentary agent refuses to accept service or the company has ceased to maintain an established place of business in Malawi:

Provided that this subsection shall not apply to service of a document—

- (a) if the company was struck off the Register of External Companies, pursuant to [section 320](#), more than six years prior to such service;
  - (b) if the person last registered as documentary agent is dead, or, in the case of a body corporate, dissolved.
- (2) Where—
    - (a) no registration of the name and address of a person as the documentary agent of an external company has been effected; or
    - (b) subsection (1) does not apply by reason of paragraph (b) of the proviso thereto,

any writ or document shall be sufficiently served on the company if delivered or sent by post to any established place of business of the company in Malawi, or, if the company has ceased to have any established place of business in Malawi, to the registered office or principal place of business of the company in the country of its incorporation.

- (3) Any document to be served by post on an external company shall be posted in such time as to admit of its being delivered in due course of delivery within the time, if any, prescribed for the service thereof; and in proving service it shall be sufficient to prove that a sealed letter containing such document was properly addressed, pre-paid, and posted, whether or not by registered post.
- (4) If it shall be proved that any document was in fact received by any local director or documentary agent or by the board of directors, or a managing director or secretary of the external company, such document shall be deemed to have been served on that company notwithstanding that service may not have been effected pursuant to subsection (3).
- (5) Nothing in this section shall derogate from the power of any court to direct how service shall be effected of any document relating to legal proceedings before that court.

### 312. Accounts of external company

- (1) Every external company shall, once at least in every calendar year, at intervals of not more than fifteen months, make out and deliver to the registrar for registration a profit and loss account and balance sheet and, if the company is a holding company, group accounts, in a form acceptable to the registrar, containing the same particulars as the accounts or reports which, under the law of the country of its incorporation or, as the case may be, under the charter, statutes, regulations, memorandum and articles or other instrument constituting or defining the constitution of the company, the directors would have been required to place before the company in general meeting or to send to the members or debentureholders of the company (which particulars are referred to as the "basic accounts requirements"):

Provided that the registrar may accept for registration, pursuant to this section, a profit and loss account, balance sheet or group accounts prepared pursuant to the basic accounts requirements but not in a form ordinarily acceptable to him, if, in his opinion, such accounts give substantially a true and fair view of the operations of the company during the period to which the said profit and loss account, balance sheet or group accounts relate.

- (2) In addition to the accounts mentioned in subsection (1), the company shall also deliver to the registrar for registration—
  - (a) a profit and loss account, made out as nearly as may be in the form prescribed and containing the prescribed particulars, giving a true and fair view of the profit or loss, during the period to which it relates, on the operations of the company in Malawi, as if such operations had been conducted in Malawi by a separate company formed in Malawi under this Act;
  - (b) a balance sheet, in the form prescribed, giving a true and fair view of the state of affairs of the company in respect of its assets and liabilities attributable to its operations and properties in Malawi as at the end of the period to which it relates, as if, in respect of such assets and liabilities, such company were a separate company formed in Malawi under this Act;
  - (c) a statement as at the end of the company's financial year showing the company's assets locally situate in Malawi, classified, distinguished and valued in the manner prescribed, and the nature and amount of any specific charges on such assets; and
  - (d) a report on the accounts and statements referred to in paragraphs (a), (b), and (c) by an approved auditor, stating that in his opinion and to the best of his information the accounts and records are in accordance with the books and records of the company and give the information required by this Act in the manner thereby required and give a true and fair view of the matters stated therein.
- (3) In the profit and loss account referred to in paragraph (a) of subsection (2), the company shall be entitled to make such apportionments and to add such notes and explanations as shall, in its opinion, be necessary or desirable in order to give a true and fair view of the profit or loss on its operations in Malawi, and for this purpose may debit a reasonable rate of interest on capital employed in Malawi.

- (4) In relation to the accounts and statements referred to in this section, the registrar may, on the application or with the consent of the local directors of any external company, modify, in relation to such company, any of the prescribed requirements to suit the circumstances of the company but no such modification shall derogate from the obligation imposed by this section to give in such accounts and statements a true and fair view of the profit or loss on the operations of the company, and of the state of affairs of the company, in Malawi.
- (5) This section shall not apply to—
- (a) any external company carrying on banking business in Malawi and registered as a bank pursuant to section 5 of the Banking Act or to any written law amending or replacing the same; or  
*[Cap. 44:01]*
  - (b) any external company carrying on insurance business in Malawi and registered as an insurer pursuant to section 6 of the Insurance Act or any written law amending or replacing the same,  
*[Cap. 47:01]*
- unless such company has, at any time, in Malawi invited the public to acquire any of its shares or debentures.
- (6) In any regulations made under [section 346](#) whereby requirements as to the form and content of the accounts and statements referred to in this section are prescribed, the Minister may provide for exemption of external companies engaged in banking business in Malawi to which this section applies by reason of subsection (5), from such of the said prescribed requirements as he deems in the public interest to be inappropriate to such companies.
- (7) If it appears to the Minister to be desirable in the public interest so to do, the Minister may, by notice published in the *Gazette*, declare that, in the case of any external company, this section shall not apply or shall apply subject to such exceptions and modifications as shall be specified in such notice.

### 313. Keeping of accounting records by external company

- (1) Every external company to which section 312 applies shall cause to be kept, in the English language or many other language acceptable to the registrar, in relation exclusively to its operations in Malawi, proper accounting records with respect to—
- (a) all sums of money received and expended by the company in the course and for the purposes of its operations in Malawi, and the matters in respect of which the receipt and expenditure takes place;
  - (b) all sales except ordinary retail sales and purchases by the company, in the course and for the purposes of its operations in Malawi; and
  - (c) the assets and liabilities of the company held or incurred in the course and for the purposes of its operations in Malawi and the interests of the members in such assets or liabilities.
- (2) For the purposes of subsection (1), proper accounting record, shall not be deemed to be kept with respect to the matters aforesaid if there are not kept such records as are necessary—
- (a) to give a true and fair view of the state of the company's affairs in respect of its operations in Malawi;
  - (b) to prepare proper balance sheets and profit and loss accounts in accordance with this Act; and
  - (c) to explain its operations and transactions.

- (3) The accounting records herein referred to shall be kept at the principal established place of business of the company in Malawi, or at such other place in Malawi (of which notice shall have been given to the registrar) as the local directors deem fit, and shall at all reasonable times be open to inspection by the Minister, the registrar, the directors and the local directors, the secretary to the company, the auditors of the company, the approved auditor and such other person as is entitled to inspect the same under any written law of Malawi.
- (4) In the event of any default in complying with subsection (1) or subsection (3) the company shall be liable to a fine of five thousand Kwacha and to be compulsorily wound up under the provisions of this Act, and every officer who is in default shall be liable to a fine of two thousand five hundred Kwacha and to imprisonment for two years.
- (5) The registrar may, for good cause shown, exempt, generally, or in respect of any particular financial year, any external company from any of the provisions of this section.

### 314. Provisions as to local directors and local manager

- (1) Every external company shall, before delivery to the registrar of all of the documents referred to in [section 307](#) for registration under this Part, appoint not less than three no more than nine individuals as the local directors in Malawi of the said company, who shall be empowered and authorized to conduct and manage all of the said affairs, properties, business and other operations of the said company in Malawi, and of whom one shall be designated by the company as the chairman of local directors.
- (2) Any external company having complied with subsection (1), may, at any time, vary the number of individuals appointed as its local directors under the said subsection:

Provided that—

- (i) no such variation shall increase or decrease the number of such local directors beyond the statutory limits contained in subsection (1); and
  - (ii) no decrease in the number of local directors for the time being appointed shall be made if the Minister directs otherwise.
- (3) The majority of the local directors of any external company (including the chairman of local directors) shall be resident in Malawi:

Provided that in no circumstances shall the number of such local directors resident in Malawi be less than three.

- (4) Every local director of an external company shall be deemed to be an officer thereof, and shall be subject to the like obligations, liabilities and duties towards such company; its creditors, the public and the Government of Malawi in respect of the operations of such company in Malawi as he would be subject to if such company were a company formed in Malawi under this Act and as if he were a director thereof.
- (5) Every external company shall, in all trade circulars and business correspondence on or in which the company's name appears, and which are despatched in Malawi, or despatched elsewhere exclusively to persons in Malawi or exclusively for the purposes of the company's operations in Malawi, by or on behalf of the company, state in legible Roman characters in respect of each local director—
  - (a) his present forenames or initials thereof, and his present surname; and
  - (b) any former forename or surname:

Provided that if special circumstances exist which, in the opinion of the Minister, render it expedient so to do, the Minister may, by notice published in the *Gazette*, subject to such conditions as may be specified in such notice, exempt any such company from the obligations imposed by this subsection.

- (6) The provisions of subsections (6) and (7) of [section 157](#) shall apply to subsection (3) of this section.

- (7) Whenever the Minister is satisfied that any external company employs any individual, who is resident in Malawi (hereinafter referred to as the "local manager"), as its general agent in respect of the management, conduct and control of the business and other operations and of the property of such company in Malawi, and the Minister deems it expedient in the national interest that such company should be exempt from the foregoing provisions of this section, the Minister may, by Order made under his hand, exempt such company from the foregoing provisions of this section.
- (8) Any duties, functions, obligations or liabilities imposed upon, and any rights or exemptions granted to, local directors under the provisions of this Part are hereby imposed upon, or granted to, as the case may be, every local manager to the same extent as if any references in such provisions to the local directors were references to the local manager.

### 315. Name of external company

- (1) If the Minister is of the opinion that the name of a company in the country of its incorporation, under which it is registered or seeks to be registered, is misleading or undesirable he may direct such company to change its registered name or to register under another name, and the company shall comply with such direction within six weeks of the date thereof, or such longer period as the Minister may think fit to allow.
- (2) The provisions of subsections (6) and (12) of [section 19](#) shall apply to any direction made by the Minister under this section.

### 316. Obligation to state name, etc., of external company

- (1) Every external company shall—
  - (a) exhibit conspicuously in legible Roman characters on every place where it carries on business in Malawi the name of the company, the country of its incorporation, and, if the liability of the members is limited, the fact that it is so limited; and
  - (b) cause the name of the company and of the country of its incorporation, and, if the liability of the members is limited, the fact that it is so limited, to be stated in legible Roman characters at the head of all business correspondence of the company despatched in Malawi.
- (2) Where the name of the company is in a foreign language, the requirements of this section relating to the name of the company shall be deemed to be fulfilled by exhibiting or stating, as the case may be, in English, or a language acceptable to the registrar, a translation thereof, and stating it to be such a translation.
- (3) The fact that the word "limited" or its equivalent in a foreign language, forms part of the company's name shall not be deemed to be a sufficient compliance with the obligations imposed by this section in relation to the exhibition or stating the name of the company, as the case may be, and the stating of the fact that the liability of the members is limited.

### 317. Registration of charges by external company

The provisions of [sections 86 to 95](#) inclusive, shall extend, *mutatis mutandis*, to charges on property in Malawi which are, or have been, created, and to charges on property in Malawi which is acquired, by an external company:

Provided that charges created prior to the date when the external company had an established place of business in Malawi shall be deemed to be duly registered if particulars thereof are delivered to the registrar for registration pursuant to [section 307](#) (1) (c).

### 318. Notification of winding up of external company

- (1) Where, in the case of an external company—
  - (a) a winding-up order is made by a court of the country of its incorporation;
  - (b) a resolution is passed or other appropriate proceedings are taken in that country to lead to the voluntary winding-up of the company; or
  - (c) the company is dissolved or otherwise has ceased to exist according to the law of the country of its incorporation,the local directors and documentary agent of the company shall, within twenty-eight days thereafter, cause notice thereof to be delivered to the registrar for registration.
- (2) Where either of the events referred to in paragraph (d) or (b) of subsection (1) has occurred, the local directors of the company shall, on every invoice, order or business letter thereafter issued in Malawi by or on behalf of the company, being a document on or in which the company's name appears, cause a statement to appear in legible Roman characters to the effect that the company is being wound up in the country of its incorporation.
- (3) If any person shall, in Malawi, carry on, or purport to carry on, business on behalf of the company after the date on which it was dissolved or otherwise ceased to exist in the country of its incorporation, he shall be liable to a fine of twenty Kwacha for each day during which he continues to do so and to imprisonment for two years.
- (4) Nothing in this section shall derogate from the provisions of [section 319](#) enabling an external company, whether or not it has been dissolved or otherwise ceased to exist according to the law of the country of its incorporation, to be wound up under this Act.

### 319. Winding-up of external company in Malawi

- (1) An external company may be wound up pursuant to this Act whether or not it has been dissolved or has otherwise ceased to exist according to the law of the country of its incorporation.
- (2) For the purposes of winding up an external company the provisions of Part XII shall apply, *mutatis mutandis*, subject to the provisions of this section.
- (3) An external company shall not be wound up except on a petition to the court.
- (4) An external company may be wound up by the court—
  - (a) if it is in the course of being wound up, voluntarily or otherwise, in the country of its incorporation;
  - (b) if it is dissolved in the country of its incorporation or has ceased to carry on business in Malawi, or is carrying on business for the purposes only of winding up its affairs;
  - (c) if it is unable to pay its debts;
  - (d) if the court is of the opinion that the business or objects of the company, or any of them, are unlawful, or that the company is being operated in Malawi for any unlawful purpose or is carrying on a business or operations not authorized by its charter, memorandum or constitution;
  - (e) if the company has for three months or more immediately preceding the filing of the petition, failed to comply with any provision of this Part requiring the delivery of any document or notice by the company to the registrar for registration; or

- (f) if the court is of the opinion that it is just and equitable that the company should be wound up,
- and in determining whether the external company is unable to pay its debts the provisions of [section 213](#) shall apply, *mutatis mutandis*.
- (5) Where an order is made by the court for the winding-up in Malawi of an external company the said external company shall, for all of the purposes of such winding up, be treated as if it were a company incorporated in Malawi under this Act and only the assets and liabilities situate in Malawi shall be deemed to be the assets and liabilities thereof.
- (6) The court may, in the winding-up order or on subsequent application by the liquidator, direct that all transactions in Malawi by or with such external company shall be deemed to be validly done notwithstanding that they occurred after the date when such external company was dissolved or otherwise ceased to exist according to the law of the country of its incorporation, and may make such order on such terms and conditions as it deems fit.

### 320. Cessation of business of external company

- (1) If any external company ceases to have an established place of business in Malawi, it shall, within twenty-eight days after so ceasing, deliver notice thereof to the registrar in the prescribed form for registration.
- (2) The registrar shall thereupon strike the name of the company off the Register of External Companies.
- (3) After notice has been given to the registrar pursuant to subsection (1), and so long as the company shall not have an established place of business in Malawi, then, except as provided by subsection (6), no person shall be under any obligation to deliver any document relating to that company to the registrar pursuant to any of the foregoing sections of this Part.
- (4) Where the registrar has reasonable cause to believe that an external company has ceased to have an established place of business in Malawi, he may send, by registered post, to the registered local directors and documentary agent, a letter enquiring whether the company is or is not maintaining an established place of business in Malawi.
- (5) If the registrar receives an answer to an enquiry made pursuant to subsection (4) to the effect that the company has ceased to have an established place of business in Malawi, or does not, within three months, receive any reply, or receives an answer that the company is maintaining certain premises as an established place of business in Malawi, but he is not satisfied that such premises constitute an established place of business under this Part, he may strike the name of the company off the Register of External Companies.
- (6) At any time within six years after the date on which the company was struck off the Register of External Companies, pursuant to subsections (1) and (2) or (4) and (5) of this section, all persons shall continue to have a right to inspect the documents in the registry relating to that company; and during such six years the company shall, notwithstanding subsection (3), continue to be under the obligation imposed by [section 307](#) to give notice of any alteration in the name of the company's documentary agent.

