

# **COMPANIES ACT**

Act 25 of 1967

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Reprinted from 1967 Laws

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*Published by Authority of Prime Minister*

Price: M21.00

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**COMPANIES ACT**Act  
25 of  
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[Date of Assent ..... 14th June, 1967  
Date of Commencement ..... 3rd July, 1967

G.N. 70  
Of 1967

## COMPANIES ACT

### ACT 25 of 1967 ACT

To provide for the constitution, incorporation, registration, management, administration and winding up of companies and other associations, and for other purposes incidental thereto.

### ENACTED BY THE PARLIAMENT OF LESOTHO

#### Preliminary

- |   |   |
|---|---|
| <p>1. This Act may be cited as the Companies Act 1967 and shall come into operation on a date to be fixed by the Minister by Notice in the <b>Gazette</b>.</p> <p>2. (1) In this Act, unless inconsistent with the context -<br/>         [Accounts] includes a company's group accounts, whether prepared in the form of accounts or not;<br/>         [Act] refers to the companies Act 1967:<br/>         [Articles] means the articles of association of a company as originally framed, or as altered by special resolution; and includes, so far as they apply to a company, the regulations set out in the Table [A] in the First Schedule; and also includes in relation to an existing company such provisions of the Proclamation incorporating it or the deed of settlement thereof as are not deemed under subsection (2) of section six to be the memorandum of association of that company;<br/>         [Attorney] means an attorney admitted to practice in Lesotho; [books or papers] and [books and papers] includes accounts, deeds, writing and other documents;<br/>         [Certified] in relation to a copy or translation of any document means certified in the prescribed manner to be a true copy or a correct translation;<br/>         [Company] means a company limited by shares or a company limited by guarantee as in section nine described, or an unlimited company or an existing company;<br/>         [contributory] has the meaning given to it in section one hundred and sixty-nine;</p> | <p>Short title and date of commencement.</p> <p>Interpretation of terms</p> |
|---|---|

- [court] in relation to any company means the High Court of Lesotho, and in relation to any offence against this Act, includes a Subordinate Court having jurisdiction in respect of that offence;
- [creditors voluntary winding up] has the meaning given to it by sub-section (2) of section two hundred and thirteen;
- [debenture] includes debenture stock or bonds;
- [director] includes any person occupying the position of director or alternate director of a company, by whatever name he may be called;
- [equity share capital] has the meaning given to it by sub-section (6) of section one hundred and fifteen;
- [existing company] has the meaning given to it by sub-section (1) of section six;
- [expert] means any person whose professional or technical training gives authority to a statement made by him;
- [external company] means a body corporate which is registered or incorporated in an external country under the laws of that country;
- [external country] means any state, dominion, country colony or territory, other than Lesotho;
- [financial year] means, in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in general meeting is made up, whether that period is a year or not;
- [foreign language] means any language other than Engling and Sesotho;
- [group accounts] has the meaning given to it by sub-section (1) of section one hundred and sixteen;
- [holding company] means a holding company as defined by section one hundred and fifteen;
- [issued generally] means, in relation to a prospecturs, issued to persons who are not existing members of debenture holders of the Company;
- [Master] means the Master of the High Court of Lesotho or any person acting in that capacity;
- [members] voluntary winding up] has the meaning given to it by sub-section (2) of section two hundred and thirteen;
- [memorandum] means the memorandum of association of accompany, as originally framed or as latered in pursuance of the provisions of any law hitherto in orce or this Act;
- [minimum subscription] has the meaning given to it by sub-section (2) of section fifty-one;
- [officer] in relation to a company, includes a director, manager or secretary;
- [officer who is default] has the meaning given to it by sub-section (2) of section two hundred and ninety-five;
- [ordinary resolution] has the meaning given to it by sub-

- section (5) of section one hundred and six;
- “prescribed” means prescribed by rules or regulations made under section three hundred and eleven or section three hundred and twelve, as the case may be;
- “prescribed form” means a form set out in the First, Second, Fourth, Fifth or Ninth Schedules or any form added to or altered in the said schedules under the provisions of this Act or any form prescribed by rules or regulations made under section three hundred and eleven or section three hundred and twelve, as the case may be;
- “printed” includes typed, handwritten in ink, lithographed, cyclostyled or any other mod of representing words, figures or symbols in a permanent visible form, but unless prescribed does not include any carbon copy of a document;
- “private company” has the meaning given to it by section thirty;
- “promoter” means, in relation to a prospectus, any person who is a party to the preparation of the prospectus but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of a company;
- “prospectus” means any prospectus, notice, circular, advertisement or other printed or duplicated invitation offering to the public for subscription or purchase any shares or debentures of a company;
- “quoted” means in relation to any share, debenture or other investment an investment for which a quotation or permission to deal has been granted in respect of any stock exchange of good repute, and the term “unquoted” shall be construed accordingly;
- “recognized stock exchange” means a stock exchange prescribed as a recognized stock exchange for the purposes of this Act;
- “Registrar” means the Registrar of Companies or any person acting in that capacity;
- “secretary” includes any official of a company by whatever name called who is performing the duties normally performed by a secretary of a company;
- “share” means a share in the share capital of a company and includes stock, except where a distinction between stock and shares is expressed or implied;
- “special notice” has the meaning given to it by section one hundred and seven;
- “special resolution” means a resolution passed at a general meeting of a company in manner provided by sub-section (1), (2), (3) and (4) of section one **hundred and six**;
- “Subsidiary” and “wholly owned subsidiary” have the meanings given to them by section one hundred and fifteen;
- “Unable to pay its debts” in relation to a company has the meaning given to it by section one hundred and seventy-two and, in relation to an unregistered association, has the meaning given to it by paragraph (d) of section two hundred

and seventy-nine;

“Unregistered association” has the meaning given to it by section two hundred and seventy-eight;

“Winding-up order” means any order whereby a company is placed under liquidation or under provisional liquidation when such order for provisional liquidation has not been set aside;

(2) Every reference in this Act to a section, Part or Schedule is a reference to a section, Part or Schedule of this Act unless expressly stated otherwise.

3. The Minister for the time being responsible for Commerce and Industry (hereinafter called the Minister) shall exercise general direction and supervision over the administration of this Act.

4. (1) Nothing in this Act contained shall apply to any co-operative societies, the formation, registration and management whereof are governed by any other law save as may be otherwise provided in any such law.

(2) The provisions of this Act shall not be construed as applying to any building society, trade union, or friendly society established under the Friendly Societies Act, 1882, of the Cape of Good Hope as in force in Lesotho.

(3) In this section -

“Building society”, until a law is in force in Lesotho regulating

building societies, means a society to persons formed for the sole purpose of raising by the subscription of its members and by contributions of or deposits by its members and others a stock or a fund out of which advances may be made to members and others upon the security by way of mortgage to the society of immovable property or upon the security of a cession of a lease or upon the security of the shares of members, and, when any such law is in force, means a building society as therein defined;

“trade union” has the meaning given to it by any law for the time being relating to trade unions and trade disputes.

5. Where a company or an eternal company is subject to the provisions of any law which is specially applicable to insurance companies or societies, the provisions of this Act which would otherwise apply in respect of such company shall not apply whereby those provisions would be inconsistent with any such law.

6. (1) This Act shall apply to every company which has been specially incorporated or which, having been formed and registered under any of the repealed laws, is registered in Lesotho as a company at the commencement of this Act, in the same manner as if the company has been formed and registered as a company under this Act; and every company to which this Act is to so applicable shall be deemed to be duly incorporated in the

registered under this Act and is in this Act referred to as an existing company:

Provided that -

- (i) nothing in this act shall affect the validity of the incorporation of any existing company;
- (ii) reference in this Act, expressed or implied, to the date of registration shall be construed as a reference to the date at which an existing company was registered under any of the repealed laws;
- (iii) nothing in this Act contained shall affect any right or privilege acquired, or liability incurred, whether by agreement or otherwise, before the commencement of this Act, by an existing company, or affect the validity of any provisions in the deed of settlement of an existing company which, being in force at such commencement, are not in conflict with the provisions of this Act, save in so far as those provisions may be affected by sub-section (2) of this section;
- (iv) the provisions of this Act relating to the winding up of companies shall not apply to any company if it had commenced to be wound up 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.

(2) Those provisions of the Proclamation incorporating an existing company, or deed of settlement of any existing company which should have been contained in a memorandum of association if the company had been formed under this Act, shall for the purpose of this Act, be deemed to be the memorandum of association or part of the memorandum of association of the company, and shall be subject in all respects to the provisions of this Act relating to a memorandum of association.

(3) Any new or supplementary deed of settlement registered prior to the commencement of this Act under any of the repealed laws and embodying any alteration, consolidation, sub-division, conversion, increase or reduction of its registered capital, shall be of the same legal force and effect as if such alteration, consolidation, sub-division, conversion, increase or reduction had been fully effected under the provisions of this Act.

Registrar  
of  
companies

7. (1) The officer for the time being performed the functions of the Register General shall be Registrar of Companies and shall have all powers and perform all duties conferred on the Registrar of companies by or under this Act.

(2) As from the commencement of this Act -

(a) all registers of companies and other documents pertaining of companies field of record under the provisions of the repealed laws or any other law, shall be incorporated in and form part of the register of companies and files kept by the Registrar appointed under this section.

