CHAPTER 212
THE COMPANIES ACT

An Act to regulate trading companies and other associations, to impose tax on nominal capital, to regulate dividends and surpluses, and to provide for related matters.

[1st October, 1932 [i]1]
[15th June, 1972]

Ords. Nos.
46 of 1931
[R.L. Cap. 212]
3 of 1933
42 of 1947
38 of 1952
10 of 1955
31 of 1960
Acts Nos.
33 of 1964
41 of 1966
41 of 1969
2 of 1970
11 of 1971
10 of 1973
8 of 1974
16 of 1974
22 of 1981
17 of 1990
13 of 1991
14 of 1992
6 of 1994
13 of 1996
[R.L. Cap. 188]
4 of 1997
25 of 1997
2 of 1998
12 of 1998

PART I
PRELIMINARY PROVISIONS (ss 1-2)

1. Short title

This Act may be cited as the Companies Act.

2. Interpretation (1) In Parts I to XIII of this Act, unless the context requires otherwise–

"annual return" means the return required to be made, in the case of a company having a share capital, under section 108 and, in the case of a company not having a share capital, under section 109 of this Act;

"Approved Stock Exchange" means a stock exchange approved under section 25 of the Capital Markets and Securities Act [ii]*, and includes an interim stock trading facility approved under section 114 of that Act;

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

Act, 1913, as applied to Tanzania or in Table A in the First Schedule to this Act;

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

"Capital Markets and Securities Authority" means the Authority established by section 6 of the Capital Markets and Securities Act [iii]*;

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

"court" used in relation to a company, a parastatal organisation or a statutory corporation, means the High Court;

"existing company" means a company formed and registered under the Indian Companies Act, 1913, as applied to Tanzania;

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

"default fine" means a fine as defined in section 339;

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

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

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

"manager" includes any person occupying the position of a manager by whatever name called and whether under a contract of service or not;

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

"Minister" means the Minister for the time being, responsible for companies' incorporation;

"Minister responsible for the parent Ministry" in relation to a parastatal organisation, means the Minister for the time being responsible under the direction of the President for the principal business in which the parastatal organisation in question is engaged or, if the President has not for the time being assigned responsibility for the business in question to any Minister, the President;

"officer" used in relation to a company, a parastatal organisation or a statutory corporation, includes any director, director-general, managing director, general manager, manager or other person, by whatever designation described, who is concerned, as the chief executive, with the management of the business and affairs of the company, organisation or corporation, as the case may be, but, save in sections 265, 270 and 271, does not include an auditor;

"open-ending investment company" means a body corporate–

(a) which has as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds by or, on behalf of that body; and

(b) the members in which have rights represented by shares of securities of that body which–

(i) those members are entitled to have redeemed or purchase from them by, or out of funds provided by that body; or

(ii) the body ensures can be sold by the members on an investment exchange at a price related to the value of the property to which they relate;

"parastatal organisation" means any company established under this Act fifty or more *per centum* of whose share capital is owned or otherwise contributed by the Government, a statutory corporation or whose management the Government, a statutory

corporation or another parastatal organisation participates;

"Parastatal Organisations Committee" means the Committee of the National Assembly which deals with matters relating to parastatal organisations;

"prescribed" means, as respects the provisions of this Act relating to the winding up of companies, prescribed by rules made by the High Court and, as respects the other provisions of this Act, prescribed by the President;

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

"Registrar" means the Registrar of Companies or any Assistant Registrar performing under this Act the duty of registration of companies;

"rules" means rules made under section 285 of this Act, and includes forms;

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

"statutory corporation" means any body corporate established by or under any written law, other than a company;

"Table A" means Table A in the First Schedule to this Act.

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

PART II
INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO (ss 3-44)
Memorandum of Association (ss 3-7)

3. Mode of forming incorporated company

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

(2) Such a company may be either–

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

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

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

4. Requirement with respect to memorandum

(1) The memorandum of every company must state–

(a) the name of the company, with "Limited" as the last word of the name in the case of a company limited by shares or by guarantee; and

(b) the objects of the company.

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

(3) The memorandum of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company in the event of its

being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

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

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

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

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

5. Signature of memorandum

The memorandum must be signed by each subscriber in the presence of at least one witness who must attest the signature.

6. Restriction on alteration of memorandum

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

7. Cases and mode in which and extent to which objects of company may be altered (1) Subject to the provisions of this section, a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable to–

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

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

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

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

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

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

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

(2) The alteration shall not take effect until, and except in so far as, it is confirmed on petition by the court.

(3) Before confirming the alteration the court must be satisfied–

(a) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the court, be effected by the alteration; and

(b) that, with respect to every creditor who in the opinion of the court is entitled to object and who signifies his objection in manner directed by the court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of court:

Provided that the court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

(4) The court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit.