### 321. Penalties and disabilities

- (1) If any external company or any local director or documentary agent of any external company fails to comply with any of the obligations imposed upon it or him by any of the provisions of any of the foregoing sections of this part, the external company and any local director or documentary agent of such company who is in default shall be liable to a fine of one thousand Kwacha or, in the case of a continuing default, twenty-five Kwacha in respect of every day during which the default continues:

Provided that this subsection shall not apply in respect of any default for which the penalty is expressly provided.

- (2) If there is any default by an external company in delivering to the registrar any document required to be delivered for registration pursuant to any of the provisions of the foregoing sections of this Part, the rights of the external company concerned under or arising out of or incidental to any contract made in Malawi during such time as the default continues shall not be enforceable by action or other legal proceedings:

Provided that—

- (i) the external company may apply to the court for relief against the disability imposed by this subsection and the court, on being satisfied that it is just and equitable so to do, may grant such relief, either generally or as respects any conditions as the court may impose;
- (ii) nothing herein contained shall prejudice the rights of any other parties against the external company in respect of such contract; and
- (iii) if any action or proceedings shall be commenced by any other party against the external company to enforce the rights of such party in respect of such contract, nothing herein contained shall preclude the external company from enforcing in such action or proceedings, by way of counterclaim, set-off or otherwise, such rights as it may have against that party in respect of that contract.

### **322. Control of public invitations relating to external companies**

- (1) If any person makes in Malawi any invitation to the public to acquire or dispose of any shares or debentures of an external company, or to deposit money with any external company for a fixed period or payable at call, whether bearing or not bearing interest, then, subject as hereinafter provided, the provisions of [sections 164 to 178](#) inclusive, relating to prospectuses, shall apply, *mutatis mutandis*, as if the external company were a public company.
- (2) The registrar may, in his absolute discretion, waive or modify the provisions of [sections 164 to 178](#), or any of them, in relation to any such public invitation as is referred to in subsection (1).
- (3) Any prospectus issued by reason of the provisions of subsection (1) shall in addition to complying with the provisions of [section 168](#), and subject to any modifications made in accordance with subsection (2), also contain particulars with respect to the following—
  - (a) the instrument constituting or defining the constitution of the company;
  - (b) the law, or provisions having the force of law, by or under which the incorporation of the company was effected;
  - (c) an address in Malawi where copies of the foregoing, or, if the same are in a language other than English, certified translations thereof can be inspected; and
  - (d) the date on which and the country in which the company was incorporated.
- (4) Any prospectus registered, and any advertisement or circular published in connexion with any such invitation shall state the country in which the external company is incorporated and the address of its principal established place of business in Malawi.
- (5) Unless the provisions of this section are complied with the making of the invitation shall be deemed to be a breach of [section 164](#).

### **323. Control of public invitations relating to other non-Malawian company**

- (1) For the purposes of this section the expression "non-Malawian company" means any association incorporated or to be incorporated outside Malawi, not being an external company as defined in [section 306](#).

- (2) If any person makes in Malawi any invitation to the public to acquire or dispose of any shares or debentures of a non-Malawian company or to deposit money with a non-Malawian company for a fixed period or payable at call, whether bearing or not bearing interest, then, subject as hereinafter provided, the provisions of [sections 164 to 178](#) relating to prospectuses shall apply, *mutatis mutandis*, as if the non-Malawian company were a public company and subsections (2) and (3) of [section 322](#) shall apply as if such company were an external company.
- (3) Any prospectus registered, and any advertisement or circular published in connexion with any such invitation shall state the country in which the non-Malawian company is incorporated and if the liability of the members is limited it shall so state.
- (4) Unless the provisions of this section are complied with the making of the invitation shall be deemed to be a breach of [section 164](#).

## Part XIV – Administration of Act

### 324. Registrar of Companies: Deputy Registrars: Assistant Registrars

- (1) There shall be a Registrar of Companies (in this Act referred to as the "registrar") who shall be such officer in the public service, having professional legal qualifications, as is charged with the performance of the duties and functions vested by or under this Act or any other written law in the registrar.
- (2) There may be—
  - (a) Deputy Registrars of Companies, having professional legal qualifications; and
  - (b) Assistant Registrars of Companies,who shall be such officers in the public service as are charged with the performance of the duties and functions lawfully assigned or delegated to such respective offices.
- (3) Anything in this Act appointed, authorized, or required to be done to or by the registrar or to be signed by the registrar may be done to or by or signed by any Deputy or Assistant Registrar and shall be as valid and effectual as if done to or by or signed by the registrar.
- (4) The registrar shall have a seal and such seal shall bear the words "Registrar of Companies, Malawi".

### 325. Registration of documents

- (1) Where, under any section of this Act, any document or particulars require to be registered by the registrar, registration shall be effected in the manner prescribed, but if no such manner be prescribed such registration shall be effected as directed by the Minister.
- (2) For the purposes of any provision of this Act, no document or particulars shall be deemed to have been delivered to the registrar for registration until the appropriate registration fee has been paid to the registrar.
- (3) A separate document shall be delivered to the registrar for each company in respect of which any document or particulars require to be registered under this Act.
- (4) All documents and particulars which are delivered to the registrar for registration shall be printed or typewritten on good quality paper to the satisfaction of the registrar.
- (5) If the registrar is of opinion that any document or particulars delivered to him for registration—
  - (a) contain matter contrary to law;
  - (b) by reason of any error, omission or misdescription have not been duly completed;
  - (c) are insufficiently legible;

- (d) are written on paper insufficiently durable; or
- (e) otherwise do not comply with the requirements of this Act,

he may request that the document or particulars be appropriately amended or completed and resubmitted and may refuse to register the document or particulars until appropriately amended or completed, and in that event the document or particulars shall not be deemed to have been delivered for registration until resubmitted appropriately amended or completed.

- (6) The registrar may require that a document or a fact stated in a document delivered to him for registration shall be verified by statutory declaration.
- (7) The registrar shall, if either generally or in a particular case he is so directed by the Minister, cause a copy or particulars of any document or class of documents delivered to him for registration to be published in the *Gazette*, and for such purpose may require the delivery to him of any such document in duplicate, or the provision of any such particulars, and may withhold registration of the document until such requirement has been complied with.
- (8) The registrar may alter a document if so authorized by the person who delivered the document or his representative.

### 326. Extension of time for registration

- (1) Where under this Act an instrument, deed, statement or other document is required to be delivered to the registrar for registration within a specified time, the time so specified shall by force of this section, in relation to an instrument, deed, statement or other document executed or made in a place out of Malawi, be extended by fourteen days.
- (2) The registrar may, before the expiration of any time fixed for the registration of any matter, extend such time for such period, and on such terms, as he may in his discretion think proper.
- (3) Subject to subsection (2), where any matter is delivered to the registrar after the expiration of the time fixed for its registration, it shall be accepted for registration upon payment of such additional fee as may be prescribed:

Provided that the registrar may reduce or waive the calculated amount of any additional fee imposed under this Act in any case where he is satisfied that the failure has been caused or continued solely through administrative oversight and that no party is likely to have suffered damage or to have been prejudiced as a result of such failure.

### 327. Documents to be in approved language

- (1) Where, under any section of this Act, any document is required to be prepared, kept or registered such document shall, unless the section otherwise provides, be in the English language, or in any other language acceptable to the registrar.
- (2) Where the registrar accepts for registration a document all or part of which is in a language other than English, he may in his discretion require a translation in English to be annexed to it.

### 328. Prescribed forms

- (1) Where any section of this Act provides that any document shall be "in the prescribed form" such document shall be in the form prescribed by regulations made by the Minister and published in the *Gazette*.
- (2) Notwithstanding subsection (1), where any section of this Act provides that any document shall be "in the prescribed form" or "in the prescribed form, if any", the registrar may in his discretion authorize the preparation thereof in any form he deems to be substantially appropriate, and may accept a document in such form for registration in satisfaction of the requirements of this Act.

### 329. Inspection, copies and evidence

- (1) Any person may—
  - (a) inspect any document registered by the registrar upon payment of such fee as may be prescribed for each inspection of the documents relating to one company; and
  - (b) require a certificate of the incorporation of any company or a copy of any other document, or any part of any other document, registered by the registrar to be certified under the hand of the registrar, on payment of such fee as may be prescribed.
- (2) No process for compelling the production of any document kept by the registrar shall issue from any court except with the leave of that court and any process if issued shall bear thereon a statement that it is issued with the leave of the court.
- (3) Any copy of, or extract from, any document registered by the registrar, which is certified to be a true copy by the registrar (whose official position it shall not be necessary to prove), shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

### 330. Authentication of documents issued by registrar or Minister

- (1) All documents purporting to be orders, certificates, licences, approvals, or revocations thereof made or issued by the registrar or the Minister for the purposes of this Act and purporting to be sealed with the seal of the registrar, or to be signed by him, or to be signed by the Minister or on his behalf by the Principal Secretary or other authorized officer shall be received in evidence as such without further proof of validity unless the contrary is shown.
- (2) A certificate that any order made, certificate issued, or act done is the order, certificate, or act of the registrar or the Minister shall, if signed by the registrar or Minister respectively, be conclusive evidence of the fact so certified.

### 331. Enforcement of duty to make returns

If a body corporate or any officer, receiver or liquidator of a body corporate, having made default in complying with any provision of this Act which requires it, or him, to deliver any return, account, or other document, or to give notice of any matter, fails to end the default within fourteen days after the service of a notice on the body corporate or the officer, receiver or liquidator requiring him to do so, the court may, on an application made to the court by the registrar or by any member or creditor of the body corporate, or by any other person claiming an interest which the court deems sufficient, make an order directing the body corporate and any officer thereof or the liquidator to make good the default within such time as may be specified in the order and may provide that all costs of and incidental to the application shall be borne by the body corporate or by any officer or liquidator of the body corporate responsible for the default.

### 332. Registrar's power to obtain directions of the court

The registrar may apply to the court for directions in relation to any matter arising in connexion with his functions under this Act, and on any such application the court may give such directions or make such order as the court thinks fit.

### 333. Fees

- (1) There shall be paid to the registrar such fees as may be prescribed by regulations in respect of—
  - (a) the performance by the registrar of his functions under this Act, including the receipt by him of any notice or other document which under this Act is required to be given, delivered, sent or forwarded to him; and
  - (b) the inspection of documents kept by him under this Act.

- (2) Where by virtue of any provision in any such regulations an additional fee is payable by reason of the late delivery of a document for registration or otherwise, the Minister may in his discretion remit the whole or any part of such additional fee.
- (3) Where by virtue of any provision in any such regulations an additional fee is payable by reason of the late delivery of a document for registration or otherwise, such additional fee shall be payable notwithstanding that the company or any other person may be criminally liable in respect of the same act or default.

### **334. No stamp duty payable on registered documents**

- (1) Subject to the provisions of this Act, a document required to be registered under this Act shall not be liable to stamp duty in addition to the fee payable in respect of such registration.
- (2) Where registration is required under this Act of a copy or particulars of any document which is not itself required to be registered, that document shall be liable to stamp duty notwithstanding subsection (1).

## **Part XV – Supplementary**

### **335. Penalty for false statements**

- (1) If any person in any return, report, certificate, account or other document required by or for the purposes of any of the provisions of this Act wilfully makes a statement false in any particular, knowing it to be false, he shall be liable to imprisonment for two years and to a fine of one thousand Kwacha.
- (2) Nothing in this section shall affect the liability of any body corporate or other person under any other section of this Act or any other written law, but the penalties imposed by this section shall be alternative, and not additional, to any penalties imposed by such other section or written law.

### **336. Penalty for improper use of "Incorporated" or "Limited "**

A person who trades or carries on business in Malawi under any name or title of which the word "incorporated", "corporation" or any contraction or imitation thereof or any equivalent in a language other than English forms part or of which the word "limited" or any contraction or imitation thereof or any equivalent in a language other than English is the last word shall, unless duly incorporated under this Act or some other written law, whether of Malawi or elsewhere, and, where "limited" or any contraction or imitation thereof is the last word, unless duly incorporated with limited liability, be liable to a fine of ten Kwacha for every day upon which that name or title has been used.

### **337. Responsibility for fraudulent trading**

- (1) If in the course of the winding-up of a company or in any proceedings against a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court on the application of the liquidator or any creditor or member of the company may if it thinks proper so to do, declare that any person who was knowingly a party to the carrying on of the business in that manner shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court directs.
- (2) Where a person has been convicted of an offence under [section 298](#) in relation to the contracting of such a debt as is referred to in that section the court, on the application of the liquidator or any creditor or member of the company, may, if it thinks proper so to do, declare that the person shall be personally responsible without any limitation of liability for the payment of the whole or any part of that debt.

- (3) Where the court makes any declaration pursuant to subsection (1) or (2), it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any person under the declaration a charge on any debt or obligation due from the company to him, or on any charge or any interest in any charge on any assets of the company held by or vested in him or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf, and may from time to time make such further orders as is necessary for the purpose of enforcing any charge imposed under this subsection.
- (4) For the purpose of subsection (3) "assignee" includes any person to whom or in whose favour by the directions of the person liable the debt, obligation or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any of the matters on the ground of which the declaration is made.
- (5) Where any business of a company is carried on 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 with that intent or purpose shall be liable to imprisonment for one year and to a fine of two thousand Kwacha.
- (6) The provisions of this section shall have effect notwithstanding that the person concerned is criminally liable apart from this section in respect of the matters on the ground of which the declaration is made.
- (7) On the hearing of an application under subsection (1) or (2) the liquidator may himself give evidence or call witnesses.

### **338. Meaning of "in default"**

For the purpose of any provision in this Act which states that an officer of the company or other person who is in default shall be liable to a fine or penalty, any such officer or person shall be deemed to be in default if he knowingly and wilfully authorizes or permits the default, refusal or contravention mentioned in such provision.

### **339. Costs in actions by limited companies**

Where a body corporate with limited liability is a plaintiff in any legal proceedings the court may, if it appears by credible evidence that there is reason to believe that the body corporate will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

### **340. Contribution between joint wrongdoers**

Where more than one person is liable (whether as an officer of a body corporate or otherwise) to pay any damages costs, compensation, debt or monetary penalty under, or in respect of any breach of, any section of this Act, they shall have a right of contribution amongst themselves, and in any action to enforce liability or in an action to recover contribution the court may award contribution on such terms as it shall consider equitable in all the circumstances and may exempt any person from liability to make contribution or direct that the contribution to be recovered from any person shall amount to a complete indemnity.

### **341. Power to grant relief**

- (1) If in any proceedings against a member, officer, receiver, liquidator or auditor of a company for any default or breach of duty under any section of this Act or against any trustee for debentureholders in respect of any breach of duty or trust it appears to the court hearing the case that that member, officer, auditor or trustee is or may be liable but that he has acted honestly and reasonably and that, having regard to all the circumstances of the case, he ought fairly to be excused, the court may relieve him in whole or in part from his liability on such terms as the court may think fit.

- (2) Where any such member, officer, receiver, liquidator, auditor or trustee has reason to apprehend that any claim may be made against him in respect of any breach of duty or trust, he may apply to the court for relief, and the court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for breach of duty or trust had been brought.

### **342. Prohibitions of partnerships exceeding fifty members**

- (1) No company, association or partnership consisting of more than fifty persons shall be formed within Malawi for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is incorporated under this Act or any other written law.
- (2) If it appears to the Minister to be desirable in the public interest to do so, the Minister may, by notice published in the *Gazette*, declare that, in the case of any particular partnership or class of partnerships, this section shall not apply or shall apply subject to such exceptions and modifications as shall be specified in such notice.

### **343. No constructive notice**

No person shall be affected by or deemed to have notice or knowledge of the existence or contents of a document concerning a company by reason only that the document has been registered with the registrar or is available for inspection at an office of the company or elsewhere by virtue of this Act.

### **344. Companies formed for special purposes**

Nothing in this Act shall abrogate or affect any special legislation relating to companies carrying on the business of banking, insurance or any other business from time to time subject to special legislation.

### **345. Regulations**

- (1) The Minister may, by notice published in the *Gazette*, make regulations for the better carrying into effect of this Act.
- (2) The matters prescribed by or contained in the Second, Third, Fourth and Fifth Schedules to this Act may be amended, added to or repealed by regulations made by the Minister by notice published in the *Gazette*.