(b) all powers and functions vested by the repealed laws or any other law in the Registrar of Deeds for Lesotho in relation to the registration of companies and to the examination, registration, filing, inspection or certification of documents and returns required to be lodged by any company and to the collection of stamp duty or fees payable by a company or its offices shall vest in the Registrar appointed under this section who shall carry out in his office all such matters in relation to companies as, immediately prior to the commencement of this Act, were in that office uncompleted and which would have been carried out if this Act had not been promulgated so far as is necessary to complete those matters and give effect to then existing rights, privileges and obligations, and shall collect any fees due under the repealed laws in respect of such uncompleted matters; and every such incomplete matter shall be completed as if this Act had not been promulgated.

## **PART I**

### **INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO**

#### **Prohibition of Partnership Exceeding Twenty Members**

8. (1) No company, association, syndicate or partnership consisting of more than twenty persons shall be formed in Lesotho for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association, syndicate or partnership, or by the individual members thereof, unless it is registered as a company under this Act or is formed in pursuance of some other law, or instrument of a public character having the force of law.

(2) No association of persons formed in Lesotho are after the commencement of this Act for the purpose of carrying on any business that has for its object acquisition of carrying on any business that has for its object the acquisition of gain by the association or by the individual members thereof shall be a body corporate, unless it is registered as a company under this act or is formed in pursuance of some other law, or instrument of a public character having the force of law.

#### **Memorandum of Association**

9. Any seven or more persons (or, where the company to be formed will be a private company, any two or more persons) association 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 (that is to say) either -

- (a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed a company limited by shares); or
- (b) if a licence is granted in terms of section twenty-three the company having no share capital but having liability of its members limited by 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 having the liability of its members unlimited (in this Act termed an unlimited company).

10. (1) In the case of a company limited by shares, the memorandum shall be in the English or the Sesotho language and must state -

- (i) the name of the company which, unless a licence has been granted under section twenty-three, must contain "Limited" as the last word in the name and which, if the company be private company, must contain the term "(Proprietary)" preceding "Limited";
- (ii) the objects of the company;
- (iii) that the liability of the members is limited;
- (iv) the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount.

In the case of a company limited by guarantee, the memorandum shall be in the English or the Sesotho language and must state -

- (i) the name of the company;
- (ii) the objects of the company;
- (iii) that liability of the members is limited;
- (iv) that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member for payment of the debts and liabilities of the company contracted before he ceases to be a member and of the costs, charges and expenses of the winding-up and for the adjustment of the rights of the contributories among themselves such amount as may be required not exceeding a specified amount.

(2) No subscriber to the memorandum of a company limited by shares may take less than one share.

(3) Each subscriber to the memorandum of a company limited by shares must write in words opposite to his name the number of shares he takes.

(4) Every public company which converts itself into a private company in terms of sub-section (3) of section thirty shall, within thirty days after that conversion, and every existing company which is deemed to be a private company in terms of sub-section (4) of section thirty shall, within thirty months of the commencement of this Act, insert the term [(Proprietary)] before the word [limited] in its name.

(5) The insertion of the term [(Proprietary)] in compliance with the provisions of this section shall be regarded as a change of name for the purposes of sub-section (2), (3) and (4) of section twenty-two but not for the purposes of subsection (1) of that section.

(6) In the case of an unlimited company -

(a) The memorandum must state -

- (i) the name of the company;
- (ii) the objects of the company.

(b) If the company has a share capital -

- (i) no subscriber of the company may take less than one share;
- (ii) each subscriber must write opposite to his name in words the number of shares he takes.

11. The memorandum shall be printed in ink by some mode other than by handwriting and shall be signed and dated, in the presence of at least one attesting witness, by each subscriber. Opposite every such signature of a subscriber or a witness there shall be written in legible characters his full name, occupation, and full residential or business address.

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

13. (1) A company may by special resolution -

(a) subject to the provisions of section one hundred and sixty-five alter any condition contained in its memorandum which could lawfully have been contained in articles of association:

Provided that this paragraph shall not apply where the memorandum itself provides for or prohibits the alteration of all or any of the said conditions, and shall not authorise any variation or abrogation of the special rights of any class of members;

(b) subject to the provisions of the next succeeding sub-section alter the provisions of its memorandum with respect to the objects of the company so far as may be required to enable it

- 
- (i) to carry on its business more economically or more efficiently; or
  - (ii) to attain its main purpose by new or improved means;
  - or
  - (iii) to enlarge or change the local area of its operation; or
  - (iv) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company, or
  - (v) to restrict or abandon any of the objects specified in the memorandum; or
  - (vi) to sell or dispose of the whole or any part of the undertakings of the company; or
  - (vii) to amalgamate with any other company or body of persons.

(2) If any application is made to the court by the holders of not less in the aggregate than fifteen per centum in nominal value of the company's issued share capital or of any class thereof, or, if the company has no share capital, not less than fifteen percent of the company's members, for any alteration in terms of the preceding sub-section to be canceled, the alteration shall not have effect except in so far as it is confirmed by the court:

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

(3) An application under the provisions of the preceding sub-section shall be made within twenty-one days after the date on which the resolution altering the condition contained in the memorandum of the company's objects (as the case may be) to make the application by such one or more of their number as they may appoint in writing for the purpose.

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

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

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

where such a company alters its objects the Minister (unless he

sees fit to revoke the licence) may vary the licence by making it subject to such conditions and regulations as he thinks fit, in place of or in addition to the conditions and regulations, if any, to which the licence was formerly subject.

- (6) Where a company passes resolution altering its objects -
  - (a) if no application is made with respect thereto under this section, it shall within fifteen days from the end of the period for making such an application deliver to the Registrar a copy of its memorandum as altered; and
  - (b) if such an application is made it shall -
    - (i) forthwith give notice of the fact to the Registrar; and
    - (ii) within fifteen days from the date of any order cancelling or confirming the alteration, deliver to the Registrar a certified copy of its memorandum as altered.

The court may by order at any time extend the time for delivery of documents to the Registrar under paragraph (b) of this sub-section for such period as the court may think proper.

(7) If a company makes default in giving notice or delivering any document to the Registrar as required by sub-section (6) of this section the company shall be guilty of an offence and liable on conviction to a fine not exceeding twenty rand.

(8) The validity of an alteration of the provisions of a company's memorandum with respect to the objects of the company shall not be questioned on the ground that it was not authorised by sub-section (1) of this section or otherwise) before the expiration of twenty-one days after the date of the resolution in that behalf; and where any such proceedings are taken otherwise than under this section the provisions of sub-section (6) and (7) taken under this section and as if an order declaring the alteration invalid were an order cancelling it and as if an order dismissing the proceedings were an order confirming the alteration.

### **Articles of Association**

14. (1) There may, in the case of a company limited by shares, and there shall in the case of a company limited by guarantee, or an unlimited company be registered with the memorandum articles of associations signed by the subscribers to the memorandum and prescribing regulations for the company.

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

- (2) In the case of a company which has no share capital (other

than a company licensed under section twenty-three) the articles must state the number of member with which the company proposes to be registered. Where such a company has increased the number of its members beyond the registered number, it shall within thirty days after the increase was resolved on or took place deliver to the Registrar notice of the increase, and the Registrar shall record the increase.

(3) If default is made in complying with the requirements of this section the company and every officer of the company who is party to the default, shall be guilty of an offence and liable on conviction to a fine not exceeding ten rand for every day during which the offence continues.

15. (1) Articles of Association of a company limited by shares, may adopt all or any of the regulations contained in Table A in the First Schedule.

(2) In the case of a company limited -

- (a) by shares, if articles of association are not registered, or if articles of association are registered in so far as the articles do not exclude or modify the regulations contained in Table A, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles;
- (b) by guarantee, articles of association as near as circumstances permit in the form set out in Table C shall be registered.

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

- (a) of excluding the right to demand a poll at a general meeting on any question other than the election of the chairman of the meeting or the adjournment of the meeting or
- (b) of making ineffective a demand for a poll on any such question which is made -
  - (i) by not less than five members having the right to vote at the meeting; or
  - (ii) by a member or members representing not less than non-tenth of the total voting rights of all the members being the right to vote at the meeting;

Or

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

16. Articles shall be in the English or the Sesotho language, shall be printed and shall -

- (a) be divided into paragraphs numbered consecutively; and
- (b) be signed and dated by each subscriber to the memorandum in the presence of at least one attesting witness. Opposite every such signature of a subscriber or a witness there shall be written in legible characters his full name, occupation and full residential or business address.

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

### **Registration**

18. (1) The memorandum and the articles, if any, together with either a duplicate original or a printed copy certified as a true copy by a notary public shall be delivered to the Registrar and shall be accompanied by a power of attorney by the subscribers to the memorandum in favour of the person lodging the documents and by a share capital duty receipt.

(2) Subject to due compliance with the provisions of sections one hundred and forty-two, if applicable, and eighty-five and upon payment of the prescribed fees, the Registrar shall, if the documents required in sub-section (1) are in order, register the memorandum and the articles, if any, and shall return to the company a duplicate original or one notarial copy of the memorandum and of the articles, if any, with the date of the registration endorsed thereon.

19. (1) On registering the memorandum of a company the Registrar shall certify under his hand that the company is incorporated, and the date of such incorporation.

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

(3) A company may have a seal and, if it has, such seal shall be affixed to instruments in the manner prescribed in its articles.

20. (1) A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that ll 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 authorised to be registered and duly registered under this Act.

(2) A solemn declaration by an attorney engaged in the formation of a company, or by a person named in the articles as a director or secretary  
the company, of comlof company

of the company, of compliance with all or any of the said requirements shall be produced tot he Registrar, and the Registrar may accept such a declaration as sufficient evidence of compliance.

