145. Financial year of holding company and subsidiary 82
146. Particulars of directors' emoluments etc 82
147. Particulars of waiver of emoluments 84
148. Particulars of loans to officers of company 84
149. Particulars of subsidiaries 85
150. Particulars of associated companies in which company holds shares 85
151. Particulars of company's holding company 86
152. Duty to give information for purpose of sections 146 to 151 86
Directors' reports 87
153. Duty to lay directors' annual report 87
154. Particulars of different classes of business of company and its directors 89
Audit 89
155. Appointment of auditors 89
156. Proposals not to re-appoint retiring auditor 91
157. Qualifications for appointment as auditor 92
158. Auditors' report 92
Signing and circulation of accounts and reports 94
159. Signing and circulation of accounts, etc 94
Profits and dividends 94
160. Disposal of profits 94
161. Dividends to be paid only out of profits and reserves; computation of profits 95
Directors 97
162. Number of directors 97
163. Appointment of directors 97
164. Disqualifications for appointment as a director 98
165. Disqualification of a person from being a director by order of the court 99
166. Directors appointed by memorandum or articles or named in a prospectus or registration statement 100
167. Qualification shares 100
168 Removal of directors 101
169. Register of directors and secretaries 103
170. Particulars of directors to be included in company's publications 104
171. Duties of directors 105
172. Loans to directors 106
173. Directors' duties in connection with allotment of shares and debentures 107

174. Directors' remuneration 109
175. Compensation for loss of office by a director on transfer of company's undertaking 110
176. Compensation for loss of office by a director on transfer of shares in the company 111
177. Provisions supplementary to sections 174, 175 and 176 112
178. Managing directors 112
Secretaries 113
179. Appointment of secretary etc 113
180. Persons acting as director and secretary 113
Proceedings against officers for breach of duty 113
181. Provisions exempting officers from liability 113
182. Relief from liability by order of the court 113
Inspections and investigations 113
183. Appointment of inspector to investigate the affairs of a company 113
184. Preliminary inspection of company's books and papers 114
185. Issue of search warrant 115
186. Information and documents obtained under sections 184 and 185 to be confidential 116
187. Investigation of related companies 116
188. Production of evidence and documents to inspectors 116
189. Inspectors' reports 117
190. Proceedings on inspectors' report 117
191. Expenses of investigation 118
192. Investigation of beneficial ownership and control of company 119
193. Power of Registrar to require information as to interests in shares or debentures 120
194. Power of Registrar to impose restrictions on shares or debentures under investigation 120
195. Duties of lawyers and banks 121
Compromises and arrangements 122
196. Power of court to sanction compromises and arrangements 122
197. Information to be sent to persons affected by compromise or arrangement 123
198 . Reconstructions and amalgamations 124
Offers to acquire shares and debentures 125
199. Takeover bids 125
200. Compulsory acquisition of shares 129
Minorities 130
201. Protection of minority shareholders 130
Part VI – Winding up 132

(I) – Preliminary 132
Modes of winding up 132
202. Application of Insolvency Act 2013 132
Contributor's 132
Section 203. *** 132
Section 204. *** 132
(II) – Winding up by the court 132
Cases in which a company may be wound up by the court 132
Section 205. *** 132
Section 206. *** 132
Petition for winding up and effect thereof 132
207. *** 132
Section 208. *** 132
Commencement of winding up 133
Section 209. *** 133
Consequences of winding up petition and order 133
Section 210. *** 133
Liquidators 133
Section 211. *** 133
Section 212. *** 133
Section 213. *** 133
Official receiver 133
Section 214. *** 133
Section 215. *** 133
Section 216. *** 133
Liquidators 133
Section 217. *** 133
Section 218. *** 133
Section 219. *** 134
Section 220. *** 134
Section 221. *** 134
Section 222. *** 134
Section 223. *** 134
Section 224. *** 134
Section 225. *** 134

Section 226. *** 134
Section 227. *** 134
Section 228. *** 134
Committees of inspection 134
Section 229. *** 134
Section 230. *** 134
Section 231. *** 134
Meetings of shareholders and creditor 135
Section 232. *** 135
General powers of the court in case of winding up by the court 135
Section 233. *** 135
Section 234. *** 135
Section 235. *** 135
Section 236. *** 135
Section 237. *** 135
Section 238. *** 135
Section 239. *** 135
Section 240. *** 135
Section 241. *** 135
Section 242. *** 135
Section 243. *** 135
Section 244. *** 135
Section 245. *** 136
Enforcement of and appeal from orders 136
Section 246. *** 136
(III) Voluntary winding up 136
Resolutions for and commencement of voluntary winding up 136
Section 247. *** 136
Section 248. *** 136
Section 249. *** 136
Section 250. *** 136
Consequences of voluntary winding up 136
Section 251. *** 136
Section 252. *** 136
Declaration of solvency 136

Section 253. *** 136
Provisions applicable to a members' voluntary winding up 136
Section 254. *** 136
Section 255. *** 137
Section 256. *** 137
Section 257. *** 137
Section 258. *** 137
Section 259. *** 137
Provisions applicable to a creditor's voluntary winding up 137
Section 260. *** 137
Section 261. *** 137
Section 262. *** 137
Section 263. *** 137
Section 264. *** 137
Section 265. *** 137
Section 266. *** 137
Section 267. *** 137
Provisions applicable to every voluntary winding up 138
Section 268. *** 138
Section 269. *** 138
Section 270. *** 138
Section 271. *** 138
Section 272. *** 138
Section 273. *** 138
Section 274. *** 138
Section 275. *** 138
(IV) Provisions applicable to every mode of winding up 138
Proof and ranking of claim 138
Section 276. *** 138
Section 277. *** 138
Section 278. *** 138
Section 279. *** 138
Section 280. *** 139
Section 281. *** 139
Section 282. *** 139

Section 283. *** 139
Section 284. *** 139
Section 285. *** 139
Offences antecedent to or in course of winding up 139
Section 286. *** 139
Section 287. *** 139
Section 288. *** 139
Section 289. *** 139
Section 290. *** 139
Section 291. *** 139
Section 292. *** 139
Supplementary provisions as to winding up 140
Section 293. *** 140
Section 294. *** 140
Section 295. *** 140
Section 296. *** 140
Section 297. *** 140
Section 298. *** 140
Section 299. *** 140
Section 300. *** 140
Supplementary powers of the court 140
Section 301. *** 140
Section 302. *** 140
Disposal of asset's of companies in accordance with the memorandum 140
Section 303. *** 140
Provisions as to dissolution 141
Section 304. *** 141
305. Power of Registrar to strike name of defunct company off the register 141
306. Property of dissolved company to be bona vacantia 142
307. Disclaimer by Crown 142
Regulations 142
Section 308. *** 142
Part VII – Overseas companies 143
309. Overseas companies to which Part VII applies 143
310. Registration of particulars of overseas companies 143

311. Personality and capacity of overseas companies 145
312. Registration of alterations in registered particulars 145
313. Managing agent 146
314. Annual accounts of overseas companies 146
315. Publication of name etc., of overseas companies 148
316. Service of process and notices on overseas companies 149
317. Prospectuses and debentures of overseas companies 149
318. Winding up of overseas companies 150
319. Offences by directors etc. of overseas companies and investigations 150
320. Orders to cease carrying on business 150
321. Interpretation of Part VII 151
Part VIII – Existing companies 151
322. Application of Ordinance to existing companies 151
323. Adoption of memorandum and articles by existing companies 152
324. Registration of existing companies as proprietary companies 152
325. Transitional provisions as to annual general meetings and directors 153
326. Managing directors 154
327. Classes of shares 154
328. Transitional orders 154
Part IX – Registration office and fees 154
329. Registrar of companies, etc 154
330. Fees and delivery of documents 154
331. Inspection of documents kept by Registrar 155
332. Enforcement of duty of companies to deliver returns etc 155
Part X – Miscellaneous 155
Prohibition of partnerships with more than ten members 155
333. Prohibition on partnerships of more than ten persons 155
334. Offences Offences in connection with applications, returns, etc 156
335. Improper use of word "Limited" 156
336. Meaning of "default fine" and "in default" 156
337. Production and inspection of books where offence suspected 156
Legal proceedings 157
338. Costs in actions by limited companies 157
339. Saving for privileged communications 157
Regulations and Rules of Court 157

340. Rules of Court 157
341. Amendment of First and Seventh Schedules 157
342. Regulations 157
Electronic transactions 158
342A. Electronic transactions 158
Repeal and modified application of enactments 159
343. Repeals and savings 159
344. Modified application of enactments 159
First Schedule (Section 4) 159
Second Schedule (Section 11) 174
Third Schedule (Section 34) 174
Fourth Schedule (Sections 41 and 49) 175
Fifth Schedule (Section 114) 175
Sixth Schedule (Sections 142 and 144) 176
Seven Schedule (Section 330) 186
Eighth Schedule 188

"**" means a certificate by the terms of which the ** of the certificate for the time being is entitled to the shares specified in it, and includes a renounceable or transferable letter of allotment or acceptance in respect of shares;

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

"**capital reserve**" means the total of the amounts referred to in section 55(5);

"**chairman**" means the person who presides at a meeting or during part of a meeting;

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

"**contributory**" has the meaning assigned to it under the Insolvency Act 2013;

[Act 5 of 2013]

"**convertible debenture**" has the meaning assigned to it by section 173(5);

"**court**" means the Supreme Court of Seychelles, except in connection with criminal proceedings for contraventions of this Ordinance, when it means the court before which such proceedings may be brought;

"**creditors**" voluntary winding up" has the meaning assigned to it under the Insolvency Act 2013;

[Act 5 of 2013]

"**debenture**" means a written acknowledgment of indebtedness issued by a company in respect of a loan made to it or to any other person (whether before, or at the time of, or subsequently to the issue of the debenture) or in respect of existing indebtedness of the company or any other person, and includes debenture stock, a bond, an obligation (whether under seal or authenticated by a notarial deed or not), loan stock, an unsecured note or any other instrument executed, authenticated, issued or created in consideration of such a loan or existing indebtedness, whether constituting a charge on any of the assets of the company or not, but does not include a bill of exchange, cheque, promissory note, banker's draft, banker's cheque or letter of credit, nor an acknowledgment of indebtedness issued in the ordinary course of business for goods or services supplied, nor a deposit certificate, pass book or similar document issued in connection with a deposit or current account at a bank, nor a policy of insurance;

"**debenture stock**" means a debenture by which a company or trustees of a debenture trust deed acknowledge that the holder of the stock is entitled to participate in the debt owing by the company to the trustees under the debenture trust deed, and includes loan stock;

"**debenture trust deed**" means a deed executed by a company and trustees appointed by the deed in connection with the issue of debentures, together with any supplemental deed, resolution or scheme of arrangement modifying the terms thereof, and any deed substituted therefor;

"**derivative interest**" has the meaning assigned to it by section 26(2);

"**director**" includes any person occupying the position of director by whatever name called, and any person in accordance with whose directions or instructions the directors of a company are accustomed to act, but does not include a holding company or a substantial shareholder merely by virtue of its or his position as such;

"**directors**' annual report" has the meaning assigned to it by section 153(1);

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

"**employee share subscription scheme**" has the meaning assigned to it by section 173(6);

"**equity capital**" means the issued share capital of a company or corporation, except non-participating preference shares and preference shares which do not entitle their holders to unrestricted voting rights as defined by section 118(7);

or renounceable share certificate or similar document in respect of debentures issued in connection with a capitalisation of profits or reserves;

"**prospectus issued to the public**" has the meaning assigned to it by section 40(16);

"**qualification shares**" has the meaning assigned to it by section 166(6);

"**registered**" means registered in the register of members or debenture holders;

"**Registrar**" means the Registrar of Companies;

"**revenue reserves**" has the meaning assigned to it by section 160(5);

"**rights issue**" has the meaning assigned to it by section 54(5);

"**share**" means a share in the capital of a company and includes stock;

"**shares carrying unrestricted voting rights**" has the meaning assigned to it by section 118(8);

"**shareholder**" has the meaning assigned to it by section 23(3);

"**special resolution**" has the meaning assigned to it by section 122(2);

"**stock**" means the interest of a holder of a share in a company which has been converted into stock;

"**stock exchange**" means any exchange or association of dealers in securities which provides facilities for the sale and purchase of shares or debentures, and publishes at intervals of: not more than one week the prices at which shares or debentures are currently being sold and purchased; "a stock exchange in Seychelles" means a stock exchange carrying on such activities in Seychelles, whether or not also carrying on such activities elsewhere; and "a recognised overseas stock exchange" means any other stock exchange declared by the Governor to be such a stock exchange;

"**subsidiary**" means a company or body corporate of which another company or body corporate is the holding company;

"**substantial shareholder**" has the meaning assigned to it by section 112(6);

"**transfer**" means an instrument of transfer of registered shares or debentures and "to transfer" means to execute and deliver such an instrument, or in the case of a ** or a **, to deliver it with the intention of passing the title to the shares or debentures represented by it;

"**trustee in bankruptcy**" means a trustee or assignee in the bankruptcy or insolvency of a person or partnership and includes the official assignee in bankruptcy;

"**underwriting contract**" has the meaning assigned to it by section 40(16);

"**wholly owned subsidiary**" has the meaning assigned to it by section 143(4);

"**winding up resolution**" has the meaning assigned to it under the Insolvency Act 2013.

[Act 5 of 2013]

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

(3) References in this Ordinance to a body corporate or to a corporation shall be construed as not including a corporation sole, but as including a body corporate or corporation incorporated outside Seychelles; and references to the memorandum or articles shall in the case of a corporation which is not a company be construed to mean the legislation constituting it, its charter, certificate or articles of incorporation, statutes, or other instrument having the same function as the memorandum and articles of a company, and references to its directors shall be construed to mean members of its governing body, by whatever name called.

parties are members to cease to be a proprietary company, the agreement shall be enforceable only if;

(a) the articles of the company do not require its members to abstain from any act whereby the company may cease to be a proprietary company; or

(b) the agreement is authorised or approved by an ordinary resolution passed by a general meeting of the company.

Capacity, contracts, authorisation etc.

33. Capacity to contract etc

(1) A company shall, subject to the provisions of section 12, have the same capacity to enter into contracts, incur liabilities, and acquire, hold and dispose of property as an individual of full age who is not under any disability or interdicted, and may sue and be sued in its corporate name.

(2) The capacity of a company shall not be limited by any provision of its memorandum or articles as to its objects or powers, or as to the powers of its directors or of meetings of its members to act in its name or on its behalf.

(3) Nothing in this section shall relieve a director or officer of a company from liability to the company for a breach of the provisions of its memorandum or articles, or for entering into transactions unconnected with the promotion or carrying on of the company's business as stated in the memorandum, or the achievement of the purposes there stated, and nothing in this section shall restrict the right of a shareholder to apply to the court under section 136, or to present a petition under section 201, or to present a petition for the winding up of the company.

34. Power of directors to act on company's behalf

(1) The directors of a company shall have power to do all acts on its behalf which are necessary for or incidental to the promotion and carrying on of its business as stated in its memorandum, or the achievement of the purposes there stated, and all persons dealing with the company, whether shareholders or not, may act accordingly.

(2) Each director of a proprietary company and each managing director of any other company shall have power to do the acts mentioned in subsection (1) without the concurrence of any other director.

(3) Without prejudice to the generality of the foregoing, the directors of a company, each director of a proprietary company and each managing director of any other company shall, subject to any contrary provisions of the memorandum or articles, have power to do the acts specified in the Third Schedule to this Ordinance on behalf of the company.

(4) Nothing in this section shall relieve a director or officer of a company from liability to the company for a breach of the provisions of memorandum or articles, or for entering into transactions unconnected with the promotion or carrying on of the company's business as stated in the memorandum, or the achievement of the purposes there stated; and nothing in this section shall restrict the right of a shareholder to apply to the court under section 136, or to present a petition under section 201, or to present a petition for the winding up of the company.

35. Form of contracts

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

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

section (5) (otherwise than on the direction of the court), the company shall be liable to that person in damages for any consequential loss which he suffers.

(9) This section shall not apply to a proprietary company except in respect of orders made by the Registrar under section 194 and in respect of warrants of execution issued under section 245 of the Seychelles Code of Civil Procedure in relation to shares or debentures issued by the company.

(10) This section shall apply to derivative interests in shares and debentures created before or after the coming into force of this Ordinance.

(11) Article 1690 of the Civil Code shall not apply in respect of derivative interests in shares or debentures.

Registers of directors' holdings, of substantial shareholders' holdings and of options to subscribe

111. Register of directors' holdings

(1) Every company shall keep a register (in this Ordinance called "the register of directors' holdings") in which it shall enter the particulars required by this section in respect of all interests in shares and debentures of the company, of companies belonging to the same group of companies as the company, and of associated companies of the company, which are vested in any of the directors of the company, or of companies belonging to the same group of companies as the company.

(2) For the purposes of this section a director has an interest in shares or debentures if:

(a) the shares or debentures are registered in the directors' name, or the names of the director and other persons jointly, or in the name of a nominee for him, or for him and them; or

(b) the director has a derivative interest in the shares or debentures, or a right or power to acquire a derivative interest in them; or

(c) the director has a right to subscribe for the shares or debentures, or another person has a right to subscribe for them and the director has a right to acquire them after they have been allotted; or

(d) the shares or debentures are the subject of a voting arrangement in favour of a director, that is to say, an arrangement (whether legally enforceable or not) by which the director may require the holder of the shares or debentures to vote, or not to vote, or to vote in a particular manner, at any general meeting of the company or at any meeting of a class of shareholders or debenture holders, or by which the director may require the holder of the shares or debentures to appoint the director or any other person to be his proxy with power to vote in respect of the shares or debentures at any such meeting.

(3) For the purposes of this Ordinance a company is the associated company of another company if:

(a) the company holds, by itself or its nominees, shares in that other company which entitle the holder of such shares to exercise at least one-fifth of the unrestricted voting rights exercisable at any general meeting of that other company, or if that other company holds, by itself or its nominees, shares in the company which entitle their holder to exercise the same fraction of voting rights at any of its general meetings; or

(b) the other company is the holding company or subsidiary of a third company which is an associated company of the company by virtue of paragraph (a) of this subsection.

(4) The particulars required to be entered in the register of directors' holdings are:

(a) the number, classes and nominal values of the shares, and the number, classes and the amount of the principal and premiums payable to the holder of the debentures, in which a director has an interest;

(4) This section shall not apply to a proprietary company which delivers to the Registrar with its annual return the certificates required by subsections (1) and (2) of section 116.

116. Provisions as to proprietary companies

(1) A proprietary company shall deliver to the Registrar with its annual return a certificate signed by each of its directors and by its secretary that the conditions required to be fulfilled for a company to be a proprietary company have been fulfilled in respect of it continously and without exception since the date of its incorporation, or the date of its last annual return, or the date on which the Registrar issued a certificate of incorporation under section 24(3) or section 324(4) (whichever is the later).

(2) A proprietary company shall also deliver to the Registrar with its annual return—

(a) a certificate of solvency signed by its auditor containing the statements and opinion by the auditor of the company required by this section, and made with reference to the state of the company's assets and liabilities at the date on which the balance sheet of the company laid before an annual general meeting during the period to which the annual return relates was made out (in this section referred to as the company's last balance sheet); and

(b) a certificate signed by each director and the auditor of the company that the said certificate agrees with the balance sheet and profit and loss account of the company laid as aforesaid.

(3) A certificate of solvency shall:

(a) state the amounts shown in the company's last balance sheet as the total values respectively of the company's fixed assets, current assets and investments;

(b) state the amount shown in the company's last balance sheet as the total amount of the company's debts and liabilities accrued due at, or accruing due within one year after, the date as at which the balance sheet is made out, and the amount so shown as the total amount of the company's other debts and liabilities; and

(c) state whether, in the opinion of the auditor of the company, the company was, at the date as at which its last balance sheet was made out, able or unable to pay its debts and, liabilities as they fall due.

(4) If the company does net hold an annual general meeting in the year to which the annual return relates, the certificates required by the last foregoing subsection shall he modified so as to refer to the balance sheet or the balance sheet and profit and loss account (as the case may be) copies of which were sent to the shareholders of the company in compliance with section 141(1) during the period to which the annual return relates.

(5) If the auditor of the company refuses to give or sign either of the certificates mentioned in subsection (2), the certificate delivered to the Registrar under subsection (1) shall contain a statement to that effect, and the annual return with which it is delivered shall have annexed thereof the documents specified in section 115(1). A company which delivers an annual return accompanied by such a certificate under subsection (1) containing that statement and by the documents specified in section 115(1) shall then be deemed to have complied with the requirements of this section.

117. Offences in connection with annual returns

If

(a) a director or secretary of a company signs an annual return delivered to the Registrar which contains any statement which is false, deceptive or misleading, or which omits any matter required to be included therein by this Ordinance; or

(b) a director or secretary delivers, or concurs in the delivery of, any document to the Registrar which an annual return, and that document purports to be a copy of an account or document required to

(3) An ordinary resolution by a general meeting of a company shall be necessary:

(a) to appoint a director of the company other than a director appointed under section 163(4), (5), (7) or (8);

(b) to authorise or approve the remuneration to be paid to a director of the company in the circumstances where such authorisation or approval is required by section 174(1), and to authorise or approve any other payments or benefits of the kinds mentioned in sections 174(2) and 175(1) in circumstances where such authorisation or approval is required by either of those sections;

(c) to remove a director of the company under section 168;

(d) to give any authorisation to a director which is required by sections 171 or 172;

(e) to appoint an auditor of the company;

(f) to authorise the sale or transfer of the whole or substantially the whole of the company's undertaking or assets (subject or not to its liabilities) to another person;

(g) to authorise the issue of any of the unissued shares or debentures of a company (other than a proprietary company), or to authorise the re-issue of shares or debentures of such a company (except to the extent that section 173 otherwise provides);

(h) to authorise an issue or re-issue of the company's shares for a consideration other than cash, unless the terms of the issue are set out in the company's memorandum in conformity with section 6(1);

(i) to dispose of the profits or revenue reserves of the company, whether by payment of a dividend, by capitalisation of profits or revenue reserves and the issue of bonus shares or debentures, by transfer to capital reserve, by the acquisition of shares of the company under paragraph (c) of section 54(2), by the redemption of redeemable shares, by allocations to employee share subscription schemes to which the company is a party or otherwise;

(j) to alter the share capital of the company under section 59;

(k) to authorise the company to alter or abrogate the rights of debenture holders;

(l) to wind up the company voluntarily under section 146(1)(a)(i) of the Insolvency Act 2013; and

[Act 5 of 2013]

(m) in connection with matters arising in the winding up of the company which by this Ordinance are required to be transacted by ordinary resolution;

(n) in such other cases as this Ordinance provides.

(4) A special resolution by a general meeting of a company shall be required:

(a) to alter the company's memorandum or cuticle; (except to the extent that alterations may be effected by ordinary resolution under section 59);

(b) to allot shares or debentures of a proprietary company otherwise than in proportion to the respective nominal values of the share holdings of the existing shareholders;

(c) to wind the company up voluntarily under section 146(1)(b) of the Insolvency Act 2013; and

[Act 5 of 2013]

(d) in connection with matters arising in the winding up of the company which by this Ordinance are required to be transacted by special resolution;

(e) in such other cases as this Ordinance provides.

(b) fails in any notice or advertisement relating to the meeting at which the proposal is to be considered to state that representations have been made by an auditor in respect of the proposal (if that is the case); or

(c) fails to send a copy of any written representations made by an auditor in respect of the proposal to every member of the company in compliance with subsection (3), and to every shareholder or debenture holder or trustee for debenture holders who makes a written request for such a copy within two days after the request is received by the company;

the company and every officer of the company who is in default shall be guilty of an offence punishable by a fine not exceeding one thousand rupees.

157. Qualifications for appointment as auditor

(1) A person shall not be qualified for appointment as auditor of a company unless either:—

(a) he is a member of a body of accountants (whether established, in or outside Seychelles) for the time being recognised for the purposes of this section by the Minister; or

(b) he is for the time being authorised by the Registrar to be so appointed, either as having similar qualifications, or as having obtained adequate knowledge and experience in the course of his employment by a member of a body of accountants recognised for the purposes of paragraph (a) of this subsection, or as having practised as an accountant in Seychelles before the coming into force of this Ordinance.

(2) None of the following persons shall be qualified for appointment as auditor of a company

(a) an officer or servant of the company:

(b) a person who is a partner of or in the employment of an officer or servant of the company;

(c) a body corporate;

(d) a person who is disqualified from being appointed to be a director of any company by an order of the court made under section 165(1);

Provided that if three or more persons carry on practice as accountants in partnership in Seychelles, any one or more of them (not being officers or servants of the company) may be appointed to be an auditor or auditors of a company notwithstanding that another of them is an officer or servant, or others of them are officers or servants, of the company, if those of them who are appointed auditors of the company exceed in number those of them who are officers or servants of the company.

(3) A person shall not be qualified for appointment as auditor of a company if he is, by virtue of the subsection (2), not qualified for appointment as auditor of any other company or body corporate which belongs to the same group of companies as the first mentioned company, or would not be qualified for such appointment if the body corporate which belongs to the same group of companies as aforesaid were a company.

(4) If any person who is riot qualified to be appointed an auditor of a company makes a report to the members or debenture holders of the company on the company's annual accounts or on the directors' annual report, he shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or to both such fine and such imprisonment.

158. Auditors' report

(1) The auditors of a company shall make a report to the members and debenture holders of the company on the accounts examined by them, and on every balance sheet, every profit and loss account and all group accounts laid before an annual general meeting of the company, or if the company avails itself of section 141, all such accounts circulated to its shareholders and debenture holders, during their tenure of office.

(2) No provision in the memorandum or articles shall be valid by which a dividend is expressed to be payable at a specified time, or on the occurrence of a specified event, or on the ascertainment of the profits earned by the company for a specified period, without the declaration of a dividend by an annual general meeting.

(3) An annual general meeting or an extraordinary general meeting may by ordinary resolution capitalise the whole or any part of the profits (including profits carried forward from previous financial years) or the whole or any part of the revenue reserves of a company, and, subject to the approval of any class of shareholders required by section 19, may provide for the application of the capitalised profits or reserves in any of the ways in which the capital reserves of a company may be applied by section 55(4) with the same consequences as if such an application were made.

(4) Notwithstanding any provision in the memorandum or articles of a company, a general meeting may resolve to dispose of the profits or revenue reserves of the company in a way authorised by this section, even though the directors recommend that the disposal should not be made, or recommend that a different disposal should be made, or prohibit or refuse to permit the disposal, and any creation of revenue reserves or transfer of profits to revenue reserves by the directors shall be ineffective unless approved by an annual general meeting:

Provided that nothing in this section shall empower a general meeting to dispose of the profits or revenue reserves of the company in a manner which is inconsistent with any contract which the company has entered into, or with an employee share subscription scheme to which the company is a party.

(5) In this Ordinance interim dividends mean dividends declared by directors between annual general meetings of a company under a power for that purpose contained in the memorandum or articles of the company, and revenue reserves mean the reserves of a company other than its capital reserve.

161. Dividends to be paid only out of profits and reserves; computation of profits

(1) Dividends in respect of shares of a company and applications of profits and revenue reserves under section 160(3) may be declared or made only out of the profits (including profits carried forward from previous financial years) and the revenue reserves of the company as shown by the annual accounts of the company approved by an annual general meeting:

Provided that directors may declare an interim dividend in respect of ordinary shares out of the profits (including profits carried forward from previous financial years) and revenue reserves shown by the most recent annual accounts of the company and out of the profits which they estimate the company has earned since the date to which those annual accounts were made up, but before declaring an interim dividend the directors shall make provision for any loss which they estimate the company has incurred since that date.