*[Second Schedule; Third Schedule; Fourth Schedule; Fifth Schedule]*

- (3) Without prejudice to the generality of the foregoing provisions, the powers of the Minister shall in particular include power to make regulations for the following purposes—
  - (a) the conduct of the business of the office of the Registrar;
  - (b) the form and content of any application, register, notice, return, account, book, record, certificate, licence or other document required for the purposes of this Act;
  - (c) the payment of fees and charges in respect of any matter or thing done or supplied under this Act;
  - (d) the procedure to be followed in connexion with any application or request to the registrar or any proceeding before him;
  - (e) the provision of copies of any documents under this Act, and the certification of such copies;
  - (f) the making of inspections and searches under this Act, including the times when they may be made;
  - (g) the conduct of any winding-up or other proceeding or transaction under this Act;

- (h) the service of notices and other documents under this Act; and
- (i) anything which in accordance with this Act is required or authorized to be prescribed.

### 346. Rules of Court

The Chief Justice may make Rules of Court governing the practice and procedure for the winding-up of companies in Malawi and with respect to the procedure in any application to the court under the provisions of this Act, and enabling all or any of the powers and duties conferred and imposed on the court in respect of the winding-up of companies to be exercised or performed by the registrar or by the official receiver, or by the liquidator as an officer of the court and subject to the control of the court.

### 347. Extension to other bodies corporate

- (1) The Minister may, by order published in the *Gazette*, direct that any of the provisions of this Act shall apply to all bodies corporate formed in Malawi otherwise than under the repealed law or this Act, or to certain classes of such bodies or to certain named bodies corporate formed in Malawi, as specified in the order, as if they were companies incorporated under this Act.
- (2) If any such order is made the Minister may from time to time exempt any named body corporate from the application to it of any of such provisions.

### 348. Application of Act to existing companies

Save where in respect of existing companies this Act makes specific provision to the contrary, this Act shall apply to an existing company in the same manner as if the company had been incorporated under this Act, and—

- (a) a reference, express or implied, to a date of incorporation shall be construed as a reference to the date on which the company was originally incorporated; and
- (b) where the articles of the company include any provision contained in Table A in the First Schedule of the Act repealed by this Act the provision, so far as it is not contrary to or inconsistent with any express provision of this Act, shall continue to apply until altered pursuant to this Act.

*[First Schedule]*

## First Schedule

### Tables

#### Table A

#### *Part I - Articles of association of a public company limited by shares*

#### *Interpretation*

1. In these articles—

"the Act" means the Companies Act (Cap. 46:03);

"the seal" means the common seal of the company;

"secretary" means any person appointed to perform the duties of the secretary of the company;

Unless the context otherwise requires, words, or expressions contained in these articles shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these articles become binding on the company.

### ***Share capital and variation of rights***

2. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, but subject to the Act, shares in the company may be issued by the directors and any such share may be issued with such preferred, deferred, or other special rights or such restrictions, whether in regard to dividend, voting, return of capital, or otherwise, as the directors, subject to any ordinary resolution of the company, determine.
3. Subject to the Act, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the company are, liable to be redeemed.
4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these articles relating to general meetings shall *mutatis mutandis* apply, but subject to the following provisions—
  - (a) where a class has only one member, that member shall constitute a meeting;
  - (b) at any meeting of a class of members, one member of the class present in person or by proxy may demand a poll;
  - (c) at any meeting of a class of members other than an adjourned meeting the necessary quorum shall be one member present in person or by proxy, if there are not more than two members of that class, and in any other case shall be two members, present in person or by proxy, holding not less than one-third of the total voting rights of that class; and
  - (d) at any adjourned meeting of a class of members, the necessary quorum shall be one members of that class.
5. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking equally therewith.
6. The company may exercise the powers of paying commissions conferred by the Act, provided that the rate per cent or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the Act and the commission shall not exceed the rate of 10 per cent of the price at which the shares in respect whereof the same is paid are issued or an amount equal to 10 per cent of that price (as the case may be). Such commission may be satisfied by the payment of cash or the allotment of fully paid shares or partly in one way and partly in the other. The company may also on any issue of shares pay such brokerage as may be lawful.
7. Except as required by law, no person shall be recognized by the company as holding any share upon any trust, and the company shall not be bound by or be compelled in any way to recognize (even when having notice thereof) any equitable, contingent, future, or partial interest in any share or (except only as by these articles or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.
8. Every person whose name is entered as a member in the register of members shall be entitled without payment to receive a certificate under the seal of the company in accordance with the Act but in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.
9. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of a fee of one Kwacha or such less sum and on such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the company of investigating evidence as the directors think fit.

### ***Transfer of shares***

10. Subject to these regulations any member may transfer all or any of his shares by instrument in writing in the form in the Sixth Schedule to the Act or in any other form which the directors may approve. The instrument shall be executed by or on behalf of the transferor and transferee; and the transferor shall remain the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of members in respect thereof.

#### *[Sixth Schedule]*

11. The instrument of transfer shall be left for registration at the registered office of the company together with such fee not exceeding 25 tambala as the directors from time to time may require 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 thereupon the company shall subject to the powers vested in the directors by these regulations register the transferee as a shareholder and retain the instrument of transfer.
12. The registration of transfers may be suspended at such times and for such periods as the directors may from time to time determine not exceeding in the whole thirty days in any year.

### ***Transmission of shares***

13. In case of the death of a member the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder or last survivor of joint holders, shall be the only persons recognized by the company as having any title to his interest in the shares; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.
14. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member may upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by him registered as the transferee thereof.
15. If the person so becoming entitled elects to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects. If he elects to have another person registered he shall testify his election by executing to that person a transfer of the share. All the limitations, restrictions, and provisions of these articles relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.
16. Where the registered holder of any share dies or becomes bankrupt his personal representative or the assignee of his estate, as the case may be, shall be entitled to the same dividends and other advantages as the registered holder would have been entitled to if he had not died or become bankrupt, and to the same rights and remedies as if he were a member of the company, except that he shall not, before being registered as a member in respect of the share, be entitled to vote at any meeting of the company:

Provided that the company may at anytime give notice requiring any such personal representative or assignee to elect either to be registered himself or to transfer the share and if the notice is not complied with within three months the company may thereafter suspend payment of all dividends or other moneys payable in respect of the share until the requirements of the notice have been complied with.

Where two or more persons are jointly entitled to any share in consequence of the death of the registered holder they shall for the purposes of these regulations, be deemed to be joint holders of the share.

### ***Alteration of capital***

17. The company may from time to time by ordinary resolution—
  - (a) increase the share capital by new shares of such amount as the resolution shall prescribe;

- (b) consolidate and divide all or any of its share capital into shares of larger amount;
  - (c) subdivide its shares or any of them into shares of smaller amount;
  - (d) cancel shares which at the date of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.
18. Unless the company otherwise resolves all new shares shall first be offered to such persons as at the date of the offer are entitled to receive notices of general meetings in proportion, as nearly as possible, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer if not accepted, will be deemed to be declined, and, after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of these shares in such manners as they think most beneficial to the company. The directors may likewise so dispose of any odd shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this regulation.
19. The company may by special resolution reduce its share capital, any capital redemption reserve fund or any share premium account in any manner and with, and subject to, any incident authorized and consent required by law.

### ***General meetings***

20. The company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of the company and that of the next:
- Provided that—
- (a) so long as the company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year; and
  - (b) if all the members of the company entitled to attend and vote at any annual general meeting agree in writing that an annual general meeting shall be dispensed with in any year, it shall not be necessary to hold an annual general meeting that year.
21. All general meetings other than annual general meetings shall be called extraordinary general meetings.
22. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on the requisition of members as provided by section 106 of the Act. If at any time there are not within Malawi sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.
23. All general meetings shall be held in Malawi, at such times and places as the directors shall determine.

### ***Notice of general meetings***

24. An annual general meeting and a meeting called for the passing of a special resolution shall be called by twenty-one days notice in writing at the least, and a meeting of the company other than an annual general meeting or a meeting for the passing of a special resolution shall be called by fourteen days notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and in case of special business, the general nature of that business, and shall be given, in manner hereinafter mentioned or in such other manner if any, as may be prescribed by the company in general meeting, to

such persons as are, under the Act or the articles of the company, entitled to receive such notices from the company:

Provided that a meeting of the company shall notwithstanding that it is called by shorter notice than that specified in this article, be deemed to have been duly called if it is so agreed—

- (a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and
  - (b) in the case of any other meeting by a majority in number of the members having a right to attend and vote at the meeting being a majority together holding not less than 95 per cent of the total voting rights at that meeting of all the members.
25. Notices of general meetings shall be accompanied by any statements required to be circulated therewith on behalf of members in accordance with sections 117 and 118 of the Act.
26. The accidental omission to give notice of a meeting to, or the nonreceipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

### ***Proceedings at general meetings***

27. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets, and the reports of the directors and auditors, the election of directors in the place of those retiring, the fixing of the remuneration of the directors and the appointment of, and the fixing of the remuneration of, the auditors.
28. 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 persons being members or holding proxies from members shall be a quorum.
29. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members shall be dissolved, in any other case it shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members then present or represented by proxy shall be a quorum.
30. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, the members present shall choose one of their number to be chairman of the meeting.
31. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
32. At any general meeting a resolution put to the vote of the meeting, shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded—
- (a) by the chairman; or
  - (b) by at least three members present in person or by proxy; or
  - (c) by any member or members present in person or by proxy and representing not less than one-twentieth of the total voting rights of all the members having the right to vote at the meeting.

Unless a poll be so demanded a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to 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.

33. Except as provided in article 35, if a poll is duly demanded, it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
34. In the case of an equality of votes whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.
35. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.
36. Subject to the provisions of the Act, a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at general meetings (or, being bodies corporate or unincorporated associations, by their duly authorized representatives) shall be as valid and effective as if it had been passed at a general meeting of the company duly convened and held.

### ***Votes of members***

37. Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every member present in person shall have one vote, and on a poll every member shall have one vote for each share of which he is the holder.
38. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.
39. No member shall be entitled to vote at any general meeting unless all sums presently payable by him in respect of shares in the company have been paid.
40. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.
41. On a poll, votes may be given either personally or by proxy.
42. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorized in writing, or, if the appointor is a body corporate, either under seal, or under the hand of an officer or attorney duly authorized. A proxy need not be a member of the company.
43. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company or at such other place within Malawi as is specified for that purpose in the notice convening the meeting, not less than forty-eight hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, or, in the case of a poll not less than twenty-four hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.
44. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

(Name of company, Limited)

I/We \_\_\_\_\_, of (address), being a member/members of the above-named company, hereby

appoint \_\_\_\_\_ of \_\_\_\_\_, or failing him  
 \_\_\_\_\_ of \_\_\_\_\_, as my/our proxy to vote for me/us on my/  
 our behalf at the (annual or extraordinary, as the case may be) general meeting of the company, to be held  
 on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, at any adjournment thereof.

This form is to be used—

\* in favour of

\_\_\_\_\_ resolution no. \_\_\_\_\_;

against

in favour of

\* \_\_\_\_\_ resolution no. \_\_\_\_\_;

against

in favour of

\* \_\_\_\_\_ resolution no. \_\_\_\_\_;

against

Unless otherwise instructed, the proxy will vote as he thinks fit.

Date \_\_\_\_\_ Signed \_\_\_\_\_;

\* Strike out not be a member of the company

A proxy need not be a member of the company.

45. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.
46. A vote given in accordance with the terms of an instrument of proxy, shall be valid notwithstanding the previous death, or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the share in respect of which the proxy is given, provided that nomination in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

### ***Bodies corporate and unincorporated associations acting by representatives at meetings***

47. Any body corporate or unincorporated association which is a member of the company may by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person authorized shall be entitled to exercise the same powers on behalf of the body corporate or unincorporated association which he represents as that body corporate or unincorporated association could exercise if it were an individual member of the company, and shall be deemed to be a member for the purpose of reckoning a quorum.

### ***Directors***

48. The first directors shall be appointed in writing by the subscribers of the memorandum of association or a majority of them.
49. The number of the directors, not being fewer than three, shall be determined by the subscribers of the memorandum of association or by a majority of them or, failing such determination, shall be the number of directors appointed under the preceding articles.

50. The remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of directors or general meetings of the company or in connexion with the business of the company.
51. The shareholding qualification for directors may be fixed by the company in general meeting, and unless and until so fixed no qualification shall be required.

#### ***Borrowing powers***

52. The directors may exercise all the powers of the company to borrow money, and to mortgage or charge its undertaking and property or any part thereof, and to issue debentures, debenture stock, and other securities whether outright or as security for any debt, liability or obligation of the company or of any third party:

Provided that the amount for the time being remaining undischarged of moneys borrowed or secured by the directors as aforesaid (apart from temporary loans obtained from the company's bankers in the ordinary course of business) shall not at any time, without the previous sanction of the company in general meeting, exceed the amount of the share capital of the company for the time being issued, but nevertheless no lender or other person dealing with the company shall be concerned to see or inquire whether this limit is observed.

#### ***Powers and duties of directors***

53. The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Act or by these articles, required to be exercised by the company in general meeting, subject, nevertheless to the provisions of the Act and to these articles.
54. The directors may from time to time and at any time by power of attorney appoint any body corporate, firm or person or body of persons, whether nominated directly or indirectly by the director to be the attorney or attorneys of the company for such purposes with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these articles) and for such period and subject to such conditions as they may think fit, and any such power of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorize any such attorney to delegate all or any of the powers, authorities and discretions vested in him.
55.
  - (1) A director who is in any way, whether directly or indirectly, materially interested in a contract or proposed contract with the company shall declare the nature and extent of his interest at a meeting of the directors or shareholders in accordance with section 150 of the Act.
  - (2) Subject to these articles a director shall not vote in respect of any contract or arrangement in which he is interested, and if he shall do so his vote shall not be counted, nor shall he be counted in the quorum present at the meeting, but neither of these prohibitions shall apply to—
    - (a) any arrangement for giving any director any security, or indemnity in respect of money lent by him to or obligations undertaken by him for the benefit of the company; or
    - (b) any arrangement for the giving by the company of any security to a third party in respect of a debt or obligation of the company for which the director himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or
    - (c) any contract by a director to subscribe for or underwrite shares or debentures of the company;

and these prohibitions may at any time be suspended or relaxed to any extent, and either generally or in respect of any particular contract, arrangement or transaction, by the company in general meeting.

- (3) A director may hold any other office or place of profit under the company (other than the office of auditor) in conjunction with his office of director for such period and on such terms (as to remuneration and otherwise) as the directors may determine and no director or intending director shall be disqualified by his office from contracting with the company site with regard to his tenure of any such other office or place of profit or as vendor purchaser or otherwise, nor shall any such contract, or any contract or arrangement entered into by or on behalf of the company in which any director is in any way interested, be liable to be avoided, nor shall any director so contracting or being so interested be liable to account to the company for any profit realized by any such contract or arrangement by reason of such director holding that office or of the fiduciary relation thereby established.
  - (4) A director, notwithstanding his interest, may be counted in the quorum present at any meeting whereat he or any other director is appointed to hold any such office or place of profit under the company or whereat the terms of any such appointment are arranged, and he may vote on any such appointment or arrangement other than his own appointment or the arrangement of the terms thereof.
  - (5) Any director may act by himself or his firm in a professional capacity for the company, and he or his firm, shall be entitled to remuneration for professional services as if he were not a director; provided that nothing herein contained shall authorize a director or his firm to act as auditor to the company.
56. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the directors shall from time to time by resolution determine.
57. The directors shall cause minutes to be made in books provided for the purpose—
- (a) of all appointments of officers made by the directors;
  - (b) of the names of the directors present at each meeting of the directors and of any committee of the directors; and
  - (c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors.
58. The directors on behalf of the company may pay a gratuity or pension or allowance on retirement to any director who has held any other salaried office or place of profit with the company or to his widow or dependants and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.