(5) The court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and may give such directions

and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement:

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

(6) A certified copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within fifteen days from the date of the order, be delivered by the company to the Registrar, and he shall register the copy so delivered and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum as so altered shall be the memorandum of the company.

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

(7) If a company makes a default in delivering to the Registrar any document required by this section to be delivered to him, the company shall be liable to a fine not exceeding one thousand shillings for every day during which the default continues.

(8) Notwithstanding anything contained in this section, a company registered on or before the 18th February, 1955, may at any time by special resolution alter or delete any provision in its memorandum relating to the place in which its registered office is to be situate.

Articles of Association (ss 8-12)

8. Articles prescribing regulations for companies

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

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

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

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

(3) Where a company not having a share capital has increased the number of its members beyond the registered number, it shall, within fifteen days after the increase was resolved on or took place, give to the Registrar notice of the increase, and the Registrar shall record the increase.

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

10. Adoption and application of Table A

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

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

11. Printing and signature of articles

Articles must–

(a) be printed;
(b) be divided into paragraphs numbered consecutively; and
(c) be signed by each subscriber to the memorandum of association in the presence of at least one witness who must attest the signature and add his occupation and address.

12. Alteration of articles by special resolution

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

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

***Form of Memorandum and Articles* (s 13)**

13. Statutory forms of memorandum and articles (1) The form of–

(a) the memorandum of association of a company limited by shares;
(b) the memorandum and articles of association of a company limited by guarantee and not having a share capital;
(c) the memorandum and articles of association of a company limited by guarantee and having a share capital; and
(d) the memorandum and articles of association of an unlimited company having a share capital,

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

(2) The Minister may by regulations amend the First Schedule so as to prescribe forms of the memorandum of association and the articles of association of a company which is a subsidiary of a statutory corporation.

(3) A company shall for the purposes of subsection (2) be deemed to be a subsidiary of a statutory corporation if it is a subsidiary within the meaning assigned to that term by section 331A.

***Registration* (ss 14-20)**

14. Registration of memorandum and articles

The memorandum and the articles, if any, shall be delivered to the Registrar and he shall retain and register them.

14A. Refusal to register memorandum and articles of association (1) Notwithstanding the provisions of section 14, the Registrar may, in his absolute discretion, and shall, if so directed by the Minister, refuse to register the memorandum and the articles delivered to him.

(2) Where the Registrar refuses to register the memorandum and the articles delivered to him, he shall return the same to the person who tendered them for registration, and shall advise such person in writing that in the exercise of the power or, as the case may be, the obligation conferred or imposed upon him by subsection (1) of this section he refuses to register the memorandum and the articles.

(3) The Registrar shall not be required to assign reasons for his refusals to register the memorandum and the articles.

15. Effect of registration

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

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers to the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name

contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, with power to hold land and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

16. Conclusiveness of certificate of incorporation

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

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

17. Registration of unlimited company as limited

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

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

18. Prohibition of registration of companies by undesirable names No company shall be registered by a name which, in the opinion of the Registrar, is undesirable.

19. Powers to dispense with "Limited" in name of charitable and other companies (1) Where it is proved to the satisfaction of the Registrar of Companies that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity or any other useful or social object, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Registrar of Companies may by licence under the hand of the Registrar of Companies direct that the association may be registered as a company with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly.

(2) A licence by the Registrar of Companies under this section may be granted on such conditions and subject to such regulations as the Registrar of Companies thinks fit, and those conditions and regulations shall be binding on the association, and shall, if the Registrar of Companies so directs, be inserted in the memorandum and articles, or in one of those documents.

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its name, and of sending lists of members to the Registrar.

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

Provided that, before a licence is so revoked, the Registrar of Companies shall give to the association notice in writing of the intention to revoke, and shall afford the association an opportunity of being heard in opposition to the revocation.

(5) Where the name of the association contains the words "Chamber of Commerce" the notice to be given as aforesaid shall include a statement of the effect of the provisions of subsection (3) of section 20 of this Act.

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

(2) If a company, through inadvertence or otherwise, is registered by a name which is identical with that by which a company in existence is previously registered, or which so nearly resembles that name as to be calculated to deceive, the first-mentioned company may change its name with the sanction of the Registrar.

(3) Where a licence granted in pursuance of section 19 of this Act to a company the name of which contains the words "Chamber of Commerce" is revoked, the company shall, within a period of six weeks from the date of the revocation or such longer period as the Registrar of Companies may think fit to allow, change its name to a name which does not contain those words.

If a company makes a default in complying with the requirements of this subsection, it shall be liable to a fine not exceeding one thousand shillings for every day during which the default continues.

(4) Where a company changes its name the Registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.