(2) In calculating the profits of a company:

(a) proper provision shall be made for the depreciation, diminution in value or obsolescence of its fixed assets (other than shares, debentures or other securities held by it);

(b) proper provision shall be made for writing of bad debts, the unrecovered part of debts which have been only partially recovered or are only partially recoverable, and the expenses of forming the company and issuing its shares and debentures;

(c) the current assets of the company (other than cash, debts and liabilities owed to the company and shares, debentures and other securities held by it) shall be valued at their cost of acquisition, or the cost of acquiring the materials from which they are made, plus the cost of constructing, manufacturing or processing them, so far as such cost has been incurred, but such current assets shall in no case be valued at more than the amount which they may reasonably be expected to realise on a sale in the open market less the cost of completing them in order to make them marketable;

By Laws.Africa and contributors. Licensed under CC-BY. Share widely and freely.

(d) no appreciation in the value of the fixed or current assets of the company resulting from a revaluation shall be taken into account;

(e) dividends or interest received by a company out of the profits of any of its subsidiaries for a financial year of the subsidiary which ended before it became the company's subsidiary shall not be taken into account;

(f) interest paid by the company shall be treated (so far as is possible) as having been paid out of the profits and revenue reserves; and

(g) reasonable provision shall be made for the company's contingent liabilities and for liabilities the amount of which cannot be ascertained with precision.

(3) Proper provision for the depreciation, diminution in value or obsolescence of a fixed asset shall be deemed to be made if either

(a) there is debited each year an amount equal to the quotient of the cost of acquisition, construction or development of the fixed asset (less its estimated disposal value at the end of its estimated useful life) and the number of the remaining years of its estimated useful life: or

(b) there is debited each year a constant fraction of the cost of acquisition, construction or development of the fixed asset as diminished by provisions for depreciation, diminution in value or obsolescence of the asset made in previous financial years, so that at the end of the estimated useful life of the asset its written down value will equal its estimated disposal value;

and for the purpose of this subsection:

(i) the estimated useful life of an asset means the number of years during which it was reasonably expected to assist the company to earn profits when it was acquired, constructed or developed; and

(ii) the estimated disposal value of an asset means the amount reasonably estimated at that time as the price which it would realise on being sold in the open market at the end of its estimated useful life.

(4) Current assets (other than cash, debts and liabilities owed to the company and shares, debentures and other securities) may be valued by applying any reasonable accounting method which avoids the need for ascertaining the cost of acquiring, constructing or processing individual items out of a stock of goods (whether constructed, manufactured or processed by the company or not) which are physically similar and are disposed of by the company at a substantially similar price at any given time.

(5) It shall be permissible in valuing current assets of a kind which the company constructs, manufactures or processes to add to their value as ascertained under subsections (2) and (4) a reasonable proportion of the fixed overheads of the company which it reasonably expects to recoup out of the proceeds of disposal of the assets.

(6) For purpose of declaring dividends (including interim dividends) or making any application of profits or revenue reserves under section 160(3), the profits and revenue reserves of a company shall be diminished by

(a) any loss sustained by the company in any previous financial year (so far as not already written off out of profits or revenue reserves, or eliminated by a cancellation of paid up share capital or a reduction of capital reserve; and

(b) any loss sustained by the company in a financial year subsequent to that in which the profits, or the profits transferred to revenue reserves, were earned:

Provided that it shall be permissible for a company to declare and pay the fixed dividend in respect of preference shares for a financial year if the company has earned profits in that year

at least equal to the amount of the fixed dividend, and if the profits of the company for that year are less than the amount of the fixed dividend, the company may declare and pay a part of the fixed dividend amounting to not more than the profits earned in that year.

(7) A company may declare a dividend out of the profit obtained on the realisation of a fixed asset only if:

(a) any loss sustained on the sale of any other fixed asset in the same or a previous financial year has been written off out of profits or revenue reserves, or has been eliminated by a cancellation of paid up share capital or a reduction of capital reserve; and

(b) the net worth of the company is not less than the sum of its paid up share capital and its capital reserve.

(8) A consolidated profit and loss account of a holding company may not be used as the basis on which a dividend may be declared in respect of any of the shares of the holding company, nor as the basis on which profits of the holding company may be applied under section 160(3).

(9) In this section the net worth of a company means the amount of its assets less the amount of its debts and liabilities, whether certain or contingent.

(10) This section shall apply to profits earned and losses incurred by a company before or after the coming into force of this Ordinance and to revenue reserves created by the transfer of such profits.

Directors

162. Number of directors

(1) Every company shall have at least two directors.

(2) If at the coming into force of this Ordinance a company has less than two directors:

(a) the director or any member of the company may call an extraordinary general meeting to appoint directors, and such a meeting may appoint one or more directors, or one or more additional directors; and

(b) the court may on the application of any shareholder or debenture holder of the company direct that such a meeting shall be held and may further give any direction which it could give under section 124.

(3) If a company has less than two directors, or in the case of an existing company, if it has less than two directors at any time after the expiration of six months from the coming into force of this Ordinance, no director or other person shall have power to carry on the business of the company or to enter into transactions o-n its behalf (other than calling general meetings) until the company has two or more directors:

Provided that nothing in this section shall affect the application of section 39.

(4) Nothing in this section shall affect the power of an annual general meeting to appoint directors.

163. Appointment of directors

(1) Subject to the provisions of this section, a director of a company may be appointed only by an ordinary resolution passed at a general meeting of the company for a period not exceeding five years, but any director may be reappointed in like manner on any number of occasions for a period not exceeding five years on each reappointment.

(2) The memorandum or articles of a company may prescribe the maximum and minimum number of directors of the company who shall be appointed (being not less than two directors), and such a maximum or minimum number may be varied from time to time by an ordinary resolution passed at a general meeting, but so that the minimum number is not less than two.

By Laws.Africa and contributors. Licensed under CC-BY. Share widely and freely.

(3) The memorandum or articles may appoint or provide for the appointment of the first directors of the company, but unless the first directors are appointed by a general meeting of the company, they shall all cease to hold office at the termination of the first annual general meeting of the company, but shall be eligible for re-appointment at that meeting under subsection (1).

(4) If a casual vacancy occurs in the office of a director, the directors may fill it, and the person appointed by them shall retire at the termination of the next succeeding annual general meeting, but shall be eligible for re-appointment at that meeting under subsection (1).

(5) Any provision in the memorandum or articles of a company by which a director may be appointed in any other manner than the manner provided by this section shall be invalid:

Provided that the memorandum or articles may provide for the appointment of one director, or for the appointment of two or more directors (not exceeding in number one-third of the maximum number of directors who may be appointed for the time being) by the holders of de-debentures issued by the company or by the trustees of the debenture trust deeds covering such debentures.

(6) At a general meeting of a company a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be made unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

(7) The memorandum or articles of a company may provide for the reappointment of a director at the expiration of his term of office without the passing of a resolution by a general meeting to that effect if no other person is or has been appointed by a general meeting in his place, but such a director shall not be reappointed under this subsection if an ordinary resolution is or has been passed at a general meeting that the vacant directorship shall not be filled, or if a resolution for the re-appointment of the director is defeated.

(8) This section shall not apply to a managing director or to a proprietary company, and shall apply to an existing company only from the date when all directors of the company holding office at the time when this Ordinance comes into force have completed the terms of office for which they were appointed before that time, or have ceased to be directors before the completion of such terms.

164. Disqualifications for appointment as a director

(1) A person may not be appointed to be a director of a company if

(a) he is an undischarged bankrupt; or

(b) an order has been made in respect of him under section 165 and the period of disability imposed by it has not expired; or

(c) he is a trustee of a debenture trust deed covering debentures issued by the company or by a company belonging to the same group of companies as the company; or

(d) it is a company or a body corporate.

(2) If a person is adjudged bankrupt or has an order made against him under section 165 after he is appointed to be a director, he shall forthwith cease to be a director, and a casual vacancy in the directorship which he held shall occur.

(3) The court may for special reasons permit a person who is disabled from being appointed to be a director by paragraph (a) or (b) of subsection (1) of this section, or who would but for this subsection have ceased to be a director by reason of subsection (2), to be appointed to be a director of a particular company or to continue to be a director of a particular company, (as the case may be), and if a person is permitted by the court to continue to be a director of a company, he shall be deemed not to have ceased to be a director by reason of subsection (2).

(4) If immediately before the coming into force of this Ordinance an existing company or a body corporate is a director of a company, the board of directors or governors of that existing company or body corporate may within six months thereafter 'nominate one of their own number to be a

director of the company in place of the existing company or body corporate, and thereupon he shall become a director of the company for the same period and on the same conditions as if he had been appointed to be a director instead of the existing company or body corporate at the date when it was so appointed:

Provided that

(a) the person so nominated shall account to the existing company or body corporate for all remuneration which it would have received if paragraph (d) of subsection (1) had not been enacted; and

(b) if no person is nominated as aforesaid within six months after the coming into force of this Ordinance, there shall be a casual vacancy in the directorship formerly held by the existing company or body corporate.

(5) Any person who acts as a director of a company at any time when he is disqualified by this section from being appointed to be a director, or from continuing to be a director, shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or to imprisonment for not more than two years, or to both such fine and imprisonment.

165. Disqualification of a person from being a director by order of the court

(1) If

(a) a person is convicted of any offence involving fraud or dishonesty; or

(b) a director, officer, or auditor of a company or a trustee of a debenture trust deed covering debentures issued by a company has committed a serious breach or persistent breaches of duties owed by him to a company or to its shareholders or debenture holders, or has been guilty of a serious or persistent failure to comply with this Ordinance; or

(c) a director has failed, or has acquiesced in the failure of the other directors, to call a general meeting of a company with a view to pass a resolution to wind it up when he knows, or has reasonable cause to believe, that it is unable to pay its debts as they fall due or that the company's debts and liabilities exceed the value of its assets as ascertained in accordance with section 161;

the court may make an order that that person shall not be a director, or directly or indirectly in any way be concerned or take part in the management, of any company, or of any overseas company which carries on business in Seychelles, for such period not exceeding five years as may be specified in the order, and if he is sentenced to a term of imprisonment, the court may order that the said period shall be extended by the term of imprisonment which he actually undergoes.

(2) In this section the expression "company" includes an overseas company and the expression "the court" includes the court by which the person against whom an order under subsection (1) is lo be made is convicted of an offence, or is found to have committed the breach or breaches of duty, and also any court having jurisdiction to wind up the company or overseas company.

(3) A person intending to apply for the making of art order under this section shall give not less than ten days' notice of his intention to the person against whom the order is sought, and on the hearing of the application the last-mentioned person may appear and himself give evidence or call witnesses:

Provided that nothing in this subsection shall affect the power of a court by whom a person is convicted of an offence to make an order under this section on its own motion.

(4) An application for the making of an order under this section may be made by the official receiver or the liquidator of the company, or by any person who is or has been a shareholder, debenture holder or creditor of the company; and on the hearing of any application for an order under this section, or of any application for permission to be appointed or to continue to be a director of a particular company by a person against whom an order has been made under this section, the official receiver

or liquidator of the company (if it is in liquidation) shall appear and call the attention of the court to any matters which appear to him to be relevant, and may himself give evidence or call witnesses.

166. Directors appointed by memorandum or articles or named in a prospectus or registration statement

(1) A person shall not be capable of being appointed to be director of a company by the memorandum or articles, and shall not be named as a director or proposed director of a company in a prospectus issued by or on behalf of the company, or in a registration statement delivered to the Registrar by or on behalf of a company, unless before the registration of the memorandum and articles, or the publication of the prospectus, or the delivery of the registration statement to the Registrar (as the case may be), he has (by himself or by his agent authorised in writing)

(a) signed and delivered to the Registrar for registration a consent in writing to act as such director; and

(b) either

(i) signed the memorandum for a number of shares not less than his share qualification (if any) prescribed by the memorandum or articles of the comp any; or

(ii) taken from the company and paid or agreed to pay for his qualification shares, if any; or

(iii) signed and delivered to the Registrar for registration an undertaking in writing to take from the company and pay for his qualification shares, if any; or

(iv) made and delivered to the Registrar for registration a signed declaration to the effect that a number of shares, not less than his share qualification, if any, are registered in his name,

(2) Where a person has signed and delivered as aforesaid an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the memorandum as a subscriber thereof for that number of shares.

(3) References in this section to the share qualification of a director or proposed director shall be construed as meaning a share qualification required on his appointment or within a period determined by reference to the time of his appointment.

(4) On the application for registration of the memorandum and articles of a company, the applicant shall deliver to the Registrar a list of the persons who have consented to be directors of the company, and if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding one thousand rupees.

(5) Nothing in this section shall make it necessary for any person to comply with subsection (1) thereof more than once.

(6) In this Ordinance "qualification shares" means shares equal in number to the share qualification prescribed by the memorandum or articles in respect of a director, being shares of the class and conforming to the conditions (if any) which are so prescribed.

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

167. Qualification shares

(1) Without prejudice to the disqualification and the restrictions imposed by section 166, it shall be the duty of every director who is by the memorandum or articles of the company required to hold a share qualification, and who does not already hold qualification shares, to obtain his qualification shares within two months after his appointment, or such shorter time as may be fixed by the memorandum or articles.

(2) For the purpose of any provision in the memorandum or articles requiring a director to hold a share qualification, the holder of a ** shall not be deemed to be the holder of the shares specified therein.

(3) The office of a director of a company shall be vacated if the director does not, within two months from the date of his appointment, or within such shorter time as may be fixed by the memorandum or articles, obtain his qualification shares, or if, after the expiration of the said period or shorter time, he ceases at any time to hold his qualification shares or any of them.

(4) If the share qualification of a director is increased by an alteration of the memorandum or articles after he has been appointed, this section shall apply as if he ha I been appointed to be a director at the time the alteration is made.

(5) A person vacating office under this section shall be incapable of being reappointed as a director of the company until he has obtained his qualification shares or increased number of qualification shares (as the case may be).

(6) If, after the expiration of the period fixed by this section or such shorter time as may be fixed by the memorandum or articles, any person who has not obtained his qualification shares, or has ceased to hold his qualification shares or any of them, acts as a director of the company, he shall be liable to a fine not exceeding one hundred rupees for every day between the expiration of the said period or shorter time, or the day on which he ceased to hold his qualification shares or any of them (as the case may be), and the last day on which it is proved that he acted as a director.

168 Removal of directors

(1) A company may by ordinary resolution remove a director before the expiration of his period of doctors office, notwithstanding anything in its memorandum or articles or in any agreement between it and him. Such a resolution may be passed at an annual general meeting or at an extraordinary general meeting, and it shall be immaterial whether the meeting is called by the directors, the Registrar or any other person, or by order of the court, and whether the proposed resolution is included in the notice of the meeting at the instance of the directors or any other person.

(2) The directors or the other person who calls the general meeting shall give written notice of the proposal to the director whose removal is proposed:

(a) if the meeting is called pursuant to a requisition made under section 120(2), at least fifteen days before the day when notices calling the meeting are sent to members of the company or when the meeting is advertised under section 127(4), whichever is the earlier; or

(b) in any other case, at least one month before the date when notices calling the meeting are sent out or the meeting is advertised, as aforesaid.

(3) If the director whose removal is proposed makes written representations in. Respect of the proposal to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so:

(a) in every notice or advertisement relating to the meeting at which the proposal is to be considered, state the fact of the representations having been made;

(b) send a copy of the representations to every shareholder, debenture holder and trustee for debenture holders of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company);

(c) in any advertisement of the meeting published under section 127(4), state that copies of the representations may be obtained by any share holder, debenture holder or trustee for debenture holders of the company on a written request being made at an address in Seychelles given for the purpose; and

(d) send a copy of the representations to every shareholder, debenture holder or trustee for debenture holders of the company to whom notice of the meeting has not been sent, within two days after receipt of a written request by him for such a copy at the address given in the advertisement of the meeting published under section 127{4), or if no such advertisement is published, at the company's registered office;

and if a copy of the representations is not sent as aforesaid because it Is received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:

Provided that copies of the representations need not be sent out, and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved made within seven days after the receipt of the representations by the company, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this section to be paid in whole or in part by the director.

(4) If a director who is removed from office under this section is a managing director of the company, he shall on such removal also be removed from office as a managing director without any separate resolution being necessary for that purpose.

(5) A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

(6) A person appointed to be a director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become a director on the day on which the person in whose place he is appointed was appointed or last reappointed to be a director, whichever is the later.

(7) Nothing in this section shall be taken as depriving a person, removed thereunder of compensation or damages payable to him in respect of the termination of his appointment as a director, or of any appointment, office or employment under the company which terminates with his appointment as a director, or as derogating from any power to remove a director which may exist apart from this section:

Provided that the damages or compensation payable to a director, whether fixed as liquidated damages or compensation by any agreement entered into by him, and whether constituting damages or compensation for breach of any such agreement or a condition to be fulfilled by the company or by any other person if his appointment is terminated, shall not exceed the aggregate remuneration to which he has been entitled during the three years immediately preceding the termination of his appointment for his services as a director of the company and in respect of any other appointment, office or employment under the company which terminates with his appointment as a director.

(8) For the purposes of this section a person shall be deemed to hold an appointment, office or employment under the company if he holds it by virtue of a contract with the company or its holding company or subsidiary, or if he was appointed to it by the company or its holding company or subsidiary under a provision for the purpose contained in the memorandum or articles of any such company.

(9) If a company

(a) fails to give written notice to a director of a proposal to remove him from office in compliance with subsection (2); or

(b) fails, in any notice or advertisement relating to the meeting at which the proposal is to be considered, to state that representations have been made by the director whose removal is proposed (if that is the case); or

(c) fails to send a copy of any written representations made, by the director whose removal is proposed, in respect of the proposal to every shareholder, debenture holder and trustee

for debenture holders of the company to whom is sent a notice of the meeting at which the proposal is to be made, and to every other shareholder, debenture holder or trustee for debenture holders who makes a written request for such a copy within two days after the request is received by the company;

the company and any officer of the company who is in default shall be guilty of an offence punishable by a fine not exceeding one thousand rupees.

(10) This section shall not apply

(a) to a proprietary company; or

(b) to a director appointed or nominated by trustees of one or more debenture trust deeds, or by debenture holders, pursuant to a right to make the appointment or nomination conferred by a debenture trust deed or debentures.

169. Register of directors and secretaries

(1) Every company shall keep at its registered office a register of its directors and secretaries.

[Act 5 of 2013]

(2) The said register shall contain the following particulars with respect to each director, that is to say, his present forename and surname, any former forename or surname, his usual residential address, his nationality, his business occupation (if any), and particulars of any other directorships held by him:

Provided that it shall -not be necessary for the register to contain particulars of a directorship held by a director in a company of which the company is the wholly-owned subsidiary.

(3) The said register shall contain the following particulars with respect to the secretary or, where there are joint secretaries, with respect to each of them, that is to say

(a) in the case of an individual, his present forename and surname, any former forename and surname and his usual residential address; and

(b) in the case of a company or corporation, its corporate name and registered or principal office:

Provided that, where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated instead of the said particulars.

(4) The company shall, within the periods respectively mentioned in subsection (5), send to the Registrar a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors or in its secretary or in any of the particulars contained in the register, specifying the date of the change.

(5) The periods referred to in the last foregoing subsection are the following, namely,

(a) the period within which the said return is to be shall be a period of fifteen days from the appointment of the first directors of the company; and

(b) the period within which the said notification of a change is to be sent shall be fifteen days from the happening thereof:

Provided that, in the case of a return containing particulars with respect to the persons who are the company's directors and secretary at the date when this Ordinance comes into force, the period shall be fifteen days from the coming into force of this Ordinance.

(6) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any shareholder

or debenture holder of the company without charge, and of any other person on payment of one rupee, or such less sum as the company may specify, for each inspection.

(7) If a company fails to comply with any of the provisions of subsections (1) to (5) inclusive of this section, the company and any officer of the company who is in default shall be guilty of an offence punishable by a fine not exceeding one hundred rupees for every day during the first month that default continues, two hundred and fifty rupees for every day during the next two months that default continues, and five hundred rupees for every day that default continues thereafter.

(8) If any inspection required under this section is refused

(a) the court may by order compel an immediate inspection of the register; and

(b) the company and any officer of the company who is in default shall be guilty of an offence punishable by a fine not exceeding one hundred rupees and further by a default fine not exceeding one hundred rupees.

(9) For the purpose of this section

(a) the expression "forename" includes a forename or personal name and the expression "surname" includes a family name;

(b) references to a former forename or surname does not include

(i) in the case of any person, a former forename or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years, or has been changed or disused for a period of not less than twenty years; or

(ii) in the case of a married woman, the name or surname by which she was known prior to the marriage.

170. Particulars of directors to be included in company's publications

(1) Every company to which this section applies shall, in all written and printed publications and business letters on or in which the company's name appears and which are issued or sent by the company to any person within or outside Seychelles, state in legible characters with respect to every director the following particulars:

(a) his present forename or the initials thereof and present surname;

(b) any former forenames and surnames;

(c) his nationality,

Provided that, if special circumstances exist which render it in the opinion of the Registrar expedient that such an exemption should be granted, the Registrar, may by order grant, subject to such conditions may be specified in the order, exemption from the obligations imposed by this subsection.

[Act 5 of 2013]

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

(3) For the purpose of this section

(a) the expression "initials" includes a recognised abbreviation of a forename; and

(b) the expressions "forename", "surname", "former forename" and "former surname" shall have the same meaning as in section 169.

(4) This section shall apply to every company incorporated under this Ordinance, every existing company and every overseas company which has established a place of business in Seychelles or which carries on business there.

171. Duties of directors

(1) It shall be the duty of the directors of a company:

(a) to exercise their powers in accordance with this Ordinance and within the limits and subject to the conditions and restrictions established by the company's memorandum and articles;

(b) to obtain the authorisation of a general meeting before doing any act or entering into any transaction for which the authorisation or consent of a general meeting is required by this Ordinance or by the company's memorandum or articles;

(c) to exercise their powers in good faith in what they reasonably consider to be the interests of the shareholders of the company as a whole and for the respective purposes for which such powers are explicitly or impliedly conferred;

(d) to account to the company for any monetary gain, or the value of any other gain or advantage, obtained by them in connection with the exercise of their powers, or by reason of their position as directors of the company, except remuneration, pensions, provisions and compensation for loss of office in respect of their directorships of any company which are lawfully authorised or approved by a resolution passed by a general meeting and (where necessary) by a meeting of a class of shareholders;

(e) not to make use of any information received by them respectively as directors otherwise titan for the benefit of the shareholders of the company as a whole, either during their respective terms of office or thereafter;

(f) not to compete with the company or become a director or officer of a competing company, unless a general meeting by ordinary resolution authorises the director concerned to do so in any specific case;

(g) if directors have any interest, whether direct or indirect, immediate or prospective, in any contract or transaction or proposed contract or transaction with the company, to disclose each of their respective interests to the meeting of the directors of the company at which the contract or transaction is first taken into consideration.

or to the first meeting of the directors held after the interest arises (whichever is the later), and in such written disclosure to state the nature and extent of their respective interests and the effect or probable effect on them of the contract cr transaction; and

(h) not to use any assets of the company for any illegal or improper purpose, and not to do, or knowingly allow to be done, anything by which the company's assets may be damaged or lost (otherwise than in the ordinary course of carrying on its business);

(i) to transfer forthwith to the company all cash or assets acquired on its behalf whether before or after its incorporation) or as the result of employing its cash or assets, and until such transfer is effected to hold such cash or assets on behalf of the company and to use it only for the purposes of the company;

(j) to attend meetings of the directors of the company with reasonable regularity, unless prevented from so doing by illness or offer reasonable excuse:

Provided that nothing in this section shall affect the operation of sections 33, 34 and 39.

(2) The duties imposed by this section shall be owed to the company, and not to the members, shareholders, debenture holders or creditors of the company, but:

(a) an application may be made to the court by any shareholder or debenture holder for a declaration that any act or transaction, or proposed act or transaction, by the directors or

any director or former director involves a breach of any of their said duties, and if the court makes such a declaration it may issue an injunction to restrain the directors or any director or former director from doing any such proposed act or entering into any such proposed transaction; and

(b) an action for damages for breach of the said duties may be brought in the name of the company by the holders of at least one-tenth of the issued and outstanding shares of the company which carry unrestricted voting rights, or on behalf of the holders of that fraction of those shares by any one or more of their number authorised by each of the others of them in writing.

(3) The notice of a general meeting called to give an authorisation under paragraph (f) of subsection (1) of this section shall contain or be accompanied by a statement in clearly legible print setting out

(a) the nature of the business which the director intends to carry on and the extent to which it is likely to compete with any class of business carried on by the company; or

(b) the name and the class or principal classes of business carried on by the competing company of which he intends to become a director or officer, and the extent to which any class of business carried on by it competes or is likely to compete with that of the company.

(4) For the purpose of this section, a general notice given to the directors of a company by a director to the effect that he is a member, shareholder, debenture holder or officer of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm, shall be deemed to be a sufficient declaration of interest in relation to any contract so made:

Provided that no such notice shall be of effect unless it is given at a meeting of the directors, or unless the director ensures it is brought up and read at the next meeting of the directors after it is given.

(5) Any person who commits a breach of a duty imposed on him by paragraphs (d), (e), (f), (h) or (j) of subsection (1) shall, without prejudice to the generality of the expression, be deemed to have committed a serious breach of duty within the meaning of section 28(2) and 165(1).

(6) A person who

(a) knowingly commits a breach of any duty imposed on him by subsection (1) of this section; or

(b) commits a breach of a duty imposed on him by paragraphs (d), (e), (g), (h) or (i) of that subsection;

shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or to both such fine and such imprisonment, but a person shall not be sentenced to a term of imprisonment unless the court is satisfied that he acted wilfully.

(7) If a company has a subsidiary, directors of the company and the subsidiary shall owe the same duties under subsection (1) to the company in respect of the affairs of the subsidiary and their conduct in relation to the subsidiary as though the company and the subsidiary were one company, and the company owned the subsidiary's assets and undertaking, and the whole of this section shall then be applied accordingly:

Provided that nothing in this subsection shall affect the duties of the directors of the subsidiary toward the subsidiary and the remedies conferred by this section for the breach of any such duties.

172. Loans to directors

It shall not be lawful for a company to make a loan to any person who is a director of it or of a company which doctors belongs to the same group of companies as the company, or to enter

into any guarantee, or provide any security, in connection with a loan made to such a person as aforesaid by any other person:

Provided that nothing in this section shall apply either

(a) to anything done by a company which is for the time being a proprietary company; or

(b) to anything done by a company in respect of a director who holds a salaried employment or office under the company or under a company which belongs to the same group of companies as the company with a view to enabling him to subscribe for or purchase shares or debentures of the company or of any such other company;

(c) subject to the next following subsection, to any thing done to provide a director of the company with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company; or

(d) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business.

(2) Paragraphs (b) and (c) of the proviso to subsection (1) shall not authorise the making of any loan, or the entering into any guarantee, or the provision of any security, except either

(a) with the prior authorisation of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed in the notice calling the meeting and in any advertisement published under section 127(4); or

(b) on condition that, if the approval of the company is not given as aforesaid at or before the next following annual general meeting, the loan shall be repaid or the liability in respect of which the guarantee or security was given shall be discharged, as the case may be, within six months from the conclusion of that meeting,

and in no case shall a loan be made, guaranteed or secured by a company under paragraph (b) aforesaid except on condition that it shall be wholly repaid within two years from the time when it is made.

(3) Where the authorisation of the company is not given in accordance with any such condition as is mentioned in paragraph (b) of subsection (2), the directors who authorise the making of the loan, or the entering into the guarantee, or the provision of the security, shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

(4) If a loan is made, or a guarantee is given, or security is provided by a company in contravention of this section:

(a) the contract of loan, or guarantee, or the security shall be as valid and enforceable as though no contravention had occurred;

(b) every director in default and every person who participates in the making of the loan or its use by the borrower, or in the giving of the guarantee or the providing of the security, knowing of the contravention aforesaid:

(i) shall be liable to compensate the company for any loss suffered by it; and

(ii) shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or to both such fine and such imprisonment.