### ***Disqualification of directors***

59. The office of director shall be vacated if the director—
- (a) ceases to be a director by virtue of section 144 of the Act; or
  - (b) becomes bankrupt or makes any arrangement or composition with his creditors generally; or
  - (c) becomes prohibited or disqualified from being a director by reason of any order made by a competent court; or
  - (d) becomes of unsound mind; or
  - (e) resigns his office by notice in writing to the company; or
  - (f) shall for more than six months have been absent without permission of the directors from meetings of the directors held during that period; or
  - (g) is directly or indirectly materially interested in any contract or proposed contract with the company and fails to declare the nature of his interest in manner required by the Act.

### ***Rotation of directors***

60. At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.
61. 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. A retiring director shall be eligible for re-election.
62. The company at the meeting at which a director retires in manner aforesaid may fill the vacated office by electing a person thereto, and in default the retiring director shall if offering himself for re-election be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost.
63. No person other than a director retiring at the meeting shall unless recommended by the directors be eligible for election to the office of director at any general meeting unless not less than three nor more than twenty-one days before the date appointed for the meeting there shall have been left at the registered office of the company notice in writing, signed by a member duly qualified to attend and vote at the meeting, for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.
64. The company may from time to time by ordinary resolution increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.
65. The directors shall have power at any time and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these articles. Any director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for re-election but shall not be taken into account in determining the directors who are to retire by rotation at such meeting.
66. The company may by ordinary resolution, of which notice has been given in accordance with section 146 of the Act, remove any director before the expiration of his period of office notwithstanding anything in these articles or any agreement between the company and such director. Such removal shall be without prejudice to any claim such director may have for damages for breach of any contract of service between him and the company.
67. The company may by ordinary resolution appoint another person in place of a director removed from office under the immediately preceding articles, and without prejudice to the powers of the directors under article 65 the company in general meeting may appoint any person to be a director either to fill a casual vacancy or as an additional director. A person, appointed in place of a director so removed or to fill such a vacancy shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

### ***Proceedings of directors***

68. 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 case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, any time summon a meeting of the directors. Subject to the provisions hereinafter contained regarding alternate directors, it shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Malawi.
69. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.
70. The continuing directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below, the number fixed by or pursuant to the articles of the company as the necessary

quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

71. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.
72. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.
73. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.
74. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.
75. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.
76. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

#### ***Alternate directors***

77. A director may, either generally or in respect of any period in which he is absent from Malawi or unable for any reason to act as a director, appoint another director, or any other person approved by a resolution of the board of directors, as an alternate director. Such appointment shall be in writing signed by the appointor and lodged with the company.
78. Every alternate director so appointed shall during the currency of such appointment be deemed for all purposes to be a director and officer of the company and not the agent of his appointor, and shall be entitled to receive all notices of meetings and to attend, speak and vote at all meetings accordingly; but he shall not himself be entitled to appoint an alternate director.
79. The company shall not be liable to pay additional remuneration by reason of the appointment of an alternate director.
80. An alternate director who is himself a director shall have an additional vote for each director for whom he acts as alternate at every meeting of the directors.
81. The appointment of an alternate director shall cease at the expiration of the period, if any, for which he was appointed, or if his appointor gives written notice to that effect to the company, or if his appointor ceases for any reason to be a director or if the alternate resigns by notice in writing to the company.
82. Until the cessation of the appointment of an alternate director both the appointor and appointee shall be and may act as directors of the company, but no alternate, unless a director in his own right, shall attend or vote at any meeting of the directors or any committee of directors at which his appointor is present.

#### ***Managing directors***

83. The directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment. A director so appointed shall not, whilst holding that office, be subject to retirement by rotation or be taken into account in determining the

rotation of retirement of directors, but his appointment shall be automatically determined if he ceases from any cause to be a director.

84. A managing director shall receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the directors may determine.
85. The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers and may from time to time revoke, withdraw, alter or vary all or any of such powers.

### ***Secretary***

86. The secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.
87. A provision of the Act or these articles requiring or authorizing a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in the place of, the secretary.

### ***Common seal***

88. (1) This article applies if the company has a seal (the "common seal").
  - (2) The common seal shall only be applied to a document if its use on that document has been authorised by a decision of the directors.
  - (3) If the common seal is applied to a document, the document shall be—
    - (a) signed by an authorised person; and
    - (b) countersigned by another authorised person.
  - (4) For the purposes of this article, an authorised person is—
    - (a) any director of the company;
    - (b) the company secretary, if any; or
    - (c) any person authorised by the directors for the purpose of signing and countersigning documents to which the common seal is applied.

*[26 of 2012]*

### ***Dividends and reserve***

89. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.
90. 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.
91. No dividend shall be paid otherwise than out of profits.
92. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the 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 distribute.
93. Any general meeting declaring a dividend or bonus may direct payment of such dividend or bonus wholly or partly by the distribution of specific assets and in particular of paid-up shares, debentures or debenture

stock of any other company or in any one or more of such ways and the directors shall give effect to such resolution and where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient, and in particular may issue fractional certificates and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as may seem expedient to the directors.

94. Any dividend, interest or other moneys payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts from any dividends, bonuses or other moneys payable in respect of the shares held by them as joint holders.
95. No dividend shall bear interest against the company.

### *Accounts*

96. The directors shall cause proper accounting records to be kept with respect to—
- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
  - (b) all sales (except ordinary retail sales) and purchases of goods by the company; and
  - (c) the assets and liabilities of the company.

Proper accounting records shall not be deemed to be kept if there are not kept, such books of account as are necessary to give a true and fair view of the state of the company's affairs and to explain its operations and transactions.

97. The accounting records shall be kept at the registered office of the company, or, subject section 180 of the Act, at such other place or places as the directors think fit, and shall always be open to the inspection of any director.
98. The directors shall from time to time determine whether and to what extent and at what time and places and under what conditions or regulations, the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorized by the directors or by the company in general meeting.
99. The directors shall from time to time, in accordance with the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets, group accounts (if any) and reports as are required by law.
100. The directors shall, at some date not later than eighteen months after incorporation of the company and subsequently once at least in every calendar year at intervals of not more than fifteen months cause to be prepared and sent to every member of the company and to every holder of debentures of the company a copy of each of the following documents—
- (a) a profit and loss account and balance sheet;
  - (b) a report by the directors thereon; and
  - (c) any report by the auditors:

Provided that this article shall not require a copy of such documents to be sent to a member or debentureholder of whose address the company is unaware, but such person shall be entitled to be furnished on demand without charge with a copy of the last of such profit and loss accounts and balance sheets and directors and auditors reports.

101. Unless the holding of an annual general meeting is waived by the members in accordance with section 104 of the Act, the documents referred to in article 100 shall be laid before the company in general meeting.

### ***Capitalization of profits***

102. The company in general meeting may upon the recommendation of the directors resolve that it is desirable to capitalize any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the members or any class of members *pro rata* to their respective shareholdings on condition that the same be not paid in cash but be applied in paying up in full unissued shares or debentures of the company to be allotted and distributed credited as fully paid up to and amongst such members in the proportion aforesaid, and the directors shall give effect to such resolution:

Provided, that a share premium account and a capital redemption reserve fund may, for the purposes of this article, only be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.

103. Whenever such a resolution as aforesaid shall have been passed the directors shall make all appropriations and applications of the sums resolved to be capitalized thereby, and all allotments and issues of fully-paid shares or debentures, if any; and generally shall do all acts and things required to give effect thereto, with full power to the directors to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions, and also to authorize any person to enter on behalf of all the members entitled thereto into an agreement with the company providing for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalization, and any agreement made under such authority shall be effective and binding on all such members.

### ***Audit***

104. Auditors shall be appointed and their duties regulated in accordance with the Act.

### ***Notices***

105. A notice may be given by the company to any member either personally or by sending it by post to him or to his address on the register of members, or (if he has no such address within Malawi) to the address, if any within Malawi supplied by him to the company for the giving of notice to him or by leaving it for firm with some person apparently over the age of eighteen years at such address. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected at the expiration of seven days or, if it is sent to an address outside Malawi, fourteen days after the letter containing the same is posted.
106. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.
107. A notice may be given by the company to the persons entitled to a share in consequence of the death, receivership or bankruptcy of a member either personally 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, receiver, or trustee of the bankrupt, or by any like description, at the address, if any, within Malawi supplied for the purpose by the persons claiming to be so entitled or by leaving it for diem with some person apparently over the age of eighteen years at such address, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death, receivership or bankruptcy had not occurred.
108. Notice of every general meeting shall be given in any manner hereinbefore authorized to—
- (a) every member except those members, who (having no registered address within Malawi) have not supplied to the company an address within Malawi for the giving of notices to them;

- (b) every person upon whom the ownership of a share devolves by reason of his being a legal personal representative, a receiver or a trustee in bankruptcy of a member where the member but for his death, receivership or bankruptcy would be entitled to receive notice of the meeting;
- (c) every director of the company; and
- (d) the auditor for the time being of the company.

No other person shall be entitled to receive notices of general meetings.

### ***Winding-up***

109. If the company shall be wound-up the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Act divide amongst the members in specie or kind the whole or any part of the assets of the company (whether they shall consist of property of the same kind or not) and may for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the members as the liquidator, with the like sanction, shall think fit.

### ***Indemnity***

110. Every director, managing director, agent auditor, secretary and other officer for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connexion with any application under section 342 of the Act in which relief is granted to him by the court.

### ***Part II - Articles of association of a private company limited by shares***

1. The regulations contained in Part I of Table A shall apply.
2. The company is a private company and accordingly the right to transfer shares is restricted in manner hereinafter prescribed.

### ***Transfer of shares***

3. A share may be transferred by a member or other person entitled to transfer the same (hereinafter called the proposing transferor) to any member selected by the proposing transferor.
4. Any share may transferred by a member to his or her father or mother or to any lineal descendant of his or her father and mother or to his wife or her husband, and any share, of a deceased member may be transferred by his executors or administrators to the father or mother or the lineal descendants of the father and mother or the widow or widower of such deceased member, and shares standing in the name of the trustees of the will of any deceased member may be transferred upon any change of trustees to the trustees for the time being of the will.
5. Except where the transfer is made pursuant to articles 3 and 4 the proposing transferor shall give notice in writing (hereinafter called "the transfer notice") to the company that he desires to transfer the same. The notice shall constitute the company his agent for the sale of the share to any member of the company or to any person selected by the directors as one whom it is desirable in the interests of the company to admit to membership at the fair value to be fixed by the auditor for the time being of the company. The transfer notice may include several shares, and in such case shall operate as if it were a separate notice in respect of each.
6. If the company within the space of sixty days after being served with such transfer notice shall find a member or person selected as aforesaid willing to purchase the share (hereinafter called "the purchasing member") and give notice thereof to the proposing transferor he shall be bound, upon payment of the fair value, to transfer the share to the purchasing member who shall be bound to complete the purchase within fourteen days from the service of such last-mentioned notice.

7. The directors shall, with a view to finding a purchasing member, offer at the fair value any shares comprised in a transfer notice to the persons then holding the remaining shares in the company as nearly as may be in proportion to their respective holdings of shares in the company and shall limit a time within which such offer if not accepted in whole or in part shall be deemed to be declined, and shall notify such persons that any such person who desires to purchase shares in excess of his said proportion shall in his reply state how many additional shares he desires to purchase at the fair value, and if all such persons do not accept their said proportions in full the unaccepted shares shall be used for satisfying the said claims for additional shares. If there shall be insufficient of the said unaccepted shares to satisfy in full all such claims for additional shares, the said unaccepted shares shall be distributed amongst persons making such claims as nearly as may be in proportion to the said respective holdings of shares in the company provided that no person shall be bound to take more additional shares than those he shall have offered to purchase. The directors shall make such arrangements as regards the finding of a purchasing member for any shares not accepted or claimed as aforesaid within the time so limited as they shall think just and reasonable.
8. The auditor for the time being of the company shall on the application of the directors certify in writing the sum which, in his opinion, is the fair value, and such sum shall be deemed to be the fair value, and in so certifying the auditor shall be considered to be acting as an expert, and not as an arbitrator, and accordingly the Arbitration Act shall not apply.

*[Cap. 6:03]*

9. If in any case the proposing transferor, after having become bound as aforesaid, makes default in transferring the share, the company may receive the purchase money, and shall thereupon cause the name of the purchasing member to be entered in the register as the holder of the share, and shall hold the purchase money in trust for the said proposing transferor. The receipt of the company for the purchase money shall be a good discharge to the purchasing member, and after his name has been entered in the register, in purported exercise of the aforesaid power, the validity of the proceedings shall not be questioned by any person. The proposing transferor shall in such a case be bound to deliver up his certificate for the said shares, and on such delivery shall be entitled to receive the said purchase price, without interest, and if such certificate shall comprise any shares which he has not become bound to transfer as aforesaid the company shall issue to him a balance certificate for such shares.
10. If the company shall not within the space of sixty days after being served with the transfer notice find a purchasing member and give notice in manner aforesaid the proposing transferor shall at any time within six months afterwards, be at liberty to sell and transfer the shares (or those not placed) to any person, and at any price.

| Names, addresses and occupations of subscribers |                     |                |            |           |
|---|---------------------|----------------|------------|-----------|
| Full name                                       | Residential address | Postal address | Occupation | Signature |
|   |                     |                |            |           |
|   |                     |                |            |           |
|   |                     |                |            |           |
|   |                     |                |            |           |
|   |                     |                |            |           |
|   |                     |                |            |           |

Dated: \_\_\_\_\_

Witness to the above signatures: \_\_\_\_\_

**Table B - Memorandum of association of a company limited by shares**

1. The name of the company is \_\_\_\_\_ Limited.
2. \*The business which the company is authorized to carry on is restricted as follows—  
 \*The business which the company is authorized to carry on is unrestricted.
3. The liability of the members is limited.
4. The share capital of the company is \_\_\_\_\_ Kwacha divided into shares as follows: †
5. \*The company is a public company.  
 \*The company is a private company and accordingly—
  - (a) the number of members of the company (exclusive of persons who are *bona fide* in the employment of the company and persons who, having been, formerly *bona fide* in the employment of the company were while in that employment, and have continued after that employment to be, members of the company) is limited to fifty; ‡

\_\_\_\_\_

\*Delete whichever is inappropriate.

† Here should be set out the description of each class of shares, the number of shares in each class and their nominal value, and the rigots, privileges, restrictions and conditions attaching to each class.

‡ A number smaller than fifty may be substituted. Where two or more persons hold shares jointly, they are to be treated as a single member.
- (b) the company is prohibited from making any invitation to the public to acquire any of its shares or debentures; and
- (c) the right to transfer shares in the company is restricted by its articles of association.

§We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Note: The provisions of this memorandum of association may only be altered to the extent and in the manner provided by section 8 of the Companies Act.

| Full name | Residential address | Postal address | Occupation | Number and class of shares taken | Signature |
|-----------|---------------------|----------------|------------|----------------------------------|-----------|
| _____     | _____               | _____          | _____      | _____                            | _____     |

| Full name | Residential address | Postal address | Occupation | Number and class of shares taken | Signature |
|-----------|---------------------|----------------|------------|----------------------------------|-----------|
| _____     | _____               | _____          | _____      | _____                            | _____     |
| _____     | _____               | _____          | _____      | _____                            | _____     |
| _____     | _____               | _____          | _____      | _____                            | _____     |
| _____     | _____               | _____          | _____      | _____                            | _____     |

Total shares taken:

Dated the \_\_\_ day of \_\_\_ 19 \_\_\_\_

Witness to the above signatures: \_\_\_\_\_

**Table C - Memorandum and articles of association of a company limited by guarantee memorandum of association**

1. The name of the company is: \_\_\_\_\_
2. The objects for which the company is established are: \_\_\_\_\_
3. The income and property of the company shall be applied solely towards the promotion of the objects of the company, and no portion thereof shall be paid or transferred directly or indirectly to the members of the company except as may be permitted by law.
4. The liability of the members is limited.
5. Each member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member for payment of debts and liabilities of the company and of the costs of winding up and for the adjustment of the rights of the members among themselves such amount as may be required not exceeding Kwacha.