### **Provisions with respect to Names of Companies**

21. (1) The Registrar may, on written application, reserve a name pending registration of a company or a change of name by an existing company. Such reservation shall be for a period of thirty days or such longer period, not exceeding in all sixty days, as the Registrar may, for special reasons, allow.

(2) No name shall be reserved and no company shall be registered by a name which is identical with that for which a reservation is current or with that of a registered company or a registered external company or which so nearly resembles any such name as to be calculated to deceived unless the registered company or registered external company is in liquidation and signifies its consent to the registration in such manner as the Registrar may require.

(3) Unless otherwise ordered by the Minister, the Registrar shall not register a company a name which in his opinion is calculated to mislead the public or to cause offence to any person or class of persons or is suggestive or blasphemous or indecent.

(4) Without the consent of the Minister, no company shall be registered by a name which includes the words "Imperial," "Royal," "Crown," "Empire," "Government," "State," "Commonwealth," "Dominion" or the combined words "United Nations" or any other word or words which import or suggest that it enjoys the patronage of the Sovereign or Government of Lesotho, of the United Kingdom, or of any other part of the Commonwealth, or of any department of any such Government or Administration or of the General Assembly of the United Nations.

(5) If a company through inadvertence or otherwise is registered, whether originally or by reason of a change of name, by a name which would not, under the provisions of this section, be permitted to be used for the registration of a company, the Registrar may order the company to change its name and the company shall thereupon do so within a period of six weeks from the date of the written order or such longer period as the Minister may see fit to allow.

22. (1) A company may, by special resolution and with the

written approval of the Registrar, change its name.

The Registrar shall not give such approval unless there has been published in the Gazette and in a newspaper circulating in Lesotho and advertisement stating that application will be made to the Registrar for his approval not less than fourteen days after the last publication of the advertisement.

(2) Where the name of the company is changed, in terms of the provisions of this section, the Registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of

incorporation altered to meet the circumstances of the case, or a certificate that the new name is entered on the register in place of the former name.

(3) Upon the production by a company to the Registrar of Deeds or other officer proper for the registration of deed of a certificate by the Registrar in terms of sub-section (2) of this section together with the relevant documents and application, in writing, and on payment of the prescribed fees, such Registrar of Deeds or other officer shall make in his registers all such alternations as are necessary by reason of the change name and shall endorse the change of name on the said documents.

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

23. (1) Where the Minister is satisfied that an association exists for any lawful purpose, the pursuit of which is calculated to be in the interests of the public, or any section of the public, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, and that it is desirable that such association should be incorporated the Minister may by licence under his hand direct that the association be registered as a company without the addition of the word "Limited" to its name, and the association may thereupon be registered accordingly.

(2) The association, upon such registration, shall enjoy all the privileges of a company and be subject to all the obligations thereof, except those of using the word "Limited" as any part of its name and of complying with the provisions of sections **fifty-one, fifty-two, fifty-six, eighty-seven, ninety-six, ninety-seven, one hundred and twenty-one and one hundred and forty-two.**

(3) A licence under this section may at any time be revoked by the Minister and upon revocation the Registrar shall enter the "Limited", at the end of the name of the association upon the register, and the association shall thereupon cease to enjoy the exemptions and privileges granted by this section.

Before a license is so revoked the Minister shall give to the

association notice in writing of his intention, and shall afford it an opportunity of submitting in writing arguments in opposition to evocation.

An association whose licence has been revoked may appeal to the court within such period and in accordance with such rules as may be prescribed under section three hundred and eleven. On any such appeal the court may make such order as it deems fit.

(4) Whenever it is proved to the satisfaction of the Minister that the objects of a company are those defined in sub-section (1) of this section and objects incidental or conducive thereto, and that by its constitution the company is required to ap p

constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its members, the Minister may by a licence authorise the company to change its name by special resolution by the omission therefrom the word "Limited", and as from the date of registration of the special resolution passed pursuant to such licence the company shall be deemed to be a company licences under this section.

(5) The provisions of section twenty-two shall apply to a change of name under this section.

(6) A licence by the Minister under this section may be granted on such conditions and subject to such regulations as he may think fit, and those conditions and regulations shall be binding upon the association or company and shall, if the Minister so directs, be inserted in the memorandum and articles, or one of those documents.

#### **General Provisions with Respect to Memorandum and Articles**

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

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

25. (1) Every Company shall send to every member at his request, on payment of one rand or such less sum as the company may prescribe, a copy of the memorandum and of the articles, if any, or shall afford to every member or to his duly authorised agent reasonable facilities for making a copy of the memorandum and of the articles, if any.

(2) If a company makes default in complying with this section the company and every officer of the company who is in default shall be guilty of an offence, and liable on conviction to a fine not exceeding four rand for each default.

26. (1) Where an alteration is made in the memorandum of

articles of a company, every copy of the memorandum or articles issued after the date of the alteration shall be in accordance therewith.

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copy of the memorandum or articles which is not in accordance with the alteration, the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding four rand for each copy so issued.

### **Membership of Company**

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

(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.

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

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

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

(4) Subject to the provisions of sub-section (1) of this section sub-sections (1) and (3) of this section shall apply in relation to a nominee for a body corporate which is a subsidiary, as if references in sub-sections (1) and (3) of this section to such a body corporate included references to a nominee for it.

29. If at any time the number of members of the company is reduced, in the case of private company, below two, or, in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than two members,

or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

### **Private Companies**

30. (1) The expression "private company" means a company which is by its articles -

- (a) restricts the right to transfer of its shares; and
- (b) limits the number of its members to fifty, not including persons who are in the employment of the company, and persons who having been formerly in the employment of the company, were while in that employment and have continued, after the termination of that employment, to be members of the company; and
- (c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

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

(3) With the sanction of a special resolution and subject to confirmation by the court, a public company may convert itself into a private company.

(4) Any existing company upon satisfying the Registrar within fifteen months after the commencement of this Act that its articles do comply, or that it has altered its articles so as to comply with the provisions of sub-section (1) of this section shall be deemed in all respects to be a private company.

31. Where the articles of a company include the provisions which, under section thirty, are required to be included in the articles of a company in order to constitute it a private company but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies by this Act and the provisions thereof shall in all respects apply to the company as if it were not a private company:

Provided that the court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other persons 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.

32. (1) If a company, being private company, alters its articles in such manner that they no longer include the provisions which, under section thirty, are required to be included in the articles of a company in order to constitute it a private company, or if an

existing company which contains either of the terms "Proprietary" or "(Pty.)" in its name has not been deemed to be a private company under sub-section (4) of section thirty within fifteen months of the commencement of this Act, the company shall, as on the date of the alteration or on the first day of the sixteenth month after the commencement of this Act, as the case may be, cease to be a private company and shall, within a period of twenty-one days after the said date, remove the term "(Proprietary)" or "(Pty.)" from its name and, unless within the same period a prospectus relating to the company which complies with the Third Schedule is issued and lodged with the Registrar as required by section forty-two, shall within that period deliver to the Registrar for registration a statement in lieu of prospectus in the form and containing the particulars set out in Part I of the Second Schedule and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein; and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

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

(3) If default is made in complying with sub-section (1) or (2) of this section, the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand for every day during which the offence continues.

(4) The provisions of sub-sections (5) and (6) of section fifty-two shall mutatis mutandis apply to every statement in lieu of prospectus lodged under this section as they apply to a statement in lieu of prospectus lodged under that section.

(5) The removal of the term "(Proprietary)" or "(Pty.)" from the name of a company in compliance with sub-section (1) of this section shall be regarded as a change of name for the purposes of sub-sections of sub-section (1) of that section.

33. Any contract made in writing by a person professing to act as agent or trustee for a company not yet formed, incorporated or registered, shall be capable of being ratified or adopted by or otherwise made binding upon and enforceable by such company after it has been duly registered as if it had been duly formed, incorporated and registered at the same time when the contract was made, if -

- (a) the memorandum contains as one of the objects of such company the adoption or ratification of or the acquisition of rights and obligations in respect of such contracts; and
- (b) the contract or a certified copy thereof is delivered to the Registrar simultaneously with the delivery of

memorandum in terms of section eighteen.

**Contracts etc.**

34. (1) Contracts on behalf of a company may be made in the following manner:

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

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

(2) All contracts made in accordance with this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto.

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

(2) All documents, other than the documents mentioned in this section and section thirty-four shall, if executed on behalf of a company be signed as prescribed in section thirty-four by any person acting under its authority, express or implied, unless the articles otherwise provide.

36. A company may, by writing, which if it has a seal shall be under its seal and the hand of one of its directors or, if it has not a seal, shall be under the hands of two of its directors or of one director and of the secretary, empower any person either generally or in respect of any specified matters, as its agent, to execute deeds on its behalf in any external country; and every deed signed by such agent, on behalf of the company, shall bind the company, if valid in other respects.

37. (1) any company whose objects require or comprise the transaction of business in external countries may, if authorised by its articles, have for use in any external country an official seal, which shall be a facsimile of the seal of the company, if any, with the addition on its face of the name of the external country where it is to be used.

(2) a company having such an official seal may, by writing, which if it has a seal for use in Lesotho shall be under that seal and the hand of one of its directors or, if it has not such a seal, shall be under the hands of two of its directors or of one director and of the secretary, empower any person appointed for the purpose in any external country, to affix the said official seal to any deed or other document to which the company is party.

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

(4) The person affixing any such official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and the place of affixing the same.

(5) a deed or other document to which such an official seal is duly affixed shall bind the company, if valid in other respects.