173. Directors' duties in connection with allotment of shares and debentures

(1) Before issuing or re-issuing any shares or debentures of a company, the directors of the company shall offer the shares or debentures for subscription to the existing shareholders of the company

in proportion to the respective nominal values of their shareholdings, and the directors may allot shares or debentures in some other manner only to the extent that they are not subscribed for pursuant to the said offer:

Provided that this section shall not apply to:

(a) shares allotted to the subscribers of the company's memorandum of association; or

(b) shares allotted to directors to provide them with the share qualification specified in the memorandum or articles; or

(c) shares allotted to trustees of a scheme authorised by an ordinary resolution passed by a general meeting of the company, being a scheme by which the company provides money gratuitously to enable the trustees to subscribe for or purchase fully paid scares of the company, or of any other company or body corporate, to be held by or for the benefit of employees (including directors holding a salaried employment or office) of the company, or of a company which belongs to the same group of companies as the company; or

(d) shares or debentures allotted to employees (including directors holding a salaried employment or office) of the company, or of a company which belongs to the same group of companies as the company, under an employee share subscription scheme (whether involving the issue of options to subscribe to the beneficiaries of the scheme or not), being a scheme which has been authorised by an ordinary resolution passed by a general meeting of the company; or

(e) shares or debentures of a company (other than a proprietary company) which the directors have been authorised to issue by an ordinary resolution passed by a general meeting of the company under section 122(3) or (5) during a period not exceeding one year from the passing of the resolution, subject to the conditions (if any) imposed by the resolution; or

(f) shares or debentures of a proprietary company which the directors have been authorised to issue otherwise than in proportion to the respective nominal values of the shareholdings of the existing shareholders by a special resolution passed at a general meeting of the company; or

(g) shares or debentures properly allotted for a consideration other than cash pursuant to sections 6(1) or 122(3); or

(h) shares or debentures in respect of which a class of shareholders have waived their rights under this section by a resolution passed by the major liability specified in section 19 at a meeting of the class held under that section.

(2) If shares or debentures are offered to shareholders, or to one or more classes of shareholders, under this section, the directors may not issue any of the shares or debentures to other persons:

(a) at an issue price less than that at which they were offered to the existing shareholders, or

less than the issue price at which they were most recently offered to the existing shareholders (as the case may be); or

(b) more than one year after the offer, or the most recent of two or more successive offers (as the case may be), is made to the existing shareholders.

(3) If shares or debentures are offered for subscription to existing shareholders on two or more successive occasions, the issue price at which they are offered on a later occasion may be greater or less than the issue price at which they were offered on a previous occasion.

(4) This section shall apply to the issue of options to subscribe for shares or debentures as it applies to the allotment of shares or debentures.

(5) If a company issues convertible debentures, this section shall not apply to shares allotted in satisfaction of the conversion rights of any debenture holder, and for the purpose of this Ordinance:

(a) the expression "convertible debenture" means a debenture which, by its terms or by the terms of the covering trust deed, confers conversion rights which entitle the holder of the debenture to exchange his debenture for a specified number of fully or partly paid shares, or to subscribe at a specified issue price for shares in proportion to the principal amount of his debenture; and

(b) the conversion rights of the holder of a convertible debenture include any right conferred on him by the debenture or the covering trust deed to acquire additional shares to those mentioned in paragraph (a) of this subsection in proportion to the number of shares which the company has (under sections 55(4) or 160(3) or otherwise) since the issue of the convertible debentures issued to its shareholders as bonus shares paid up out of capital reserve or by means of a capitalisation of profits or revenue reserves, or has since that time offered for subscription to its shareholders by way of a rights issue.

(6) In this Ordinance "employee share subscription scheme" means a scheme to which a company is a party and which, by the furnishing of money by the company, by the allocation of a fraction of the company's profits, the making available of shares or debentures of the company or of any other company or body corporate, or otherwise, provides facilities for the subscription or purchase of such shares or debentures by employees (including salaried directors) of the company or of another company which belongs to the same group of companies as the company.

(7) If directors allot shares or debentures in contravention, of this section:

(a) the allotment shall be valid in favour of a person who subscribes for or purchases them in goo4 faith without knowledge that this section bay not been complied with, and in. favour of his successors in title; and

(b) any director who participated or acquiesced in the allotment shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or to both such fine and such imprisonment.

174. Directors' remuneration

(1) No remuneration shall be paid to a director unless the amount or rate thereof is specified in the memorandum or articles of the company, or in a written service agreement between the company and the director which has been authorised or approved by a general meeting of a company:

Provided that if such a service agreement is entered into without the prior authorisation of a general meeting, remuneration may be paid to the director thereunder for a period not exceeding six months until the remuneration is approved by a general meeting, and if such approval is refused no remuneration paid in respect of a period prior to the refusal shall be recoverable by the company from the director.

(2) No payment shall be made by a company:

(a) to a director or former director as a pension or retirement benefit;

(b) to a director or former director as compensation for loss of office or as consideration for or in connection with his retirement from office;

(c) to a dependant of, or to a person nominated by, a director or former director by way of a pension or a provision; or

(d) to any person in return for an undertaking to provide any benefit falling within the foregoing paragraphs:

unless the payment has previously been authorised or approved by an ordinary resolution passed at a general meeting of the company, or unless the payment is provided for by a written service

agreement between the company and the director and the term relating to the payment has been approved by an ordinary resolution passed at a general meeting before or within six months after the agreement was entered into.

(3) No payment to which this section applies shall be made by a company free of income tax, or otherwise calculated by reference to, or varying with, the amount of income tax payable by any person, or by reference to, or varying with, or to or with any specified rate of income tax, and the payment to be made shall be a gross sum subject to income tax equal to the net sum for which the memorandum or articles or any resolution or contract in respect of the payment actually provides.

(4) In this section and section 171 the expressions

(a) "remuneration" shall include salary, fees, commission, share or percentage of profits, expenses allowance and any other form of emolument, whether in the form of cash or not, relating to services as a director of the company or of any of its subsidiaries;

(b) "pension" shall include any superannuation allowance, superannuation gratuity or similar payment;

"dependant" shall include any person, whether related to a director or former director or not, who is entitled to any benefit or advantage under a contract, trust, scheme or arrangement to which the company is a party by reason of his connection with the director or former director;

"provision" shall include any payment of money to, or the conferment of any benefit on, the recipient, whether on one occasion or on two or more successive occasions; and

"income tax" shall mean any tax imposed on and calculated by reference to the amount of the income of a person by the law of Seychelles or of any other country.

(5) Nothing in this section shall enable a company or any other person to recover any premium paid by the company to an insurance company in order to secure the provision to another person of any benefit falling within paragraph (a), (b) or (c) of subsection (2), but if the payment of the premium has not been authorised under that subsection, the value of any benefit falling within any of those paragraphs which is conferred by the insurance company shall be recoverable by the company from the person who receives it.

175. Compensation for loss of office by a director on transfer of company's undertaking

(1) It shall not be lawful in connection with the transfer of the whole or any part of the undertaking or property of a company for any payment to be made to any director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars with respect to the proposed payment (including the amount thereof) have been disclosed to the shareholders of the company and the proposal has been approved by the company by an ordinary resolution passed in general meeting.

(2) Where a payment which is prohibited by this section is made to a director of the company, the amount received shall be deemed to have been received by him on behalf of the company, and may be recovered by it from him as a debt immediately due and payable.

(3) Particulars of a proposed payment to a director within this section shall be sufficiently disclosed to shareholders of the company if the particulars are included in or accompany the notice calling the general meeting and any advertisement of the meeting published by the company under section 127(4).

(4) If any person makes or receives a payment, or if a director of the company acquiesces in the making of a payment, which is prohibited by this section, he shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or by both such fine and such imprisonment, but a person shall not be sentenced to a term of imprisonment unless the court is satisfied that he acted wilfully.

By Laws.Africa and contributors. Licensed under CC-BY. Share widely and freely.

176. Compensation for loss of office by a director on transfer of shares in the company

(1) Where, in connection with the transfer to any persons of all or any of the shares in a company, being a transfer resulting from:

(a) an offer made to all the shareholders of the company; or

(b) an offer made by or on behalf of some other company or body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company; or

(c) an offer made with a view to acquiring at least twenty per cent of the issued and outstanding shares of any class of the company, being shares which carry unrestricted voting rights; or

(d) any other offer which is conditional on acceptance to a given extent;

a payment is to be made to a director of the company by way of compensation for loss of office, or as consideration for on in connection with his retirement from office, it shall be the duty of that director to ensure that particulars with respect to the proposed payment (Including the amount thereof) shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(2) If:—

(a) any such director fails to take all proper steps to ensure that particulars are given as aforesaid; or

(b) any person who has been required by any such director to include the said particulars in or send them with any such notice as aforesaid fails so to do:

he shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or to imprisonment for not more than two years, or to both such fine and such imprisonment, but a person shall not be sentenced to a term of imprisonment unless the court is satisfied that he acted wilfully.

(3) If

(a) the requirements of subsection (1) of this section are not complied with in relation to any such payment as is therein mentioned; or

(b) the making of the proposed payment is not before the execution and delivery of a transfer of any shares in pursuance of the offer, approved by a meeting of the holders of the all or some of which are the subject of the offer, and if there are two or more such classes, by separate meetings of the holders of each such class;

any sum received by the director on account of the payment shall be deemed to have been received by him on behalf of any persons who have accepted the offer in respect of their shares in proportion to the consideration offered for their respective shares, and the expenses incurred by the director in distributing that sum amongst those persons shall be borne by him and not retained out of that sum. Each such person may sue the director for the proportion of the said sum held on his behalf as though it were a debt immediately due and payable to that person.

(4) A meeting of a class of shareholders under the last foregoing subsection shall be held in accordance with section 19(2), and a resolution approving a payment to which this section relates shall be valid if passed by a simple majority of the votes cast.

(5) If at a meeting of a class of shareholders summoned for the purpose of approving any payment under paragraph (b) of subsection (3) of this section a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment shall be deemed for the purposes of that subsection to have been approved by a meeting of that class of shareholders.

By Laws.Africa and contributors. Licensed under CC-BY. Share widely and freely.

177. Provisions supplementary to sections 174, 175 and 176

(1) Where in proceedings for the recovery of any payment as having, by virtue of section 175 or 176, been received by any person on behalf of the company or any other persons, it is shown that:

(a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question, or within one year before or two years after that agreement or the offer leading thereto was made; and

(b) the company or any person to whom the transfer was made was privy to that arrangement;

the payment shall be deemed, except insofar as the contrary is shown, to be one to which those sections apply.

(2) If in connection with any such transfer as is mentioned in section 175 or 176

(a) the price to be paid to a director whose office is to be abolished, or who is to retire from office, for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares; or

(b) any valuable consideration is given to any such director;

the excess of the price or the money value of the consideration, as the case may be, shall, for the purposes of that section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(3) It is hereby declared that references in sections 174, 175 and 176 to payments made to any director of a company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, do not include any *bona fide* payment by way of damages (not exceeding the amount specified in the proviso to section 16S(7)) or by way of pension in respect of past services, and for the purposes of this subsection the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment.

178. Managing directors

(1) The directors of a company may appoint one or more of their number to be the managing director or managing directors of the company, and may revocably delegate to him, or to them jointly or separately, such of the powers of the directors as they think fit, but without prejudice to their right subsequently to vary such delegated powers or to exercise any such powers themselves.

(2) If the appointment of a managing director is authorised by an ordinary resolution passed by a general meeting of the company, or is approved by such a resolution passed not later than six months after his appointment by the directors, the managing director may be appointed to hold office as such for more than five years, and thereupon section 163(1) and any provisions in the memorandum or articles as to the maximum period for which directors may be appointed and as to the retirement of directors by rotation shall not apply to him so long as he continues to be a managing director.

(3) The notice of a meeting called to pass a resolution under subsection (2) and any advertisement of that meeting published under section 127(4) shall include or be accompanied by a statement of the period for which the managing director has been, or is proposed to be, appointed, and a concise statement of the powers which have been delegated, or which it is proposed to delegate, to him.

(4) This section shall not apply to a proprietary company.

(5) Nothing in this section shall be taken as affecting section 34(2).

Secretaries

179. Appointment of secretary etc

(1) Every company shall have a secretary who may be an individual, a company or body corporate, or a firm (as from time to time constituted).

(2) Anything required or authorised to be done by or to the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or to any officer of the company authorised generally or specially in that behalf by the directors.

180. Persons acting as director and secretary

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

Proceedings against officers for breach of duty

181. Provisions exempting officers from liability

Subject as hereinafter provided, any provision, whether contained in the memorandum or articles of a company or in any contract with a company or otherwise, for exempting any officer or auditor of the company from, or indemnifying him against, liability in respect of any negligence, default or breach of duty of which he may be guilty in relation to the company shall be void:

Provided that, notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour, or in which he is acquitted, or in connection with any application under section 182 in which relief is granted to him by the court.

182. Relief from liability by order of the court

(1) If in any proceedings for negligence, default or breach of duty against an officer or auditor of a company it appears to the court hearing the case that that officer or auditor is or may be liable in respect of the negligence, default or breach of duty, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default or breach of duty, that court may relieve him, either wholly or partly, from his liability on such terms as the court may think fit.

(2) Where any such officer or person aforesaid has reason to apprehend that any claim will or may be made against him in respect of any negligence, default or breach of duty, he may apply to the court for relief, and the court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default or breach of duty had been brought.

Inspections and investigations

183. Appointment of inspector to investigate the affairs of a company

(1) The Registrar may appoint one or more competent inspectors to investigate the affairs of a company, and to report thereon in such manner as the Registrar may direct, on the application either of not less than fifty a company, persons being shareholders or debenture holders of the

company (or of a company which belongs to the same group of companies as the company, or of an associated company of the company) or on the application of persons who hold at least one tenth of the issued and outstanding shares carrying unrestricted voting rights of any such company as aforesaid.

(2) The Registrar may, of his own motion or at the request of any person, appoint one or more competent inspectors as aforesaid if it appears to him that there are circumstances relating to a company which give cause to suspect;

(a) that the company was formed for a fraudulent or unlawful purpose; or

(b) that its affairs are being, or have been, conducted with intent to defraud its creditors or the creditors of any other person, or otherwise for a fraudulent or unlawful purpose; or

(c) that its affairs are being or have been conducted in a manner which is unfairly prejudicial to any section of its shareholders or debenture holders; or

(d) that persons concerned with the formation or management of the company have in connection therewith been guilty of the breach of any duty imposed on them by this Ordinance or by the memorandum or articles, or have otherwise been guilty of misconduct;

(e) that shareholders and debenture holders of the company have not been given all the information with regard to its affairs to which they are entitled under this Ordinance or the memorandum or articles of the company.

(3) Any application or request for the appointment of an inspector shall be supported by such evidence as Registrar may require for the purpose of showing that the applicants have good reason for applying for or requesting the investigation, and the Registrar may, before appointing an inspector, require the applicants to give security, to an amount not exceeding one thousand rupees or such larger sum as may be prescribed, for payment of the costs of the investigation.

(4) Without prejudice to his powers under the foregoing subsections, the Registrar shall appoint one or more competent inspectors as aforesaid if the court makes an order declaring that the affairs of the company should be investigated by an inspector appointed by the Registrar.

(5) The court may exercise its power under the last foregoing subsection, either of its own motion in the course of or at the conclusion of any proceedings, whether civil or criminal, and whether the company is a party to the proceedings or not, or on the application of any person who has previously applied to or requested the Registrar to appoint an inspector, and in that case the court may take into account a written statement by the Registrar of his reasons for not acceding to the application or request:

Provided that the court shall not exercise its power under the last foregoing subsection without giving the directors of the company an opportunity to be heard by it.

(6) This section and sections 184 to 191 shall not come into operation until a date appointed by the Governor in Council by notice in the *Gazette*.

184. Preliminary inspection of company's books and papers

(1) In order to determine whether to appoint an inspector or inspectors to investigate the affairs of a company, the Registrar shall have power to give directions to:

(a) that company;

(b) any company or body corporate which belongs to the same group of companies as the company, or which is an associated company of the company or any such other company or body corporate;

(c) a company or body corporate whose affairs appear to the Registrar to be so connected with those of such a body as is mentioned in paragraph (a) or (b) above as to affect materially the question whether or not that body is insolvent:

requiring the company or body corporate, at such time and; place as may be specified in the directions, to produce such books or papers as may be so specified.

(2) An officer of the Registrar duly authorised in that behalf shall have power, on producing (if required so to do) evidence of his authority, to require any such company or body corporate as aforesaid to produce to him forthwith any books or papers which the officer may reasonably require for the purpose of the foregoing subsection.

(3) Where by virtue of the foregoing provisions of this section the Registrar, or an officer of the Registrar, has power to require the production of any books or papers from any company or body corporate, the Registrar or officer shall have the like power to require production of those books or papers from any person who appears to the Registrar or officer to be in possession of them; but where any such person claims a right to detain books or papers produced by him, the production shall be without prejudice to that right.

(4) Any power conferred by this section to require a company, body corporate or other person to produce books or papers shall include power

(a) if the books or papers are produced

(i) to take copies of them or extracts from them; and

(ii) to require that person, or any other person who is a present or past officer of, or is employed by, the company or body corporate, to provide an explanation of any of them;

(b) if the books or papers are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(5) If a requirement to produce books or papers, or provide an explanation, or make a statement, which is imposed under this section is not complied with, the company, body corporate or other person on whom the requirement was so imposed shall be guilty of an offence punishable by a fine not exceeding one thousand rupees; but where a person is charged with an offence under this subsection in respect of a requirement to produce any books or papers, it shall be a defence to prove that they were not in his possession or under his control, and that it was not reasonably practicable for him to comply with the requirement.

185. Issue of search warrant

(1) If the court or a magistrate is satisfied on information on oath laid by an officer of the Registrar, or laid under the authority of the Registrar, that there are reasonable grounds for suspecting that there are on any premises any books or papers of which production has been required under section 184 and which hove not been produced in compliance with that requirement, the court or the magistrate may issue a warrant authorising any police officer, together with any other persons named in the warrant and any other police officers, to enter the premises specified in the information (using such force as is reasonably necessary for the purpose) and to search the premises and take possession of any cooks or papers appearing to be such books or papers as aforesaid, or to take, in relation to any books or papers so appearing, any other steps which may appear necessary for preserving them and preventing interference with them.

(2) Every warrant issued under this section shall continue in force until the end of the period of one month after the date on which it is issued.

(3) Any books or papers of which possession is taken under this section may be retained for a period of three months or, if within that period there are commenced any proceedings for an offence under this Ordinance to which they are relevant, until the conclusion of those proceedings.

(4) A person who obstructs the exercise of a right of entry or search conferred by virtue of a warrant issued under this section, or who obstructs the exercise of a right so conferred to take possession of any books or papers, shall be guilty of an offence punishable by a fine not exceeding one thousand rupees; but where a person is charged with an offence under this subsection in respect of

a requirement to produce any books or paper, it shall be a defence to prove that they were not in his possession or under his control, and that it was not reasonably practicable for him to comply with the requirement

186. Information and documents obtained under sections 184 and 185 to be confidential

(1) No information or document relating to a body which has been obtained under section 184 or 185 shall, without the previous consent in writing of that body, be published or disclosed, except to the Registrar or an officer of his department or an inspector appointed by the Registrar under section 183, unless the publication or disclosure is required

(a) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings pursuant to, or arising out of, this Ordinance;

(b) for the purpose of enabling the Registrar to consider whether or not he should exercise with respect to the body a power conferred on him by this Ordinance;

(c) for the purposes of complying with any requirement, or exercising any power, imposed or conferred by this Ordinance with respect to reports made by inspectors appointed as aforesaid; or

(d) with a view to the institution by the Registrar of proceedings in the name of any company or body corporate for the recovery of any property or damages or for any other relief whatsoever, or for the presentation by the Registrar of a petition for the winding up of any company or body corporate or a petition under section 201 in respect of the affairs of any company.

(2) A person who publishes or discloses any information or document in contravention of this section shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

187. Investigation of related companies

If an inspector appointed under section 183 to investigation affairs of a company thinks it necessary for the purposes of his investigations to investigate also the affairs of any other company or body corporate which is or has at any relevant time been

(a) the company's holding company or subsidiary; or

(b) a subsidiary of a company which is or has at any relevant lime been the company's holding company;

(c) a company which is or has at any relevant time been the holding company of a company which has at any relevant time been the company's subsidiary; or

(d) a company which or has at any relevant time been an associated company of any company falling within paragraph (a), (b) or (c);

he shall have power so to do, and shall report on the affairs of the other body corporate so far as he thinks the results of his investigation thereof are relevant to the investigation of the affairs of the firstmentioned company.

188. Production of evidence and documents to inspectors

(1) It shall be the duty of all officers and agents of the company and of all officers and agents of any other company or body corporate whose affairs are investigated under; section 187 to produce to the inspector all books and documents of or relating to the company or, as the case may be, the other company or body corporate, which are in their custody or power, and otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

(2) An inspector may examine on oath the officers and agents of the company or such other company or body corporate in relation to its business, and may administer an oath accordingly.

(3) If any officer or agent of the company or such other company or body corporate refuses to produce to the inspector any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspector with respect to the affairs of the company or other company or body corporate, as the case may be, the inspector may certify the refusal under his hand to the court, and the court may thereupon inquire into the case, and after hearing any witnesses who may be produced against or on behalf of the alleged offender, and after hearing any statement which, may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the court.

(4) If an inspector thinks it necessary for the purpose of his investigation that a person whom he has no power to examine on oath should be so examined, he may apply to the court, and the court may, if it sees fit, order that person to attend and be examined on oath before it on any matter relevant to the investigation, and on any such examination

(a) the inspector may take part therein either personally or by attorney or counsel;

(b) the court may put such questions to the person examined as the court thinks fit;

(c) the person examined shall answer all such questions as the court may put or allow to be put to him, but may at his own cost employ a barrister or attorney who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him;

and notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him:

Provided that, notwithstanding anything in paragraph (c) of this subsection, the court may allow the person examined such costs as in its discretion it may think fit, and any costs so allowed shall be paid as part of the expenses of the investigation.

(5) In this section, any reference to officers or to agents shall include past, as well as present, officers or agents, as the case may be, and for the purposes of this section the expression "agents", in relation to a company or other body corporate shall include the auditors, bankers and legal advisers of the company or other body corporate, whether those persons are or are not officers of the company or other body corporate.

189. Inspectors' reports

(1) The inspector may, and if so directed by the Registrar shall, make interim reports to the Registrar, and on the conclusion of the investigation shall make a final report to the Registrar.

Any such report shall be written or printed, as the Registrar directs.

(2) The Registrar shall

(a) forward a copy of any report made by the inspectors to the registered office of the company; and

(b) furnish a copy thereof on request and on payment of the prescribed fee to any other person who is a shareholder, debenture holder or creditor of the company or of any other company or body corporate whose affairs have been investigated under section 187;

and may also cause the report to be printed and published.

190. Proceedings on inspectors' report

(1) If from any report made under section 189 it appears to the Registrar that any person has, in relation to the company or to any other company or body corporate whose affairs have been

investigated by virtue of section 187, been guilty of an offence for which he is criminally liable, the Registrar shall refer the matter to the Attorney-General for consideration of the question whether a prosecution should be instituted.

(2) If, where any matter is referred to the Attorney-General under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the company or other company pr body corporate as aforesaid (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which they are reasonably able to give.

Section 188(5) shall apply for the purposes of this subsection as it applies for the purposes of that section.

(3) If, in the case of any company or body corporate liable to be wound up under this Ordinance, it appears to the Registrar, from any such report as aforesaid that it is expedient so to do by reason of any such circumstances as are referred to in paragraphs (a) to (d) inclusive of section 183(2), the Registrar may, unless the company or body corporate is already being wound up by the court, present a petition for it to be so wound up on the ground that it is just and equitable that it should be wound up, or, in the case of a company, a petition for an order under section 201, or both.

(4) If from any such report as aforesaid it appears to the Registrar that proceedings ought, in the interest of shareholders, debenture holders or creditors of any such company or body corporate, to be brought for the recovery of any property or damages or for any other relief whatsoever, he may bring proceedings for that purpose in the name of the company or body corporate, and shall have sole control over the conduct of such proceedings, including power to discontinue them, or to enter into a compromise or make a settlement which shall be binding on the company or body corporate, but the Registrar shall indemnify the company or body corporate against all costs and expenses incurred by it in or in connection with such proceedings.

191. Expenses of investigation

(1) The expenses of and incidental to an investigation by an inspector appointed by tire Registrar under investigation, the foregoing provisions of this Ordinance shall be defrayed in the first instance by the Registrar, but the following persons shall, to the extent mentioned, be liable to indemnify the Registrar, that is to say:

(a) any person who is convicted on a prosecution instituted as a result of the investigation by or on behalf of the Registrar, or against whom judgment is given in any proceedings brought by the Registrar under section 190(4), may in the same proceedings be ordered by the court to pay the said expenses to such extent as may be specified in the order:

(b) any company or body corporate in whose name proceedings are brought as aforesaid shall be liable to the amount or value of any sums or property recovered by it as a result of those proceedings; and

(c) unless, as a result of the investigation, a prosecution is instituted by or on behalf of the Attorney-General:

(i) any company or body corporate dealt with by the report, where the inspector was appointed otherwise than under section 183(2), shall be liable, except so far as the Registrar otherwise directs; and

(ii) the applicants for the investigation, where the inspector was appointed under section 183(1) shall be liable to such extent (if any) as the Registrar may direct;

and any amount for which a company or body corporate is liable by virtue of paragraph (b) of this subsection shall be a first charge on the sums or property mentioned in that paragraph.

(2) The report of an inspector appointed otherwise than under section 183(2) may, if he thinks fit, and shall, if the Registrar so directs, include a recommendation as to the directions (if any) which he

thinks appropriate, in the light of his investigation, to be given under paragraph (c) of subsection (1).

(3) For the purposes of this section, any costs or expenses incurred by the Registrar in or in connection with proceedings brought under section 190(4) shall be treated as expenses of the investigation giving rise to the proceedings.

(4) Any liability to indemnify the Registrar imposed by paragraphs (a) and (b) of subsection (1) of this section shall, subject to satisfaction of the Registrar's right to repayment, be a liability also to indemnify ali persons against liability under paragraph (c) thereof, and any such liability imposed by the said paragraph (a) shall, subject as aforesaid, be a liability also to indemnify all persons against: liability under the said paragraph (b); and any person liable under the said paragraph (a) or (b) or either subparagraph (i) or (ii) of the said paragraph (c) shall be entitled to a contribution from any other person liable under the same paragraph or sub-paragraph, as the case may be, according to the amount of their respective liabilities thereunder.

192. Investigation of beneficial ownership and control of company

(1) Where it appears to the Registrar that there is good reason so to do, he may of his own motion, or at the request of any person, appoint one or more competent inspectors to investigate and report on the ownership of beneficial interests (whether vested, absolute, contingent or conditional or not, and whether in respect of capital or income or voting rights) in any shares or debentures of any company, and otherwise with respect to the company for the purpose of determining the persons who are or have been financially interested in the success or failure (real or apparent) of the company, or able to control or materially to influence the policy of the company.

(2) The appointment of an inspector under this section may define the scope of his investigation, whether as respect is the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular shares or debentures.

(3) Where an application for an investigation under this section with respect to particular shares or debentures of a company is made to the Registrar by members of the company, and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of an inspector under section 183(1), the Registrar shall appoint an inspector to conduct the investigation unless he is satisfied that the application is vexatious, and the inspector's appointment shall not exclude from the scope of his investigation any matter which the application seeks to have included therein, except insofar as the Registrar is satisfied that it is unreasonable for that matter to be investigated.