\_\_\_\_\_

§Any additional provisions should be set out here.

6. If upon the winding-up or dissolution of the company there remains after the discharge of all its debts and liabilities any property of the company, such property shall not be distributed among the members but shall be transferred to some other company limited by guarantee having objects similar to the objects of the company or applied to some charitable object, such other company or charity to be determined by ordinary resolution of the members in general meeting prior to the dissolution of the company.

\*7. The company is a public company and proposes to be registered.

{
   
 \*without any limit
   
 \*with a limit of .....
   
 } on the number of its members.

OR

- \*8. The company is a private company and accordingly—
  - (a) the number of members of the company (exclusive of persons who are *bona fide* in the employment of the company and of persons who having been formerly bonafide in the employment of the company were while in such employment and have continued after the determination of such employment to be members of the company) is limited to fifty; † and
  - (b) the company is prohibited from making any invitation to the public to acquire any of its debentures.

(††)

\_\_\_\_\_   
 \*Delete whichever is inappropriate

† A number smaller than fifty may be substituted.

††† Any additional provisions should be set out here.

Note: The provisions of this memorandum of association may only be altered to the extent and in the manner provided by section 8 of the Companies Act.

We, the several persons whose names and addresses are subscribed, wish to be formed into a company limited by guarantee in pursuance of this memorandum of association.

| Full name | Residential address | Postal address | Occupation | Signature |
|-----------|---------------------|----------------|------------|-----------|
|           |                     |                |            |           |
|           |                     |                |            |           |
|           |                     |                |            |           |
|           |                     |                |            |           |
|           |                     |                |            |           |
|           |                     |                |            |           |
|           |                     |                |            |           |
|           |                     |                |            |           |

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_

Witness to the above signatures: \_\_\_\_\_

### Articles of Association

#### *Interpretation*

1. In these articles—

"the Act" means the Companies Act (Cap. 46:03);

"member" means an Ordinary Member;

"the seal" means the common seal of the company;

"secretary" means any person appointed to perform the duties of the secretary of the company.

Unless the context otherwise requires, words or expressions contained in these articles shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these articles become binding on the company.

### ***Ordinary members***

2. The subscribers of these articles and such other persons as the board of directors shall admit to Ordinary Membership shall be members of the company. The members in general meeting may by ordinary resolution prescribe qualifications for membership of the company and unless the resolution otherwise, provides no person shall thereafter, be admitted to membership by the board of directors unless he has the prescribed qualifications.

### ***Associate members***

3. The company in general meeting may resolve by ordinary resolution that the board of directors may admit such persons as the board shall think fit to Associate Membership of the company and may prescribe qualifications for such Associate Membership. Associate Members shall be permitted take part in such proceedings and functions of the company as the resolution shall prescribe or, in default of prescription, as the board of directors shall think fit, but shall not be members of the company in its corporate capacity and shall not have any vote on any resolution at any general meeting of the company, or be counted towards a quorum.

### ***Honorary membership***

4. The company in general meeting may resolve by ordinary resolution that the board of directors may admit to Honorary Membership of the company any person, whether or not an Ordinary or Associate Member of the company, who in the opinion of the members has rendered signal service to the company or to any of the objects which the company is formed to promote. An Honorary Member, unless also admitted as an Ordinary Member of the company, shall have the same rights as an Associate Member, and if also admitted as an Ordinary Member shall have the same rights as an Ordinary Member, but shall not be liable to pay any subscription to the company.

### ***Resignation or exclusion of members***

5. (a) Any Ordinary, Associate or Honorary Member may resign his membership by notice in writing to the board of directors.
- (b) The board of directors may in its discretion exclude from membership of the company any Ordinary or Associate Member—
- (i) if the subscription payable to the company by such Ordinary or Associate Member shall be unpaid six months after the same shall have become due and payable; or
  - (ii) if in the opinion of the board of directors the continued membership of such person would be detrimental to the interests of the company or to the furtherance of its objects.

### ***Subscriptions***

6. Ordinary and Associate Members shall pay such annual subscriptions as the members in general meeting on the recommendation of the board of directors shall determine by ordinary resolution from time to

time. The subscription shall be due and payable on admission to membership and thereafter on the first day of January in each year or on such other date as the resolution shall provide. The subscription may differ as between Ordinary and Associate Members and a different subscription may be prescribed in the case of bodies corporate admitted to membership or in the case of any person admitted to membership as representing any institution or unincorporated association.

### ***Meetings***

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

Provided that—

- (a) so long as the company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year; and
  - (b) if all the members of the company entitled to attend and vote at any annual general meeting agree in writing that an annual general meeting shall be dispensed with in any year, it shall not be necessary to hold an annual general meeting that year.
8. All general meetings other than annual general meetings shall be called extraordinary general meetings.
9. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on the requisition of members as provided by section 106 of the Act. If at any time there are not within Malawi sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.
10. All general meetings shall be held in Malawi, at such times and places as the directors shall determine.

### ***Notice of general meetings***

11. An annual general meeting and a meeting called for the passing of a special resolution shall be called by twenty-one days notice in writing at the least, and a meeting of the company other than an annual general meeting or a meeting for the passing of a special resolution shall be called by fourteen days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business and shall be given, in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the Act or the articles of the company, entitled to receive such notices from the company:

Provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in this article be deemed to have been duly called if it is so agreed—

- (a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and
  - (b) in the case of any other meeting by a majority in number of the members having a right to attend and vote at the meeting, being a majority together representing not less than ninety-five per cent of the total voting rights at that meeting of all the members.
12. Notices of general meetings shall be accompanied by any statements required to be circulated therewith on behalf of members in accordance with sections 117 and 118 of the Act.
13. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

### ***Proceedings at general meetings***

14. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of the consideration of the accounts, and the reports of the directors and auditors, the election of directors in the place of those retiring, the fixing of the remuneration of the directors and the appointment of, and the fixing of the remuneration of, the auditors.
15. 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 shall be a quorum.
16. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved, in any other case it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.
17. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, the members present shall choose one of their number to be chairman of the meeting.
18. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment of or the business to be transacted at an adjourned meeting.
19. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded—
  - (a) by the chairman; or
  - (b) by at least three members present in person or by proxy; or
  - (c) by any member or members present in person or by proxy and representing not less than one-twentieth of the total voting rights of all the members having the right to vote at the meeting.

Unless a poll be so demanded a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost and an entry to that effect in the book containing the minutes of proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

The demand for a poll may be withdrawn.

20. Except as provided in article 22, if a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
21. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.
22. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.
23. Subject to the provisions of the Act, a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at general meetings (or being bodies corporate by their duly authorized representatives) shall be a valid and effective as if it had been passed at a general meeting of the company duly convened and held.

### ***Votes of members***

24. Every member shall have one vote.
25. No member shall be entitled to vote at any general meeting unless all moneys presently payable by him to the company have been paid.
26. On a poll votes may be given either personally or by proxy.
27. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorized in writing, or if the appointor is a body corporate enter under senior under the hand of an officer or attorney duly authorized. A proxy need not be a member of the company.
28. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company or at such other place within Malawi as is specified for that purpose in the notice convening the meeting, not less than forty-eight hours before the time for holding the meeting to adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty four hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.
29. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

(Name of Company)

\*I/We \_\_\_\_\_, of \_\_\_\_\_ (address), \_\_\_\_\_ being a member/  
members of the above-named company, hereby appoint † \_\_\_\_\_ of \_\_\_\_\_, or failing him  
† \_\_\_\_\_, of \_\_\_\_\_ as \* my/our proxy to vote for \* me/us on \* my/our  
behalf at the (annual or extraordinary, as the case may be) general meeting of the company to be held on  
the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, and at any adjournment thereof.

This form is to be used—

\* in favour of resolution no. \_\_\_\_\_ ;

against

\* in favour of resolution no. \_\_\_\_\_ ;

against

\* in favour of resolution no. \_\_\_\_\_ ;

against

Unless otherwise instructed, the proxy will vote as he thinks fit.

Date \_\_\_\_\_ Signed \_\_\_\_\_

\*Strike out whichever is not desired

† A proxy need not be a member of the company.

30. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.
31. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, provided that no intimation in writing of such death, insanity or revocation as

aforesaid shall have been received by the company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

### ***Bodies corporate and unincorporated associations acting by representatives at meetings***

32. Any body corporate or unincorporated association which is a member of the company may by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company, and the person so authorized shall be entitled to exercise the same powers on behalf of the body corporate or unincorporated association which he represents as that body corporate or unincorporated association could exercise if it were an individual member of the company, and shall be deemed to be a member for the purpose of reckoning a quorum.

### ***Directors***

33. The first directors shall be appointed in writing by the subscribers of the memorandum of association or a majority of them.
34. The number of the directors, not being fewer than three, shall be determined by the subscribers of the memorandum of association or a majority of them or, failing such determination, shall be the number of directors appointed under the preceding article.
35. The directors may be paid such travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee, of the directors or general meetings of the company or in connexion with the affairs of the company as the company in general meeting shall from time to time determine.

### ***Borrowing powers***

36. The directors may exercise all the powers of the company to borrow money, and to mortgage or charge its undertaking and property, or any part thereof, and to issue debentures, debenture stock and other securities, whether outright or as security for any debt, liability or obligation of the company or of any third party.

### ***Powers and duties of directors***

37. The affairs of the company shall be managed by the directors, who may pay all expenses incurred in registering, the company, and may exercise all such powers of the company as are not, by the Act or by these articles, required to be exercised by the company in general meeting, subject nevertheless to the provisions of the Act and these articles.
38. The directors may from time to time and at any time by power of attorney, appoint any body corporate, firm or person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these articles) and for such period and subject to such conditions as they may think fit, and any such Powers of attorney may contain such provisions^ the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorize any such attorney to delegate all or any of the powers, authorities and discretions vested in him.
39. A director shall not vote in respect of any contract in which he is interested or any matter arising thereout, and if he does so vote his vote shall not be counted; and a director so interested shall not be counted in the quorum required for that business.
40. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the directors shall from time to time by resolution determine.
41. The directors shall cause minutes to be made in books provided for the purpose—
- (a) of all appointments of officers made by the directors;

- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
- (c) of all resolutions and proceedings at all meetings of the company and of the directors, and of committees of directors.

### ***Disqualification of directors***

42. The office of director shall be vacated if the director—
- (a) without the consent of the company in general meeting holds any office of profit under the company; or
  - (b) becomes bankrupt or makes any arrangement or composition with his creditors generally; or
  - (c) becomes prohibited or disqualified from being a director by reason of any order made by a competent court; or
  - (d) becomes of unsound mind; or
  - (e) resigns his office by notice in writing to the company; or
  - (f) is directly or indirectly interested in any contract with the company and fails to declare the nature of his interest in manner required by section 150 of the Act.

### ***Rotation of directors***

43. At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.
44. 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. A retiring director shall be eligible for re-election.
45. The company at the meeting at which a director retires in manner aforesaid may fill the vacated office by electing a person thereto and in default the retiring director shall, if offering himself for re-election, be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost.
46. No person other than a director retiring at the meeting shall unless recommended by the directors be eligible for election to the office of director at any general meeting unless, not less than three nor more than twenty-one days before the date appointed for the meeting there shall have been left at the registered office of the company notice in writing, signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.
47. The company may from time to time by ordinary resolution increase or reduce the number of directors and may also determine in what rotation the increased or reduced number is to go out of office.
48. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these articles. Any director so appointed shall hold office only until the next following annual general meeting and shall then be eligible for re-election, but shall not be taken into account in determining the directors who are to retire by rotation at such meeting.
49. The company may by ordinary resolution of which notice has been given in accordance with section 146 of the Act, remove any director before the expiration of his period of office, notwithstanding anything in these articles or in any agreement between the company and such director.

50. The company may by ordinary resolution appoint another person in place of a director removed from office under the immediately preceding article. Without prejudice to the powers of the directors under article 48 the company in general meeting may appoint any person to be a director either to fill a casual vacancy or as an additional director. The person appointed to fill such a vacancy shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

### ***Proceedings of directors***

51. The directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors. Subject to the provisions hereinafter contained regarding alternate directors, it shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Malawi.
52. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.
53. The continuing directors may act notwithstanding any vacancy in then body, but, if and so long as their number is reduced below the number fixed by or pursuant to the articles of the company as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.
54. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.
55. The directors may delegate any of their powers to committees consisting of such member or members of their body us they think fit: any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.
56. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.
57. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.
58. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.
59. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

### ***Alternate directors***

60. A director may, either generally or in respect of any period in which he is absent from Malawi or unable for any reason to act as a director, appoint another director, or any other person approved by a resolution of the board of directors, as an alternate director. Such appointment shall be in writing signed by the appointor and appointee and lodged with the company.
61. Every alternate director so appointed shall during the currency of such appointment be deemed for all purposes to be a director and officer of the company and not the agent of his appointor, and shall be

entitled to receive all notices of meetings and to attend, speak and vote at all meetings accordingly; but he shall not himself be entitled to appoint an alternate director.

62. The company shall not be liable to pay additional remuneration by reason of the appointment of an alternate director.
63. An alternate director who is himself a director shall have an additional vote for each director for whom he acts as alternate at every meeting of the directors.
64. The appointment of an alternate director shall cease at the expiration of the period, if any, for which he was appointed, or if his appointor gives written notice to that effect to the company, or if his appointor ceases for any reason to be a director or if the alternate resigns by notice in writing to the company.
65. Until the cessation of the appointment of an alternate director both the appointor and appointee shall be and may act as directors of the company, but no alternate, unless a director in his own right, shall attend or vote at any meeting of the directors or any committee of directors at which his appointor is present.

### ***Secretary and treasurer and officers***

66. The directors shall appoint a secretary and may also appoint a treasurer and such other officers and agents as may be necessary or expedient. A person so appointed need not be a member of the company. Any person so appointed may be removed by the directors.
67. A provision of the Act or these articles requiring or authorizing a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

### ***Common seal***

68.
  - (1) This article applies if the company has a seal (the "common seal").
  - (2) The common seal shall only be applied to a document if its use on that document has been authorised by a decision of the directors.
  - (3) If the common seal is applied to a document, the document shall be—
    - (a) signed by an authorised person; and
    - (b) countersigned by another authorised person.
  - (4) For the purposes of this article, an authorised person is—
    - (a) any director of the company;
    - (b) the company secretary, if any; or
    - (c) any person authorised by the directors for the purpose of signing and countersigning documents to which the common seal is applied.

[26 of 2012]

### ***Accounts***

69. The directors shall cause proper accounting records to be kept with respect to—
  - (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
  - (b) all sales (except ordinary retail sales) and purchases of goods by the company; and

- (c) the assets and liabilities of the company.

Proper accounting records shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the company's affairs and to explain its operations and transactions.

70. The accounting records shall be kept at the registered office of the company or subject to section 180 of the Act, at such other place or places as the directors think fit, and shall always be open to the inspection of any director.
71. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorized by the directors or by the company in general meeting.
72. The directors shall from time to time in accordance with the Act, cause to be prepared and to be laid before the company in general meeting such income and expenditure accounts, balance sheets, group accounts (if any) and reports as are required by law.
73. The directors shall, at some date not later than eighteen months after the incorporation of the company and subsequently once at least every calendar year at intervals of not more than fifteen months cause to be prepared and sent to every member of the company and to every holder of debentures of the company a copy of each of the following documents—
  - (a) an income and expenditure account and balance sheet;
  - (b) any report by the directors thereon; and
  - (c) a report by the auditors:

Provided that this article shall not require a copy of such documents to be sent to a member or debentureholder of whose address the company is unaware, but such person shall be entitled to be furnished on demand without charge with a copy of the last of such income and expenditure accounts and balance sheets and directors' and auditors' reports.

74. Unless the holding of an annual general meeting is waived by the members in accordance with section 104 of the Act, the documents referred to in article 73 shall be laid before the company in general meeting.