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

## **PART II**

### **SHARE CAPITAL AND DEBENTURES**

#### **Prospectus**

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

40. (1) Every prospectus issued by or on behalf of a company or on behalf of any person who is or has been engaged or interested in the formation of the company shall be in the English or Sesotho language and must state the matters specified in Parts I and II of the Third Schedule and set out -

- (a) the reports specified in Part II of that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule;
- (b) the report of any expert who is mentioned in the prospectus or an abstract from such report certified by the expert as truly conveying the substance of his report and of his opinion and conclusions.

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

(3) It shall not be lawful to issue, distribute or deliver or cause to be issued, distributed or delivered any form of application for

shares in or debentures of a company unless the form is issued, distributed or delivered, as the case may be, with a prospectus which complies with the requirements of this section:

Provided that this sub-section shall not apply if it is shown that the form of application was issued either -

- (a) in connection with an bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or
- (b) in relation to shares or debentures which were not offered to the public.

If any contravenes any of the provisions of this subsection, he shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

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

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

- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
- (c) the non-compliance or contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial or was otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 15 of the Third Schedule, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) This section shall not apply to -

- (a) the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; or
- (b) the issue of a prospectus or form of application relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange;

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

(6) Nothing in this section shall limit to diminish any liability which any person may incur under the common law or his Act part from this section.

(7) Every newspaper or other advertisement whatsoever offering or calling attention to an offer or intended offer of shares in or purchase of a company to the public for subscription or purchase shall be deemed to be a prospectus issued by the person responsible for publishing or disseminating the advertisement (and all enactments and rules of law as to the contents of prospectuses and as to liability in respect of statements in an omissions from prospectuses or otherwise relating to prospectuses shall apply and have effect accordingly), unless it contains a statement as to the places at and times during which copies of the prospectuses may be obtained and no more than the following:-

- (a) the number and description of the shares or debentures concerned;
- (b) the name and date of registration of the company;
- (c) the general nature of the main business or proposed main business of the company;
- (d) the names of the directors or proposed directors.

No statement that or to the effect that the advertisement is not a prospectus shall avail to prevent the operation of this subsection.

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

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

(2) If any prospectus is issued in contravention of this section, the company and every person who is knowingly a party to the issue thereof shall be guilty of an offence and liable on conviction, in the case of the company, to a fine not exceeding one thousand rand and in the case of any such person, to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

42. (1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, a copy thereof has been filed with and registered by the Registrar. Such copy shall be signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, and shall have endorsed thereon or attached thereto-

- (a) any consent to the issue of the prospectus required by section forty-one from any person as an expert; and
- (b) in the case of a prospectus issued generally, also -
  - (i) a copy of any contract required by paragraph 14 of the Third Schedule to be stated in the prospectus or, in the case of a contract not reduced to writing, a memorandum giving full particulars thereof; and
  - (ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein any such adjustments are as mentioned in paragraph 26 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

The references in sub-paragraph (i) of paragraph (b) of this subsection to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a foreign language, be taken as references to a copy of a certified translation of the contract or a copy embodying a certified translation of the parts in a foreign language, as the case may be.

- (2) Every prospectus shall on the face of it -
  - (a) specify the date of its registration under sub-section (10) of this section; and
  - (b) specify, or refer to statements included in the prospectus which specify any documents required by this section to be endorsed on or attached to the copy so delivered.

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

(4) If a prospectus states that the whole or portion of the share capital or debentures offered for subscription has been underwritten, the prospectus shall not be registered until there is lodged with the Registrar the documents required by section forty-six.

(5) The Registrar shall not register any prospectus which names any person as the auditor, attorney, banker or broker of the company or proposed company unless it is accompanied by the consent in writing of the person so named to act in the capacity stated, but such person shall not be deemed thereby to have authorised the issue of the prospectus.

(6) No prospectus shall be issued more than three months after the date of its registration by the Registrar, and if a prospectus is so issued it shall be deemed to be a prospectus a copy of which has not been registered.

- (7) If a prospectus is issued-
  - (a) without a copy thereof being filed with and registered by

- the Registrar; or
- (b) without the copy so filed and registered having endorsed thereon or attached thereto the required documents;
- the company, and every person who is knowingly a party to the issue of prospectus shall be guilty of an offence and liable on conviction, in the case of the company, to a fine not exceeding one thousand rand and, in the case of any such person, to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

43. A company not being a private company shall not previously to the statutory meeting vary in any material respect the terms of a contract referred to in the prospectus, or statement in lieu of prospectus, except when the variation is made subject to the approval of the statutory meeting.

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

- (a) every person who is a director of the company at the time of the issue of the prospectus;
- (b) every person who has in writing authorised himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;
- (c) every person being a promoter of the company; and
- (d) every person who has authorised the issue of the prospectus:

Provided that -

- (i) where, under section forty-one, the consent of a person is required to the issue of a prospectus and he has given that consent, he shall not by reason of his having given it be liable under this sub-section as a person who has authorised the issue of the prospectus except in respect of an untrue statement purposing to be made by him as an expert; and
- (ii) no person whose ordinary business or part of whose ordinary business is to do secretarial or administrative work, shall be liable under this sub-section as a person who has authorised the issue of the prospectus by reason only that he is employed in the company to perform on its behalf the secretarial and administrative work of the issue of shares or debentures to which the prospectus relates and is named in the prospectus as secretary or manager for the issue.

(2) No person shall be liable under sub-section (1) of this section if he proves -

- (a) that, having consented to become a director of the

- company, he withdrew his consent in writing before the issue of the prospectus, and that it was issued without his authority or consent; or
- (b) that the prospectus was issued without his knowledge or consent gave reasonable public notice that it was issued without his knowledge or consent; or
  - (c) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of the untrue statement, made an immediate written withdrawal of his consent thereto and give reasonable public notice of such withdrawal ad of the reason therefor; or
  - (d) that -
    - (i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable grounds to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true; and
    - (ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was correct and fair copy of or extract from the report or valuation and he had reasonable grounds to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and had given the consent required by section forty-one

to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendants' knowledge, before allotment thereunder; and

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

Provided that this sub-section shall not apply in the case of a person liable, by reason of his having given a consent required of him by section forty-one as a person who has authorised the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert shall not be so liable if he proves -

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

- (a) that, having given his consent under section forty-one to the issue of the prospectors, he withdrew it in writing

- before delivery of a copy of the prospectus of registration; or
- (b) that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he, on becoming aware of the untrue statement, made an immediate written withdrawal of his consent and gave reasonable public notice of such withdrawal, and of the reason therefor; or
  - (c) that he was competent to make the statement and that he had reasonable ground to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true.
- (4) Where -
- (a) the prospectus contains the name of the person as a director of the company, or as having agreed to become a director thereof, and he has not consented in writing to become a director or has in writing withdrawn his consent before the issue of the prospectus and has not authorised or consented to the issue thereof; or
  - (b) the consent of a person is required under section forty-one to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus;

the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof shall be liable, jointly or severally, to indemnify the person named as aforesaid or whose consent was

required as aforesaid, as the case may be, against all damage, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, as they case may be, or in defending himself against any action or legal proceeding brought against him in respect thereof;

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

45. (1) Where a prospectus issued after the commencement of this Act includes any untrue statement, any person who authorised the issue of the prospectus shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand, or to imprisonment for a period not exceeding two years, either that the statement was immaterial or that he had reasonable grounds to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.

(2) A person shall not be deemed for the purposes of this section to have authorised the issue of a prospectus by reason only of his having given the consent required by section forty-one to

the inclusion therein of a statement purporting to be made by him as an expert.

45. (1) If the whole or any portion of the share capital or debentures of a company being offered for subscription has been or is being underwritten there shall be lodged by the company with the Registrar not later than the day before the date of the proposed offer of shares or debentures, a copy of the underwriting contract and a sworn declaration by the person named as directors of such company, that to the best of the deponent's knowledge and belief the underwriter is and will be a position to carry out his obligations even if no shares or debentures, as the case may be, are applied for.

(2) It shall be the duty of the underwriter to furnish the company within fourteen days of a written request by the company with the sworn declaration required by sub-section (1) of this section, in default whereof the underwriter shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand, or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

(3) Should any underwriter, in respect of whom the declaration referred to in sub-section (1) of this section has been made, fail, when duly called upon, to carry out his obligations under the underwriting contract, the declaration shall be deemed to have been made without reasonable grounds for belief that the person named as underwriter was or would be able to carry out the obligations of the contract, and any person making such declaration shall be guilty of an offence unless he proves that he did so believe and have reasonable grounds for that belief, and shall be liable on conviction to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(4) If default is made by the company in lodging a copy of the underwriting contract and sworn declaration with the Registrar within the time prescribed by sub-section (1) of this section the company shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand.

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

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

- (a) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or
- (b) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

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

- (a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and
- (b) the place and time at which the contract under the said shares or debentures have been or are to be allotted my be inspected;

and section forty-two as applied by this section shall have effect as though the person making the offer were persons named in a prospectus as directors of a company.

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

48. For the purposes of this Act -

- (a) a statement included in a prospectus shall be deemed to the untrue if it is misleading in the form and context in which it is included; and
- (b) a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by thereof or by reference incorporated therein or issued therewith;
- (c) if any matter which ought, under the provisions of section forty and forty-one and the Third Schedule or under subsection (3) of section forty-seven, to be inserted in a prospectus is omitted therefrom and if such omission is calculated to mislead then the prospectus shall be deemed, in respect of such omission, to be a prospectus in which an untrue statement is included.