(4) Subject to the terms of an inspector's appointment his powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

(5) The Registrar shall appoint one or more competent inspectors under this section if the court makes an order declaring that an investigation thereunder should be made into any matter specified by the court in the order, and section 183(5) except the proviso thereto shall apply in relation to such an order.

(6) For the purposes of any investigation under this section, sections 184 to 189 inclusive shall apply with the necessary modifications of references to the affairs of the company or to those of any other company or body corporate, so, however, that

(a) the said sections shall apply in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or to have been, financially interested in the success or failure or the apparent success or failure of the company, or of any other company or body corporate the beneficial ownership of whose shares or debentures is investigated with that of the company, or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others, as they apply in relation to officers and agents of the company or of the other body corporate, as the case may be; and

(b) the Registrar shall 'not be bound to furnish the company or any other person with a copy of any report by an inspector appointed under this section, or with a complete copy thereof, if he is of opinion that there is good reason for not divulging the contents of the report or of parts thereof, unless the court otherwise orders on an application made to it for the purpose.

(7) This section and sections 193 to 195 inclusive shall come not into operation until a date appointed by the Governor in Council by notice in the *Gazette*, and the Governor in Council may for the purpose of bringing those sections into operation, also bring into operation sections 184 to 189 inclusive insofar as they are applied by subsection (6).

193. Power of Registrar to require information as to interests in shares or debentures

(1) Where it appears to the Registrar that there is good reason to investigate the ownership of beneficial interests (whether vested, absolute, contingent or conditional or not, and whether in respect of capital or income or voting rights) in any shares or debentures of a company and that it is unnecessary to appoint an inspector for the purpose, he may require any person whom he has reasonable cause to believe

(a) to be or to have been interested in those shares or debentures; or

(b) to act or to have acted in relation to those shares or debentures as the legal adviser or agent of someone interested therein;

to give to the Registrar any information which that person has or can reasonably be expected to obtain as to present and past interests in those shares or debentures, and as to the names and addresses of the persons who have or have had any such interests and of any persons who act or have acted on their behalf in relation to the shares or debentures.

(2) Without prejudice to the generality of the expression "interest", a person shall be deemed to have an interest in a share or debenture if he has a derivative interest therein, or any right to acquire or dispose of the share or debenture or any interest therein or to vote in respect thereof, or if his consent is necessary for the exercise of any of the rights of other persons interested therein, or if other persons interested therein can be required or are accustomed to exercise their rights in accordance with his instructions.

(3) Any person who fails to give any information required of him under this section, or who in giving any such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or to both such fine and such imprisonment.

194. Power of Registrar to impose restrictions on shares or debentures under investigation

(1) Where in connection with an investigation under sections 192 or 193 it appears to the Registrar that there is difficulty in finding out the relevant facts about any shares or debentures (whether issued or to be issued), and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist the investigation as required by this Ordinance, the Registrar may by order direct that the shares or debentures shall until further order be subject to the restrictions imposed by this section.

(2) So long as any shares or debentures are directed to be subject to the restrictions imposed by this section

(a) any transfer of those shares or debentures, or in the case of unissued shares or debentures, any transfer of the right to be issued therewith and any issue thereof, shall be void;

(b) no voting rights shall be exercisable in respect of those shares or debentures;

(c) no further shares or debentures shall be issued in right of those shares or debentures, or in pursuance of any offer made to the holder thereof;

(d) except in a winding up, no payment shall be made of any sums due from the company on those shares or debentures, whether in respect of capital, principal, dividends, interest or other wise.

(3) Where the Registrar makes an order directing that shares or debentures shall be subject to the said restrictions, or refuses to make an order directing that shares or debentures shall cease to be subject thereto, any person aggrieved thereby may apply to the court, and the court may, if it sees fit, direct that the shares or debentures shall cease to be subject to the said restrictions.

(4) If the Registrar makes an order under subsection (1) in respect of registered shares or debentures, he shall give notice thereof to the company together with a copy of the order, and thereupon section 110 shall apply as though the notice were a notice of interest under that section and the Registrar had a derivative interest in the shares or debentures:

Provided that unless the Registrar notifies the company within the period of fourteen days mentioned in section 110(5) that it may register a transfer of shares or debentures, the same consequences shall follow as if the court had made an order enjoining the registration of the transfer at the expiration of that period and that order were not subject to appeal.

(5) Nothing in this section shall affect the validity and effectiveness of a transfer for valuable consideration of shares or debentures represented by a ** share certificate or a ** to a person who has no actual knowledge of an order made in respect of the shares or debentures under subsection (1).

(6) Any order (whether made by the Registrar or the court) which directs that shares or debentures shall cease to be subject to restrictions imposed under subsection (1), may, if the order is expressed to be made with a view to permitting a transfer of those shares or debentures, continue the restrictions mentioned in paragraph (c) of subsection (2), either in whole or in part, so far as they relate to any right acquired or offer made before the transfer.

(7) Any person who

(a) exercises or purports to exercise any right to dispose of any shares or debentures which, to his knowledge, are for the time being subject to restrictions imposed under subsection (1), or of any right to be issued with any such shares or debentures; or

(b) votes at any general meeting or any meeting of a class of shareholders or debenture holders in respect of any such shares or debentures, whether as holder of the shares or debentures or as a proxy, or appoints a proxy to vote in respect thereof at such a meeting; or

(c) being the holder of any such shares or debentures, fails to give notice that they are subject to restrictions imposed under subsection (1) to any person whom he docs not know to be aware of that fact but does know to be entitled, apart from the said restrictions, to vote in respect of those shares or debentures as a transferee thereof, or as a person in whom the right to vote vests by operation of law, or under an order of any court;

shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees.

(8) Where shares or debentures in any company are issued in contravention of the said restrictions, every officer of the company who is in default shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees.

195. Duties of lawyers and banks

A legal adviser or a bank shall not be exempted from the duty to give evidence, produce documents or provide information under sections 192 or 193 by reason of any professional or other privilege, or by reason of any contractual or other obligation to a client or customer, and a legal adviser or bank who gives evidence, produces documents or gives evidence, produces documents or gives evidence as aforesaid shall not be liable to any client or customer for having done so.

Compromises and arrangements

196. Power of court to sanction compromises and arrangements

(1) Where a compromise or arrangement is proposed between a company and its shareholders, debenture holders or creditors, or any class of them, the court may on the application of the company or of any person affected by the compromise or arrangement, or, in the case arrangements. of a company being wound up, of the liquidator, order a meeting of the shareholders, debenture holders or creditors, or of the class or classes of shareholders, debenture holders or creditors affected by the compromise or arrangement, to be called and he'd in such manner as the court directs.

(2) If two or more classes of shareholders, debenture holders or creditors are affected by the compromise or arrangement, the court shall direct a separate meetings to be held for each such class, and for the purpose of this section creditors shall be deemed to belong to different classes if there is any difference between them as to:

(a) any security or guarantee for the payment of their claims; or

(b) the order in which their respective claims would rank for payment if an order for the winding up of the company were made on the date when the meeting is to be held; or

(c) the date when their claims fall due for payment, that is to say, whether their claims are immediately owing and are payable not later than one year after the date of the meeting, or are contingent or not immediately owing or are payable more than one year after that date.

(3) If the shareholders, debenture holders or creditors, or the members of the class or each of the classes of such persons, at the meetings directed by the court resolve, by the votes of the holders of three quarters in value of the interest represented at each such meeting in respect of which votes are cast by the holders of such interests or their proxies, to agree to the compromise or arrangement, the compromise or arrangement shall, if approved by the court and subject to subsection (9), be binding on all the shareholders, debenture holders or creditors, or on all the members of the class or classes of such persons, who are affected by the compromise or arrangement, and also on the company and, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(4) The court shall not approve a compromise or arrangement unless it is satisfied that:

(a) the notice calling the meeting or each of the meetings held under this section, or a statement accompanying it, contained an adequate explanation of the terms and effect of the compromise or arrangement and sufficiently disclosed the interests mentioned in section 197 and the effect of the compromise or arrangement on them;

(b) the persons who voted in favour of the compromise or arrangement at the meeting or at each of the meetings directed by the court, acted in good faith in the interests of the shareholders, debenture holders or creditors for whom the meeting was held, or in good faith in the interests of the class of such persons to which they belong; and

(c) the compromise or arrangement is fair and reasonable, having regard to the interests of the persons affected thereby, and, if the company is insolvent, the rights of those persons if the company were to be wound up by the court forthwith.

(5) A copy of each notice calling a meeting directed by the court, of every statement accompanying the notices calling such meetings, of the document embodying the compromise or arrangement and of the application to the court to approve it, shall be delivered to the Registrar by the company or other person who makes the application immediately after the application has been made, and the Registrar, without being made a party to the proceedings, may make representations to the court on the hearing of the application.

(6) Whether the Registrar makes representations on the hearing of the application to the court to approve the compromise or arrangement or not, the court may at any stage of the proceedings refer the compromise or arrangement to him for his report and opinion, and the court may take any such report and opinion into account in deciding whether to approve the compromise or arrangement, or to refuse its approval, or to give its approval subject to conditions or subject to the modification of the compromise or arrangement.

(7) It is hereby declared that the court may approve a compromise or arrangement under this section notwithstanding that: -

(a) it is not within the objects or powers of the company contained in its memorandum; or

(b) it could be effected, wholly or partially, under some other provision of this Ordinance.

(8) On the hearing of an application to the court to approve a compromise or arrangement, the court: may give its approval subject to such conditions or modifications of the compromise or arrangement as it thinks fit and the compromise or arrangement as so approved by the court shall, subject to subsection (9), be binding on the persons mentioned in subsection (3),

(9) An order of the court approving a compromise or arrangement shall have no effect until a copy of the order has been delivered to the Registrar for registration, and if the compromise or arrangement affects shareholders or any class of shareholders of the company, a copy of every such order shall be annexed to every copy of the memorandum or articles of the company issued after the order has been made as though it were an alteration or addition made thereto under this Ordinance, and section 17 shall apply accordingly.

(10) In this section and sections 197 and 198 the expression "company" means any company liable to be wound up under this Ordinance, and without prejudice to the generality of the expression, an "arrangement" includes

(a) a reorganisation of the share capital of a company by the consolidation of shares of different classes, or by the division of shares into shares of different classes, with or without an alteration of the nominal or paid up values of any of the shares or the alteration of the rights attached to them;

(b) a reconstruction of a company or an amalgamation of a company with one or more other companies, whether already incorporated or to be incorporated under the arrangement; and

(c) an arrangement for the acquisition of the whole of the shares or debentures, or the whole of a class of shares or debentures, of a company by another company in consideration of cash or the allotment or transfer of shares or debentures of that other company or of any other body corporate.

197. Information to be sent to persons affected by compromise or arrangement

(1) Where a meeting of shareholders, debenture holders creditors of a company, or of a class of shareholders, debenture holders or creditors of a company, is called under the last foregoing section there shall

(a) with every notice calling the meeting which is sent to a shareholder, debenture holder or creditor be sent also a copy of the document embodying the compromise or arrangement and a statement explaining the effect of it and disclosing any material interests affected by it of the directors and substantial shareholders of the company, of any company which belongs to the same group of companies as the company, and of any company which is an associated company of the company or of any company which belongs to the same group as aforesaid, whether such interests are held by those persons as directors or as share holders, debenture holders or creditors of any of the said companies or otherwise;

(b) in every notice calling the meeting which is given by advertisement, be included either a copy of the document embodying the compromise or arrangement and such a statement as is mentioned in paragraph (a) of this subsection, or a notification of an address in Seychelles

at which shareholders, debenture holders or creditors entitled to attend the meeting may obtain copies of that document arid of such a statement as aforesaid.

(2) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement mentioned in subsection (1) shall also disclose the material interests affected by it of the trustees of any trust deed covering the debentures, and if any trustee is a corporation, shall also disclose such interests of the trustee's directors.

(3) Where a notice given by advertisement includes a notification that copies of the document embodying the compromise or arrangement and of a statement explaining the effect of the compromise or arrangement may be obtained by shareholders, debenture holders or creditors entitled to attend the meeting, every such shareholder, debenture holder or creditor shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the document and of the statement.

(4) It shall be the duty of every parson who has a material interest in the compromise or arrangement which is required to be disclosed under subsection (2) or subsection (3) to notify the company of his interest and of the way in which it will be affected by the compromise or arrangement as soon as he becomes aware that the compromise or arrangement is to be submitted to a meeting or meetings of the parsons affected thereby, and if he fails to do so he shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees.

(5) Where a company, or any other person who has obtained an order of the court under section 196(1), fails to comply with any requirement of this section, every officer of the company who is in default or that other person (as the case rnay be) shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees, and for the purpose of this subsection, a liquidator of the company shall be deemed to be an officer of the company:

Provided that in a prosecution under this subsection, the accused shall not be guilty of an offence if he shows that the failure to comply with this section was due to the failure of some other person to supply the 'necessary particulars to his interests, and that no other sufficient information as to those interests was available to the accused.

198 . Reconstructions and amalgamations

(1) Where an application is made to the court under section 196 for the approval of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the court that the compromise or arrangement has been proposed for the purpose of or in connection with a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies, or for the acquisition of the whole of the shares or debentures, or the whole of a class of shares or debentures, of a company by another company, and that under the scheme the whole or any part of the undertaking, property, shares or debentures of any company concerned in the scheme (in this section referred to as "a transferor company") is to be transferred to another company (in this section referred to as "the transferee company"), the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters:

(a) the transfer to the transferee company of the whole or any part of the undertaking, property, shares or debentures, or the whole or part of the liabilities, of any transferor company;

(b) the allotment, transfer or appropriation by the transferee company of any shares or debentures which under the compromise or arrangement are to be allotted, transferred or appropriated by that company to or for any person;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(d) in the case of a reconstruction or amalgamation, the dissolution, without winding up, of any transferor company;

(e) the provision to be made for any persons, who within such time and in such manner JS the court directs, dissent from the compromise or arrangement;

(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation or acquisition of shares or debentures shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property or those liabilities shall, by virtue of the order, transferred to and become the property or liabilities of the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) An order under this section may provide for the transfer of contracts, rights and obligations notwithstanding that, apart from the provisions of this Ordinance, such contracts, rights or obligations are not assignable or transferable by agreement, and may also direct that the transferee company shall be substituted for any transferor company in respect of any office or appointment made by any person or body of persons or by the court.

(4) Where an order is made under this section, every company in relation to which the order is made shall cause a copy of it to be delivered to the Registrar for registration within fourteen days after the order is drawn up, and if default is made m complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(5) If an order made under this section provides for the transfer of shares or debentures of any company, the order shall operate as though it were an instrument of transfer executed by all necessary parties, and the company shall register the transfer accordingly in its register of members or debenture holders and shall issue all necessary certificates in respect of the shares or debentures to the persons entitled thereto.

(6) In this section the expression "property" includes property, rights and powers of every description, and the expression "liabilities" includes duties.

Offers to acquire shares and debentures

199. Takeover bids

(1) This section shall apply to an offer to acquire shares or debentures, or an invitation to make tenders of shares or debentures, which is addressed by any person, company or body corporate (in this section called "the offeror") to more than twenty-five persons, if the purpose of the offer or invitation is the acquisition by the offerer or by any other person on whose behalf the offer or invitation is made, of:

(a) all the issued and outstanding shares or debentures of a company (other than the offeror), or all the issued and outstanding shares or debentures of a particular class of such a company; or

(b) a specified fraction of such shares or debentures or of such shares or debentures of a particular class; or

(c) sufficient shares of a company (other than the offeror) so as to make the offeror or the person on whose behalf the offer or invitation is made (in consequence of the acquisition and of any shares already held by the offeror or that person, or by 'nominees for either of them) the holding company of that company; or

(d) sufficient shares of a company (other than the offerer) so as to give the offeror or the person on whose behalf the offer or invitation is made (in consequence of the acquisition, of any shares already held by the offeror or that person or by nominees for either of them, and of any voting agreements entered into by them or any of them) the right to exercise or control the exercise of not less than twenty per cent of the votes which may be cast in respect of

issued and outstanding shares carrying unrestricted voting rights at general meetings of the company; or

(e) any shares of a company (other than the offeror) if the offeror or the person on whose behalf the offer or invitation is made is the company's holding company; or

(f) any shares of a company (other than the offeror) if, by any of the means mentioned in paragraph (d) of this subsection, the offeror or person on whose behalf the offer or invitation is made has the right to exercise or control the exercise of not less than twenty per cent of the votes which may be cast in respect of the issued and outstanding shares carrying unrestricted voting rights at general meetings of the company.

(2) An offer or invitation to which this section applies shall be made in writing by a document in the same form and containing the same information sent to all the persons to whom the offer or invitation is addressed, and that document shall contain:

(a) a statement of the price or consideration offered for the shares or debentures whose acquisition is sought, or, in the case of an invitation, the range of prices or consideration within which tenders of shares made by the persons to whom the invitation is addressed will be considered by the offeror;

(b) a statement of the most recent known price at which any of the shares or debentures which are the subject of the offer or invitation, or any shares or debentures of the same class, have been sold on a stock exchange, or if none of them are quoted on a stock exchange, the most recent known price at which a sale of any of them has taken place;

(c) if any of the shares or debentures which are the subject of the offer or invitation, or any shares or debentures of the same class, have been quoted on a stock exchange within the preceding twelve months, a statement of the prices, or if more than six sales have taken place within that period, at least six prices at which sales have taken place on a stock exchange during that time, including the highest price and the lowest price at which such sales have taken place;

(d) if the offer or invitation provides for the issue or transfer of shares or debentures of another company or body corporate as consideration for the acquisition of the shares or debentures to which the offer or invitation relates, a statement of the prices mentioned in paragraphs (b) and (c) in respect of sales of any of the shades or debentures so to be issued or transferred, or in respect of sales of shares or debentures of the same class (if any);

(e) a statement of the price or consideration offered or agreed to be paid to each director and each substantial shareholder of the company, and to each director and each substantial shareholder of a company which belongs to the same group of companies as the company, and to each director of a company which is an associated company of any of those companies, for the acquisition from him of any shares or debentures of the same class as the shares or debentures to which the offer or invitation relates;

(f) a statement of the amount and nature of any payment, consideration, compensation, benefit or advantage arranged to be given to, or conferred on, any person mentioned in paragraph (e) in connection with the offer or invitation, whether conditional on acceptance of the offer or invitation by the persons to whom it is addressed, or by some of them, or not;

(g) the date when the offer or invitation will close, being not less than thirty-five days nor more than forty-two days from the date when the offer or invitation is sent to the persons to whom it is addressed;

(h) if the offer or invitation is made on behalf of, or for the benefit of, any person not named in it as the offeror, the name and address of that person.

(3) Not less than three days before an offer or invitation to which this section applies, or any document which supplements such an offer or invitation, is sent to the persons to whom it is addressed, a

copy of it signed by the offeror and by every person on behalf of whom it is made shall be delivered to

(a) the Registrar for registration; and

(b) the company in respect of whose shares or debentures the offer or invitation is made.

(4) A copy of any communication (whether written or oral) sent or made by the directors of the company whose shares or debentures are the subject of the offer or invitation to any of the persons to whom the offer or invitation is addressed in connection with the offer or invitation shall, within two days after the communication is sent or made, be delivered to the Registrar, and that copy shall be authenticated by the signatures of at least two directors of the company.

(5) If:

(a) an offer to which this section applies is expressed to be conditional on its acceptance by the holders of a specified number or fraction of the shares or debentures in respect of which the offer is made; or

(b) an invitation to which this section applies is expressed to be conditional on the tender of a specified number or fraction of the shares or debentures to which the invitation relates at or below a specified price, or for, or for not more than, a specified consideration;

the condition shall, notwithstanding the number of acceptances or tenders received by the offeror, be deemed not to have been fulfilled, and all acceptances of the offer or tenders made in response to the invitation, shall become void, unless within seven days after the date on which the offer or invitation closes the offeror:

(i) makes a written declaration signed by him, or if the offeror is a company or body corporate, by at least two of its directors, stating that the said condition was fulfilled at or before the date when the offer or invitation closed, and giving particulars of the number and classes of shares or debentures in respect of which the offer or invitation was made and in respect of which the offer has been accepted or tenders have been made in response to the invitation;

(ii) makes a list in alphabetical order of the holders of shares or debentures who have accepted the offer or tendered shares or debentures in response to the invitation, showing against the name of each holder the number and class of the shares or debentures in respect of which he has accepted the offer or made a tender:

(iii) makes a written confirmation signed by the offeror, or if the offeror is a company or body corporate, by at the two of its directors, that the offeror will acquire all the shares or debentures specified in the list made under paragraph (ii), or that the offeror will acquire some only of those shares or debentures, and in that case the shares or debentures which the offeror will acquire shall be specified by reference to the names of the holders of them;

(iv) sends a copy of the declaration and confirmation made under paragraphs (i) and (iii) to each of the persons mentioned in the list made under paragraph (ii);

(v) delivers to the Registrar for registration, and to the company in respect of whose shares or debentures the offer or invitation was made, a copy of the said declaration, list and confirmation.

(6) Nothing contained in subsection (5) shall affect the right of any person to sue the offeror or the person on whose behalf it makes an offer for damages or other relief in respect of any breach of contract

(7) Within seven days after the offeror delivers a copy of the declaration, list and confirmation under subsection (5)'to the company in respect of whose shares or debentures the offer or invitation was made, the offeror shall pay, transfer or make available to the persons mentioned in the said list the price or consideration for the shares or debentures to be acquired from them respectively, and the

persons" so mentioned in the said list shall deliver to the offeror the certificates in respect of the said shares or debentures together with all necessary transfers executed by them,

(8) If after an offer or invitation to which this section applies is sent to the persons to whom it is addressed, the offeror or the person on whose behalf the offer or invitation is made increases the amount of the price or other consideration offered, or the maximum price or the maximum amount of the consideration mentioned in the invitation, this section shall take effect as though the increased price or consideration had been specified in the original offer or invitation, and:

(a) within two days after the increase is notified to any person to whom the original offer or invitation was addressed, written notification of the increase shall be sent by the offeror to every other such person, and a copy of the notification signed by the offeror and by every person on whose behalf the original offer or invitation was made shall be delivered to the Registrar for registration, and to the company in respect of whose shares or debentures the original offer or invitation was made;

(b) if a contract for the transfer of any shares or debentures has already been concluded in consequence of the original offer, the price or consideration to be paid or given for the shares or debentures under that contract shall be increased accordingly;

(c) any person who has made a tender to the offeror in response to the original invitation may withdraw his tender or submit a new tender.

(9) If the offeror makes a confirmation under subsection (5) in respect of less than all the shares or debentures specified in the list made under that subsection, the offeror shall be under an obligation to acquire from their respective holders a rateable proportion of all the shares or debentures in respect of which the offer made by the offeror has been accepted, or, in the case of an invitation made by the offeror in response to which more shares or debentures have been tendered at the same price, or for the same consideration, than the offeror is willing to acquire in accordance with the terms of the invitation, the offeror shall be under an obligation to acquire from their respective holders a rateable proportion of all the shares or debentures so tendered.

(10) Sections 45, 46 and 50 shall apply to an offer or invitation to which this section applies as if it were a prospectus, as if the person, company or body corporate by or on behalf of whom the offer or invitation is made were persons authorising the issue of a prospectus, and as if the persons accepting the offer or invitation were persons who subscribed for shares or debentures under such a prospectus.

(11) If an offer or invitation made under this section is a prospectus, the provisions of this Ordinance in respect of prospectuses shall apply in addition to the provisions of this section.

(12) An application may be made to the court by any interested person for an order:

(a) rectifying any statement in or omission from a declaration, list or confirmation made under subsection (5); or

(b) declaring that the offeror or any person on whose behalf the offer or invitation is made is bound or entitled to acquire the shares or debentures of another person in consequence of the offer or invitation, and ordering the specific enforcement of any obligation to acquire or transfer such shares or debentures; or

(c) declaring that any shares or debentures are not affected by any obligation arising in consequence of the offer or invitation.

(13) It shall not be lawful for any person, company or body corporate to make an offer or invitation to which this section applies on behalf of a company if the offer or invitation relates to shares of that company.

By Laws.Africa and contributors. Licensed under CC-BY. Share widely and freely.

(14) An offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or by both such fine and such imprisonment, is committed by:

(a) a person who sends out an offer or invitation to which this section applies if the offer or invitation does not contain the statements required by subsection (2); or

(b) a person who sends out an offer or invitation to which this section applies, or any document which supplements such an offer or invitation, fails to deliver a copy thereof to the Registrar and to the company to who shares or debentures it relates in accordance with this section; or

(c) any person who knowingly makes or concurs in the making of a declaration, list or confirmation under subsection (5) which is false in a material particular, or which omits any matter which should be included therein, or who knowingly deliver or concurs in the delivery of a copy of such a document to the Registrar or to the company in respect of whose shares or debentures the offer or invitation was made; or

(d) a person who sends out an offer or invitation in contravention of subsection (13).

(15) The directors of a company who send or make a communication which falls within subsection (4) to any of the persons mentioned in that subsection without delivering a copy thereof to the Registrar in compliance with that subsection shall each be guilty of an offence punishable by a fine not exceeding one thousand rupees.

(16) This section shall not apply to an offer or invitation made before the coming into force of this Ordinance.

200. Compulsory acquisition of shares

(1) Where an offer, invitation, scheme or contract involving the transfer of the whole or part of the acquisition shares of any class of a company (in this section referred to as "the transferor company") to another company or body corporate, (in this section referred to as "the transferee company"), has within two months after the making of the offer hi that behalf by the transferee company been accepted or assented to by the holders of not less than nine tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or a com-pany which belongs to the same group of companies as the transferee company), the transferee company may, at arty time within two months after the expiration of the said two months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and when such a notice is given the transferee company shall, unless, on the application made by the dissenting shareholder within two months from the date on which the notice was given, the court thinks fit to order otherwise, be entitled and bound to acquire those shares on theterms on which, under the offer, invitation, scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company:

Provided that this subsection shall apply only if:

(a) the price or consideration to be paid or given under the offer, invitation, scheme or contract is the same for each of the shares to which the offer, invitation, scheme or contract relates;

(b) the offer, invitation, scheme or contract does not provide for any payment of compensation for loss of office, or as consideration for or in connection with retirement from office, for which the approval of a general meeting or of a meeting of a class of shareholders is required by sections 174 175 or 176; and

(c) the offer, invitation, scheme or contract provides that any shareholder who wishes to do so may, instead of accepting a consideration other than cash for the transfer of his shares, require the transferee to pay to him a specified price in cash.

(2) Where, in pursuance of any such offer, invitation, scheme or contract as aforesaid, shares of any class of a company are transferred to another company or body corporate or its nominee, and those shares, together with any other shares of the same class held by, or by a nominee for, the transferee company or a company which belongs to the same group of companies as the transferee company

at the date of the transfer, comprise or include nine tenths in value of the issued and outstanding shares of that class, then

(a) the transferee company shall within two months from the date of the transfer (unless on a previous transfer in pursuance of the offer, invitation, scheme or contract it has already complied with this requirement) give notice of that fact in the prescribed manner to the holders of the remaining shares of that class who have not accepted or assented to the offer, invitation, scheme or contract; and

(b) any such holder may within two months from the giving of the notice to him require the transferee company to acquire the shares in question:

and where a shareholder gives notice under paragraph (b) of this subsection with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which under the offer, invitation, scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed or as the court, on the application of either the transferee company or the shareholder, thinks fit to order.

(3) Where a notice has been given by the transferee company under subsection (1) of this section and the court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of two months from the date on which the notice has been given, or, if an application to the court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder and on its own behalf by the transferee company, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares:

Provided that an instrument of transfer shall not be required for any share for which a ** is for the time being outstanding.