### ***Audit***

75. Auditors shall be appointed and their duties regulated in accordance with the Act.

### ***Notices***

76. A notice may be given by the company to any member either personally, or by sending it by post to him or to his registered address, or (if he has no registered address within Malawi) to the address, if any, within Malawi supplied by him to the company for the giving of notice to him or by leaving it for him with some person apparently over the age of eighteen years at such address. Where a notice is sent by post, service of the notice shall be deemed to be effected by addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of seven days or, if it is sent to an address outside Malawi, fourteen days after the letter containing the same is posted.
77. Notice of every general meeting shall be given in any manner hereinbefore authorized to—
  - (a) every member except those members who (having no registered address within Malawi) have not supplied to the company an address within Malawi for the giving of notices to them;
  - (b) every director of the company; and

(c) the auditor for the time being of the company.

No other person shall be entitled to receive notices of general meetings.

| Names, addresses and occupations of subscribers |                     |                |            |           |
|---|---------------------|----------------|------------|-----------|
| Full name                                       | Residential address | Postal address | Occupation | Signature |
|   |                     |                |            |           |
|   |                     |                |            |           |

Dated: \_\_\_\_\_

Witness to the above signatures: \_\_\_\_\_

## Second Schedule

### Contents of annual return

1. The name of the company.
2. The nature of the business or businesses of the company or, if the company is not carrying on a business, the nature of its objects.
3. The address of the company's registered office and the number of the Post Office Box of such registered office.
4. The address of the company's principal place of business in Malawi.
5. All such particulars with respect of the persons who at the date of the return are the directors and secretary, of the company as are required by section 157 of the Act to be contained in the register of directors and secretary.
6. If the company's register of members is kept and maintained elsewhere than at the registered office of the company, the address at which it is kept.
7. If the company maintains a register of debentureholders, elsewhere than at the registered office of the company, the address at which it is kept.
8. Particulars of the total, amount of the indebtedness of the company in respect of all charges which are required to be registered with the registrar pursuant to Part V of the Act.
9. The names, countries of incorporation and nature of the businesses of all subsidiaries of the company and of all bodies corporate in which the company is beneficially entitled to equity shares conferring the right to exercise more than 25 per cent of the votes exercisable at a general meeting of the body corporate:  
  
Provided that the information required by this paragraph need not be given if, and to the extent that, such information would conflict with any direction given by the Minister under section 189 of the Act.
10. If the company has shares—
  - (a) the amount of the share capital of the company and the number of shares into which it is divided;
  - (b) the number of its authorized shares of each class;
  - (c) the number of its issued shares of each class;

- (d) the total amount of any unpaid instalments or calls which are due and payable and the number and class of shares concerned;
- (e) the total amount of any unpaid liability, on shares of each class, which is not yet due for payment;
- (f) the total number of shares forfeited; and
- (g) the total amount of share capital for which share warrants are outstanding at the date, of the return and of share warrants issued and surrendered respectively since the date of the last return, and the number of shares comprised in each warrant.

11. A list—

- (a) containing the names and addresses of all persons who, on the date of the company's annual general meeting for the year, are members of the company and of persons who have ceased to be members since the date of the last return or, in the case of the first return, since the incorporation of the company;
- (b) stating the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return (or, in the case of the first return, since the incorporation of the company) by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers; and
- (c) if the names aforesaid are not arranged in alphabetical order, having annexed thereto an index sufficient to enable the name of any person therein to be easily found.

[G.N. 21/1986]

## **Third Schedule**

### **Accounts**

#### ***Preliminary***

1. The accounts shall give a true and fair view of the state of affairs and operations and results thereof of the company, together with any material matters not specifically described by the Act or this Schedule which have affected or are likely to affect the business of the company, both by way of figures and by narrative report complementing and explaining where necessary figures in financial statements.
2. This Schedule has effect in addition to the requirements of the Act.
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 sheet or profit and loss account, in the form of a note or annexure thereto if such presentation would be more effective or convenient. Nothing in this Schedule shall require this disclosure of items that are not material.

#### ***Interpretation***

4. (1) For the purposes of this Schedule, unless the context otherwise indicates—

"distributable reserve", means subject to subparagraph (2) of this paragraph, any amount which has been carried to reserves and which may, in accordance with generally acceptable accounting practice and legal principles, be treated as income and distributed by way of dividend, and does not include any amount retained by way of providing for any known liability; and non-distributable reserve shall be construed accordingly;

"listed investment" means an investment in regard to which permission has been granted to deal therein on any stock exchange of repute; and "unlisted investment" shall be construed accordingly;

"provision" means subject to subparagraph (2) of this paragraph, any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of

providing for any known liability including the liability for income or any other tax, the amount of which cannot be determined with substantial accuracy;

- (2) Where—
- (a) any amount written off or retained by way of provision for depreciation, renewals or diminution in value of assets; or
  - (b) any amount retained by way of provision for any known liability, is in excess of that which in the opinion of the directors and the auditor is reasonably necessary for the purpose, the excess shall be treated for the purposes of this Schedule as preserve and not as a provision, and, if, contrary to the opinion of the directors, the auditor considers that an amount should be treated as a reserve, he shall report specifically on the subject to the shareholders.

## Part I

### A – Balance sheet

#### *Share capital and shares*

5. There shall be stated—
- (a) the authorized and issued share capital;
  - (b) the classes of shares, and their respective number and nominal value, into which the authorized share capital is divided;
  - (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;
  - (e) in respect of redeemable preference shares, the earliest and latest dates on which the company has power to redeem them, whether they must be redeemed in any event or are liable to be redeemed at the option of the company, and the premium, if any, payable on redemption; and
  - (f) in respect of preference shares or other shares or liabilities convertible into ordinary shares, the conditions of conversion, rights of conversion or a note where these conditions may be inspected.

#### *Reserves and provisions*

6. The respective aggregate amounts if material, of reserves and provisions (other than provisions for depreciation, or diminution in value of assets) shall be stated under separate headings and subheadings indicating the types of reserves and provisions.
7. In respect of the financial year concerned there shall be stated (unless it is shown in the profit and loss account or a statement or report annexed thereto, or the amount involved is not material)—
- (a) the source of and the amount of any transfers to reserves and aforesaid provisions; and
  - (b) the amount and the application of any transfer from reserves and aforesaid provisions.

#### *Liabilities*

#### *Debentures*

8. There shall be stated—
- (a) the amount and classes of debentures issued and, if convertible into shares, the conditions of conversion and the dates on which debentures may, or shall, be redeemed, or a note where these conditions may be inspected;

- (b) where any of the company's debentures are held by a nominee of, or trustee for, the company, the nominal amount of the debentures and the amount at which they are stated in the books of the company; and
- (c) particulars of any redeemed debentures which the company has power to re-issue.

### ***General***

9. The liabilities shall be summarized 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 (including a statement of current liabilities) and where the amount of any class of liability is not material, it may be included under the same heading as some other class.

### ***Overdrafts, loans and dividends***

10. There shall be shown under separate headings—
- (a) the aggregate amount of bank borrowings and overdrafts;
  - (b) the amounts of loans made to the company, where the date of repayment of the loan is more than one year after the accounting date, the rates of interest in respect thereof, the respective dates of repayment and, if repayable in instalments, the amounts thereof (the matters prescribed in this subparagraph may, if desired, be stated by way of a note); and
  - (c) the aggregate amount which has been declared or is recommended for distribution by way of dividend.

### ***Secured liabilities***

11. Where any liability of the company is secured over any assets of the company, otherwise than by operation of law, that fact shall be stated, specifying the liability and the assets over which it is secured, and the amount at which such assets are shown in the balance sheet.

### ***Indebtedness to companies in group***

12. There shall be shown under separate headings—
- (a) the amount of indebtedness (whether on account of loan or otherwise) to each of the company's subsidiaries; and
  - (b) the amount of the company's indebtedness to every other group body corporate, distinguishing between indebtedness in respect of debentures and otherwise.

### ***Assets***

#### ***General***

13. The assets shall be summarized 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 and, where the amount of any class of assets is not material, it may be included under the same heading as some other class.
14. Fixed assets, current assets and assets that are neither fixed nor current shall be separately identified.

#### ***Fixed assets***

15. The method or methods used to arrive at the amount of the fixed assets and the assets which are neither fixed nor current, under each heading, shall be stated.

16. (1) The method of arriving at the amount of any fixed asset (and asset neither fixed nor current) shall, subject to subparagraph (2), be to take the difference between—
- (a) its cost, or if it stands in the company's books at a valuation, the amount of the valuation; and
  - (b) the aggregate, amount provided or written off since the date of acquisition or valuation, as the case may be, for depreciation or diminution of value.
- (2) Subparagraph (1) shall not apply—
- (a) to any listed and unlisted investments;
  - (b) to interests of the company in its subsidiaries; or
  - (c) to goodwill, patents or trade marks.
- (3) In respect of the assets under each heading whose amount is arrived at in accordance with subparagraph (1) of this paragraph, there shall be shown—
- (a) the aggregate of the amounts referred to in paragraph (a) of that subparagraph; and
  - (b) the aggregate of the amounts referred to in paragraph (b) thereof.
- (4) 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, distinguishing between land owned absolutely and land owned for a term of years or other period;
  - (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, which costs shall be analysed to indicate the years in which the additions and improvements to buildings were carried out:

Provided that a company may include information in a schedule or register and shall in that event state in the balance sheet that the said schedule or register shall be open for inspection by members or their duly authorized agents at the registered office of the company. The provisions of section 129 of the Act shall apply to the inspection of the said schedule or register; and such schedule or register shall be deemed to be part of the company's accounting records.

- (5) As regards any fixed assets referred to in subparagraph (4), the amount of which is arrived at by reference to a valuation, the provisions of subparagraphs (b) and (c) thereof shall not apply, but there shall be stated the years in which the assets, were severally valued and the several values and, in the case of assets that have been valued during the financial year concerned, the names and qualifications of the persons who valued them and the basis of valuation used by them:

Provided that where there are more than five different items of land and buildings which have over the years been severally valued, a company may, if it considers that compliance with this subparagraph would be inconvenient or cumbersome, include the information in a schedule or register and shall in that event state in the balance sheet that the said schedule or register shall be open for inspection by members or their duly authorized agents at the registered office of the company. The provisions of section 129 of the Act shall apply to the inspection of the said schedule or register.

### ***Interests in subsidiaries***

17. The amount of interests of the company, if a holding company, consisting of shares of or amounts owing (whether on account of loan or otherwise) by, its subsidiaries, distinguishing shares from indebtedness, shall be set out in the balance sheet separately from the other assets of the company.

***Indebtedness of holding company and other associated bodies corporate***

18. The amount of the indebtedness to the company of all holding companies and other group bodies corporate, shall be set out, distinguishing between indebtedness in respect of debentures and otherwise.

***Loans to employees and other persons***

19. The aggregate amounts of any outstanding loans under sections 72 and 151 of the Act shall be shown under separate, headings, in the case of loans to persons who are, or at any time during the currency of the loan have been, directors, the amount outstanding from each such person shall be separately shown.

***Goodwill, patents and trade marks***

20. (1) If the amount of the goodwill and of any patents and trade marks or part of that amount is shown as a separate item in, or is otherwise ascertainable from the accounting records, or from any contract for the sale or purchase of any property to be acquired by the company, or from any documents, in the possession of the company the said amount so shown or ascertainable so far as it is not written off, or, as the case may be, the said amount so far as it is so shown or ascertainable, shall be stated as a separate item.
- (2) Nothing in the preceding subparagraph shall be taken as requiring the amount of the goodwill, patents and trade marks to be stated otherwise than as a single item.

***Investments***

21. (1) There shall be shown under separate headings the aggregate amounts respectively of the company's listed and unlisted investments, not being interests in subsidiaries dealt with in group annual accounts.
- (2) There shall be shown—
- (a) in respect of the company's listed investments, the aggregate market value where it differs from the amount of the investments as stated; and
  - (b) in respect of the company's unlisted investments, and unless they are dealt with under paragraph 22, the aggregate of the directors valuation of such investments.
22. Where no directors' valuation as prescribed by paragraph 21(2)(b) is shown, the following information shall be stated in a note or statement to be annexed to the balance sheet—
- (a) the aggregate amount of the company's income for the financial year concerned that is ascribable to the investments;
  - (b) the amounts of the company's share, before and after taxation, of the net aggregate profits of the companies of which shares are held (and the extent by which such profits have been affected by abnormal items), being profits for several financial years or other accounting periods in respect of which they have issued annual accounts during the company's financial year concerned, after deducting those companies' losses for those periods (or vice versa);
  - (c) the amount of the company's share of the aggregate of the share capital, distributable and non-distributable reserves and undistributed profits accumulated by the companies of which shares are held since the dates when the investments were acquired, after deducting the losses accumulated by them since that time (or vice versa); and
  - (d) the manner in which any losses have been dealt with in the company's accounts.
23. There shall be shown in the balance sheet or in an annexure thereto, except in the case where the aggregate amount of the interest of the company consisting of shares, or amounts owing (whether on account of loan or otherwise to another company) is not material, the names of all companies (excluding subsidiary companies) of which the company beneficially owns shares and in each case either the number of shares so held or the percentage of the amount of such shares in the aggregate amount of the listed

or unlisted investments. Where a percentage is so given there shall be a statement as to whether this is a percentage of the aggregate book value, market value or directors' valuation, as the case may be.

24. Where the proceeds or any part of the profit made on the realization of any investments is applied to write down the amount of the remaining investments, that fact and the amount so applied shall be stated in the balance sheet:

Provided that the requirements of this paragraph shall not apply in respect of the proceeds or profits on the realization of investments dealt with under paragraph 36(a).

#### ***Current assets***

25. (1) For the purposes of this paragraph, "stock" means any property, whether corporeal or incorporeal, which the company buys, or manufactures, or processes or develops for sale or sells in the ordinary course of its business.
- (2) The amount of stock shall be shown as a separate item and, where the amount of stock and work in progress is material in relation to either the trading results or the financial position, it shall be classified under appropriate subheadings which shall include, where applicable—
- (a) raw materials (including component parts);
  - (b) finished goods
  - (c) merchandise which shall include any form of stock not mentioned in subparagraph (1) and 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:

Provided that where the directors are of the opinion that classification into some or all of the categories referred to would result in failure to present a fair view, then the classification should be reduced to those categories where a fair view would be obtained and the reasons given for not indicating all categories.

- (3) In regard to the method of determining the value of stock, there shall be stated—
- (a) whether it is consistent with the method of the previous year;
  - (b) whether it is the lower of cost or net realizable or replacement value or same other expressly specified value or values;
  - (c) the accounting basis which has been used in determining the value of stock on hand. Where several different bases of determining the value of stock have been used and, in the opinion of the directors, a statement of all the bases used would be of little value to the shareholders, an intelligible summary of the bases used must be stated;
  - (d) whether the value includes both direct costs and overheads; and
  - (e) in the case of spares held for maintenance purposes, the method of providing for obsolescence employed.
- (4) There shall be stated any additional information required fairly to present the value of the stock including in the case of contracts in progress, whether profits or losses have been taken into account and, if so, to what extent.
- (5) If in the opinion of the directors any of the current assets have not a value on reaction in the ordinary course of the company's business at least equal to the amount at which they are stated the fact that the directors are of that opinion and the extent of the estimated shortfall shall be stated.

#### ***Preliminary expenses, commissions and discounts***

26. There shall be stated under separate subheadings so far as they are not written off—
- (a) the preliminary expenses;
  - (b) any expenses incurred in connexion 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 debentures.

***Corresponding amounts of preceding year***

27. 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.

***Notes to balance sheet***

28. The matters stated in paragraphs 29 to 35, inclusive, shall be stated by way of note or in a statement or report annexed to the balance sheet, if not otherwise shown.

***Shares or debentures held by subsidiary or nominee***

29. There shall be stated the number, description and amount of the shares and debentures of the company held by its subsidiaries or their nominees, but excluding any such shares or debentures which a subsidiary holds 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.