49. (1) For the purposes of the provisions of this Part any reference in this Act to an offer of shares or debentures to the public or for sale tot he public shall unless the contrary is stated, include an offer to any section of the public and references in a companylls articles to invitations to the public to subscribe for

shares or debentures shall be construed accordingly:

Provided that an offer or invitation shall not be deemed to have been made to the public if, in all the circumstances, it is not calculated to cause the said shares, or debentures to become available for subscription or purchase by persons other than those to whom the offer or invitation is specially made or if it is wholly the domestic concern of the persons making and receiving it.

(2) A provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures shall not be deemed to prohibit an offer or invitation to members or debentures holders of such company which complies with the proviso to sub-section (1) of this section, and the provisions of this Act relating to private companies shall be construed accordingly.

50. (1) It shall not be lawful for any person to go from house to house offering shares or debentures for subscription or purchase or offering to purchase shares.

In this sub-section "house" shall include any office, shop or business premises, save the office or business premises of a person whose ordinary business or part of whose ordinary business it is to deal in shares or debentures, whether as principal or agent.

(2) No person shall either verbally or in writing, including any newspaper advertisement -

- (a) make an offer of shares for sale to the public or any member of the public; or any member of the public to purchase any shares;
- (b) invite offers from the public or any member of the public to purchase any shares;

and no person shall issue, distribute or publish any material which in its form and context is calculated to be understood as an offer or invitation as aforesaid

invitation as aforesaid unless the offer, invitation or material is accompanied either by a prospectus complying with the provisions of this Act or by written statement containing the particulars required by this section to be included therein.

The said statement shall be dated and signed by the person or persons making the offer or invitation or issuing, distributing or publishing the said material, and if such person is a company, by every director thereof:

Provided that the provisions of this sub-section shall not apply-

- (i) if the shares to which the offer or invitation or material relates are shares which are quoted on, or in respect of which permission to deal has been granted by a recognised stock exchange, and the person making the offer or invitation or publishing the material so states in writing specifying the stock exchange; or
- (ii) if the shares in question are shares which a company has allotted or agreed to allot with a view to their being

- offered for sale to the public; or
- (iii) if the offer or invitation is made or the material is published only to persons whose ordinary business or part of whose ordinary business is to deal in shares or debentures whether as principals or agents; or
  - (iv) to an offer for sale to the public or an invitation to the public to tender for unquoted shares made in the course of winding up a company in liquidation or in a deceased, insolvent or assigned estate or in an estate held under curatorship or in execution of a judgement of any competent court; or
  - (v) to an offer or invitation not made to the public generally and made in respect of unquoted shares by a person who is at the time of the offer or invitation the bona fide registered beneficial owner of them.
- (3) The said statement shall contain particulars with respect to the following matters -
- (a) whether the person making the offer is acting as principal or agent, and if as agent the name of his principal or agent, and if as agent the name of his principal and an address in Lesotho where that principal can be served with process and the nature and extent of the remuneration received or receivable by the agent for his services;
  - (b) the date on which and the country in which the company was incorporated, and the address of its registered or principal office in Lesotho or if none, the address of its principal office outside Lesotho;
  - (c) the authorised share capital of the company and the amount thereof which has been issued, the classes into which it is divided and the rights of each class of members in respect of capital, dividends and voting and the number and amount of shares issued for cash and the number and amount thereof issued for a consideration other than cash, giving the dates on

which and the prices at which or the consideration for which were issued;

- (d) the dividends, if any, paid by the company on each class shares during each of the five financial years immediately preceding the offer or such lesser period as the company may have operated and, with respect to the rates of such dividends, particulars of each such class of shares on which such dividends have been paid, and if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;
- (e) the total amount of any debentures issued by the company and outstanding at the date of the statement, together with the rate of interest payable thereof;
- (f) the names and addresses of the directors of the company;

- (g) whether or not shares offered are fully paid up, and if not, to what extent they are paid up;
- (h) whether or not the shares are quoted on, or permission to deal therein has been granted by, any stock exchange in Lesotho or elsewhere, and, if so, which and, if not, a statement that they are not so quoted or that no such permission has been granted;
- (i) if the offer relates to units, particulars of the names and addresses of the person in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which those shares are held, and an address in Lesotho where that document or a copy thereof can be inspected;
- (j) particulars of the date on which and the prices at which the shares offered were -
  - (i) originally issued by the company; and
  - (ii) acquired by the person making the offer, or by his principal,
 Giving the reasons for any difference between such prices and the prices at which the shares are being offered.

In this sub-section the expression [company] means the company by which shares to which a statement relates were or are to be issued.

(4) If any person contravenes this section he shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

(5) If a person convicted of an offence under this section is a company (whether a company within the meaning of this like offence and subject to the like penalties unless he proves that the act constituting the offence took place without his knowledge or consent.

(6) In this section, unless the context otherwise requires, the expression [offer] includes an invitation to make an offer, the expression [shares] means the shares of a company whether a company within the meaning of this Act or not, and includes debentures and units and the expression [unit] means any right or interest (by whatever name called) in a share and for the purposes of this section a person shall not in relation to a company be regarded as not being a member of the public by reason only that he is a holder of shares in the company or a purchaser of goods from the company.

(7) If any person is convicted of having made an offer in contravention of the provisions of this section, the court before which he is convicted may order that any contract made as a result of the offer shall be void, and, where it makes any such order, may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any shares.

### Allotment

51. (1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph 4 of the Third Schedule has been subscribed, and the sum payable on application for the amount so stated in any cheque received by the company in payment shall be deemed not to have been paid to and received by the company -

- (a) until the amount of the cheque has been credited to the account of the company with its bankers;
- (b) if the company has at any time delivered to the payer and has not been repaid the amount or value of any money, bill, promissory note, cheque or other valuable consideration otherwise than in discharge of a debt bona fide due by the company to such payer, then to the extent of the amount or value of such money, bill, promissory note, cheque or other valuable consideration.

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

(3) The amount payable on application on each share shall be the same in respect of all shares of the same class in any one issue and shall not be less than ten per cent of the nominal amount of the share.

(4) The amount paid on application shall be set part by the directors in a separate bank account and shall not be available for the purposes of the company or for the satisfaction of its debts until the minimum subscription has been made up.

(5) If the conditions aforesaid have not been complied with or the expiration of a sixty days after the first issue of the prospectus, all money received from applicants for shares shall forthwith be repaid to them without interest, and, if any such money is not so repai

repaid within seventy days after the issue of the prospectus, the directors of the company shall be guilty of an offence and liable to a fine not exceeding one hundred rand, further, shall be jointly and severally liable to repay that money with interest at the rate of five percent per annum from the expiration of the seventieth day:

Provided that a director shall not be guilty of an offence nor personally liable to repay the money if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

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

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

(2) A company which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus

but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been delivered to the Registrar for registration a statement in lieu of prospectus signed by every director of the company or by its agent authorised in writing, in the form and containing the particulars set out in Part I of the Fourth Schedule and, in the cases mentioned in Part II of that Schedule setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

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

(4) If a company contravenes sub-section (2) or (3) of this section the company and every director of the company who knowingly and wilfully authorises or permits the contravention shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand.

(5) Where a statement in lieu of prospectus delivered to the Registrar under sub-section (2) of this section includes any untrue statement, any person who authorised the delivery of the statement in lieu of prospectus for registration shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding two years, or to both such fine and imprisonment unless he proves either that the untrue statement was immaterial or that he had reasonable grounds to believe and did up to the time of the delivery of registration of the statement in lieu of Prospectus believe that the untrue statement was true.

- (6) For the purposes of this section -
- (a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
  - (b) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein; and
  - (c) if any matter which ought, under the provisions of the Fourth Schedule, to be inserted in a prospectus is omitted therefrom and if such omission is calculated to mislead then the statement in lieu of prospectus shall be deemed, in respect of such omission, to be a statement in lieu of prospectus in which an untrue statement is included.

53. (I) An allotment made by a company in contravention of section fifty-one or fifty-two shall be voidable at the instance of

the applicant within one month after the holding of the statutory meeting and not later; or in any case, where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes, or permit or authorises the contravention of, any of the provisions of section fifty-one of fifty-two he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby:

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

54. Where an application form is required by section forty to be attached to a prospectus, every allotment of shares or debentures made otherwise than in pursuance of an application form which was issued, distributed or delivered with a prospectus as required by sub-section (3) of section forty shall be voidable at the instance of the allottee within one month after allotment unless it is shown that the allottee at the time of his application was in fact possessed of a copy of the prospectus or was aware of its contents.

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

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

(2) In sub-section (1) of this section the reference to the day on which the prospectus is first issued generally shall be construed as referring to the day on which it is first issued as a newspaper advertisement:

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

(3) The validity of an allotment shall not be affected by any contravention of the foregoing provisions of this section but, in the event of any such contravention, the company and every officer of the company who is knowingly a party to the default shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand.

(4) In the application of this section to a prospectus offering shares or debentures for sale, the foregoing sub-sections shall have effect with the substitution of references to sale for references to

allotment, and with the substitution for the reference to the company and every officer of the company who is knowingly a party to the default of a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the contravention.

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

(6) In reckoning for the purposes of this section the third day after another day, any intervening day which is Saturday or Sunday or which is public holiday in Lesotho shall be disregarded and if the third day (as so reckoned) is itself a Saturday or Sunday or a public holiday, there shall for the said purposes be substituted the first day thereafter which is none of them.

56. (1) Every company shall keep a register of allotments at its registered office.