(4) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on behalf of the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(5) In this section the expression "dissenting shareholder" includes a shareholder who has not accepted or assented to the offer, invitation, scheme or contract and any shareholder who has failed to transfer his shares to the transferee company in accordance with the terms of the offer, invitation, scheme or contract.

Minorities

201. Protection of minority shareholders

(1) Any shareholder of a company who complains that the affairs of the company are being conducted in a manner which is oppressive or unfairly prejudicial to some part of the share holders (including himself) or, in a case falling within section 190(3), the Registrar, may make an application by way of petition to the court for an order under this section.

(2) If on the hearing of the application the court is satisfied either:

(a) that the applicant, either alone or together with other shareholders, has been treated oppressively in one or more respects over a period of time, or that action has been taken by the persons who are or were in control of the affairs of the company, being action which was known by them to be likely to prejudice unfairly the interests of the applicant, either alone or together with other shareholders; or

(b) the persons who are or were in control of the affairs of the company have been guilty of serious misconduct or breaches of duty which has or have prejudicially affected the interests of the applicant, either alone or together with other shareholders;

the court may, with a view to bringing to an end or remedying the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any shareholders of the company by other shareholders of the company or for the acquisition of any such shares by the company and, in the case of such an acquisition by the company, for the reduction accordingly of the company's capital, or otherwise.

(3) Without prejudice to the generality of its powers under the last foregoing subsection, the court may order that:

(a) an action or other proceeding shall be brought in the company's name and conducted by any person (including the Registrar) appointed by the court;

(b) a director, managing director or other officer or an auditor of the company shall be removed from any office, appointment or employment held by him under the company or its holding company or subsidiary, and that some other person nominated or approved by the court shall be appointed to any such office, appointment or employment in his place;

(c) any person shall be appointed to be a director or managing director of the company or of its holding company or subsidiary on such terms and condition as the court thinks fit;

(d) a dividend shall be paid by the company to shareholders or any class of shareholders of the company or by a subsidiary of the company to the company;

(e) any person shall pay damages or compensation to the company or to the applicant for any loss suffered in consequence of that person's misconduct or breach of duty.

(4) Where an order under this section makes any alteration in or addition to any company's memorandum or articles, then, notwithstanding anything in any other provision of this Ordinance, but subject to the provisions of the order, the company concerned shall not have power without the leave of the court to make any further alteration in, or addition to, the memorandum or articles inconsistent with the provisions of the order; but, subject to the foregoing provisions of this subsection, the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company, and the provisions of this Ordinance shall apply to the memorandum or articles as so altered or added to accordingly.

(5) A copy of any order under this section altering or adding to, or giving leave to alter or add to, a company's memorandum or articles shall, within fifteen days after the making thereof, be delivered by the company to the Registrar for registration; and if a company makes default in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(6) This section shall not come into operation until a date appointed by the Governor in Council by notice in the *Gazette*.

By Laws.Africa and contributors. Licensed under CC-BY. Share widely and freely.

Part VI – Winding up

(I) – Preliminary

Modes of winding up

202. Application of Insolvency Act 2013

(1) The Insolvency Act 2013 shall apply to winding up of companies registered under this Act.

[Act 5 of 2013]

(2) Any submission or registration of documents, fees or penalty payable or any action or proceedings taken against any person under Part VI of the Companies Act 1972, prior to the commencement of the Insolvency Act 2013, shall continue as if Part VI of the Companies Act 1972 had not been repealed.

(3) Any regulations made under part VI of the Companies Act 1972 shall continue to have effect until they are repealed or amended under the provisions of the Insolvency Act 2013.

Contributor's

203. ***

[Repealed]

204. ***

[Repealed]

(II) – Winding up by the court

Cases in which a company may be wound up by the court

205. ***

[Repealed]

206. ***

[Repealed]

Petition for winding up and effect thereof

207. ***

[Repealed]

208. ***

[Repealed]

Commencement of winding up

209. ***

[Repealed]

Consequences of winding up petition and order

210. ***

[Repealed]

Liquidators

211. ***

[Repealed]

212. ***

[Repealed]

213. ***

[Repealed]

Official receiver

214. ***

[Repealed]

215. ***

[Repealed]

216. ***

[Repealed]

Liquidators

217. ***

[Repealed]

218. ***

[Repealed]

219. ***

[Repealed]

220. ***

[Repealed]

221. ***

[Repealed]

222. ***

[Repealed]

223. ***

[Repealed]

224. ***

[Repealed]

225. ***

[Repealed]

226. ***

[Repealed]

227. ***

[Repealed]

228. ***

[Repealed]

Committees of inspection

229. ***

[Repealed]

230. ***

[Repealed]

231. ***

[Repealed]

Meetings of shareholders and creditor

232. ***

[Repealed]

General powers of the court in case of winding up by the court

233. ***

[Repealed]

234. ***

[Repealed]

235. ***

[Repealed]

236. ***

[Repealed]

237. ***

[Repealed]

238. ***

[Repealed]

239. ***

[Repealed]

240. ***

[Repealed]

241. ***

[Repealed]

242. ***

[Repealed]

243. ***

[Repealed]

244. ***

[Repealed]

245. ***

[Repealed]

Enforcement of and appeal from orders

246. ***

[Repealed]

(III) Voluntary winding up

Resolutions for and commencement of voluntary winding up

247. ***

[Repealed]

248. ***

[Repealed]

249. ***

[Repealed]

250. ***

[Repealed]

Consequences of voluntary winding up

251. ***

[Repealed]

252. ***

[Repealed]

Declaration of solvency

253. ***

[Repealed]

Provisions applicable to a members' voluntary winding up

254. ***

[Repealed]

255. ***

[Repealed]

256. ***

[Repealed]

257. ***

[Repealed]

258. ***

[Repealed]

259. ***

[Repealed]

Provisions applicable to a creditor's voluntary winding up

260. ***

[Repealed]

261. ***

[Repealed]

262. ***

[Repealed]

263. ***

[Repealed]

264. ***

[Repealed]

265. ***

[Repealed]

266. ***

[Repealed]

267. ***

[Repealed]

Provisions applicable to every voluntary winding up

268. ***

[Repealed]

269. ***

[Repealed]

270. ***

[Repealed]

271. ***

[Repealed]

272. ***

[Repealed]

273. ***

[Repealed]

274. ***

[Repealed]

275. ***

[Repealed]

(IV) Provisions applicable to every mode of winding up

Proof and ranking of claim

276. ***

[Repealed]

277. ***

[Repealed]

278. ***

[Repealed]

279. ***

[Repealed]

280. ***

[Repealed]

281. ***

[Repealed]

282. ***

[Repealed]

283. ***

[Repealed]

284. ***

[Repealed]

285. ***

[Repealed]

Offences antecedent to or in course of winding up

286. ***

[Repealed]

287. ***

[Repealed]

288. ***

[Repealed]

289. ***

[Repealed]

290. ***

[Repealed]

291. ***

[Repealed]

292. ***

[Repealed]

Supplementary provisions as to winding up

293. ***

[Repealed]

294. ***

[Repealed]

295. ***

[Repealed]

296. ***

[Repealed]

297. ***

[Repealed]

298. ***

[Repealed]

299. ***

[Repealed]

300. ***

[Repealed]

Supplementary powers of the court

301. ***

[Repealed]

302. ***

[Repealed]

Disposal of asset's of companies in accordance with the memorandum

303. ***

[Repealed]

Provisions as to dissolution

304. ***

[Repealed]

305. Power of Registrar to strike name of defunct company off the register

(1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or is in operation.

(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the *Gazette* with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer to the effect that the company is not carrying on business or is not in operation, or does not within one month after sending the second letter receive any answer, he may publish in the *Gazette*, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in the *Gazette* and send to the company or the liquidator (if any) a like notice as is provided in subsection (3).

(5) If a company which is not being wound up fails to deliver an annual return to the Registrar under section 114, having annexed thereto the documents required by section 115 or 116 (as the case may be) within six months after the latest date by which such an annual return should be delivered, the Registrar shall publish in the *Gazette* and send to the company a like notice as is provided by subsection (3).

(6) At the expiration of the time mentioned in a notice sent under subsection (3), (4) or (5), the Registrar shall, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall thereupon publish notice thereof in the *Gazette*, and on the publication in the *Gazette* of such a notice the company shall be dissolved:

Provided that

(a) the liability, if any, of every director, officer, member, shareholder and contributory of the company shall continue and may be enforced as if the company had not been dissolved; and

(b) nothing in this subsection shall affect the power of the court to wind up a company the name of which has been struck off the register.

(7) If a company or any member, shareholder, contributory, creditor or debenture holder thereof or any other interested person is aggrieved by the company having been struck off the register, the court on an application made by the company or any such person before the expiration of twelve years from the publication in the *Gazette* of the notice aforesaid may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon a copy of the order being delivered to the Registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and

all other persons the same position as nearly as may be as if the name of the company had not been struck off.

(8) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director or officer of the company, or, if there is no director or officer of the company whose name and address are known to the Registrar, the letter or notice may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

306. Property of dissolved company to be *bona vacantia*

Where a company is dissolved, all assets whatsoever vested in or held on behalf of or for the benefit of the company immediately before its dissolution (including leasehold interests, but not including assets held by the company on behalf of or for the benefit of any other person) shall, subject and without prejudice to any order which may at any time be made by the court under the section 304 or 305 be deemed to be *bona vacantia*, and shall accordingly belong to the Republic, and shall vest and may be dealt with in the same manner as other *bona vacantia* accruing to the Republic as aforesaid.

307. Disclaimer by Crown

(1) Where any assets vest in the Republic under the last preceding section, the Republic's title thereto under that section may be disclaimed by a notice by the President.

(2) Where a notice of disclaimer under this section is executed as respects any assets, those assets shall be deemed not to have vested in the Republic under the last preceding section, and subsections (2) and (6) of section 281 shall apply m relation to the assets as if they had been disclaimed under subsection (1) of the said section immediately before the dissolution of the company.

(3) The right to execute a notice of disclaimer under this section may be waived by or on behalf of the Republic either expressly or by taking possession or other act evincing that intention,

(4) A notice of disclaimer under this section shall be of no effect unless it is executed within twelve months of the date on which the vesting of the assets as aforesaid came to the notice of the Minister, or, if an application in writing is made to the Minister by any person interested in the property concerned requiring him. to decide whether he will or will not disclaim, within a period of three months after the receipt of the application or such further period as may be allowed by the court which would have had jurisdiction to wind up the company if it had not been dissolved.

(5) A statement in a notice of disclaimer of any property under this section that the vesting of the assets came to the notice of the Minister on a specified date, or that no such application as aforesaid was received by him with respect to the property before a specified date shall, until the contrary is proved, be sufficient evidence of the fact stated.

(6) A notice of disclaimer under this section shall be delivered to the Registrar and retained and registered by him, and copies thereof shall be published in the *Gazette* and sent to any persons who have given the Minister notice that they claim to be interested in the property concerned.

Regulations

308. ***

[Repealed]

[Act 5 of 2013]

Part VII – Overseas companies

309. Overseas companies to which Part VII applies

(1) This Part of this Ordinance shall apply to all overseas companies which, after this Ordinance comes into operation, establish a place of business or carry on business in Seychelles and to all overseas companies which have before this Ordinance comes into operation, established a place of business or carried on business in Seychelles, and either continue to have an established place of business or to carry on business there after this Ordinance comes into operation.

(2) An overseas company shall be considered as carrying on business in Seychelles if it

(a) enters into two or more contracts with persons resident there, or with companies formed or incorporated there, being contracts which

(i) are entered into in connection with the business or objects which the overseas company carries on or pursues; and

(ii) by their express or implied terms are to be wholly or substantially performed in Seychelles, or may be so performed at the option of any party thereto; or

(b) appoints an agent who resides or has a place of business in Seychelles to represent the overseas company in connection with the making or performance of two or more contracts which fall within paragraph (a) of this subsection, or in connection with the transactions of the overseas company in Seychelles generally, whether the appointment is made for a fixed period of time or not; or

(c) owns, possesses or uses assets situate in Seychelles for the purpose of carrying on or pursuing its business or objects, if it obtains or seeks to obtain from those assets directly or indirectly, any revenue, profit or gain, whether realised in Seychelles or not; or

(d) issues, or is deemed under section 48 to issue, in Seychelles a prospectus offering its shares or debentures for subscription or purchase.

(3) An overseas company shall not be considered as entering into a contract within paragraph (a) of subsection (2) if it subscribes for or purchases shares or debentures of a company incorporated under this Ordinance or of an existing company.

310. Registration of particulars of overseas companies

(1) Overseas companies which, after this Ordinance comes into operation, establish a place of business in Seychelles or commence to carry on business in Seychelles shall, within fourteen days after the establishment of the place of business or the commencement of business as aforesaid, deliver to the Registrar for registration:

(a) a certified copy of the charter, statutes, memorandum and articles of association; certificate or articles of association or incorporation of the company or the other instrument which constitutes the overseas company or contains the regulations which govern it, and, if the instrument is not written in the English language, a certified translation thereof;

(b) a list of the directors and secretary of the company containing the particulars mentioned in subsection (3);

(c) the name of the person or persons who has or have been appointed to be the managing agent or agents of the overseas company in Seychelles, and the particulars m respect of that person or each of those persons mentioned in subsection (3); and

(d) the names of two or more persons who have been appointed to accept on behalf of the company service of process and any notices required to be served on the overseas company, and the particulars in respect of those persons mentioned in subsection (3).

By Laws.Africa and contributors. Licensed under CC-BY. Share widely and freely.

(2) Any of the persons appointed for the purposes mentioned in paragraphs (c) and (d) of subsection (1) may be an individual or a firm resident or carrying on business in Seychelles, or a company formed or incorporated in Seychelles.

(3) The particulars required by paragraphs (b), (c) and (d) of subsection (1) shall be

(a) with respect to each individual who is a director, managing agent in Seychelles or person appointed to accept service on behalf of the overseas company in Seychelles, his present Christian name and surname and any former Christian name or surname, his usual residential address, his nationality and his business occupation (if any) or, if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships;

(b) with respect to a company, body corporate or firm which is a director, managing agent or person appointed to accept service on behalf of the overseas company in Seychelles, its corporate or firm name, the country where it was formed or incorporated, and its registered office (if any) and its principal place of business in Seychelles (if any);

(c) with respect to the secretary of the overseas company or, where there are joint secretaries, with respect to each of them

(i) in the case of an individual, his present Christian name and surname, any former Christian name and surname and his usual residential address; and

(ii) in the case of a company, body corporate or firm, its corporate or firm 'name and its registered office (if any) and principal place of business m Seychelles (if any).

Section 169(9) shall apply for the purpose of the construction of references in this subsection to present and former Christian names and surnames as they apply for the purpose of the construction of such references in that section.

(4) Overseas companies which have established a place of business in Seychelles or carried on business in Seychelles before this Ordinance comes into operation, and which continue to have an established place of business or to carry on business in Seychelles thereafter, shall within fourteen days after this Ordinance comes into operation deliver to the Registrar the documents specified in subsection (1), but an overseas company shall not be required to deliver a certified copy of its charter, statutes, or memorandum or articles of association, certificate or articles of association or incorporation, or the other instrument which constitutes the overseas company or contains the regulations which govern it, nor to deliver a certified translation thereof, if the overseas company already delivered copies of those documents in compliance with section 7 of the Overseas Corporation Ordinance, 1959.

(5) If any overseas company to which this Part of this Ordinance applies ceases to have a place of business or to carry on business in Seychelles, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given the obligation of the overseas company to deliver any document to the Registrar under this Part of this Ordinance shall cease:

Provided that if the Registrar is satisfied by any other means that the company neither has a place of business nor carries on business in Seychelles, it shall be lawful for him to make an entry to that effect against the particulars delivered by the overseas company, and thereupon the obligation of the company to deliver any document to the Registrar under this Part of this Ordinance shall cease.

(6) When an overseas company has delivered a notice, or notices to the Registrar under subsection (5) which show that the company neither has a place of business in Seychelles nor carries on business there, the overseas company shall, for the purposes of this Ordinance, be deemed not to be a company to which this Part of this Ordinance applies as from the date such notice or the later or latest of such notices is delivered, but without prejudice to the duty of the overseas company to comply with this section if after that date it establishes a place of business in Seychelles or carries on business there.

By Laws.Africa and contributors. Licensed under CC-BY. Share widely and freely.

(7) If the Registrar has cause to believe that any notice delivered to him under subsection (5) contains any statement which is untrue or omits any matter which should be stated therein, he may direct that subsection (6) shall not apply to the overseas company in consequence of the delivery of that notice.

(8) If any person delivers or concurs in delivering to the Registrar any notice or other document under this section which he knows to be false, or to contain a statement which is false, or to omit any matter which should be stated therein, he shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or imprisonment for nor more than two years, or by both such fine and such imprisonment,

(9) If an overseas company to which this Part of this Ordinance applies fails to comply with subsection (1) or (4) as the case may be, every director of the company who is in default and the managing agent of the company in Seychelles shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees; or imprisonment for not more than two years, or by both, such fine and such imprisonment.

311. Personality and capacity of overseas companies

(1) An overseas company to which this Part of this Ordinance applies which has corporate status or personality or moral personality by the law of the country where it was formed or incorporated shall for all purposes be deemed to be a body corporate, and may hold assets, contracts and transactions, and sue and be sued in its corporate name.

(2) An overseas company to which this Part of this Ordinance applies which has delivered to the Registrar the documents and particulars required by subsections (1) or (3) of section 310 within the period thereby limited shall, subject to the provisions of the Immovable Property (Transfer Restriction) Ordinance, 1963, have the same power to hold land as if it were a company incorporated under this Ordinance.

(3) In all other respects the powers of an overseas company to which this Part of this Ordinance applies and the powers and authority of its directors shall be governed by the law of the country where the company was incorporated, but:

(a) section 33(1) and (2) and section 34(1), (2) and (3) shall apply to an overseas company towhich this Part of this Ordinance applies in connection with contracts and transactions which are entered into or carrie d out (in whole or part) in Seychelles, or which are expressly or impliedly subject to the law of Seychelles, as though the overseas company were a company other than a proprietary company; and

(b) subject to paragraph (a), all questions arising in respect of a contract or transaction entered into or carried out by an overseas company to which this Part of this Ordinance applies shall be governed by the law of the country where the contract is to be wholly or mainly performed, or where the transaction is wholly or mainly carried out.

312. Registration of alterations in registered particulars

(1) If any alteration is made or occurs in

(a) the charter, statutes, or memorandum or articles of association, certificate or articles of association or incorporation or the other instrument which constitutes an overseas company or contains the regulations which govern it, being an overseas company to which this Part of this Ordinance applies; or

(b) the directors, secretary, managing agent or agents or persons appointed to accept service on behalf of the overseas company, or the matters particulars of which have been delivered to, the Registrar in respect of any of those persons;

the company shall, within fourteen days after the occurrence of the event giving rise to the alteration, deliver to the Registrar for registration a copy of the resolution, contract or declaration

by which the alteration is made to the instrument mentioned in paragraph (a) of subsection (1), or in a case falling under paragraph (b), the same particulars as are required by section 310(3) in respect of any person who as a result of the alteration is appointed to be or ceases to be a director, secretary, managing agent or person appointed to accept service on behalf of the overseas company, or if any matter particulars of which have been delivered in respect of any such person have changed or been altered, particulars of the alteration.

(2) Sections 169(9) and 310(8) shall apply to notices and documents delivered to the Registrar under this section as they apply to 'notices and documents delivered under section 310.

(3) If an overseas company to which this Part of this Ordinance applies fails to comply with subsection (1), every director of the company who is in default and the managing agent of the company in Seychelles shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or by both such fine and such imprisonment.

313. Managing agent

(1) No overseas company shall carry on business in Seychelles unless it has appointed a managing agent to represent it there and the appointment has not terminated by dismissal, resignation, expiration of the period of appointment, death or otherwise.

(2) A managing agent of an overseas company shall in respect of contracts and transactions entered into, acts done and defaults made in Seychelles, and in respect of the company having notice of any matter, be deemed to be a managing director or a director of the company (as the case may be) for the purposes of sections 34, 37, 38 and 39.

(3) The termination of the appointment of a managing agent shall not be effective as against any person who deals with him or does any act in relation to him, unless at the time of such act or dealing notice of the termination of his appointment has been delivered by the company to the Registrar.

(4) An individual or two or more individuals resident in Seychelles or a company or body corporate formed or incorporated in Seychelles may be appointed to be the managing agent or agents of an overseas company, but an overseas company may not be appointed to be the managing agent of another overseas company.

(5) If an overseas company to which this Part of this Ordinance applies ceases both to have a place of business in Seychelles and to carry on business in Seychelles, the managing agent most recently appointed by it shall for the purpose of this Ordinance be deemed to continue to be the managing agent of the company notwithstanding the termination of his appointment, and all persons may act accordingly, but an overseas company shall nor be considered as continuing to be one to which this Part of this Ordinance applies merely because of the deemed continuation under this subsection of the appointment of a managing agent.

(6) If at any time two or more individuals are the managing agents in Seychelles of an overseas company, this section shall apply as though each of them were the sole managing agent thereof.

314. Annual accounts of overseas companies

(1) Every overseas company to which this Part of this Ordinance applies shall, in every calendar year and at intervals not exceeding fifteen months, make out a balance sheet and profit and loss account and, if the company is a holding company, group accounts, in such form, and containing such particulars and including such documents, as under the provisions of this Ordinance it would, if it had been a company within the meaning of this Ordinance, have been required to make out and lay before the company in general meeting, and deliver copies of those documents to the Registrar within twenty-eight days after they are made out.

(2) The annual accounts of an overseas company shall, in addition to setting out the matters specified in the Sixth Schedule to this Ordinance, comply with the following rules, namely

(a) the fixed assets and current assets of the company and its assets which are neither fixed nor current shall be separately identified and classified, and such assets situate in Seychelles shall be distinguished from such assets situate elsewhere;

(b) the amount of the company's cash held by banks incorporated in Seychelles and branches of banks operating in Seychelles shall be distinguished from cash held by other banks;

(c) the amount of bank loans and overdrafts made to the company by banks incorporated in Seychelles or branches of banks operating in Seychelles shall be distinguished from bank loans and overdrafts made by other banks;

(d) the aggregate amount of the company's debts and liabilities to persons resident or carrying on business in Seychelles and to companies and bodies corporate formed or incorporated there shall be separately shown, tin a there shall also be shown the amount of such debts and liabilities which:

(i) are already due or will or may become due within twelve months after the date as at which the annual accounts of the company are made out;

(ii) will become due between twelve and thirty-six months after that date; and

(iii) will become due more than thirty-six months after that date; and

(e) the aggregate amount of the company's debts and liabilities which are secured by a hypothecation, mortgage or charge on assets situate in Seychelles shall be separately shown.

(3) For the purpose of subsection (2):

(a) a debt shall be deemed to be due on the earliest date on which the creditor could require payment of it to be made;

(b) the whole of a debt shall be deemed to be due when any instalment of it falls due; and

(c) an overseas company shall be deemed to be indebted to debenture stockholders and loan stockholders for the principal amount and any arrears of interest in respect of the debenture stock or loan stock held by them.

(4) The Minister in Council may by an order published in the *Gazette* exempt any overseas company from compliance with subsections (1) or (2) of this section, or from both those subsections, on such terms and conditions as he thinks fit if:

(a) he is satisfied that the overseas company has, and will maintain, in Seychelles sufficient cash and readily realisable assets (as defined by paragraph (c) (i) of section 206(1)) to satisfy its debts as they fall due; or

(b) a company (whether an overseas company or not) which is the holding company of the overseas company has delivered to the Registrar a written undertaking to pay all the present and future debts and liabilities of the company to persons resident or carrying on business in Seychelles and to companies and bodies corporate incorporated in Seychelles;

and while any exemption granted under this subsection continues in force, this section shall not apply to the overseas company.

(5) A written undertaking in respect of the debts and liabilities of an overseas company delivered under subsection (4) shall be enforceable by any creditor of the overseas company who was resident or carrying on business in Seychelles at the time the debt or liability to him is incurred, and by any company or body corporate incorporated in Seychelles, as though the undertaking were a written guarantee of the amount payable to the creditor by the overseas company given by the holding company to the creditor at the date when the debt or liability to him is incurred.

By Laws.Africa and contributors. Licensed under CC-BY. Share widely and freely.

(6) The Minister may it any time revoke an exemption granted under subsection (4), and thereupon any undertaking delivered by a holding company under that subsection shall cease to have effect, but without prejudice to the liability of the holding company in respect of debts and liabilities of the overseas company incurred before the revocation is advertised under subsection (7).

(7) The Registrar shall advertise the revocation of an exemption granted under this section in the *Gazette* as soon as conveniently after the revocation takes place.

(8) Upon the revocation of an exemption granted under subsection (4), subsections (1) and (2) of this section shall apply to the overseas company as though it were thereby required to deliver copies of its annual accounts to the Registrar as from the date of the revocation; the overseas company shall also deliver to the Registrar a copy of its annual accounts for its financial year ending last before that date within three months after that date, and the copy of the accounts so delivered shall comply with subsections (1) and (2).

(9) If any document delivered to the Registrar under this section is not written in the English language, there shall be annexed to it a certified translation thereof.

(10) Until sections 143 to 145 come into force, subsection (1) shall take effect as though the words "and if the company is a holding company, group accounts" were omitted therefrom.

(11) If an overseas company fails to make out or to deliver a. copy of its annual accounts to the Registrar in compliance with this section, every director of the company who is in default and every managing agent of the company in Seychelles shall be guilty of an offence punishable by a fine not exceeding one hundred rupees for every day during the first month that default continues, two hundred and fifty rupees for every day during the next two months that default continues, and five hundred rupees for every day that default continues thereafter.

(12) In a prosecution under subsection (11) the fact that an overseas company has not delivered a copy of its annual accounts to the Registrar shall be presumtive evidence that it has not made out those accounts.

315. Publication of name etc., of overseas companies

(1) Every overseas company to which this Part of this Ordinance applies shall

(a) in every prospectus inviting subscriptions for or purchases of its shares or debentures issued in Seychelles state the country in which the company was formed or incorporated; and

(b) conspicuously exhibit on every place where it carries on business in Seychelles the name of the company and the country in which the company was formed or incorporated; and

(c) cause the name of the company and of the country in which the company was formed or incorporated to be stated in legible characters in all letters, business communications, notices, advertisements and other publications of the company, and in all bills of exchange, cheques, promissory note, endorsements, cheques and orders for money or goods, purporting to be signed by or on behalf of the company, and in all invoices, receipts and letters of credit of the company; and

(d) if the liability of the members or shareholders of the company is limited, cause notice of that fact to be stated in the English language in legible characters in every such prospectus as aforesaid and in all letters, business communications, notices, advertisements and other publications of the company issued, delivered or published in Seychelles and to be affixed, on every place where it carries on its business.

(2) If an overseas company fails to comply with any of the provisions of subsection (1), every director of the company who is in default and the managing agent of the company in Seychelles shall be guilty of an offence punishable by a fine not exceeding one thousand rupees.

By Laws.Africa and contributors. Licensed under CC-BY. Share widely and freely.

316. Service of process and notices on overseas companies

(1) Any process, notice or document required to be served on an overseas company shall be sufficiently served if

(a) it is addressed to any of the persons who have been appointed by the company for that purpose and particulars of whom have been delivered to the Registrar under section 310; and

(b) it is left at or sent by post to the address notified to the Registrar in respect of that person which has been so delivered.

(2) Service under subsection (1) shall be effectual notwithstanding the termination of the appointment of the person who is so served, unless the overseas company has notified the Registrar of the termination and has delivered to the Registrar the particulars required by section 310 in respect of at least two other persons who have been appointed to accept service on behalf of the overseas company and whose appointments for that purpose have not terminated.