***Options and preferential rights to shares***

30. The number, description and amount of any shares of the company which person has an option to subscribe for or in respect of which any person has any preferential right of subscription, shall be stated together with the following particulars—
- (a) the period during which the option or right is exercisable; and
  - (b) the price, or the formula for fixing the price, to be paid for shares subscribed for under it.

***Directors' authority to issue shares***

31. The amount of any share capital or the number of shares which the directors are authorized to issue by resolution of the shareholders, the terms of such authority and the period for which it was granted, shall be stated.

***Arrear dividends***

32. The amount of any arrears of fixed cumulative dividends on each class of the company's shares and the period for which the dividends are in arrear, shall be stated.

***Contingent liabilities***

33. (1) 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.
- (2) The general nature of any other contingent liabilities not provided for and, where practicable, the aggregate or estimated amount of those liabilities, if it is material, shall be stated.

***Contracts for capital expenditure***

34. Where practicable the aggregate amount or estimated amount if it is material, of contracts for capital expenditure, not otherwise provided for and the aggregate amount or estimated amount, if it is material,

of capital expenditure authorized by the directors which has not been contracted for, shall be stated. There shall also be stated the source from which funds to meet such expenditure will be provided.

### ***Basis of conversion of foreign currency***

35. The basis on which foreign currencies have been converted into Malawian currency, where the amount of the assets or liabilities affected is material, shall be stated.

### **B – Profit and loss account**

36. (1) There shall be shown separately—
- (a) profits or losses on share transactions, showing the application of profits or part thereof to write down the amount of the remaining investments, if not already dealt with under paragraph 24;
  - (b) the amount of income from investments, distinguishing between listed and unlisted investments;
  - (c) the aggregate amount of income from group bodies corporate, stating whether dividends, interest, fees or other specified income;
  - (d) 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;
  - (e) the aggregate amount of profits and losses on the realization, scrapping or other disposal of non-trading, fixed and other non-current assets;
  - (f) the amount charged to revenue by way of provisions (other than provisions for diminution in values of current assets, unless material to the understanding of the accounts) specifying the nature of each provision or the amount withdrawn from such provisions and not applied for the purpose thereof;
  - (g) the amount provided 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 in respect of any other financial year;
  - (h) the amounts respectively set aside for redemption of shares and of loans;
  - (i) the amount, if material, set aside or proposed to be set aside to, or withdrawn from, reserves;
  - (j) the amount, if material, of any credit or charge arising in consequence of an event in a preceding financial year;
  - (k) the amount of interest (or other consideration) on any loans, including debentures and bank overdrafts made to the company;
  - (l) the amount paid by way of leasing charges for the use of any asset other than immoveable property, which, if owned by the company, would have been subject to a charge for depreciation;
  - (m) 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; and
  - (n) the amount of the remuneration of the auditor, distinguishing between the fee for the audit, the fee for other services and his expenses.
- (2) Nothing in paragraph (1) shall require the separate listing of any item that is not material.

37. (1) There shall be shown separately the following information insofar as it is contained in the company's books or the company has obtained the information from the persons concerned or has the right to obtain it—
- (a) the aggregate amount of the directors' emoluments;
  - (b) the aggregate amount of directors' or past directors' pensions; and
  - (c) the aggregate amount of any compensation to directors or past directors in respect of loss of office.
- (2) The amount to be shown under subparagraph (1) (a) shall include fees, salaries and percentages, expense allowances, contributions paid under any pension scheme, and the estimated value of benefits in kind (except benefits of such character and value as are customarily afforded to employees others than directors) paid to or receivable by any director in respect of his services as an officer of the company or any group body corporate.
- (3) The amount to be shown under subparagraph (1) (b) shall include any pension paid or receivable in respect of services as a director or past director of the company, or in respect of services, while a director of the company, in connexion with the management, or as an officer, of the company or any group company, whether that pension is paid to or receivable by the director or past director or any other person:

Provided that it shall not be necessary to include a pension paid or receivable under a pension scheme which is such that the contributions thereunder are substantially adequate for the maintenance of the scheme.

- (4) The amount to be shown under subparagraph (1)(c) shall include any sums paid to or receivable by a director or past director by way of compensation for the loss of office as director of the company or for the loss, while a director of the company or in connexion with his ceasing to be a director of the company, of any other office in the company or of any office in any group body corporate; and any sum and the value of any other valuable consideration paid or receivable, in connexion with retirement from office or as damages for breach of a contract of service shall be deemed to be paid or receivable by way of compensation for loss of office.
- (5) The amounts to be shown under subparagraph (1) shall include all relevant sums paid by or receivable from the company or any other person.
- (6) The amounts to be shown under this paragraph for any financial year shall be the sums receivable in respect of that year whenever paid or, in the case of sums not receivable in respect of a period, the sums paid during that year:

Provided that any sums paid in advance of the financial year to which they are expressed to relate shall be shown in the accounts for the financial year in which they are paid.

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

38. (1) There shall be shown—
- (a) the aggregate amount of the turnover for the financial year concerned; or
  - (b) the increase or decrease of the aggregate turnover for the financial year concerned expressed as a percentage of the aggregate turnover for the preceding financial year:
- Provided that where by virtue of the nature of the business of the company there could be doubt as to what is meant by turnover, there should be indicated (by way of note) upon what basis turnover has been determined.
- (2) The method employed to determine the amount of turnover shall be stated and, if a method different to that employed in the preceding financial year is used, that fact shall be stated.

39. Except in the case of the first profit and loss account, the corresponding amount for the immediately preceding financial year for all items shown in the profit and loss account shall be stated.

#### ***Notes to the profit and loss account***

40. The matters referred to in paragraphs 41 and 42 shall be stated by way of a note, if not otherwise shown.
41. If provision for depreciation, replacement or the diminution in value of fixed assets is made by some method other than a depreciation charge or provision for renewals or 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. If any of the items are shown net of income or any other tax, that fact shall be stated.
42. There shall be stated any material respects in which any items included in the profit and loss account (stating in each case the amount involved) are affected by—
- (a) transactions of a sort not usually undertaken by the company or otherwise by circumstances of an exceptional or non-recurrent nature;
  - (b) any change in the basis of accounting; or
  - (c) any change in the methods for the determination of the amount of any assets.

### **C – Statement of source and application of funds**

43. There shall be annexed to the balance sheet or separately contained therein a statement showing the sources and the application of any fund received and applied during the financial year specifying at least—
- (1) funds derived from—
    - (a) net income (before deduction of taxes, dividends paid and proposed, and internal provisions and retentions);
    - (b) the disposal of specified fixed and other non-current assets;
    - (c) the proceeds of loans raised and debentures issued;
    - (d) the proceeds of shares issued;
    - (e) repayments received on loans and advances made; and
    - (f) any reduction in net working capital (being current assets less current liabilities).
  - (2) funds applied to—
    - (a) meeting any loss;
    - (b) the acquisition of specified fixed and other non-current assets;
    - (c) the redemption of any loans and debentures;
    - (d) loans and advances made and the purposes for which made;
    - (e) liability for taxes;
    - (f) dividends paid and proposed; and
    - (g) any increase in net working capital (being current assets less current liabilities).

## **Part II – Group annual accounts**

### ***Preliminary***

44. The provisions contained in paragraphs 45 to 48, inclusive, shall apply to all forms of group annual accounts and shall also apply in respect of the requirements of paragraphs 54 to 57, inclusive, in relation to subsidiaries not dealt with in group annual accounts.
45. Any material profit or loss arising from transactions within the group (other than *bona fide* arms' length transactions) insofar as those profits or losses may not have been realized or incurred in respect of a transaction with a person or body corporate outside the group, shall be excluded in determining the total group profit or loss, or the interest of the holding company in the profit or loss of any subsidiary.
46. Inter-group balances, where shown, shall be excluded in determining the total assets and liabilities of the group.
47. (1) Dividends declared by a subsidiary out of profits accrued prior to the date on which it became a subsidiary of the holding company, being, pre-acquisition profits so far as they are material reasonably ascertainable, shall not, in the hands of that holding company, form part of its profits available for distribution by way of dividends unless—
  - (a) such holding company is itself the subsidiary of another body corporate incorporated or registered in Malawi;
  - (b) the shares of the subsidiary were acquired from that other body corporate or a subsidiary of it; and
  - (c) the profits out of which the dividend is declared accrued after the company became a subsidiary of that other body corporate or of a subsidiary of it.(2) For to purpose of establishing whether any profit accrued prior to the acquisition of the shares of the subsidiary, the profit 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.
48. There shall be stated ant 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, insofar as the matter which is the subject of the qualification is not covered by the holding company's own accounts or the annual group accounts and is material from the point of view of its members.

#### ***Group annual accounts in the form of consolidated accounts***

49. Subject to the provisions of paragraphs 50 to 52, inclusive, the consolidated balance sheet and the consolidated profit and loss account shall combine the information contained in the separate balance sheets and profit and loss accounts of the holding company and of the subsidiaries dealt with in such consolidated accounts, but with such appropriate adjustment as may be necessary to give a true and fair view of the state of affairs as at the end of the financial year and the results of the operations during the financial year, of the group of companies.
50. Subject as aforesaid, the consolidated accounts shall, in giving the said information, comply, so far as practicable, with the requirements of this Act and this Schedule as if they were the accounts of an actual company.
51. Section 188 of the Act (concerning the disclosure of directors' remuneration) shall not, by virtue of the requirements of paragraphs 49 and 50, apply for the purposes of consolidated financial statements.
52. In relation to any subsidiaries of the holding company not dealt with in the consolidated accounts—
  - (a) paragraph 12 (concerning indebtedness to bodies corporate in the group), paragraph 17 (concerning interests in subsidiaries), paragraph 18 (concerning indebtedness of holding company and other group bodies corporate) and paragraph 29 (concerning shares or debentures held by subsidiaries), shall apply for the purposes of such consolidated accounts as if those accounts were the accounts of an actual company of which they were the subsidiaries; and

- (b) there shall be annexed the information required by paragraphs 54 to 57, inclusive, in respect of subsidiaries not dealt with in group annual accounts, but as if reference therein to the holding company's annual accounts were reference to the consolidated accounts.

***Group annual accounts in a form other than consolidated accounts***

53. Where group annual accounts are prepared in a form other than consolidated accounts they shall, as far as practicable, presents same or equivalent information concerning the state of affairs and the results of the operations of the group as would be contained in the consolidated accounts, including the aggregate amounts of—

- (a) the excess (if any) of the cost of the shares of the subsidiaries in the group over the net asset value of such shares at the date of acquisition and the non-distributable reserve (if any) arising in consequence of the excess of the net value of the assets at the date of acquisition over the cost of the shares of the subsidiaries:

Provided 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 net asset value of such shares;

- (b) the holding company's shares of the non-distributable reserves of subsidiaries;
- (c) the interest of outside shareholders, being shareholders other than the holding company and its subsidiaries or their nominees, in the subsidiaries in the group;
- (d) the interest of the holding company, insofar as it has been disclosed in the annual group accounts, in—
- (i) the accumulated revenue profits or losses accumulated distributable reserves of subsidiaries for the period after the dates on which they respectively became subsidiaries to the end of the preceding financial year; and
- (ii) the revenue profits or losses of subsidiaries for the financial year.

***Requirements in respect of subsidiaries not dealt with in group annual accounts***

54. Where a subsidiary is not dealt with in group annual accounts pursuant to section 185 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 accounts of the holding company the information required to be stated in terms of paragraphs 55 to 57, inclusive, and if any such information is not obtainable, the reason therefor shall be stated.

55. The reasons shall be stated why the subsidiaries or any of them are not dealt with in annual group accounts.

56. In regard to the shareholders' equity, liabilities and assets of the subsidiaries not dealt with in annual group accounts 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 net asset value of such shares at the date of acquisition, and the non-distributable reserve (if any) arising in consequence of the excess of the net value of the assets at the date of acquisition over the cost of the shares of subsidiaries:

Provided 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 net value of such shares;

- (c) the holding company's shares of the 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 bodies corporate 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).
57. In regard to revenue profits or losses and distributable reserves of the subsidiaries not dealt with in annual group accounts, there shall be stated the aggregate interest of the holding company in—
- (a) the accumulated revenue profits or losses and accumulated distributable reserves of subsidiaries for the period from the dates on which they respectively become subsidiaries to the end of the preceding financial year;
  - (b) the revenue profits or losses and distributable reserves attributable to any shares of subsidiaries disposed of during the financial year;
  - (c) the revenue profits or losses of subsidiaries for the financial year;
  - (d) dividends paid or declared by subsidiaries during the financial year; and
  - (e) the revenue profits or losses and distributable reserves at the end of the financial year not dealt with in the annual accounts of the holding company.

## **Fourth Schedule**

### **Matters to be stated in auditors' report**

1. Whether, in their opinion, the company's balance sheet and profit and loss account and (if it is a holding company submitting group accounts) the group accounts have been properly prepared in accordance with the provisions of this Act and whether in their opinion a true and fair view is given—
  - (a) in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year;
  - (b) in the case of the profit and loss account (if it is not framed as a consolidated profit and loss account), of the company's profit or loss for its financial year;
  - (c) in the case of a group accounts submitted by a holding company, of the state of affairs and profit or loss of the company and its subsidiaries dealt with thereby, so far as concerns members of the company.
2. If they are of opinion that proper accounting records have not been kept by the company or that proper returns adequate for their audit have not been received from branches not visited by them or if the balance sheet and (unless it is framed as a consolidated profit and loss account) the profit and loss account are not in agreement with the accounting records and returns, they shall state the fact in their report.
3. If they fail to obtain all the information and explanations which, to the best of their knowledge and belief, are necessary for the purposes of their audit, they shall state the fact in their report.

## **Fifth Schedule**

### **Prospectus**

#### *(Contents of prospectus)*

The prospectus shall state at its head:

A copy of this prospectus has been delivered to the Registrar of Companies for registration. The registrar has not checked and will not check the accuracy of any statements made and accepts no responsibility therefore or for the financial soundness of the company or the value of the securities concerned.

### **Part I – Matters to be specified**

1. The full name of the company.
2. A full description of the securities which the public are being invited to acquire, and of the terms on which they are being invited to acquire them, including—
  - (a) the date prior to the expiration of which applications will not be accepted or treated as binding;
  - (b) if securities are being offered for subscription or purchase, the total amount payable for each share or debenture and the amount thereof payable on application and allotment; and
  - (c) the policy which will be adopted if applications exceed the shares or debentures on offer.

Where the securities are unsecured debentures they shall be described as "unsecured".

3. Whether application has been or is being made to a stock exchange for permission to deal in the securities concerned.
4. If so, the name of the stock exchange.
5. If not a statement that there will not be a market for the securities and that any holder wishing to dispose of his securities may be unable to do so.
6. The full name (including any former or other names), residential and postal address and business occupation of every person making the invitation, if other than the company.
7. The situation of the company's registered office, and its postal address.
8. The full name (including any former or other names), residential and postal address and business occupation of every director or proposed director and of the secretary or proposed secretary of the company, and particulars of all other directorships held by each director or proposed director.
9. The names, addresses and professional qualifications of the company's auditors.
10. The name and address of any underwriter of the invitation.
11. The names and addresses of the company's bankers, stockbrokers and legal practitioners.
12. If the invitation relates to debentures, the names and addresses of any trustees for debentureholders, the date of the resolutions creating the debentures, and short particulars of the security therefor or, if the debentures are unsecured, a statement to that effect.
13. The nature of the business or businesses of the company or, if the company has no business, its principal objects.
14. The restrictions, if any, upon the business of the company contained in the memorandum of association.
15. A brief summary of the history of the company.
16.
  - (a) The names, countries of incorporation, and nature of the businesses of all subsidiaries of the company and of all bodies corporate in which the company is beneficially entitled to equity shares conferring the right to exercise more than 25 per cent of the votes exercisable at a general meeting of the body corporate.
  - (b) If the company is a subsidiary, the name, country of incorporation and nature of the business of the holding company and the number of shares in each class of the company held by the holding company.