(2) The company, whenever it makes any allotment of its shares, shall within thirty days thereafter, lodge with the Registrar

- (a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names and addresses of the allottees, and the amount if any, paid or due and payable on each share; and
- (b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing and signed by the parties thereto, constituting the title of the allottee to the allotment, together with any contract of sale or contract for services or other consideration in respect of which that allotment was made, and a return stating the number and

nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(3) If default is made in complying with the requirements of this section, the company and every officer of the company who is knowingly a party to the default, shall be guilty of an offence and liable on conviction to a fine not exceeding ten rand for every day during which the offence continues:

Provided that in the case of default in lodging with the Registrar within thirty days after the allotment any document required to be lodged by this section, the company or any person liable for the default, may apply to the court for relief, and the court, if satisfied that the omission to lodge the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the lodging of the document for such period as the court may think proper.

### Commissions and Discounts

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

- (a) the payment of the commission is authorised by the articles; and
- (b) the commission paid or agreed to be paid does not exceed five percent of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less; and
- (c) the amount or rate per cent of the commission paid or agreed to be paid -
  - (i) in the case of shares offered to the public for subscription, disclosed in the statement in lieu of prospectus or in the statement in the prescribed form signed in like manner and a statement in lieu of prospectus and delivered, before the payment of the commission, to the Registrar, for registration, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice; and
- (d) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in manner aforesaid.

(2) Save as aforesaid, no company shall apply any of its shares or capita; 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 such brokerage as it has heretofore been lawful for a company to pay.

(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 this section relating to the delivery to the Registrar of the statement in

the prescribed form, the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding ten rand or every day during which the office continues.

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

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

- (i) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business;
- (ii) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully-paid shares in the company or its holding company, to be held by or in trust for the benefit of employees of the company, including any director holding a salaried employment or office in the company;
- (iii) 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 full

fully-paid shares in the company or its holding company to be held by themselves by way of beneficial ownership.

(2) If a company contravenes any of the provisions of this section, the company and every director of the company who is a party to such contravention shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand.

#### **Issue of Shares at Premiums and Redeemable Preference Shares**

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

(2) The share premium account may, notwithstanding anything in sub-section (1) of this section, 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;
- (ii) the expenses of, or the commission paid on any issue of shares or debentures of the company; or
- (c) in providing for the premium payable, if any, or 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 within the meaning of the Sixth Schedule shall be disregarded in determining the sum to be included in the share premium account.

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

Provided that -

- (i) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;
- (ii) no such shares shall be redeemed unless they are fully paid;
- (iii) the premium, if any payable on redemption must have been provided for out of the profits of the company or out of the company's share premium account before the shares are f

shares are redeemed;

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

(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 authorised 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 increased by the issue of shares in pursuance of this sub-section:

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

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

### **Miscellaneous Provisions as to Share Capital**

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

- (a) make arrangements on the issue of shares for a difference between members in the amounts and times of payment of calls on their shares;
- (b) accept from any member who assents thereto the whole or part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up, and, if the whole amount unpaid on any shares be paid, issue those shares as fully paid up;
- (c) where a larger amount is paid up on some shares than on others, pay dividend in proportion to the amount paid up on each share.

62. A company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purpose of the company being wound up or, in respect of a company placed under judicial management, with the sanction of the court, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

63. (1) a company, if authorised by its articles, may by ordinary resolution alter the conditions of its memorandum so as to -

- (a) increase its share capital by new shares of such amount as it thinks expedient;
- (b) consolidate and divide all or any part of its share capital into shares of larger amount than its existing shares;
- (c) convert all or any of its paid-up shares of any denomination;
- (d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between

the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

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

(2) 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.

62. (1) If a company has-

- (a) consolidated and divided its share capital into shares of larger amount than its existing shares, or
- (b) converted any shares into stock; or
- (c) re-converted stock into shares; or
- (d) subdivided its shares or any of them, or redeemed any redeemable preference shares; or
- (e) redeemed any redeemable preference shares;
- (f) cancelled any shares, otherwise than in connection with a reduction of share capital under section sixty-seven;

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

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding ten rand for every day during which the offence continues.

65. (1) Where a company, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, it shall give to the Registrar notice thereof within twenty-one days after the passing of the resolution authorising such increase, and the Registrar shall record the increase, and the resolution shall not take effect until the increase is so recorded.

(2) If default is made in complying with the requirements of this section, the company and every officer of the company who is in default shall be guilty of an offence, and liable on conviction to a fine not exceeding ten rand for every day during which the offence continues.

66. (1) If, in the case of a company the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of not less in the aggregate than fifteen percent of the issued shares of that class being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled, and where any such application is made, the variation shall not

have effect unless and until it is confirmed by the court.

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

(3) On any such application the court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the members of the class represented by the applicant, disallow the variation and shall, if not so satisfied confirm the variation.

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

(5) The company shall within fifteen days after the making of an order by the court on any such application forward a copy of the order to the Registrar, and, if default is made in complying with this provision, the company and every officer of the company who is in default shall be guilty of an offence and liable to conviction to a fine not exceeding ten rand for every day during which the offence continues.

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

### **Reduction of Share Capital**

67. (1) Subject to confirmation by the court, a company may, if so authorised by its articles, by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may -

- (a) extinguish or reduce the liability on any of its share in respect of share capital not paid up; or
- (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or
- (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company;

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

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

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

(2) Where the proposed reduction of share capital involves

either diminution of liability in respect of unpaid share capital or the payment to any member of any paid-up share capital, and in any other case if the court so directs, the following provisions shall have effect, subject nevertheless to sub-section (3) of this section -

- (a) every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction;
- (b) the court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction;
- (c) where a creditor entered on the list whose debt or claim is not discharged or has not been 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 debt or claim;
  - (ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like enquiry and adjudication as if the company were being wound up by the court.

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

69. (1) The court, if satisfied, with respect of every creditor of the company who, under section sixty-eight 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 terminated, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit, and in particular may -

- (a) direct that the company shall, during such period, commencing on or at any time after the date of the order, as is specified in the order, add to its name as the last words thereof the words [and reduced]; or

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

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

70. (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 a registration deemed to be paid up on each share, shall register the order and minute.

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

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

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

(5) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum, and shall be valid and 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 twenty-six.

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

Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, through no default on his part, ignorant of the proceedings, for reduction, and is in consequence not entered on the list of creditors and if at any time within twelve months after the reduction the company is unable within the meaning of section one hundred and seventy-two to pay the amount of his debt or claim then-

- (a) every person who was a member of the company at the date of registration of the order for reduction and minute shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and
- (b) if the company is wound up, the court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

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

72. If any officer of the company -

- (a) wilfully conceals the name of any creditor entitled to object to the reduction; or
- (b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or

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

he shall be guilty of an offence, and liable on conviction to a fine not exceeding twelve month, or to both such fine and such imprisonment.

#### **Transfer of Shares and Debentures, Evidence of Titles, etc.**

[73.] (1) The shares or other interest of any member in a company shall be movable property, transferable in manner provided by the articles of the company.

(2) Each share in a company shall be distinguished by its appropriate number:

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

(3) Where in terms of the proviso to sub-section (2) of this section shares are not distinguished by appropriate numbers, the certificates of such shares shall be so distinguished, and upon the registration of transfer of any such shares the certificate relating thereto shall, in addition to the distinguishing number, bear on its face such an endorsement, in the form of a reference number or otherwise, as will enable the immediately preceding holder of the shares to be identified.

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

transfer has been delivered to the company:

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

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

76. (1) If a company refuses to register a transfer of any shares or debentures the company shall, within two months after the date on which the transfer was lodged with the company, send to the transferor and the transferee notice of the refusal.

(2) If default is made in complying with this section the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding ten rand for every day during which the offence continues.

77. A transfer of the share or other interest of a deceased member of a company made by his executor shall, although the executor is not himself a member, be as valid as if he had been a member at the date of the execution of the instrument or transfer, subject always to the law relating to stamp duty.

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

For the purpose of this sub-section, the expression "transfer" means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

(2) If default is made in complying with the requirements of this section the company, and every officer of the company who is in default, shall be guilty of an offence and liable on conviction to a fine not exceeding ten rand for every day during which the offence continues.

(3) If any company, on whom a notice has been served requiring the company to make good any default in complying

with the provisions of sub-section (1) of this section fails to make good and default within ten days after the service of notice, the court may, on application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

79. A certificate, under the seal of the company, and under the hand of one of its directors, specifying any shares of stock held by any member, if it has a seal, or it has not a seal, under the hands of two of its directors or of one director and of the secretary, shall be prima facie evidence of the title of the member to the shares or stock.

80. If any person falsely and deceitfully personates any owner of any share or interest in any company, and thereby obtains or endeavours to obtain any such share or interest or receives or endeavours to receive any money due to any such owner as if the impersonator were the true and lawful owner, he shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding ten years.

#### **Special Provision as to Hypothecations and Debentures**

81. (1) A company, if so authorised by its memorandum or articles, may, subject to the provisions of this section, create and issue debentures and as security for the fulfilment of the obligation undertaken by the company thereunder may in the manner hereinafter described bind so much of the movable or immovable property of the company as is described therein.

(2) If such debentures purport to bind only movable property, they may, if executed in favour of one or more debenture holders, before a notary, be registered as a notarial bond.

(3) If such debentures purport to bind immovable property other than land, registration in respect thereof may be effected in the deeds registry of Lesotho by means of a deed of hypothecation executed on behalf of the company.