(3) If an overseas company to which this Part of this Ordinance applies neither has a place of business in Seychelles nor carries on business in Seychelles, the two persons most recently appointed by it to accept service on its behalf shall for the purposes of this Ordinance be deemed to continue to be authorised to accept service on its behalf notwithstanding the termination of their appointments, and all persons may act accordingly, but an overseas company shall not be considered as continuing to be one to which this Part of this Ordinance applies merely because of the deemed continuance under this subsection of the authority of persons appointed to accept service on its behalf.

317. Prospectuses and debentures of overseas companies

(1) Sections 40 to 50 inclusive shall apply to an overseas company as they apply to a company incorporated under this Ordinance, subject to the following modifications;

(a) in section 40(1) after the word "incorporated" there shall be added the words "or formed with corporate status or personality or with moral personality under the law of the company where it was formed or incorporated";

(b) references to "directors" in section 40(3) and (13), sections 41(10), 42(3), 43(4) and (8), section 44(3) and (8), section 46(1), (2) (except paragraph (a) thereof) and (4), section 47(1) and (5), and section 49(5) shall be construed to include references to the managing agent or agents of the overseas company, particulars of whom have been delivered to the Registrar; and

(c) section 41(1) shall be deemed to require a prospectus issued by or on behalf of an overseas company to contain, in addition +o the matters there mentioned, the following particulars and statement:

(i) the names, descriptions and addresses of the directors and proposed directors of the company, and of the managing agent or agents of the company, particulars of whom have been delivered to the Registrar;

(ii) the date when, and the country under the law of which, the company was incorporated or formed with corporate status or personality or with moral personality;

(iii) an address in Seychelles where there will be available for inspection a copy of the charter, statutes, or memorandum and articles of association, certificate or articles of association or incorporation, or the other instrument which constitutes the overseas company or contains the regulations which govern it, and a copy of the legislation under which the company was incorporated or formed, together, if any such documents are not written in the English language, with certified translations thereof; and

By Laws.Africa and contributors. Licensed under CC-BY. Share widely and freely.

(iv) a statement that any person may inspect the documents mentioned in subparagraph (iii) of this paragraph at the address specified in the prospectus at any reasonable hour between the date on which the prospectus is first issued and six months after the closing of the subscription lists for the shares or debentures offered thereby for subscription or purchase, and that any person may also obtain a copy of any such document at that address between those dates on payment of a fee not exceeding five rupees for each such document.

(2) If inspection of any document mentioned in paragraph (c) (iii) of subsection (1) is refused to any person who makes a request therefor in accordance with paragraph (c)(iv) of that subsection, or if a copy of any such document is not supplied within two days to any person who makes such a request therefor and tenders the proper fee for such a copy, every director of the company and its managing agent or each of its managing agents in Seychelles shall be guilty of an offence punishable by a fine not exceeding one thousand rupees.

(3) Sections 69 to 82 inclusive shall apply to an overseas company as they apply to a company incorporated under this Ordinance, and references therein to directors or officers of a company shall be construed as including references to the managing agent or agents of an overseas company, particulars of whom have been delivered to the Registrar,

318. Winding up of overseas companies

(1) Where a company formed or incorporated outside Seychelles has or has had a place of business in Seychelles, or carries on or has carried on business in Seychelles, it may be wound up as though it were a company incorporated under this Ordinance.

(2) This section shall apply notwithstanding that the company has been dissolved or has ceased to exist under the laws of the country in which it was incorporated or formed, and in that case the company shall for the purposes of this Ordinance be deemed to have continued in existence until it is dissolved by order of the court.

(3) This section shall also apply to an overseas company which has never had a place of business in Seychelles and has never carried on business there, if the company has assets in Seychelles, or if, upon the company being wound up by the court, assets in Seychelles would be recoverable by the liquidator or claims against any person resident or carrying on business in Seychelles would be enforceable by the liquidator or any creditor of the company.

319. Offences by directors etc. of overseas companies and investigations

(1) If an offence under this Part of this Ordinance is committed by a director or by a managing agent in Seychelles of an overseas company and any fine imposed on that person is not paid within seven days after the date of his conviction, the fine may be recovered out of the assets of the overseas company as though it had been convicted of the offence and the fine had been imposed on it, and it shall be immaterial that before or after the date of the commission or commencement of the offence the overseas company has ceased to be a company to which this Part of this Ordinance applies,

(2) Sections 183 to 195 inclusive and section 337 shall apply in respect of an overseas company as though it were a company incorporated under this Ordinance,

320. Orders to cease carrying on business

(1) If the Registrar considers that:

(a) any director, officer, managing agent or other agent of an overseas company has in Seychelles or elsewhere in connection with the management or conduct of its affairs committed a criminal offence involving dishonesty, or has obtained credit or the transfer or delivery of assets or the performance of services by false representations made fraudulently or by the dishonest concealment of material facts; or

(b) any offence has been committed by any person in Seychelles in connection with a prospectus issued by or on behalf of the overseas company, or deemed by section 48 to be issued by it; or

(c) any business or affairs of the overseas company in Seychelles has been conducted illegally or for an illegal purpose; or

(d) any act has been done by or on behalf of an overseas company in Seychelles or elsewhere which has harmed or is likely to harm the economic welfare of Seychelles;

he may serve written notice on the overseas company of his intention to make an order requiring it to cease to carry on business in Seychelles, stating the grounds on which the order will be made and informing the company that it may within one month from the service of the notice make written representations to him which he will take into consideration.

(2) If within one month from the service of a notice under subsection (1) the overseas company does not make written representations to the Registrar, or if the Registrar, after considering any written representation which the overseas company makes to him within that time, is satisfied that the ground which was specified in the notice for making an order under this section is made out, he may make an order requiring the overseas company forthwith or after a period limited by the order to cease to carry on business in Seychelles.

(3) A copy of an order made under subsection (2) shall be served on the overseas company and the order shall be published in the *Gazette*.

(4) Within one month after service on the overseas company of a copy of an order made under subsection (2), it may, if the order was made on any of the grounds mentioned in paragraphs (a), (b) or (c) of subsection (1), appeal to the court, and the court may annul the order if the overseas company satisfies it that the ground or grounds en which it was made do not exist.

(5) If an order has been made under subsection (2) in respect of an overseas company and any period limited by it has expired, and, in a case where the company has appealed to the court against the order, if its appeal has been rejected, the overseas company shall cease to carry on business in Seychelles and to have a place of business there, and shall give notice accordingly under section 310(5).

(6) If an overseas company carries on business in Seychelles or has a place of business there after it should have ceased to do so under subsection (5), the company and every director, officer, managing agent and agent of the company who is in default shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or, in the case of an individual defendant, by imprisonment for not more than two years, or by both such a fine and such imprisonment.

321. Interpretation of Part VII

For the purpose of this Part of this Ordinance:

(a) a certified copy of a document means a copy which has been certified by a judge, magistrate, notary, barrister, attorney or prescribed person, whether holding office under the law of Seychelles or of any other country, to be a true and complete copy of the document; and

(b) a certified translation of a document means a translation thereof which has been certified by an officer of an Embassy, High Commission, Consulate or Vice-Consulate or by a prescribed person.

Part VIII – Existing companies

322. Application of Ordinance to existing companies

(1) Subject to the provisions of this Part of this Ordinance, Parts 1 to VI inclusive of this Ordinance shall apply to an existing company as though it had been incorporated on the date on which this

Ordinance comes into operation by the Registrar issuing to it under section 11 a certificate of incorporation bearing that date.

(2) This Ordinance and all other rules of law shall apply to the regulations of an existing company as though such of them as would, in the case of a company incorporated under this Ordinance, be required to be set out in its memorandum, were set out in a registered memorandum of association of the existing company, and as though the remainder of the said regulations were contained in registered articles of association of the existing company.

(3) The name of an existing company shall, as from the date on which this Ordinance comes into force, be the name which it had immediately before that date with the addition of the word "Limited" as the last word thereof, unless that word was immediately before that date the last word of its name.

(4) The regulations of any existing company shall be deemed to provide that its registered office shall be situate in Seychelles, and the company shall within fourteen days after this Ordinance comes into operation deliver to the Registrar a statement of the address of its registered office signed by a director of the company.

(5) Any provisions of the regulations of an existing company which conflict or are inconsistent with the provisions of this Ordinance shall be void as from the date when this Ordinance comes into force.

(6) Section 8 shall apply to an existing company and to its regulations.

(7) In this Part of this Ordinance the regulations of an existing company mean the contract, statutes, notarial deed or other instrument by which it was formed and which were referred to in the proclamation sanctioning its formation issued by the Governor, subject to such alterations thereof and additions thereto as have been lawfully made since the date of the proclamation.

(8) If an existing company fails to comply with subsection (4) the company and every director thereof shall be guilty of an offence punishable by a fine of one thousand rupees and a further fine of one hundred rupees for each day that the default continues.

(9) Nothing in this section shall invalidate any contract or transaction entered into, or any shares or debentures issued by an existing company before this Ordinance comes into force, and if **s have been issued in respect of such shares, the issue shall be as effectual as if they had been issued with the consent of the Financial Secretary under section 90.

323. Adoption of memorandum and articles by existing companies

(1) An existing company may by an ordinary resolution passed by a general meeting adopt a memorandum and articles of association in place of the regulations which apply to it immediately before this Ordinance comes companies into operation, but the company may not alter or add to the provisions of its regulations unless it complies with section 18 or section 20 (whichever is applicable), and in that case sections 19 and 21 shall apply to the alteration or addition.

(2) Every shareholder of an existing company shall be entitled to vote upon any resolution proposed under subsection (1), whether it does or does not alter or add to the regulations of the company, and section 118(1) shall apply to the resolution.

(3) The adoption of any of the provisions contained in the forms of articles of association set out in Parts II or IV of the First Schedule to this Ordinance, shall not be considered to be an alteration of or addition to the regulations of an existing company for the purpose of this section.

324. Registration of existing companies as proprietary companies

(1) An existing company may, within six months after the date when this Ordinance comes into operation and before holding its first annual general meeting after that date, declare itself to be a proprietary company. The declaration shall be made by all the shareholders of the company subscribing an instrument in the prescribed form and the declaration shall take effect only when the company delivers that instrument to the Registrar.

(2) An instrument under subsection (1) may be subscribed on behalf of a person who is a minor or who has been interdicted by his tutor, or if he has no tutor, by a person appointed by the court for that purpose.

(3) A declaration made under subsection (1) shall be effective only if, at the dates when the instrument containing it is signed by each subscriber and when that instrument is delivered to the Registrar, the company satisfies the conditions contained in section 24(1) and has not at any time before or after this Ordinance comes into operation issued a prospectus inviting the public to subscribe for its shares or debentures.

(4) Upon delivery of an instrument subscribed under subsection (1), the Registrar shall make enquiries to ensure that the conditions mentioned in subsection (3) have been fulfilled, and on being satisfied in that respect, the Registrar shall issue a certificate of incorporation to the company. The certificate of incorporation shall be conclusive evidence that the company is authorised to become, and is at the date of the certificate, a proprietary company, and that ail proceedings leading to the issue of the certificate were duly and regularly taken.

(5) In satisfying himself that the conditions mentioned in subsection (3) have been fulfilled, the Registrar may rely to such extent as he thinks fit upon a signed declaration made by a notary, barrister or attorney in respect of any relevant facts.

(6) If a certificate is issued under this section the word "Proprietary" shall be added to the name of the company as the penultimate word thereof.

(7) If a certificate of incorporation is issued under this section, the company shall for all purposes be deemed to have been a proprietary company from the date on which this Ordinance comes into operation until the date of the certificate.

325. Transitional provisions as to annual general meetings and directors

(1) Notwithstanding anything in the regulations of an existing company, the company shall hold its annual general meeting for the year in which this Ordinance comes into operation (in this section called its transitional annual general meeting) within six months after the date when this Ordinance comes into operation, and shall hold its annual general meetings for subsequent years in accordance with section 119.

(2) An existing company need not hold its transitional annual general meeting under subsection () if it has, in accordance with its regulations, held an annual general meeting for the year in which this Ordinance comes into operation before the date when it comes into operation, but if in reliance on this subsection a company does not hold its transitional annual general meeting under subsection (1), section 119(1) and (3) shall apply to it as though it had held an annual general meeting four months after this Ordinance comes into operation.

(3) All directors of an existing company holding office at the date when this Ordinance comes into operation shall, notwithstanding anything in the regulations of the company, retire at the end of the second annual general meeting of the company held after that date, but any such director may be re-elected at any annual general meeting of the company, and thereupon section 163(1) shall apply to him:

Provided that a director of an existing company shall cease to hold office before the second, annual general meeting aforesaid if he becomes disqualified under this Ordinance or the regulations of the company from being or acting as a director of it, or if by or under the regulations of the company or any contract with him his appointment terminates.

(4) Subsection (3) shall not apply to an existing company after it delivers to the Registrar an instrument under section 324 if the Registrar issues a certificate of incorporation to it under that section.

326. Managing directors

(1) A person who is a managing director of an existing company at the date when this Ordinance comes into operation shall cease to be a managing director thereof one month after that date, but without prejudice to the power of the directors at any time after that date to appoint him or any other person to be a managing director under section 178.

(2) In this section the expression "managing director" means a director, by whatsoever name called, whom the directors have appointed to exercise the powers necessary for carrying on the company's business in the usual way, whether with or without other powers and whether subject to exceptions, conditions or restrictions or not.

(3) This section shall not apply to an existing company after it delivers to the Registrar an instrument under section 324 if the Registrar issues a certificate of incorporation to it under that section.

327. Classes of shares

(1) If an existing company has before the date when this Ordinance comes into operation issued two or more classes of shares and the rights or obligations of any of those classes of shares are wholly or partly set out in a resolution, prospectus, contract or instrument (other than the regulations of the company) the rights and obligations so set out shall for the purposes of this Ordinance be deemed to be set out in the company's regulations.

(2) Section 118(3) shall apply to non-participating preference shares issued by an existing company before the date when this Ordinance comes into operation as it applies to such shares issued after that date.

328. Transitional orders

(1) The Minister may by order adapt, modify or add to the provisions of this Ordinance insofar as they apply to existing companies for the purpose of enabling existing companies to conform in an orderly manner to the requirements of this Ordinance applicable to companies incorporated thereunder.

(2) The Minister may, by order made under this section, either conditionally or unconditionally exempt from any of the requirements of this Ordinance any particular existing company or class of existing companies.

(3) An order made under this section shall be published in the *Gazette*.

Part IX – Registration office and fees

329. Registrar of companies, etc

(1) For the purpose of the registration of companies and the carrying out of the provisions of this Ordinance, the President shall appoint a Registrar of Companies, and may appoint such number of Assistant Registrars of Companies as the President shall think fit

(2) Whenever any act is by this Ordinance directed to be done by or to the Registrar, it shall be sufficient for it to be done by or to an Assistant Registrar of Companies.

330. Fees and delivery of documents

(1) In respect of the several matters mentioned in the first column of the table set out in the Seventh Schedule to this Ordinance, there shall be paid to the Registrar the several fees specified in the second column of that table.

(2) Where by this Ordinance and document is required to be delivered or sent to the Registrar, it shall be sufficient for it to be sent to him by pre-paid letter post or by a messenger or delivery service, and it shall not be necessary for the person by or on behalf of whom the document is delivered or sent or his agent to attend at the office of the Registrar in person.

331. Inspection of documents kept by Registrar

(1) Any person may inspect any of the records, documents and copies of documents kept by the Registrar on payment of the prescribed fee, and any person may require a copy or extract of any such record or document or any part thereof to be certified by the Registrar as being a true copy on presentation of the copy to the Registrar and payment of the prescribed fee.

(2) No process for compelling the production of any document kept by the Registrar shall issue from any court except with the leave of that court, and any such process if issued shall bear thereon a statement that it is issued with the leave of the court

(3) A copy of or extract from any document kept and registered at the office for the registration of companies, certified to be a true copy under the hand of the Registrar shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

(4) No document delivered or sent to the Registrar under this Ordinance and no record or document kept by the Registrar thereunder shall be removed from the office of the Registrar unless the court so orders.

332. Enforcement of duty of companies to deliver returns etc

(1) If a company having made default in complying with any provision of this Ordinance which requires it to file with, deliver or send to the Registrar any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the court may, on an application made by any member, shareholder, creditor or debenture holder of the company or by the Registrar, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.

(4) This section shall apply to an overseas company as though it were a company incorporated under this Ordinance.

Part X – Miscellaneous

Prohibition of partnerships with more than ten members

333. Prohibition on partnerships of more than ten persons

(1) No company, association, or partnership consisting of more than ten persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association, or partnership, or by the invididual members thereof, unless it is registered as a company under this Ordinance, or is formed by or under some other Ordinance or by letters patent.

(2) This section shall not apply to

(a) a partnership for the purpose of carrying on practice as accountants;

(b) a partnership or association for the purpose of carrying on business as stock brokers or jobbers or as dealers in securities, consisting of persons each of whom is a member of a stock exchange in Seychelles or of a recognised overseas stock exchange; or

(c) a company, association or partnership formed for the purpose of carrying on a profession, vocation or business specified in regulations made by the Governor In Council and consisting of persons who satisfy any conditions imposed by those regulations; or

(d) an overseas company.

334. Offences Offences in connection with applications, returns, etc

(1) If any person in any application, return, report, certificate, annual accounts or other document, required by or for the purposes of any of the provisions of this Ordinance, knowingly makes a statement false in any returns, etc. material particular, or makes such a statement not believing it to be true, he shall be guilty of an offence punishable by 3 fine not exceeding ten thousand rupees or to imprisonment for not more than two years, or to both such fine and imprisonment.

(2) Nothing in this section shall affect the provisions of any other section of this Ordinance which creates an offence or offences, and the offences created by this section shall be in addition to such other offences.

335. Improper use of word "Limited"

If any person or persons trade or carry on business under any name or title of which "Limited", or any contraction or imitation of that word, is the last word, that person or those persons shall, unless incorporated under this Ordinance or deemed to be so incorporated by section 322, be guilty of an offence punishable by a fine of one hundred rupees for every day upon which that name or title has been used.

336. Meaning of "default fine" and "in default"

(1) Where by any provision of this Ordinance it is provided that a company, or a director or officer of a company, or any other person, who is in default shall be liable to a default fine, every such company, director, officer or other person shall, for every day during which the offence or contravention continues, be liable to a fine not exceeding such amount as is specified in the said provision, or, if the amount of the fine is not so specified, to a fine not exceeding one hundred rupees.

(2) For the purpose of any provision of this Ordinance which provides that a director or officer of a company, or any other person, who is in default shall be liable to a fine or penalty, the expression "in default" means committing, authorising, concurring in or permitting the offence or contravention mentioned in the provision, and it shall be presumed that every director or officer of the company in respect of which an offence is committed permitted the offence or contravention, unless he satisfies the court that he neither committed, authorised or concurred in the commission of the offence or contravention, nor could, by the exercise of reasonable diligence, have prevented its commission.

337. Production and inspection of books where offence suspected

(1) If on an application made to the court by the Attorney-General, the Registrar or a police officer of or above the rank of Assistant Superintendent, there is shown to be reasonable cause to believe that any person has, while a director or other officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made

(a) authorising any person named therein to inspect the said books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or

(b) requiring the secretary of the company or such other officer thereof as may be named in the order to produce the said books or papers or any of them to a person named in the order at a place so named.

(2) An auditor of a company shall for the purposes of this section be deemed to be an officer of the company.

Legal proceedings

338. Costs in actions by limited companies

Where a company or an overseas company is a plaintiff in any action or other legal proceeding, and court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company or overseas company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

339. Saving for privileged communications

Where proceedings are instituted under this Ordinance against any person in any court nothing in this Ordinance shall be taken to require any person who has acted as banister, attorney or notary for the defendant to disclose any privileged communication made to him in that capacity.

Regulations and Rules of Court

340. Rules of Court

The Chief Justice may make rules of court for regulating proceedings under this Ordinance (other than proceedings under Part VI thereof) and for specifying the fees payable in respect of such proceedings.

341. Amendment of First and Seventh Schedules

(1) The Governor in Council may by order published in the *Gazette*

(a) alter, add to or rescind any Part of the First Schedule to this Ordinance; and

(b) amend the Seventh Schedule to this Ordinance.

(2) No alteration or addition to, or rescission of, any Part of the First Schedule made under this section shall affect any company which was registered or which expressly or by implication was governed by any provisions of those Parts immediately before the alteration, addition or rescission came into force.

342. Regulations

The Governor in Council may make such regulations as appear to him to be necessary or expedient for carrying out the objects and provisions of this Ordinance, and in particular (but without prejudice to the generality of the foregoing) such regulations may

(a) prescribe forms for the purposes of any provision of this Ordinance, whether forms of application or otherwise;

(b) prescribe anything which is to be or may be prescribed under this Ordinance;

(c) make provision for any purpose for which regulations are authorised or required to be made by any provision of this Ordinance;

By Laws.Africa and contributors. Licensed under CC-BY. Share widely and freely.

(d) for the purpose of securing conformity with the provisions of this Ordinance or otherwise, amend, modify the application of, repeal, abolish or revoke any provision or rule of law in force immediately before the commencement of this Ordinance and which touches upon any matter in relation to which provision is made in this Ordinance.

Electronic transactions

342A.Electronic transactions

(1) Where this Act requires for any documentation, information or matters to be in writing such requirement shall be deemed to have been satisfied if such documentation, information or matter is

(a) tendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference.

(2) (a) Where this Act requires for the authentication by affixing the signature on any documents, information or matter by any person, such requirement shall be deemed to have been satisfied if such documents, information or matter is authenticated by means of digital signature affixed in such manner as prescribed by regulations.

(b) For the purpose of this section "digital signature" means the authentication of any electronic record by a subscriber by means of a electronic method or procedure.

(3) Where documents or information are filed electronically under this Act, the Registrar shall not be liable for any loss or damage suffered by any person by reason of an error or omission, if the error or omission has occurred or arisen as a result of any defect or breakdown in the service or any of the equipment used in the service.

(4) Where a copy or an extract from a document electronically filed with the Registrar is supplied or issued and certified to be a true copy or extract thereof under the hand of the Registrar in any proceedings shall be admissible in evidence as of equal validity of the original document.

(5) The Registrar may require a certificate in respect of any document to be filed electronically from any party filing the document certifying that the stamp duty and fees payable for the document has been duly paid.

(6) Where this Act requires that documents, records or information shall be retained for any specified period, such requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if

(a) the information contained therein remains accessible so as to be usable for a subsequent reference;

(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received; and

(c) the details of which will facilitate the identification of the origin, destination, date, time of dispatch or receipt of such electronic record are available in the electronic record.

(7) The Minister may prescribe

(a) the manner and format in which such electronic records shall to be filed, created or issued; and

(b) the manner or method of payment of any fee or charge for filing, creating or issuing any electronic records under paragraph (a).

Repeal and modified application of enactments

343. Repeals and savings

(1) The enactments specified in the Eighth Schedule to this Ordinance are hereby repealed to the extent stated in the second column of that Schedule.

(2) Where any offence, being an offence for the continuance of which a penalty was provided, has been committed under any former enactment relating to companies, proceedings may be taken under this Ordinance in respect of the continuance of the offence after the commencement of this Ordinance, in the same manner as if the offence had been committed under the corresponding provisions of this Ordinance.

344. Modified application of enactments

(1) After this Ordinance comes into operation Book III Title IX of the Civil Code and Book I Title III of the Commercial Code shall not apply to any company incorporated under this Ordinance or to any existing company, except so far as any provision of that Title is expressly included in the memorandum or articles or in the regulations of the company by being set out or referred to therein and is not inconsistent with the provisions of this Ordinance.

(2) After this Ordinance comes into operation the Civil and Commercial Pledges (Amendment) Ordinance, 1965 and the Security on Movables Ordinance, 1965 shall not apply to any pledge, mortgage or charge created by a company or an overseas company or affecting any assets of a company or an overseas company:

Provided that in connection with a pledge, mortgage or charge created before the date when this Ordinance comes into operation sections 9 to 12 inclusive of the Security on Movables Ordinance shall continue to apply after that date.

(3) The Mortgage and, Registration Ordinance is hereby amended as follows

(a) by adding to section 75 thereof, next before the fullstop appearing at the end thereof, the words and figures "and provided further that the provisions of this section do not apply in relation to any company formed after the commencement of the Companies Ordinance, 1972 and registered under that Ordinance";

(b) by inserting in section 90 thereof, next after paragraph (xx) thereof, the following new paragraph "(xxi) All documents and writings, judicial or extra-judicial acts and proceedings specified in any order made by the Governor in Council for the purposes of this paragraph:"

First Schedule (Section 4)

Part I – Form of memorandum of association of a company (other than a proprietary company)

1. The name of the company is "Modern Metallic Compounds Limited".

2. The registered office of the company will be situate in Seychelles.

3. The objects or lawful purpose for which the company is established.

[Act 5 of 2013]

4. The liability of the members of the company is limited.

5. The share capital of the company consists of:

   (i) Fifty thousand preference shares with a nominal value of ten rupees each; and

   (ii) Ten thousand ordinary shares with a nominal value of one hundred rupees each.

   The nominal capital of the company is one million five hundred thousand rupees, consisting of five hundred thousand rupees nominal capital in respect of the said preference shares and one million rupees capital in respect of the said ordinary shares.

6. The said preference shares shall each carry the right:

   (i) to a fixed cumulative preference dividend of one rupee *per annum*;

   (ii) to repayment of the capital paid up thereon and to payment of all accrued but unpaid preference dividend (whether declared or not) calculated to the date of repayment of capital in priority to any payment in respect of any other class of shares in the winding up of the company or on a reduction of capital; and

   (iii) to an unrestricted vote at general meetings.

7. The company will purchase the business of metallurgical engineers hitherto carried on by Victoria Metallic Compounds Limited at Victoria, Seychelles (which is valued at eight hundred thousand rupees) in consideration of the allotment to that company or its nominees of eight thousand ordinary shares of one hundred rupees each credited as paid.

   We, the several persons whose names and addresses are subscribed are desirous of being formed into a company to be governed by this memorandum of association.

Number of shares to be taken by each subscriber

1. Henry Pereira of Victoria, Seychelles, Engineer 500 preference shares and 500 ordinary shares.
2. John Pereira of Sans Souci, Mahe, Seychelles, Engineer 100 ordinary shares
3. Peter Pereira of La Misere, Mahe, Seychelles, Accountant 100 ordinary shares.
4. Joshua Smith of Anse Boileau, Mahc, Seychelles, Landowner 100 preference shares.
5. Henry da Silva of Glacis, Mahe, Seychelles, Landowner 100 preference shares,
6. James Fourneaux of Bel Ombre, Mahe, Seychelles, Retired 100 preference shares.
7. Albert Henry Wilson of Victoria, Seychelles, Bank Manager 100 preference shares.

Dated the _____ day of _____ 19 _____

Witness to the above signatures:

Isabelle Laforgue, Victoria, Seychelles, Secretary.

Part II –
Regulations for the management of a company (other than a proprietary company) (Section 8)

Interpretation

1. In these regulations:

   "the Ordinance" means the Companies Ordinance, 1972.

"secretary" means any person appointed to perform the duties of the secretary of the company.

Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words ii| a visible form.

Unless the context otherwise requires, words or expressions contained in these regulations shall bear the same meaning as in the Ordinance or any modification thereof in force at the date at which these regulations become binding on the company.

Share and loan capital

2. Except as required by law, no person shall be recognised by the company as holding any share or debenture as a nominee for, or otherwise on behalf of, any other person, and the company shall not be bound by or be compelled m any way to recognise (even when having notice thereof) any usufruct, contingent, future or partial interest in any share or debenture, or any interest in any fractional part of a share or debenture, or (except only as by these regulations or by law otherwise provided) any other rights in respect of any share or debenture except an absolute right to the entirety thereof in the registered holder. Provided that nothing in this paragraph shall prevent the company from issuing ** certificates in respect of shares or debentures or shall affect the rights of the holders of such documents.