17. Where the company is proposing to acquire securities in any body corporate (hereinafter in this Schedule called a "proposed subsidiary") which, by reason of the acquisition or anything to be done in consequence thereof or in connexion therewith, will become a subsidiary of the company, the name, country of incorporation, and nature of the business of that proposed subsidiary.
18. Where the company is proposing to acquire a business, a full description of the nature of that business.
19. The situation, area, and tenure (including, where appropriate, the rent and unexpired term of any lease or concession) of the main places of business of the company and its subsidiaries and proposed subsidiaries.
20. A statement as to (a) the financial and trading prospects of the company together with any material information which may be relevant thereto, and (b) any material changes in the financial or trading position of the company which may have occurred since the end of the last completed financial year of the company.
21. A statement the directors of the company that in their opinion the company's working capital is sufficient or, if not, how it is proposed to provide the additional working capital thought by the directors to be necessary.
22. The amount or estimated amount of the expenses incidental and preliminary to the invitation (including the expenses of any application to a stock exchange for permission to deal in the securities concerned in the invitation) and by whom such expenses are payable.
23. Particulars of any commissions paid within the two preceding years, or payable, as commission for acquiring any shares or debentures of the company or of any of its subsidiaries and proposed subsidiaries.
24. Where the company is inviting or under section 166 of the Act is deemed to be inviting, the public to subscribe for any of its shares or debentures—
  - (a) a statement or an estimate of the net proceeds of the issue and a statement as to how such proceeds were or are to be applied;
  - (b) the minimum amount which in the opinion of the company's directors must be raised by the issue in order to provide the sums, or, if part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters—
    - (i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;
    - (ii) any expenses incidental and preliminary to the invitation and issue (including the expenses of any application to a stock exchange for permission to deal in the shares or debentures) payable by the company and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares or debentures of the company;
    - (iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters; and
    - (iv) working capital; and
  - (c) the amounts to be provided in respect of the matters stated in subparagraph (b) otherwise than out of the proceeds of the issue and the sources out of which these amounts are to be provided.
25. Where a person other than the company is inviting the public to purchase any shares or debentures of the company (whether or not, under section 166 of the Act, the invitation is also deemed to be made by the company)—
  - (a) if such shares or debentures were issued by the company for cash, a statement of the price per share or debenture at which those shares or debentures were issued, and of the total net proceeds of the issue;

- (b) if such shares or debentures were issued by the company for a consideration other than cash, a statement of the nature of the consideration and an estimate by the directors of its fair value and of the price per share or debenture which it represents;
  - (c) if the person making the invitation did not acquire the shares or debentures directly from the company on their issue—
    - (i) if he purchased them for cash, a statement of the price per share or debenture at which he purchased them (or if purchased over a period of time at different prices, the lowest and highest prices) and the total purchase price paid by him; and
    - (ii) if he acquired them for a considerate, other than cash, a statement of the nature of the consideration and an estimate by him of its fair value and of the price per share or debenture which it represents.
26. The authorized capital of the company and the number and description of the company's authorized shares of each class and issued shares of each class.
27. The amount paid on the issued shares of each class (a) in cash, (b) otherwise than in cash.
28. The amount, if any, remaining payable on the shares of each class previously issued, distinguishing between the amount presently due for payment and the amount not yet due for payment.
29. The number of unissued shares of each class agreed to be issued and the amount payable therefore, distinguishing between the amount payable in cash and the amount payable otherwise than in cash.
30. If the company's shares are divided into different classes, the rights in respect of voting, repayment, and dividends and other special rights attached to the several classes and a statement as to the consents necessary for the variation of such rights.
31. The amounts of the dividends (if any) per share paid by the company in respect of each class of shares in each of the ten completed financial years of the company immediately preceding the date of publication of the prospectus, or in respect of each of the financial years since the incorporation of the company if this occurred less than five years before such publication, and particulars of any cases in which no dividends have been paid in respect of any class of shares in any of those years.
- [G.N. 21/1996]*
32. If any of the company's shares are redeemable preference shares, the earliest date on which the company has power to redeem them.
33. The name of every holder and (so far as is known) every beneficial owner of more than 25 per cent of the company's shares or any class of shares and the number and description of the shares held or owned.
34. The amount of the outstanding debentures issued or agreed to be issued by the company and any of its subsidiaries and proposed subsidiaries or, if none, a statement to that effect.
35. Particulars of any bank overdrafts of the company and any of its subsidiaries and proposed subsidiaries as at the latest practical date (which shall be stated) or if there are no bank overdrafts, a statement to that effect.
36. The nature of the consideration for the issue of any of the company's shares or debentures issued or proposed to be issued otherwise than for cash.
37. Particulars of any shares or debentures of any of the company's subsidiaries and proposed subsidiaries which have, within two years immediately preceding the publication of the prospectus, been issued, or which are proposed to be issued, otherwise than for cash and the nature of the consideration.
38. Particulars of any shares or debentures of the company or any of its subsidiaries and proposed subsidiaries which have, within two years immediately preceding the publication of the prospectus, been issued, or which are proposed to be issued, for cash, the price and terms upon which the same have been or are to be issued and (if not already fully paid) the dates when any instalments are payable.

39. Particulars of any shares or debentures of the company or any of its subsidiaries and proposed subsidiaries which are under option, or agreed conditionally or unconditionally to be put under option, with the price to be paid for the securities under option, the duration of the option, the consideration for which the option was granted, and the name and address of the grantee:

Provided that where the option is to all the shareholders, or debentureholders or any class thereof or to employees generally, it shall be sufficient, so far as names are concerned, to record that fact without giving the names and addresses of the grantees.

40. Where any property has been acquired or is proposed to be acquired by the company or any of its subsidiaries and proposed subsidiaries (except where the contract for its acquisition was (i) completed and any purchase money fully paid, more than two years before the date of publication of the prospectus; or (ii) entered into in the ordinary course of business and there is no connexion between the contract and the invitation)—

- (a) the names and addresses of the vendors;
- (b) the amount paid or to be paid in cash, shares, debentures or otherwise to the vendor, and, where there is more than one separate vendor or the company or subsidiary or proposed subsidiary is a sub-purchaser, the amount so paid or to be paid to each vendor, distinguishing between the amounts paid or to be paid—
  - (i) in cash;
  - (ii) in shares;
  - (iii) in debentures;
  - (iv) the nature of, and value attributed to, any other consideration; and
  - (v) the amount (if any) paid or payable for goodwill;
- (c) full particulars of the nature and extent of the interest, direct or indirect, of every director or proposed director of the company or any of its subsidiaries and proposed subsidiaries in any such property;
- (d) short particulars of all transactions relating to any such property which were entered into or completed within the two years immediately preceding the date of publication of the prospectus.

41. Unless more than two years have elapsed since the registration of the company—

- (a) the amount or estimated amount of the expenses incidental or preliminary to the promotion and registration of the company and by whom those expenses have been paid or are payable;
- (b) the names of the promoters of the company;
- (c) the amount of any cash or securities paid, or benefit given or proposed to be given, to any promoter and the consideration for such payment or benefit; and
- (d) full particulars of the nature and extent of the interest of every director and proposed director in the promotion of the company.

42. Where the prospectus includes a statement purporting to be made by an expert, a statement that the expert has given and has not withdrawn his written consent to the publication of the prospectus with the statement included in the form and context in which it is included.

43. The dates of, parties to, and general nature of, every material contract (other than contracts entered into in the ordinary course of business or completed more than two years before the date of publication of the prospectus).

44. A reasonable time (not being less than 28 days) during which, and place at which, the following documents (or certified copies thereof), may be inspected—

- (a) the company's memorandum and articles;

- (b) where the invitation relates to debentures, the debenture trust deed, if any;
- (c) each contract disclosed pursuant to paragraph 43 hereof or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof;
- (d) the profit and loss account, balance sheet, group accounts and reports required to be circulated to the members and debentureholders of the company in accordance with section 182 of the Act, for the five financial years of the company immediately preceding the date of publication of the prospectus or, if the company has been incorporated for less than five years, for the number of years in respect of which it has or should, in accordance with section 182 of the Act, have circulated such accounts and reports;
- (e) the profit and loss account and balance sheet of every subsidiary and proposed subsidiary of the company and of every business acquired or to be acquired by the company for each of its five financial years immediately preceding the date of publication of the prospectus, or, if any subsidiary or proposed subsidiary has been incorporated or any business has been carried on for less than five years, for the number of financial years completed since its incorporation or commencement:

Provided that this subparagraph shall not apply to the profit and loss accounts and balance sheets of a subsidiary or business in respect of any financial years in which the profits or losses and assets and liabilities of the subsidiary or business are dealt with in the accounts or group accounts of the company;

- (f) all other reports, letters, balance sheets valuations and statements by any expert any part of which is extracted or referred to in the prospectus; and
- (g) a written statement signed by the accountants making the report required under Part II of this Schedule, setting out the adjustments made by them in arriving at the figures shown in their report and giving the reasons therefor:

Provided that if the whole or any part of any of the above-mentioned documents is in a language other than English, a certified translation of such a document or of the parts thereof which are not in English shall be made available for inspection instead of the original or a certified copy:

Provided further that where accounts have not been kept by the company in the form specified in subparagraphs (d) and (e) accounts in another form giving equivalent information may be substituted.

45. The names and addresses of the accountants making the reports required under Part II of this Schedule.

## Part II – Reports to be set out

46. A report by accountants duly qualified under section 192 of the Act to be appointed auditors of the company—
- (a) with respect to the profits or losses of the company in respect of each of the five completed financial years immediately preceding the publication of the prospectus, or in respect of each of the financial years since the incorporation of the company if this occurred less than five years before such publication; and if the last financial year of the company ended six months or more before the date of the publication of the prospectus, with respect to the profits or losses from the end of the last financial year to the latest practicable date not being more than six months before the date of the publication of the prospectus;  
*[G.N. 21/1996]*
  - (b) where the company is a holding company, in lieu of the report required by subparagraph (a) a like report with respect to the profits or losses of the company and of its subsidiaries, so far as such profits or losses can properly be regarded as attributable to the interests of the company;

- (c) with respect to the assets and liabilities of the company as at the end of its last financial year or if the financial year ended six months or more before the date of publication of the prospectus, as at the latest practicable date not being more than six months before the date of publication of the prospectus;

*[G.N. 21/1996]*

- (d) where the company is a holding company, in lieu of the report required by subparagraph (c), a like report with respect to the assets and liabilities of the company and of its subsidiaries so far as such assets can properly be regarded as attributable to the interests of the company; and
- (e) with respect to the aggregate emoluments paid by the company to the directors of the company or any group body corporate during the last period for which the accounts have been made up, and the amount, if any, by which such emoluments would differ from the amounts payable under any arrangements in force at the date of publication of the prospectus;
- (f) with respect to any other matters which appear to the accountants to be relevant having regard to the purpose of the report.

In making such report the accountants shall make such adjustments (if any) as are in their opinion appropriate for the purposes of the prospectus.

*[G.N. 21/1996]*

47. Where at any time within the five years immediately preceding the publication of the prospectus the company has acquired any business or any subsidiary, or where at the date of the publication of the prospectus the company proposes to acquire any business or any proposed subsidiary, a report in manner hereinafter appearing by accountants duly qualified under section 192 of the Act to be appointed auditors of the company—

- (a) with respect to the profits or losses of that business or subsidiary or proposed subsidiary in respect of each of the five financial years immediately preceding the publication of the prospectus, or in respect of each of the financial years since the commencement of that business or the incorporation of that subsidiary or proposed subsidiary if that occurred less than five years before the publication of the prospectus, and if the last financial year of that business, subsidiary or proposed subsidiary ended six months or more before the date of the publication of the prospectus, with respect to the profits or losses from the end of the last financial year to the latest practicable date not being more than six months before the date of the publication of the prospectus:

Provided that—

- (i) such report shall deal with such of the profits or losses of a subsidiary or proposed subsidiary as can properly be regarded as attributable to the interests of the company;
- (ii) where the report relates to any financial year before the subsidiary became a subsidiary of the company or relates to a proposed subsidiary, only such of its profits or losses shall be regarded as attributable to the interests of the company as would have been properly so attributable if the company had held the securities in the subsidiary or proposed subsidiary which it holds at the date of publication of the prospectus or proposes to acquire;
- (iii) where any such subsidiary or proposed subsidiary has itself subsidiaries the report shall be extended to the profits or losses of the subsidiary or proposed subsidiary and its subsidiaries so far as the same can properly be regarded as attributable to the interests of the company;
- (iv) the report required by this paragraph need not extend to any period in respect of which the profits or losses of that business or the appropriate part of the profits or losses of that subsidiary are dealt with in the report required under paragraph 46;

*[G.N. 21/1996]*

- (b) where a business or subsidiary has been, acquired since the latest date to which the accounts of the company have been made up, or where the company proposes to acquire a business or a proposed

subsidiary with respect to the assets and liabilities of that business or that subsidiary or proposed subsidiary as at the end of its last financial year, or, if the financial year ended six months or more before the date of publication of the prospectus, as at the latest practicable date not being more than six months before the date of publication of the prospectus:

Provided that—

- (i) such report shall deal with the assets and liabilities of the subsidiary or proposed subsidiary so far as such assets and liabilities can properly be regarded as attributable to the interests of the company;
- (ii) in relation to a proposed subsidiary only such assets and liabilities shall be regarded as attributable to the interests of the company as would have been properly so attributable if the company had held the securities in the proposed subsidiary which it proposes to acquire;
- (iii) where any such subsidiary or proposed subsidiary has itself subsidiaries, the report shall be extended to the assets and liabilities of that subsidiary or proposed subsidiary and its subsidiaries so far as the same can properly be attributable to the interests of the company;

[G.N. 21/1996]

- (c) with respect to any other matters which appear to the accountants to be relevant having regard to the purpose of the report.

In making such report the accountants shall make such adjustments (if any) as are in their opinion appropriate for the purposes of the prospectus; and if any of the information specified is for reasons beyond the power of the company not available, that fact and the reasons therefor shall be stated.

[G.N. 21/1996]

## Sixth Schedule

### Form of share transfer

#### *Form of transfer of fully-paid shares in company limited by shares*

I, \_\_\_\_\_

(full name, address and occupation of transferor)

in consideration of \_\_\_\_\_

hereby transfer to \_\_\_\_\_

(full name, address and occupation of transferee)

\_\_\_\_\_ fully-paid

(number of shares)

\_\_\_\_\_ shares numbered

(class of shares)

\_\_\_\_\_ to \_\_\_\_\_ (inclusive) in

(distinguishing numbers of shares, if any)

\_\_\_\_\_ Limited

(name of company)

Dated: \_\_\_\_\_

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Signature of transferor

(If the transfer is not made by the registered holder(s) the name(s) and capacity (e.g. Executor) of the person making the transfer should also be stated.)

***Acknowledgement by the transferee***

I, the said \_\_\_\_\_ hereby acknowledge the transfer.

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Signature of transferee

**Seventh Schedule**

**Definition of "subsidiary"**

For the purposes of this Act—

"subsidiary", as regards a company or other body corporate, means that, in relation to any other body corporate—

- (a) that other is a member of it and by the exercise of some power directly or indirectly vested in it, whether by virtue of the beneficial ownership of shares or otherwise, can appoint or remove or procure the appointment or removal of all or not less than half of its directors for the time being or can prevent the appointment or removal of all or not less than half of its directors:

Provided that—

- (i) a power exercisable in a fiduciary capacity for another person shall be treated as exercisable by that other and not by the fiduciary;
- (ii) a power exercisable by virtue of shares held by way of security only for the purpose of a transaction entered into in the ordinary course of business of that other body corporate shall be disregarded;
- (iii) a body corporate shall be deemed to have power to appoint a director of another body corporate if any person's appointment as director of that other body corporate necessarily follows from his appointment as director or other officer of that first named body corporate; or
- (b) that other holds more than half in nominal value of its equity share capital; or
- (c) it is a subsidiary of any body corporate which is that other's subsidiary.