If such debentures purport to bind both movable and immovable property other than land, registration in respect thereof may be effected in the deeds registry of Lesotho by means of a deed of hypothecation executed on behalf of the company and hypothecating the immovable property other than land concerned and of a collateral notarial bond or bonds executed on behalf of the company and hypothecating the movable property concerned or by a notarial bond or bonds or notarial debenture or debentures executed on behalf of the company and hypothecating the movable property and collateral deed of hypothecation executed on behalf of the company and hypothecating the immovable

property other than land concerned. Whenever it is desired to hypothecate movable or immovable property other than land shall be hypothecated by collateral notarial bond in the case of the movable property and by collateral notarial bond in the case of the movable property and by collateral deed of hypothecation in the case of immovable property other than land. If the bond is in favour of one or more debenture holders, the original debenture shall be annexed to one copy of the bond, and duplicate or certified copies of the debenture shall be annexed to the other copies. If the bond is in favour of trustees for debenture holders, a certified copy of the trust deed by which the trustees are appointed and in which their rights and duties are defined, together with a specimen form of the debenture, shall be annexed to each copy of the bond.

(5) Registration of such notarial bonds or deeds of hypothecation and cancellation or cession thereof in whole or in part shall be effected in accordance with the regulations and practice of the deeds registry relating to notarial bonds or deeds of hypothecation respectively. When so registered, such notarial bonds or deeds of hypothecation shall, as from the date of registration, subject to any prior rights arising out of any bond or debenture previously registered or out of any legal hypothec, pledge or right of retention, operate as a first or preferential charge in respect of so much of the movable or immovable property other than land of the company as is mentioned and described therein as bound by way of security or the fulfilment of the obligation undertaken by the company thereunder.

(6) In any bond executed in favour of trustees for debenture holders generally, provision may be made that the debentures thereby secured, or to be secured, may be issued from time to time and at different dates, as the company may determine, but all such debentures, whenever issued, shall rank for preference concurrently with one another as from the date of registration of the bond.

(7) Every holder of a debenture secured by a bond executed in favour of trustees for debenture holders generally shall, unless it is otherwise provided by the terms of the bond or of the trust deed and form of debenture annexed thereto, be entitled to enforce his right under such debenture as soon as it has been issued to him in the same manner as if he were himself the holder of such bond. No notice of the cession of any such debenture shall be necessary in order to confer upon any cessionary thereof the rights of the cedent.

82. (1) Every company shall keep at its registered office -

- (a) a register of hypothecations, notarial bonds and debentures and enter therein within fourteen days of the date of any hypothecation full particulars thereof, giving in each case the date of the hypothecation, a short description of the property hypothecated, the amount of

the debt secured, the rate of interest payable thereon and the names and addresses of the hypothecaries and debenture holders;

- (b) a register of debenture holders showing the number of debentures issued and outstanding, specifying whether issued to bearer or not, and in the case of those not issued to bearer, specifying further the names and the addresses of the holders thereof.

(2) If default is made in complying with sub-section (1) of this section the company shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand.

(3) The register of hypothecations, notarial bonds and debentures shall be open at all reasonable times to the inspection of the Registrar or any person authorised by him or any creditor or member of the company without fee, and any other person on payment of such fee not exceeding twenty cents per hour or part of an hour for such inspection as the company may prescribe.

(4) The register of debenture holders shall, except when closed during such period or periods (not exceeding in the whole sixty days in any year) as may be specified in the articles, be open to the inspection of any creditor or member of the company but subject to such reasonable restrictions as the company may in general meeting impose so that at least two hours in each business day are appointed for inspection and the company shall furnish to any creditor or member at his request extracts from the register on payment of fifteen cents for every hundred words or fractional part thereof required to be extracted.

(5) A copy of any trust deed for securing any issue of debentures shall be transmitted to any holder of such debentures at his request on payment of the sum of seventy-five cents or such less sum as may be prescribed by the company.

(6) If any inspection, copy, extract or other facility prescribed by sub-section (3), (4) or (5) of this section is refused or not transmitted the company shall be guilty of an offence and liable on conviction to a fine not exceeding ten rand and to a further fine not exceeding four rand for every day during which the offence continues, and the court, including the court convicting, may by order direct that an immediate inspection be granted of the register concerned or that copies required shall, subject to payment of the prescribed sum, be delivered to the person requiring them.

(7) Nothing in sub-sections (1) to (6) inclusive of this sections shall apply to an existing company till the expiry of three months from the commencement of this Act.

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

- (a) unless any provision to the contrary, whether expressed or implied, is contained in the articles or in any contract

entered into by the company; or  
 (b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled and not re-issued; the company shall have, and shall be deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

(2) On a re-issue of redeemed debentures the person entitled to the debentures shall have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.

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

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

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

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

### **PART III**

#### **MANAGEMENT AND ADMINISTRATION**

##### **Registration Office and Name**

85. (1) Every company shall have a registered office in Lesotho to which all communications and notices may be addressed, and at which all process may be served.

(2) Notice of the situation of the registered office shall accompany the memorandum and article delivered to the Registrar pursuant to section eighteen. Notice of a change in the situation of the registered office shall be given to the Registrar within twenty-one days subsequent to the date the change:

Provided that the existing company shall give notice of

such situation to the Registrar within two months after the commencement of this Act.

(3) if default is made in complying with this section the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding ten rand for every day during which the default continues.

86. (1) Every Company -

- (a) shall continuously display its name on the outside of every office or place in which its business is carried on in conspicuous position, in letters easily legible;
- (b) shall have its name engraved in legible characters on its seal, if any;
- (c) shall have its name mentioned in legible characters in all business letters, notices and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all delivery notes, invoices, receipts and letters of credit of the company:

Provided that, for the purposes of this sub-section the abbreviation "Ltd." and "(Pty)." may be used for the words "Limited" and "(Proprietary)" respectively in a company's name.

(2) If default is made in complying with paragraph (a) of subsection (1) of this section the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding ten rand and to a further fine not exceeding ten rand for every day during which the offence continues.

(3) If default is made in complying with paragraph (b) or paragraph (c) of sub-section (1) of this section, the company shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand.

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

- (a) uses or permits the use of any seal purporting to be a seal of the company whereon its name is not so engaged as aforesaid; or
- (b) issues or permits the issue of any business letter, notice or other official publication of the company, or signs or permits to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods wherein its name is not mentioned in manner aforesaid; or
- (c) issues or permits the issue of any delivery note, invoice, receipt or letter of credit of the company wherein its

name is not mentioned in manner aforesaid; he shall be guilty of an offence, and liable on conviction to a fine not exceeding one hundred rand and shall further be personally liable to the holder of the bill of exchange, promissory note, cheque, or order for money or goods for the amount thereof, unless it is duly paid by the company.

### **Restrictions on Commencement of Business**

87. (1) Nothing in this section shall apply to a private company or to an existing company, or to an association licensed under section twenty-three.

(2) If a company has issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers unless -

- (a) shares held subject to the payment of the whole amount thereof in cash have been allotted to a total amount of note less than the minimum subscription; and
- (b) every director of the company has paid to the company each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and
- (c) there has been delivered to the Registrar for registration and affidavit by the secretary, or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with; and
- (c) the Registrar has certified that the company is entitled to commence business.

(3) If a company has not issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers, unless

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

- (b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and
- (c) there has been delivered to the Registrar for registration an affidavit by the secretary or one of the directors in the prescribed form that paragraph (b) of this subsection has been complied with; and

(d) the Registrar has certified that the company is entitled to commence business.

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

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

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

(7) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand for every day during which the offence continues.

### **Register and Index of Members**

88. (1) Every company shall keep a register of its members and punctually enter therein the following particulars:

- (a) The names and addresses of the members, and in the case of a company having a share capital, a statement of the shares held by each member, distinguishing each share by its number so long as the share has 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;
- (c) the date at which any person ceased to be a member:

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the register shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified in paragraph (a) of this sub-section.

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

Provided that -

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

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

(3) Every company shall send notice in writing to the Registrar of the place where its register of members is kept and of any change in that place within thirty days of the date of its incorporation or change of place:

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

(4) Every company having more than fifty members shall unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall, within fourteen days after the date on which any alternation is made in the register of members, make any necessary alteration in the index.

(5) The index shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

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

(7) If default is made in complying with this section the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding ten rand for every day during which the offence continues and for the purposes of this section any person with whom the company makes an arrangement in terms of paragraph (ii) of sub-section (2) of this section shall be deemed to be an officer of the company and liable accordingly.

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

(2) Any member may require a copy of the register, or of any part thereof, on payment of twenty cents 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 member to be sent to such member within a period of twenty-one 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 guilty of an offence and liable on conviction

of each offence to a fine not exceeding four rand and to a further continues, and the court, including the court so convicting, may by order compel an immediate inspection of the register and index or direct that the copies required shall, subject to payment of the appropriate sum, be sent to the persons requiring them.

90. A company may, or giving prior notice by advertisement in a newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole thirty days in each year.

91. (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 either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3) On an application under this section the court may decide any question relating to the title of any person who is 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 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.

92. No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the Registrar, in the case of companies registered in Lesotho.

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

#### Branch Register

94. (1) A company may, if so authorised by its articles, cause to be kept in any external country, a register of members resident in that external country (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 the discontinuance, and any such notice shall be given within thirty days of the opening of the office or of the change or discontinuance, as the case may be.