3. Every person whose 'name is entered as a member in the register of members or as a debenture holder in the register of debenture holders shall be entitled without payment to receive within one month after allotment or lodgement of a transfer one certificate for all his shares or debentures, or several certificates each for one or more of his shares or debentures upon payment of five rupees for every certificate after the first, or such less sum as the directors shall from time to time determine. Every certificate shall be signed by at least two directors and the secretary of the company and shall specify the shares or debentures to which it relates and the amount paid up thereon: Provided that in respect of shares or debentures held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for shares or debentures to one of several joint holders shall be sufficient delivery to all such holders.

4. If a share certificate, debenture, debenture stock certificate or loan stock certificate in respect of shares or debentures be defaced, lost or destroyed, it may be renewed on payment of a fee of five rupees or such less sum and on such terms if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the company of investigating evidence as the directors think fit:

   Provided that nothing in this paragraph shall authorise or require the directors to renew a ** or a ** unless the court so orders.

5. The company shall not give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with a purchase or subscription made or to be made by any person of or for any shares or debentures of the company or of any company which belongs to the same group of companies as the company, nor shall the company make a loan for any purpose whatsoever on the security of its shares or debentures or those of any company which belongs to the same group of companies as the company, but nothing in this regulation shall prohibit any of the transactions mentioned in the proviso to section 53(1) of the Ordinance.

Payment of issue price

6. The directors may, if they think fit, receive from any person willing to advance the same, all or any part of the moneys not yet due upon any shares or debentures held by him, and upon all or any of the moneys so advanced may (until the same would, but for such advance, become payable) pay interest at such rate not exceeding (unless the company in general meeting shall otherwise direct) ten per cent *per annum*, as may be agreed upon between the directors and the person paying such sum in advance.

Transfer of shares and debentures

7. An instrument of transfer of shares or debentures shall name the transferee, shall state the number or nominal value of the shares transferred or the principal amount of the debentures transferred, and shall be signed by the transferor. As regards the company the transferor shall be deemed to remain the holder of the shares or debentures until the name of the transferee is entered in the register of members or debenture holders, except so far as the Ordinance otherwise provides or the court otherwise orders.

8. The directors may decline to register the transfer of a share (not being a fully paid share) to a person of whom they shall not approve, and they may also decline to register the transfer of a share on which calls or instalments of the issue price are due and unpaid.

9. The directors may also decline to recognise any instrument of transfer of shares or debentures unless:

   (a) a fee of five rupees or such less sum as the directors may from time to time require is paid to the company in respect thereof;

   (b) the instrument of transfer has been certificated by or on behalf of the company, or is accompanied by the certificate of the shares or debentures to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer; and

   (c) the instrument of transfer is in respect of only one class of shares or debentures.

10. If the directors refuse to register a transfer they shall within one month after the date on which the transfer was lodged with the company send notice of the refusal to the transferor and the transferee.

11. The registration of transfers may be suspended at such times and for such periods as the directors may from time to time determine, provided always that such registration shall not be suspended for more than thirty days in any year.

12. The company shall be entitled to charge a fee not exceeding five rupees on registering the heir or other person entitled to shares or debentures on the death of a holder, and on the registration of every certificate of appointment of a trustee in bankruptcy, power of attorney, notice of interest, charging order, or other instrument

Transmission of shares and debentures

13. In case of the death of a shareholder or debenture holder the survivor or survivors where the deceased was a joint holder, and the heir or other person entitled on the death of the deceased where he was a sole holder, shall be the only persons recognised by the company as having any title to the deceased's shares or debentures; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which has been jointly held by him with other persons.

14. Any person becoming entitled to shares or debentures in consequence of the death or bankruptcy of a shareholder or debenture holder may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the shares or debentures or to have some person nominated by him registered as the transferee thereof, but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the shares or debentures by that shareholder or debenture holder before his death or bankruptcy, as the case may be.

15. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company:

By Laws.Africa and contributors. Licensed under CC-BY. Share widely and freely.

Provided always that the directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share, and, if the notice is not complied with within ninety days the directors may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the re-quirements of the notice have been complied with.

16. Regulations 14 and 15 shall not apply to shares which are represented by **.

Forfeiture and re-issue of shares

17. A declaration in writing (signed by at least two directors and the secretary of the company) that a share in the company has been duly forfeited under section 56 of the Ordinance on a date stated in the declaration, shall be conclusive evidence of the facts therein stated in favour of the person to whom the share is re-issued and persons claiming under him as against all other persons claiming to be entitled to the share. The company may receive the consideration (if any) given for the share or debenture on the re-issue thereof and may issue a share certificate to the person to whom the share is re-issued, and unless the share is in ** form, he shall thereupon be registered as a member of the company in respect of the share, and he shall not be bound to see to the application of the consideration (if any) nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

Conversion of shares into stock

18. The company may by ordinary resolution convert any paid-up shares with a nominal value into stock, and reconvert any stock into paid-up shares with a nominal value of not less than ten rupees.

19. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as and subject to which the shares from which the stock arose might, previously to conversion, have been transferred, or as near thereto as circumstances admit; and the directors may from time to time fix the minimum amount of stock transferable, but so that such minimum shall not exceed the nominal amount of the shares from which the stock arose.

20. The holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company and in the assets on winding up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.

21. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder".

General meetings

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

Provided that so long as the company holds it first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The annual general meeting shall be held at such time and place as the directors shall appoint.

23. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 120(2) of the Ordinance. If at any time there are not within Seychelles sufficient directors capable of acting to form a quorum, any director or any two shareholders of

the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Notice of general meetings

24. An annual general meeting and an extraordinary general meeting called for the passing of a special resolution shall be called by twenty-one days' notice in writing at the least, and a meeting of the company (other than an annual general meeting or a meeting for the passing of a special resolution) and meeting of a class of shareholders shall be called by fourteen days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and the exact wording of every resolution to be proposed at the meeting (except a procedural resolution and a resolution in respect of ordinary business at an annual general meeting). Notice of a meeting shall be given to such persons as are by section 127 of the Ordinance entitled to receive such notices from the company, in the manner prescribed by that section:

    Provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in. this regulation, be deemed to have been duly called if it is so agreed

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

    (b) in the case of any other meeting, by a majority in number of the shareholders having a right to attend arid vole at the meeting, being a majority together holding not less than 95 per cent in nominal value of the shares giving that right.

25. Ordinary business at an annual general meeting shall consist of the declaration of dividend and the approval or rejection of the annual accounts and the directors' and auditors' reports.

26. Subject to section 127(6) of the Ordinance, the accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

27. No business shall be transacted at any general meeting unless a quorum of shareholders is present at the time when the meeting proceeds to business; save as herein otherwise provided, three shareholders present in person or by proxy shall be a quorum.

28. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of shareholders, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the shareholders present or their proxy or proxies shall be a quorum.

29. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting, or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.

30. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the shareholders present shall choose one of their number to be chairman of the meeting.

31. The chairman may, with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, hut no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for eight days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

By Laws.Africa and contributors. Licensed under CC-BY. Share widely and freely.

32. At any general meeting a resolution put to the vote of the meeting shall, subject to the provisions of the Ordinance, be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded

(a) by the chairman; or

(b) by at least three shareholders present in person or by proxy; or

(c) by any shareholder or shareholders present in person or by proxy and representing not less than one-tenth of the total voting rights of all the shareholders having the right to vote at the meeting.

Unless a poll be so demanded, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company snail, subject to the provisions of the Ordinance, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resoution.

A demand for a poll may be withdrawn

33. Except as provided in paragraph 34, if a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

34. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

35. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded an any other question shall be taken at such time as the chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

Votes of members

36. Subject to any restrictions for the time being attached to any class or classes of shares by the memorandum of the company, on a show of hands every shareholder present in person or by proxy shall have one vote and on a poll, he shall have the number of votes to which he is entitled by section 118 of the Ordinance.

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

38. A shareholder who is a minor or who has been interdicted may vote, whether on a show of hands or cm a poll, by his tutor, or if he has no tutor, by some other person appointed for the purpose by the court, and any such tutor or other person may vote by proxy.

39. No votes shall be cast in respect of shares acquired by or transferred to the company unless they have been re-issued, and no votes shall be cast in respect of shares held by nominees for the company.

40. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive, subject to any proceedings brought under section 136 of the Ordinance.

By Laws.Africa and contributors. Licensed under CC-BY. Share widely and freely.

41. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his agent duly authorised in writing, or, if the appointer is a corporation, either under seal, or under the hand of an officer or agent of the corporation who has been duly authorised.

42. The instrument appointing a proxy and the instrument containing the authority under which it is signed (if any), or a notarially certified copy of either or both of those instruments, shall be deposited at the registered office of the company, or at such other place within Seychelles as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

43. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit

Limited

I/We _____, of _____, being a shareholder/share-holders of the above-named company, hereby appoint of _____, or failing him, _____ o _____, _____ as my/ our proxy to vote for me/us on my/our behalf at the annual *or* extraordinary, (as the case may be) general meeting of the company to be held on the day of 19 and at any adjournment thereof.

Signed this _____ day of 19 _____

44. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or interdiction of the shareholder, or the revocation of the proxy or of the authority under which the proxy was given, or the transfer of the share in respect of which the proxy is given, provided that no intimation in writing of such death, interdiction, revocation or transfer as aforesaid has been received by the company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

Directors

45. The number of the directors and the names of the first directors shall be determined in writing by the subscribers or the memorandum of association or a majority of them.

46. The remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors OF any committee of the directors or general meetings of the company, or in connection with the business of the company.

47. The shareholding qualification for directors may be fixed by the company in general meeting, and unless and until so fixed no such qualification shall be required.

48. Subject to the provisions of the Ordinance, a director of the company may be or become a director or other officer of, or otherwise interested in, any company promoted by the company or in which the company be interested as shareholder or otherwise, and no such director shall be accountable to the company for any remuneration or other benefits received by him as a director or officer of, or from his interest in, such other company unless the company otherwise directs.

Borrowing powers

49. Subject to the provisions of the Ordinance, the directors may exercise all the powers of the company to borrow money, and to hypothecate, mortgage or charge its undertaking, assets and uncalled capital, or any part thereof, and to issue debentures, debenture stock, and other securities as security for any loan to, or debt, liability or obligation of the company or of any third party:

Provided that the amount for the time being remaining undischarged of moneys borrowed or secured by the directors as aforesaid (apart from temporary loans obtained from the company's bankers in the ordinary course of business) shall not at any time, without the previous sanction of the company in general meeting, exceed the amount paid up on the company's issued and outstanding shares plus the amount of the company's capital reserve for the time being, but nevertheless no lender or other person dealing with the company shall be concerned to see or inquire whether this limit is observed. No debt incurred or security given in excess of such limit shall be invalid or ineffectual, except in the case of express notice to the lender or the recipient of the security at the time when the debt was incurred or security given that the limit hereby imposed had been or was thereby exceeded.

Powers and duties of directors

50. The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Ordinance or by these regulations, required to be exercised by the company in general meeting, subject, nevertheless, to any of these regulations, to the provisions of the Ordinance and to such directions, being not inconsistent with the aforesaid regulations or provisions, as may be given by the company in general meeting; but no direction given by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that direction had not been given.

51. The directors may from time to time and at any time, by an instrument in writing signed by at least two of their number on behalf of them all, appoint any company, firm or parson or body of persons, whether nominated directly or indirectly by the directors, to be the general agent or agents of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these regulations) and for such period and subject to such conditions as they may think fit, and any such instrument may contain such provisions for the protection and convenience of persons dealing with any such general agent as the directors may think fit and may also authorise any such general agent to delegate all or any of the powers, authorities and discretions vested in him.

52. (1) A director who is in any way, whether directly or indirectly, interested, in a contract or proposed contract with the company shall declare the nature of his interest in accordance with paragraph (g) section 171(1) of the Ordinance as extended by section 171(4).

(2) At a meeting of the directors a director shall not vote in respect of any contract or arrangement in which he is interested, and if he shall do so his vote shall not be counted, nor shall he be counted in the quorum present at the meeting, but subject to the provisions of the Ordinance neither of these prohibitions shall apply to

(a) any arrangement for giving any director any security or indemnity in respect of money lent by him to, or obligations undertaken by him for the benefit of, the company; or

(b) any arrangement for the giving by the company of any security to a third party in respect of a debt or obligation of the company for which the director himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or

(c) any contract by a director to subscribe for or underwrite shares or debentures of the company; or

(d) any contract or arrangement with any other company in which he is interested only as an officer of the company or as the holder of shares or other securities of it;

and these prohibitions may, subject to the provisions of the Ordinance, at any time be suspended or relaxed to any extent, and either generally or in respect of any particular contract, arrangement or transaction, by the company in general meeting.

(3) Subject to the provisions of the Ordinance, a director may hold any other office or place of profit under the company {other than the office of auditor) in conjunction with his office of director for such period and on such terms (as to remuneration and otherwise) as the directors may determine, and no director or intending director shall be disqualified by his office from contracting with the

company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, and subject to the provisions of the Ordinance, no such contract, or any contract or arrangement entered into by or on behalf of the company in which any director is in any way interested, shall be liable to be avoided, nor shall any director so contracting or being so interested be liable to account to the company for any profit realised by any such contract or arrangement, by reason of such director holding that office or of the fiduciary relation thereby established.

(4) A director, notwithstanding his interest, may be counted in the quorum present at any meeting of the directors whereat he or any other director is appointed to hold any such office or place of profit under the company, or whereat the terms of any such appointment are arranged, and he may vote on any such appointment or arrangement other than his own appointment or the arrangement of the terms thereof.

(5) Any director may act by himself or his firm in a professional capacity for the company, and he or his firm shall be entitled to remuneration for professional services as if he were not a director:

Provided that nothing herein contained shall authorise a director or his firm to act as auditor to the company.

53. All cheques, promissory notes, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed (as the case may be) in such manner as the directors shall from time to time by resolution determine.

54. The directors shall cause minutes to be made in books provided for the purpose

(a) of all appointments of officers made by the directors;

(b) of the names of the directors present at each meeting of the directors and of any committee of the directors;

(c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

55. Subject to the provisions of the Ordinance, the directors on behalf of the company may pay a gratuity or pension or allowance on retirement to any director who has held any other salaried office or place of profit with the company, or to his widow or dependants, and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.

Rotation of directors

56. At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-fifth of the directors for the time, being, or, if their number is not five or a multiple of five, then the number nearest one-fifth, shall retire from office.

57. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.

58. A retiring director shall be eligible for re-election.

59. The company at the meeting at which a director retires in manner aforesaid may fill the vacated office by electing a person thereto, and in default the retiring director shall if offering himself for re-election be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office, or unless a resolution for the re-election of such director shall have been put to the meeting and lost.

By Laws.Africa and contributors. Licensed under CC-BY. Share widely and freely.

60. No person other than a director retiring at the meeting shall, unless recommended by the directors, be eligible for election to the office of director at any annual general meeting unless not less than one week before the date appointed for the meeting there shall have been left at the registered office of the company a notice in writing, signed by a shareholder duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected:

    Provided that if an annual general meeting is called after such a notice is left as aforesaid, the notice shall be deemed to have been validly given notwithstanding that there is less than one week between the giving of the notice and the holding of the annual general meeting,

61. The company may from time to time by ordinary resolution increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

62. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these regulations. Any director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for re-election, but shall not be taken into account in determining the directors who are to retire by rotation at such meeting.

63. The company may by ordinary resolution, in accordance with section 168 of the Ordinance, remove any director before the expiration of his period of office notwithstanding anything in these articles or in any agreement between the company and such director. Such removal shall, subject to the provisions of that section, be without prejudice to any claim such director may have for damages for breach of any contract of service between him and the company.

64. The company may by ordinary resolution appoint another person in place of a director removed from office under regulation 63, and without prejudice to the powers of the directors under paragraph 62, the company in general meeting may appoint any person to be a director either to fill a casual vacancy or as art additional director. A person appointed in place of a director so removed or to fill such a vacancy shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected or re-elected a director.

Proceedings of directors

65. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall lave a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Seychelles.

66. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

67. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

68. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

By Laws.Africa and contributors. Licensed under CC-BY. Share widely and freely.

69. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any instructions that may be given to it by the directors.

70. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

71. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.

72. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

73. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

Managing director

74. Subject to the provisions of the Ordinance, the directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment. A managing director whose appointment is approved by a general meeting passed not later than six months after his appointment shall not, whilst holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors, but his appointment shall be automatically determined if he ceases from any cause to be a director.

75. The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

Secretary

76. The secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

Dividends and reserves

77. A general meeting may by ordinary resolution dispose of the profits of the company by declaring dividends, carrying profits forward, transferring profits to capital or revenue reserves, or by using profits or revenue reserves to pay the issue price of bonus shares or debentures to be issued as fully paid shares or debentures to shareholders in the same proportions as a dividend would be paid to them.

78. The directors may from time to time pay to the shareholders such interim dividends as appear to the directors to be justified by the profits of the company.

79. Subject to the rights of persons (if any) entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on a share in advance of an instalment of the issue price becoming due shall be treated for the purposes of this regulation as paid on the share. All dividends shall be apportioned a ad paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid;

By Laws.Africa and contributors. Licensed under CC-BY. Share widely and freely.

but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.

80. The directors may deduct from any dividend payable to any shareholder all sums of money (if any) presently payable by him to the company on account of instalments of the issue price of shares held by him, or otherwise in relation to shares of the company.

81. If a general meeting resolves that fully paid bonus shares shall be issued credited as paid up out of profits or capital or revenue reserves, the directors shall make all requisite allotments and issues of fully-paid shares, and generally shall do all acts and things required to give effect thereto, and shall have full power to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit in the case of shares becoming distributable in fractions.

82. Any general meeting declaring a dividend or bonus may direct payment of such dividend or bonus wholly or partly by the distribution of specific assets of the company, and in particular of paid up shares, debentures or debenture stock of any other company, or in any one or more of such ways, and the directors shall give effect to such resolution, and where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient, and in particular may issue fractional certificates and fix the value for distribution of such specific assets or any part thereof, and may determine that cash payments shall be made to any shareholders upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees or agents as may seem expedient to the directors.

83. Any dividend, interest or other moneys payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members, or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one or more joint holders may give effectual receipts for any dividends, bonuses or other moneys payable in respect of the shares held by them as joint holders.

84. No dividend shall bear interest against the company.

Books and documents

85. The books of account shall be kept at the registered office of the company, or, subject to the provisions of the Ordinance, at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

86. The directors shall from time to time determine whether and to what extent, and at what times and places and under what conditions or regulations, the accounts and books of the company or any of them shall be open to the inspection of shareholders not being directors, and no shareholder (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by the Ordinance or authorised by the directors or by the company in general meeting or directed by the court.

Notices

87. A notice may be given by the company to any member, shareholder or debenture holder either personally, or by sending it by post to him or to his registered address, or, if he has no registered address in Seychelles, to the address (if any) in Seychelles supplied by him to the company for the purpose of giving - notices to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a -notice of a meeting at the expiration of 24 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

88. A notice may be given by the company to the joint holders of a share or debenture by giving the notice to the joint holder first named in the register of members or debenture holders in respect of the share or debenture.

By Laws.Africa and contributors. Licensed under CC-BY. Share widely and freely.

89. A notice may be given by the company to the persons entitled to a share or debenture in consequence of the death or bankruptcy of a shareholder or debenture holder by sending it through the post m a prepaid letter addressed to them by name, or by the title of heirs of the deceased, or trustee of the bankrupt, or by any like description, at the address (if any) in Seychelles supplied for the purpose by the persons claiming to be so entitled, or (until such an address hrs been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

90. Notice may be given to the holders of shares or debentures represented by ** certificates by the publication of the notice once in a daily newspaper circulating in Seychelles.

91. Notice of every general meeting shall be given in any manner hereinbefore authorised to-

(a) every member of the company except those members who, having no registered address in Seychelles, have not supplied to the company an address in Seychelles for the giving of notices to them;

(b) every person upon whom the ownership of a share devolves by reason of his being an heir or a person entitled to the estate of a member, or a trustee in bankruptcy of a member, where the member but for his death or bankruptcy would be entitled to receive notice of the meeting; and

(c) the auditor for the time being of the company.

No other person shall be entitled to receive individual notices of general meetings. Notices of general meetings shall be given to the holders of shares represented by ** shares certificates in the manner prescribed by section 127(4) of the Ordinance.

Winding up

92. If the company shall be wound up the liquidator may, with the sanction of a special resolution of the company required by the Ordinance, divide amongst the or kind the whole or any part of the assets of the shall consist of assets of the same kind or not) pose set such value as he deems fair upon any aforesaid, and may determine how such division shall be carried out as between the shareholders or different classes of shareholders. The liquidator may, with the like sanction, vest the whole or any part of such assets in nominees or agents on behalf, or for the benefit, of shareholders as the liquidator, with the like sanction, shall think fit, but so that no shareholder shall be compelled to accept any shares or other securities whereon there is any liability or amount unpaid.

Indemnity

93. Every director, managing director, agent, auditor, secretary and other officer for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour, or in which he is acquitted, or in connection with any application under section 182 of the Ordinance in which relief is granted to him by the court.

1. Henry Pereira of Victoria, Seychelles, Engineer

2. John Pereira of Sans Souci, Mahe, Seychelles, Engineer

3. Peter Pereira of La Misere, Mahe, Seychelles Accountant

4. Joshua Smith of Anse Boileau, Mahe, Seychelles, Landowner

5. Henry da Silva of Glacis, Mahe, Landowner

6. James Fourneaux of Bel Ombre, Mahe, Seychelles, Retired

By Laws.Africa and contributors. Licensed under CC-BY. Share widely and freely.

7. Albert Henry Wilson of Victoria, Seychelles, Bank Manager.

Dated the day of 19 _____

Witness to the above signatures: _____

Isabelles Laforgue, Victoria, Seychelles, Secretary.

Part III – Form of memorandum of association of a proprietary company (Section 4)

1. The name of the company is "Cascade Automobile Company (Proprietary) Limited".
2. The registered office of the company will be situate in Seychelles,
3. The objects or lawful purpose for which the company established.

   [Act 5 of 2013]
4. The liability of the members of the company is limited.
5. The share capital of the company consists of three hundred shares with a nominal value of fifty rupees each. The nominal capital of the company {being its nominal capital in respect of those shares) is fifteen thousand rupees.
6. The original directors of the company shall be Henri des Isles and Jean Faubert who shall hold office for the terms of their respective lives, but may resign at any time by giving three months' notice of their intention to do so to the company.

We the several persons whose names and addresses are subscribed are desirous of being formed into a company to be governed by this memorandum of association.

Number of shares to be taken by each subscriber

1. Henri des Isles of Cascade, Mahe, Seychelles, Motor Engineer 150 shares

2. Jean Faubert of Cascade, Mahe, Seychelles, Motor Engineer 150 shares

Dated the day of _____ 19 _____

Witness to the above signatures: _____

Francis Henry Mackintosh, Victoria, Seychelles, Notary.

Part IV – Regulations for the management of a proprietary company (Section 8)

1. The regulations set out in Part II of the First Schedule to the Companies Ordinance, 1972, with the exception of regulations 34, 46, 51, 56 to 71 inclusive, the words "or of a committee of directors" in regulation 72 and regulations 74 and 75, shall be deemed to be incorporated with these regulations and shall apply to the company.
2. Each of the original directors may respectively, by an instrument in writing or by will, 'nominate any person to succeed him as a director of the company in his place on his death or retirement. The person so nominated shall (if he signifies his willingness in writing within one month after the death or retirement of the person who nominates him) become a director of the company for the term of his life or until he retires by giving three months' written notice of his intention to do so to the company, and the right of the other shareholders to purchase the shares of the original director who dies or retires shall be exercisable only to the extent that the person so nominated does not acquire the shares held by that original director.
3. It shall be the duty of members of the company 2nd all persons claiming under them to abstain from doing any act whereby the company may cease to be a proprietary company (except by voting for the conversion of the company into a company other than a proprietary company), and if for any reason the company

ceases to be a proprietary company, every member and all persons claiming under him shall do all acts in his power to enable the company to become a proprietary company again.

1. Henri des Isles of Cascade, Mahe, Seychelles, Motor Engineer

2. Jean Faubert of Cascade, Mahe, Seychelles, Motor Engineer

Dated the day of _____19 _____

Witness to the above signatures: _____

Francis Henry Mackintosh, Victoria, Seychelles, Notary.

Second Schedule (Section 11)

Government of Seychelles companies registry

This is to certify that name of company Proprietary (where applicable) Limited was this day incorporated under the Companies Ordinance 1972 and that the company is a proprietary company (where applicable).

Dated this day of _____ 19 _____ Registrar of Companies.

Third Schedule (Section 34)

Implied powers of directors, a managing director and a director of- a proprietary company

1. To enter into, agree to the modification or termination of, perform, and accept performance of contracts in the company's name or on its behalf for the purpose of carrying on the company's business or pursuing its objects.

2. To bring or defend proceedings in any court in the name or on behalf of the company, to intervene in the company's name or on its behalf in any proceedings brought by other persons (including bankruptcy proceedings and proceedings for the winding up of any company or body corporate), and to agree to the submission of disputes to arbitration and to participate in any arbitration proceedings.

3. To acquire, take on lease, hire or licence, hold, dispose of, lease, licence, let on hire and turn to account any assets of the company.

4. To enter into partnership, consortium, profit sharing and other similar agreements in the name or on behalf of the company with any person, firm, company, overseas company or body corporate, and to promote companies and subsidiaries, manage the whole or any part of the undertaking of any other company or overseas company and amalgamate with any other company or overseas company.

5. To lend money, to guarantee or give security for the debts and liabilities of other persons, and to take, hold and realise any form of security in connection with such transactions.

6. To borrow and to give security in any form over any part of the company's assets, including the unpaid part of the issue price of its shares and debentures, whether due or not.

7. To subscribe for, purchase, hold and dispose of shares, debentures and other securities, whether issued by other persons, companies, overseas companies or bodies corporate or by public authorities, and to acquire, hold and dispose of and enter into agreements (including lawful voting agreements) in relation to any such securities,

8. To issue, make acquire, hold and negotiate bills of exchange, cheques and promissory notes and all other kinds of negotiable instruments, bills of lading, dock warrants, warehouse certificates and documents used in the course of trade as evidence of the ownership or the right to the possession of goods.

9. To employ, remunerate and discharge employees and agents.

10. To pay gratuities and bonuses to employees and agents of the company, to pay retirement gratuities, pensions or capital sums to employees of the company (including directors) and their dependants, and to establish any trust or scheme o r effect any insurance requisite for providing retirement benefits, pensions or capital sums for employees (including directors) and their dependants.

11. To make the company or any of its officers a member of any trade or other association whose activities are likely to assist or protect the interests of the company, and to pay any subscriptions or fees incidental to membership of such an association out of the company's funds.

Fourth Schedule (Sections 41 and 49)

Statements, reports and accounts to be contained in a prospectus [Repealed]

[Repealed by Act 8 of 2007 with effect from 29 October 2007]

Fifth Schedule (Section 114)

Contents of annual return of a company

1. The address of the registered office of the company.

2. The address at which the registers of members and debenture holders of the company are kept.

3. A summary, distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, specifying the following particulars

   (a) the nominal capital of the company, the 'nominal capital in respect of each class of shares into which it is divided and the nominal value of each share of that class;

   (b) the -number of each class of the company's shares which have been issued and are outstanding, and the company's issued capital;

   (c) the amount paid up and credited as paid up in respect of the company's issued and outstanding shares;

   (d) the amount of instalments due but unpaid in respect of the company's issued and outstanding shares;

   (e) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures so far as not written off in the company's accounts;

   (f) the total number of shares and debentures of each class which the company has

      (i) redeemed (including acquisitions before the redemption date if the shares or debentures have not been re-issued);

      (ii) acquired by way of transfer or surrender;

      (iii) forfeited; and

      (iv) re-issued;

   (g) the total amount of outstanding loans made, guaranteed or secured by the company under section 53;

   (h) the number of shares and debentures of each class for which there are outstanding ** s and ** s.