- (3) If default is made in complying with sub-section 92) of this section the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding ten rand, for every day during which the offence continues.
95. (1) A branch register shall be deemed to be a part of the company's register of members (in this section called the principal register).
- (2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the prior newspaper advertisement required by section ninety shall be inserted in a newspaper circulating in the district 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; and shall cause to be kept at its registered office, duly entered up from time to time, a duplicate of its branch register, and the duplicate shall cause to be kept at its registered office, duly entered up from time to time, a duplicate of its branch register, and the duplicate shall for all purposes of this Act, be deemed to be part of the principal register.
- (4) The company may discontinue any branch register, and thereupon all entries in that register shall be transferred to some other branch register kept by the company or the principal register.
- (5) Subject to the provisions of this Act and of any law relating to stamp duty, any company may, by its articles, make such provisions as it may think fit respecting the keeping of branch registers.
- (6) If default is made in complying with sub-section (3) of this section, the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine
- (6) If default is made in complying with sub-section (3) of this section, the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding ten rand for every day during which the offence continues.

### **Annual Return**

96. (1) Every company shall, once in every calendar year (other than any year in which the company need not, under the provisions of section ninety-eight, hold an annual general meeting) and within forty-two days, after the date of its annual general meeting, make and file with the Registrar an annual return

consisting of -

- (a) a list, in the form and embodying the particulars contained in the Fifth Schedule or as near thereto as circumstances admit, of all persons who, on the date of the said annual general meeting, were members holding shares not fully paid up, and of all persons who, holding shares not fully paid up, ceased to be members of the company since the date of the last preceding annual general meeting or in the case of the first list, since the date of the incorporation of the company; and
  - (b) a summary, in the form contained in the \_\_\_\_\_ Schedule or as near thereto a circumstances admit, specifying the following particulars -
    - (i) all such particulars with respect to the persons who at the date of the return are directors of the company and any person who at that date is secretary of the company as are by this Act required to be contained with respect to directors and the secretary respectively in the register of directors and secretary of a company and the name and address of every person appointed as an auditor of the company;
    - (ii) the situation of the registered office of the company;
    - (iii) the place where the register of members is kept if, under the provisions of this Act it is not kept at the registered office of the company;
    - (iv) the amount of the share capital of the company, and the number of the shares into which it is divided;
    - (v) the number of shares taken from the date of incorporation of the company up to the date of the return;
    - (vi) the number of shares issued for cash;
    - (vii) the number of shares issued as fully or partly paid up otherwise than in cash and the nature of the consideration given for such shares;
    - (viii) the amount called up on each share;
    - (ix) the total amount of calls unpaid;
    - (x) the total amount of the sums, if any, paid by way of commission in respect of any shares or debentures, or allowed by way of discount in respect of any debentures, since the date of the last return;
    - (xi) the total amount of debt due by the company secured otherwise than by operation of law.
    - (xii) the total amount of debt due by the company secured otherwise than by operation of law.
- (2) If the names in the said list are not arranged in alphabetical

order there shall be annexed to it an alphabetical index sufficient to enable the name of any person to be readily found.

(3) There shall be annexed to the annual summary -

- (a) a copy certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which the summary relates (including every document required by law to be annexed to the balance sheet); and
- (b) a copy, certified as aforesaid, of the report of the auditors on, and of the report of the directors accompanying, any such balance sheet:

Provided that the provisions of this sub-section shall not apply to a private company unless one or more shareholders of such private company is a company which is not a private company.

(4) Every private company shall send with the annual return a certificate signed by a director and the secretary stating -

- (a) that the company has not since the date of the last return or, in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares, stock or debentures of the company;
- (b) the number of members of the company at the date of the certificate; and
- (c) if the number exceeds fifty, that such excess consists only of persons who, under section thirty are to be excluded in reckoning the number of fifty.

(5) Every annual return filed by a company with the Registrar shall be certified under the hands of a director and the secretary to the company in the manner prescribed in the Fifth Schedule and a duplicate copy so signed shall be kept at the registered office of the company and shall be open for inspection by any person whenever the register of members is open for inspection by such person.

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

(7) The Registrar may from time to time require a company to transmit to him particulars of the transfer of any fully paid up share or shares and a list of the persons for the time being members of the company and of all persons who have ceased to be members since the date of the last returns or, if no return has been made, since the date of the incorporation of the company.

(8) If the company makes default in complying with any of the requirements of this section, the company and every officer of

the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding ten rand for every day during which the offence continues.

### **Meetings and Proceedings**

97. (1) Save in the case of a private company, every company shall, within a period of not less than one month nor more than three months from the date at which it is entitled to commence business, hold a general meeting of its members which shall be called the statutory meeting.

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

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

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

- (a) the total number of shares allotted distinguishing shares allotted as fully or partly paid up, or otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;
- (b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;
- (c) an abstract of the receipts of the company and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses for the company;
- (d) the names, addresses and occupations of the directors, auditors (if any), managers (if any), and secretary of the company; and
- (e) if the modification or proposed modification of any contract is to be submitted to the meeting for its information or approval, full particulars thereof.

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

(5) The directors shall cause a copy of the statutory report, certified as required by this section, to be filed with the Registrar within fourteen days of the date on which it is so certified.

(6) The directors shall cause a list showing the names descriptions and addresses of the members of the company, and

the number of shares held by them respectively to be produced at the commencement of the meeting and to remain open and accessible to any member of the company during the continuance of the meeting.

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

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

(9) If default by any director is made in complying with any provisions of this section which expressly impose a duty on the directors, he shall be guilty of an offence and liable on conviction to a fine not exceeding twenty rand.

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

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 sub-section (1) of this section the Minister 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 he thinks expedient, including direction modifying or supplementing, in relation to the calling, holding and conducting of the meeting, the operation of the company's articles; and such directions 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 sub-section (2) of this section shall, subject to any directions of the Minister, 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 of 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 treated, a copy of the resolution shall, within fourteen days after the passing thereof, be forwarded to the Registrar and recorded by him, and if default is made in complying with this sub-section, the company and every officer of the company who is in default shall be guilty

of an offence and liable on conviction to a fine not exceeding four rand for every day during which the offence continues.

(5) If default is made in complying with the requirements of sub-section (1) of this section or with any direction given by the Minister under sub-section (2) of this section the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand.

99. (1) On the requisition of a company holding at the date of the deposit of the requisition not less than one-twentieth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company, or in the case of a company not having a share-capital, members of the company representing not less than one-twentieth of the total voting rights of all the members having at the said date a right to vote at general meetings of the company, the directors of the company, notwithstanding anything in its articles, shall within twenty-one days of the deposit of the requisition issue a notice to members convening an extraordinary general meeting of the company for a date not less than fourteen nor more than twenty-eight days from the date of the notice;

Provided that if a special resolutionist to be submitted the period of the notice shall not be less than twenty-one days.

(2) The requisition shall state the objects of the meeting and shall be signed by the requisitionists and 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 issue a notice as required by sub-section (1) of this section the requisitionists or any of them numbering more than fifty or representing more than one-half of the total voting rights of all of them, may themselves convene a meeting, station the objects thereof, on twenty-one days' notice but no meeting so convened shall be held after the expiration of three months from the said date.

(4) Any 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 the directors.

(5) Any reasonable expense 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 sum due or to become due from the company by way of fee or other remuneration in respect of their services to such of the directors as were knowingly party to the default.

(6) Any officer of the company who is knowingly a party to a default in convening a meeting as required by sub-section (1) of this section shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand.

100. (1) A company's annual general meeting may be called by twenty-one days' notice in writing, and a meeting of a company other than an annual general meeting or a meeting for the passing of a special resolution may be called by fourteen days' notice in writing or in the case of a private company, by seven days' notice in writing; and any provision of a company's articles shall be void so far as it provides for the calling of a meeting of the company (other than an adjourned meeting), by shorter notice than that specified in this section.

(2) A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in sub-section (1) of this section or in the company's articles, as the case may 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 numbers of the member having a right to attend and vote at the meeting, being a majority holding not less than ninety-five per cent in nominal value of the shares giving a right to attend and vote at the meeting, or, in the case of a company not having a share capital, together representing not less than ninety-five percent of the total voting rights at that meeting of all the members.

101. 91) The following provisions shall have effect in so far as the articles of a company do not make other provision in that behalf:

- (a) Notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A:
  - (b) two or more members holding not less than one-tenth of the issued share capital, or, if the company has not share capital, not less than five percent in numbers of the members of the company, may call a meeting;
  - (c) in the case of a private company, two members and in the case of any other company three members, personally present shall be a quorum;
  - (d) any member elected by the members present at a meeting may be chairman thereof;
  - (e) every member shall have one vote in respect of each share or each twenty rand of stock held by him, and in any other case every member shall have one vote.
- (2) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the articles or this Act, or if for any reason the court sees fit, the court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks

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fit, and where any such order is made may give such ancillary or consequential direction as it thinks expedient, including a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

- (3) Any meeting called, held and conducted in accordance with an order under sub-section (2) of this section shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.
102. (1) Any member of any company, other than private company, who is entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend any meeting of the company in his stead.
- (2) Any member of a private company who is entitled to attend and vote at a meeting of the company shall be entitled to appoint another member of the company or such other person as the articles of the company may allow to attend any meeting of the company in his stead.
  - (3) A proxy appointed to attend a meeting of a company instead of a member shall have the same right as the member to speak at the meeting but shall not be entitled to vote except on a poll.
  - (4) In every notice calling a meeting of a company and on the face of every proxy form issued at the company's expense shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy to attend and vote and speak in his stead and, where that is so, that a proxy need not also be a member; and if default is made in complying with this sub-section in relation to a meeting, every officer of the company who authorizes, knowingly permits or is part to the default shall be guilty of an offence and liable to conviction to a fine not exceeding one hundred rand.
  - (5) Any provision contained in a company's articles shall be void in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than