4. The total amount of the company's indebtedness secured by hypothecations, mortgages or charges which are required to be registered by the Registrar under section 92 and the total amount of such indebtedness secured by hypothecations, mortgages and charges falling within paragraphs (a) and {b) of section 92(2) respectively.

5. A list

(a) containing the names and addresses of all persons who, on the fourteenth day after the company's annual general meeting for the year, are members of the company, and of persons who have ceased to be members since the date of the last return or, in the case of the first return, since the incorporation of the company;

(b) stating the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return (or, in the case of the first return, since the incorporation of the company) by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers;

(c) if the names aforesaid are not arranged in alphabetical order, having annexed thereto an index sufficient to enable the name of any person therein to be easily found:

Provided that it shall not be necessary for such a list to contain particulars of members and shares held by them if the shares are and have throughout the period since the fourteenth day following the annual general meeting for the last preceding year, or in the case of the company's first annual return, since the date of its incorporation, continuously been fully paid shares.

6. All such particulars with respect to the persons who at the date of the return are the directors of the company, and any person who at that date is the secretary of the company, as are by section 169 required to be contained with respect to directors and the secretary respectively in the register of the directors and secretaries of a company.

Sixth Schedule (Sections 142 and 144)

Contents of accounts

Preliminary

1. Paragraphs 2 to 14 of this Schedule apply to the balance sheet and 15 to 19 to the profit and loss account, and are subject to the exceptions and modifications provided for by Part II of this Schedule in the case of a holding or subsidiary company. This Schedule has effect in addition to the provisions of sections 146 to 151 inclusive of this Ordinance.

Part I – General provisions as to balance sheet and profit and loss account

Balance sheet

2. The nominal capital, issued share capital, liabilities and assets shall be summarised, with such particulars as are necessary to disclose the general nature of the assets and liabilities, and there shall be specified

(a) any part of the issued capital that consists of redeemable shares, the earliest and latest dates on which the company has power to redeem those shares, whether those shares must be redeemed in any event or are liable to be redeemed at the option of the company and whether any (and, if so, what) premium is payable on redemption;

(b) the amount of the capital reserve;

(c) particulars of any forfeited, surrendered, acquired or redeemed shares or debentures which the company has power to re-issue.

3. There shall be stated under separate headings, so far as they are not written off

(a) the preliminary expenses of forming the company;

(b) any expenses incurred in connection with any issue of share capital or debentures;

(c) any sums paid by way of commission in respect of any shares or debentures;

(d) any sums allowed by way of discount in respect of any debentures; and

(e) the amount paid by the company for goodwill and industrial property rights.

4. (1) The reserves, provisions, liabilities and assets shall be classified under headings appropriate to the company's business:

Provided that

(a) where the amount of any class is not material, it may be included under the same heading as some other class; and

(b) where any assets of one class are not separable from assets of another class, those assets may be included under the same heading.

(2) Fixed assets, current assets, investments and assets that are neither fixed nor current shall be separately identified.

(3) The method or methods used to arrive at the amount of the fixed assets under each heading shall be stated.

5. (1) The method of arriving at the amount of any fixed asset shall, subject to the next following subparagraph, be to take the difference between

(a) its cost or, if it stands in the company's books at a valuation, the amount of the valuation; and

(b) the aggregate amount provided or written off since the date of acquisition or valuation, as the case may be, for depreciation or diminution in value;

and for the purposes of this paragraph the net amount at which any assets stand in the company's books when this Ordinance comes into operation (after deduction of the amount (if any) previously provided or written off for depreciation or diminution in value) shall, if the figures relating to the period before the coming into operation of this Ordinance can-not be obtained without unreasonable expense or delay, be treated as if it were the amount of a valuation of those assets made at the commencement of this Ordinance.

(2) The foregoing sub-paragraph shall not apply

(a) to assets the replacement of which is provided for wholly or partly

(i) by making provision for renewals and charging the cost of replacement against the provision so made; or

(ii) by charging the cost of replacement direct to revenue or

(b) to any quoted or unquoted investments; or

(c) to goodwill or industrial property rights.

(3) For the assets under each heading whose amounts is arrived at in accordance with sub-paragraph (1) of this paragraph, there shall be shown

(a) the aggregate of the amounts referred to in paragraph (a) of that sub-paragraph; and

(b) the aggregate of the amounts referred to in sub-paragraph (b) thereof.

(4) As respects the assets under each heading whose amount is not arrived at in accordance with the said sub-paragraph (1) because their replacement is provided for as mentioned in sub-paragraph (2) (a) of this paragraph, there shall be stated

(a) the means by which their replacement is provided for; and

(b) the aggregate amount of the provision (if any) made for renewals and not used,

6. In the case of unquoted investments consisting of ordinary shares of other companies, the matters referred to in the following heads shall, if not otherwise shown, be stated by way of note or in a statement or report annexed to the profit and loss account:

(a) the aggregate amount of the company's income for the financial year from those investments;

(b) the amount of the company's share before taxation, and the amount of that share after taxation, of the net aggregate amount of the profits of the companies in which the investments are held, being profits for their respective financial years ending with or during the financial year of the company, after deducting those companies' losses for those respective financial years (or vice versa;

(c) the amount of the company's share of the net aggregate amount of he undistributed profits and revenue reserves of the companies in which the investments are held since the time when the investments were acquired, after deducting the losses accumulated by them since that time (or vice versa);

(d) the manner in which any Josses incurred by the said companies have been dealt with in the company's accounts.

7. The aggregate amounts respectively of revenue reserves and provisions (other than provisions for depreciation, renewals or diminution in value of assets) shall be stated under separate headings.

8. (1) There shall also be shown (unless it is shown in the profit and loss account or a statement or report annexed thereto, or the amount involved is not material)

(a) where the amount of capital reserve or revenue reserves or of the provisions (other than provisions for depreciation, renewals or diminution in value of assets) shows an increase as compared with the amount at the end of the immediately preceding financial year, the source from which the amount of the increase has been derived; and

(b) where

(i) the amount of capital reserve or revenue reserves shows a decrease as compared with the amount at the end of the immediately preceding financial year; or

(ii) the amount at the end of the immediately preceding financial year of the provisions (other than provisions for depreciation, renewals or dimunition in value of assets) exceeded the aggregate of the sums since applied and amounts still retained for the purposes thereof;

the application of the amounts derived from the difference.

(2) Where the heading showing the revenue reserves or any of the provisions aforesaid is divided into sub-headings, this paragraph shall apply to each of the separate amounts shown in the sub-headings instead of applying to the aggregate amount thereof.

9. If an amount is set aside for the purpose of its being used to prevent undue fluctuations in charges for taxation, it shall be identified as such and separately stated.

10. (1) There shall be shown under separate headings

(a) the aggregate amounts respectively of the company's quoted investments and unquoted investments;

(b) if the amount of the goodwill and of any industrial property rights of the company, or part of that amount, is shown as a separate item in, or is otherwise ascertainable from, the books of the company, or from any contract for the sale or purchase of any assets acquired by the company, or from any documents in the possession of the company relating to the stamp duty payable in respect of any such contract or the transfer of any such assets, the said amount so shown or ascertained so far as not written off, or (as the case may be) the said

By Laws.Africa and contributors. Licensed under CC-BY. Share widely and freely.

amount so far as it is so shown or ascertainable and as so shown or ascertained, as the case may be;

(c) the aggregate amount of outstanding loans made, guaranteed or secured by the company under section 53 of the Ordinance;

(d) the aggregate amount of bank loans and overdrafts advanced to the company and remaining outstanding;

(e) the aggregate amount of loans made to the company which

(i) are repayable otherwise than by instalments, and fall due for repayment after the expiration of the periods of one year and five years respectively beginning with the day next following the expiration of the financial year; or

(ii) are repayable by instalments any of which fall due for payment after the expiration of those respective periods;

not being, in either case, bank loans or overdrafts;

(f) the aggregate amount of debts of the company (other than debts falling under head (d) and (e) of this sub-paragraph) which

(i) are payable otherwise than by instalments and fall due for payment after the expiration of one year beginning with the day next following the expiration of the financial year; or

(ii) are payable by instalments any of which fall due for payment after the expiration of that period,

(2) Nothing in head (b) of the foregoing sub-paragraph shall be taken as authorising the amount of the goodwill, patents and trade marks to be stated as a single item.

(3) The heading showing the amount of the quoted investments shall be sub-divided, where necessary, to distinguish the investments as respects which there has, and those as respects which there has not, been granted a quotation or permission to deal on a stock exchange in Seychelles or on a recognised overseas stock exchange.

(4) In relation to each loan falling within head (d) and (e) of sub-paragraph (1) of this paragraph (other than a bank overdraft repayable on demand) there shall be stated by way of not (if not otherwise stated) the terms on which it is repayable and the rate at which interest is payable thereon:

Provided that if the number of loans is such that compliance with the foregoing requirement would result in a statement of excessive length, it shall be sufficient to give a general indication of the terms on which the loans are repayable and the rates at which interest is payable thereon.

11. Where any liability of the company is secured otherwise than by operation of law on any assets of the company, the fact that that liability is so secured shall be stated, but it shall not be necessary to specify the assets on which the liability is secured.

12. Where any of the company's debentures are held by a nominee of or agent for the company, there shall be stated by way of note or in a statement annexed to the balance sheet:

(a) the nominal amount of the debentures and the amount at which they are stated in the books of the company; and

(b) whether the company has power to re-issue any of those debentures, and if so, which debentures or classes it may re-issue.

13. (1) The matters referred to in the following sub-paragraphs shall be stated by way of note, or in a statement or report annexed to the balance sheet, if not otherwise shown.

By Laws.Africa and contributors. Licensed under CC-BY. Share widely and freely.

(2) The number, description and amount of any shares in the company which any person has an option to subscribe for, together with the following particulars of the option, that is to say

(a) the period during which it is exercisable;

(b) the price to be paid for shares subscribed for under it;

but it shall not be necessary to state any of the foregoing matters in respect of convertible debentures whose issue has been authorised by a general meeting or is dealt with in the directors' report for the financial year.

(3) The amount of any arrears of fixed cumulative dividends on the company's shares and the period for which the dividends or, if there is more than one class, each class of them are in arrear, which amount shall be stated before deduction of income tax, except that, in the case of tax-free dividends, the amount shall be shown free of tax and the fact that it is so shown shall also be stated.

(4) Particulars of any charge on the assets of the company to secure the liabilities of any other person, including, where practicable, the amount secured.

(5) The general nature of any other contingent liabilities not provided for in the annual accounts and, where practicable, the aggregate amount or estimated amount of those liabilities, if it is material.

(6) Where practicable, the aggregate amount or estimated amount (if it is material) of contracts for capital expenditure, so far as not provided for and, where practicable, the aggregate amount or estimated amount (if it is material) of capital expenditure authorised by the directors which has not been contracted for.

(7) In the case of fixed assets under any heading whose amount is required to be arrived at in accordance with paragraph 5(1) of this Schedule and is so arrived at by reference to a valuation, the years (so far as they are known to the directors) in which the assets were severally valued and the several values, and, in the case of assets that have been valued during the financial year, the names of the persons who valued them and particulars of their qualifications for doing so and the bases of valuation used by them.

(8) If there are included amongst fixed assets under any heading (other than investments) assets that have been acquired during the financial year, the aggregate amount of the assets acquired as determined for the purpose of making up the balance sheet, and if during that year any fixed assets included under a heading in the balance sheet made up with respect to the immediately preceding financial year (other than investments) have been disposed of or destroyed, the aggregate amount thereof as determined for the purpose of making up that balance sheet.

(9) Of the amount of assets consisting of land, how much is attributable to land owned by the company and how much to land occupied or enjoyed by the company under leases or usufructs, and, of the latter, how much is attributable to land in which the company has interests which will or may continue for fifty years or more from the end of the financial year.

(10) The aggregate amounts paid by the company during the financial year for the acquisition of:

(a) quoted investments; and

(b) unquoted investments;

and the aggregate amounts received by the company during the financial year on disposing of each of those classes of investments.

(11) The aggregate market value of the company's quoted investments where it differs from the amount of the investments as stated in the balance sheet, and the stock exchange value of any investments of which the market value is shown (whether separately or not) and is taken as being higher than their stock exchange value.

By Laws.Africa and contributors. Licensed under CC-BY. Share widely and freely.

(12) The directors' estimate of the aggregate value of the company's unquoted investments and their estimate of the aggregate value of such investments held in companies which at the end of the financial year are associated companies of the company.

(13) If in the opinion of the directors any of the current assets do not have a value, on realisation m the ordinary course of the company's business, at least equal to the amount at which they are stated, the fact that the directors are of that opinion.

(14) If a sum set aside for the purpose of its being used to prevent undue fluctuations in charges for taxation has been used during the financial year for another purpose, the amount thereof and the fact that it has been so used.

(15) If the amount carried forward for stock in trade or work in progress is material for the appreciation of the company's state of affairs or of its profit or loss for the financial year, the manner in which that amount has been computed.

(16) The basis on which foreign currencies have been converted into the currency of Seychelles, where the amount of the assets or liabilities affected is material.

(17) The basis on which the amount (if any) set aside for income tax payable by the company in Seychelles is computed.

(18) Except in the case of the first balance sheet laid before the company after the coming into operation of this Ordinance, the corresponding amounts at the end of the immediately preceding financial year for all items shown in the balance sheet.

14. In the fifth and subsequent balance sheets laid before the company after the coming into operation of this Ordinance, there shall be shown in tabular form in a note or in a statement or report annexed (unless it is otherwise shown in that form, or is so shown in, or in a note on, or statement or report annexed to, the profit and loss account) the following matters as at the end of the financial year and of each of the four immediately preceding financial years {or, if the number of financial years that have elapsed since the company was incorporated is less than five, as at the end of each financial year that has so elapsed)

(a) the amount of the issued share capital of the company;

(b) the amount paid up on the issued and outstanding shares of the company;

(c) the amount of the companies capital reserve, revenue reserves and profits carried forward respectively.

Profit and loss account

15. (1) There shall be shown

(a) the amount charged to revenue by way of provision for depreciation, renewals or diminution in value of fixed assets;

(b) the amount of the interest on loans of the following kinds made to the company (whether on the security of debentures or not), namely, bank loans, overdrafts and loans which, not being bank loans or overdrafts

(i) are repayable otherwise than by instalments and fall due for repayment before the expiration of the periods of one year and five years respectively beginning with the day next following the expiration of the financial year; or

(ii) are repayable by instalments the last of which falls due for payment before the expiration of each of those respective periods,

and the amount of the interest on loans of other kinds so made (whether on the security of debentures or not);

(c) the amount of the charge for income tax payable by the company in Seychelles and, if that amount would have been greater but for relief from double taxation, the amount which it would have been but for such relief;

(d) the amounts respectively provided for redemption of share capital and for redemption of loans;

(e) the amount (if material) set aside or proposed to be set aside to, or withdrawn from, revenue reserves;

(f) subject to sub-paragraph (2) of this paragraph, the amount (if material) set aside to provisions other than provisions for depreciation, renewals or diminution in value of assets or, as the case may be, the amount (if material) withdrawn from such provisions and not applied for the purposes thereof;

(g) the amounts respectively of income from quoted investments and income from unquoted investments;

(h) if a substantial part of the company's revenue for the financial year consists in rents from land, the amount thereof (after deduction of rents payable by the company, rates and other outgoings in respect of the same land);

(i) the amount (if material) charged to revenue, in respect of payment of rents for, or in respect of, land (other than land falling within part (h) of this sub-paragraph) and the amount, if material, charged to revenue in respect of sums payable in respect of the hire of plant and machinery.

(2) If, in the case of any assets in whose case an amount is charged to revenue by way of depreciation or diminution in value, an amount is also so charged for renewal thereof, the last-mentioned amount shall be shown separately.

(3) If the amount charged to revenue for depreciation or diminution in value of any fixed assets (other than investments) has been calculated otherwise than by reference to the amount of those assets as determined for the purpose of making up the balance sheet, that fact shall be stated.

16. The amount of any charge arising in consequence of the occurrence of an event in a preceding financial year, and of any credit so arising, shall, if not included in a heading relating to other matters, be stated under a separate heading.

17. The amount of the remuneration of the auditors shall be shown under a separate heading, and for the purposes of this paragraph, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration".

18. (1) The matters referred to in the following sub-paragraphs shall be stated by way of note, if not otherwise shown.

(2) If depreciation or replacement of fixed assets is provided for by some method other than a depreciation charge or provision for renewals, or is not provided for, the method by which it is provided for or the fact that it is not provided for, as the case may be.

(3) The basis on which the charge for income tax payable in Seychelles is computed.

(4) Any special circumstances which affect liability in respect of taxation of profits or income for the financial year or liability in respect of taxation of profits or income for succeeding financial years.

(5) Except in the case of the first profit and loss account laid before the company after the commencement of this Ordinance, the corresponding amounts for the immediately preceding financial year for all items shown in the profit and loss account.

(6) Any material respects in which any items shown in the profit and loss account are affected

(a) by transactions of a sort not usually undertaken by the company or otherwise by circumstances of an exceptional or non-recurrent nature; or

By Laws.Africa and contributors. Licensed under CC-BY. Share widely and freely.

(b) by any change in the basis of accounting.

19. (1) In the fifth and subsequent profit and loss accounts laid before the company after the coming into operation of this Ordinance, there shall be. shown in tabular form in a note or in a statement or report annexed (unless it is otherwise shown in that form, or it so shown in, or in a note on, or statement or report annexed to, the balance sheet) the following matters in respect of the financial year and of each of the four immediately preceding financial years (or, if the number of financial years that have elapsed since the company was incorporated is less than five, in respect of each financial year that has so elapsed)

(a) the amount of the profit or loss for the year before deduction of all charges for taxation of profits and income and the amount of the said profit or loss after deduction of all such charges; and

(b) the aggregate amount of the dividends paid.

(2) In relation to the most recent financial year dealt with in pursuance of sub-paragraph (1), the reference to dividends paid shall include a reference to dividends (if any) recommended by the directors in their report.

Part II – Special provisions where the company is a holding or subsidiary company

Modifications of and additions to requirements as to company's own accounts

20. (1) This paragraph shall apply where the company is a holding company, whether or not it is itself a subsidiary of another body corporate.

(2) The aggregate amount of assets consisting of shares in, or amounts owing (whether on account of a loan or otherwise) from, the company's subsidiaries, distinguishing shares from indebtedness, shall be set out in the balance sheet separately from all the other assets of the company, and the aggregate amount of indebtedness (whether on account of a loan or otherwise) to the company's subsidiaries shall be so set out separately from all its other liabilities and

(a) the references in Part I of this Schedule to the company's investments (except those in paragraphs 13(8) and 15(3)) shall not include investments in its subsidiaries required by this paragraph to be separately set out; and

(b) paragraphs 5, 15(1) (a) and 18(2) of this Schedule shall not apply in relation to fixed assets consisting of interests in the company's subsidiaries.

(3) There shall be shown by way of note on the balance sheet or in a statement or report annexed thereto the number, description and amount of the shares in and debentures of the company held by its subsidiaries or their nominees, but excluding any of those shares or debentures in respect of which the subsidiary is concerned only as an agent or nominee, or in respect of which neither the company nor any subsidiary thereof is beneficially interested, otherwise than by way of security for money lent, guaranteed, or secured by the company or any of its subsidiaries,

(4) Where group accounts are not submitted, there shall be annexed to the balance sheet a statement showing

(a) the reasons why subsidiaries are not dealt with in group accounts;

(b) the net aggregate amount, so far as it concerns members of the holding company and is not dealt with in the company's accounts, of the subsidiaries' profits after deducting the subsidiaries' losses (or vice versa)

(i) for the respective financial years of the subsidiaries ending with or during the financial year of the company; and

(ii) for their previous financial years since the subsidiaries respectively became the holding company's subsidiaries;

(c) the net aggregate amount of the subsidiaries' profits after deducting the subsidiaries' losses (or vice versa)

(i) for the respective financial years of the subsidiaries ending with or during the financial year of the company; and

(ii) for their other financial years since the subsidiaries respectively became the holding company's subsidiaries; so far as those profits are dealt with, or provision is made for those losses, in the company's accounts;

(d) any qualifications contained in the report of the auditors of the subsidiaries on their accounts for their respective financial years ending as aforesaid, and any note or saving contained in those accounts to call attention to a matter which, apart from the note or saving, would properly have been referred to in such a qualification, in so far as the matter which is the subject of the qualification or note is not covered by the company's own accounts and is material from the point of view of its shareholders and debenture holders;

or, in so far as the information required by this sub-paragraph is not obtainable, a statement that it is not obtainable:

Provided that the Registrar may, on the application or with the consent of the company's directors, direct that in relation to any subsidiary this sub-paragraph shall not apply or shall apply only to such extent as may be provided by the direction.

(5) Paragraphs (b) and (c) of sub-paragraph (4) shall apply only to profits and losses of a subsidiary which may properly be treated in the holding company's accounts as revenue profits or losses.

(6) Where group accounts are not submitted, there shall be annexed to the balance sheet a statement showing, in relation to the subsidiaries (if any) whose financial years did not end with that of the company

(a) the reasons why the company's directors consider that the subsidiaries' financial years should not end with that of the company; and

(b) the dates on which the subsidiaries' financial years ending last before that of the company respectively ended, or the earliest and latest of those dates.

21. (1) This paragraph shall apply where the company is the subsidiary of another body corporate, whether or not it is itself a holding company.

(2) The balance sheet shall show separately

(a) the aggregate amount of its indebtedness to all bodies corporate which belong to the same group of companies as the company, distinguishing between indebtedness in respect of debentures and other indebtedness;

(b) the aggregate amount of the indebtedness of all such bodies corporate to it, distinguishing as aforesaid; and

(c) the aggregate amount of assets of the company consisting of shares held in subsidiaries of its holding company,

Part III – Consolidated accounts of holding company and subsidiaries

22. Subject to the following paragraphs of this Part of this Schedule, the consolidated balance sheet and profit and loss account shall combine the information contained in the separate balance sheets and profit and

loss accounts of the holding company and of the subsidiaries dealt with by the consolidated accounts, but with such adjustments (if 'any) as are necessary:

(a) to eliminate the effect of current transactions between any of the companies whose accounts are consolidated;

(b) to eliminate shares in the company or its subsidiaries which are held by or by nominees for any of its subsidiaries, except shares which are held by a subsidiary as an agent or nominee for persons other than another subsidiary and shares which are held by or by nominees for a subsidiary by way of security for money lent, guaranteed or secured by it; and

(c) to show the extent of the interests of persons other than shareholders and debenture holders of the holding company in the assets, net assets, capital reserves, revenue reserves and profits of the subsidiaries.

23. Subject as aforesaid, the consolidated accounts shall, in giving the said information comply, so far as practicable, with the requirements of this Ordinance as if they were the accounts of an actual company.

24. Sections 146 to 151 inclusive of this Ordinance shall not, by virtue of the two last foregoing paragraphs, apply for the purpose of the consolidated accounts.

25. Paragraph 8 of this Schedule shall not apply for the purpose of any consolidated accounts laid before a company with the first balance sheet so laid after the coming into operation of this Ordinance.

26. In relation to any subsidiaries of the holding company not dealt with by the consolidated accounts

(a) sub-paragraphs (2) and (3) of paragraph 20 of this Schedule shall apply for the purpose of those accounts as if those accounts were the accounts of an actual company of which they were subsidiaries; and

(b) there shall be annexed the like statement as is required by sub-paragraph (4) of that paragraph where there are no group accounts, but as if references therein to the holding company's accounts were references to the consolidated accounts.

27. In relation to any subsidiaries (whether or not dealt with by the consolidated accounts), whose financial years did not end with that of the company, there shall be annexed the like statement as is required by sub-paragraph (6) of paragraph 20 of this Schedule where there are no group accounts.

Part IV – Interpretation of Schedule

28. For the purposes of this Schedule, unless the context otherwise requires

(a) the expression "provision" shall, subject to sub-paragraph (2) of this paragraph, mean any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, or retained by way of providing for any known liability of which the amount cannot be determined with substantial accuracy;

(b) the expression "reserve" shall not, subject as aforesaid, include any amount written off or retained by way of providing for depredation, renewals or diminution in value of assets, or retained by way of providing for any known liability, or any sum set aside for the purpose of its being used to prevent undue fluctuations in charges for taxation;

and in this paragraph the expression "liability" shall include all liabilities in respect of expenditure contracted for and all disputed or contingent liabilities.

(2) Where

(a) any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, not being an amount written off in relation to fixed assets before the commencement of this Ordinance; or

(b) any amount retained by way of providing for any known liability;

is in excess of that which in the opinion of the directors is reasonably necessary for the purpose, the excess shall be treated for the purposes of this Schedule as a reserve and not as a provision.

[Please note: numbering as in original.]

29. For the purposes aforesaid, the expression "quoted investment" means an investment as respects which there has been granted a quotation or permission to deal on a stock exchange in Seychelles or on a recognised overseas stock exchange, and the expression "unquoted investment" shall be construed accordingly.

30. For the purposes aforesaid, the expression "industrial property rights" means patents, trade marks, designs, concessions or grants having a similar operation to patents, trade marks and designs, and inventions, processes and applications of materials which, although not patented, are protected by contractual arrangements, confidential communication or otherwise.

31. For the purposes aforesaid, a loan shall be deemed to fall due for repayment, and an instalment of a loan shall be deemed to fall due for payment, on the earliest date on which the lender could require repayment or, as the case may be, payment, if he exercised all options and rights available to him.

Seven Schedule (Section 330)

Fees to be paid to the registrar of companies

[Seventh Schedule repealed and substituted by Act 10 of 2012 with effect from 17 December 2012]

1. For registration of company where the nominal share capital is SCR5,000 or less	SCR1,000
2. For registration of a company where the nominal share capital exceed SCR5,000 but does not exceed SCR25,000	SCR1,500
3. For registration of a company where the nominal shared capital exceed SCR25,000 but does not exceed SCR250,000	SCR2,000
4. For registration of a company where the nominal share capital exceed SCR250,000 but does not exceed SCR1,000,000	SCR3,000
5. For registration of a company where the nominal share capital exceed SCR1,000,000	the aggregate of half percent of the amount of the nominal capital plus SCR5,000
6. For registering of a particular overseas company under section 310 (1)	SCR5,000
7. For inspecting the file of documents kept by the Registrar in respect of each company	SCR25
8. For a copy of any document or part thereof	SCR10
9. For a certificate issued by the Registrar	SCR100
10. For preparing a record required or authorised to be recorded by the Registrar	SCR100

By Laws.Africa and contributors. Licensed under CC-BY. Share widely and freely.

Eighth Schedule

Repeals

Short Title of Enactment	Extent of Repeal
The Commercial Code (Code de Commerce).	Articles 29 to 37 inclusive, 40 and 45
The Companies (Designation) Ordinance	The whole Ordinance
The Oversea Corporations Ordinance, 1959	The whole Ordinance
The Civil and Commercial Pledges (Amendment) Ordinance, 1965	In section 5 the words, “shares and debentures in a company or”, the words “shares or debentures or", the words “Shares, debentures or” and in the marginal note thereto the words “shares, debentures and”.
The Land Registration Ordinance, 1965	In section 73(1) the words “or order” wherever they appear
The Companies (Debentures and Floating Charges) Ordinance, 1970	Sections 4 to 11 inclusive, and sections 14, 17, 18, 19, 20(2) and 22.

By Laws.Africa and contributors. Licensed under CC-BY. Share widely and freely.