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

***General Provisions with respect to Memorandum and Articles* (ss 21-25)**

21. Effect of memorandum and articles

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

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

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

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

(2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of a company limited by guarantee and registered on or after the date aforesaid, purporting to divide the undertaking of the company into shares

or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

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

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

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

24. Copies of memorandum and articles to be given to members (1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles, if any, subject to payment of shilling one or such less sum as the company may prescribe.

(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 five hundred shillings.

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

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

Membership of Company (ss 26-28)

26. Membership of company

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

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

27. Meaning of "private company"

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

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

(b) limits the number of its members to fifty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were while in that employment, and have continued after the determination of that employment to be, members of the company; and

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

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

28. Circumstances in which company ceases to be, or to enjoy privileges of a private company (1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under section

27 of this Act, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of fourteen days after the said date, deliver to the Registrar for registration of a prospectus or a statement in lieu of a prospectus in the form and containing the particulars set out in the Second Schedule to this Act.

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

(3) Where the articles of a company include the provisions aforesaid but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions contained in subsection (3) of section 110, subsection (1) of section 130 and paragraph (d) of section 167 of this Act, and thereupon the said provisions shall apply to the company as if it were not a private company:

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

Reduction of Number of Members below Legal Minimum (s 29)

29. Prohibition of carrying on business with fewer than seven or, in the case of a private company, two members

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

Contracts, etc. (ss 30-33)

30. 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, signed by the parties to be charged therewith, may be made on behalf of the company in writing, signed by any person acting under its authority, express or implied;

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

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

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

31. Bills of exchange and promissory notes

A bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of a company if made, accepted, or endorsed in the

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

32. Execution of deeds abroad

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

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

33. Power for company to have official seal for use abroad

(1) A company whose objects require or comprise the transaction of business beyond the limits of Tanzania may, if authorised by its articles, have for use in any country, district or place not situate in Tanzania, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every country, district or place where it is to be used.

(2) A deed or other documents to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

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

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

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

***Authentication of Documents* (s 34)**

34. Authentication of documents

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

PART III
SHARE CAPITAL AND DEBENTURES (ss 35-78)
Prospectus (ss 35-39)

35. Dating and registration of prospectus (1) A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, shall be delivered to the Registrar for registration on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so delivered for registration and it has been registered by the Registrar.

(3) The Registrar shall not register any prospectus unless it is dated, the copy thereof signed, in manner required by this section and the prospectus has been approved by the Capital Markets and Securities Authority.

(4) Every prospectus shall state on the face of it that a copy has been delivered

for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so delivered, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding one hundred shillings for every day from the date of issue of the prospectus until a copy thereof is so delivered.

35A. Expert statements on a prospectus (1) If any prospectus relating to an offer to the public in respect of any shares or debentures of a company includes a statement purporting to be made by an expert such a prospectus shall not be delivered for registration unless–

(a) such an expert has given his written consent (which shall be endorsed thereon or attached thereto) and has not, before delivery of the prospectus for registration in accordance with section 35, withdrawn such consent to the publication of the prospectus with the inclusion of the statement in the form and context in which it is included; and

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

(2) If after delivery of the prospectus for registration but prior to the registration thereof any such expert withdraws his consent the person who has delivered the prospectus for registration shall immediately notify the Registrar.

(3) For the purpose of this section the word "expert" has the meaning ascribed to it by section 38(4) of the Act.

35B. Prospectus on approved stock exchange (1) Where a prospectus relates to shares or debentures dealt in on an approved stock exchange or states that the application has been or will be made to an approved stock exchange for permission to deal in the shares or debentures to which it relates, there shall be delivered to the Registrar with the certificate signed by or on behalf of that approved stock exchange, that the prospectus has been scrutinised by the stock exchange and that its requirements relating to the intents thereof have been satisfied, and the Registrar shall thereupon register the prospectus within 48 hours of the delivery of such a prospectus to him, unless it is incomplete or irregular on its face or prior to registration any consent of an expert required by section 35A has been withdrawn.

(2) For cases which do not fall within subsection (1) of this section, the Registrar shall register the prospectus and any documents required to be endorsed thereon or attached thereto at the expiration of 21 days from the date of the delivery to him in accordance with section 35, or such shorter time as he may allow in any particular case, unless any consent of an expert required by section 35A above has been withdrawn or unless in the opinion of the Registrar, the prospectus does not comply with the provisions of this Act or contains any untrue statement or omits to state any material fact or is otherwise incomplete or misleading, in which case he shall refuse to register the same until any necessary consents are given or the prospectus is amended to the Registrar's satisfaction.

(3) Where there is a refusal by the Registrar to register a prospectus, the company or any other person who has delivered the prospectus for registration may apply to the court which, after hearing the applicant and the Registrar, and such evidence as they may call, may either order the Registrar to register the prospectus or may dismiss the application and prohibit any person before the court from publishing the prospectus until it has been amended to the satisfaction of the Registrar. If the court orders the prospectus to be registered it shall be registered by the Registrar upon delivery to him of an office copy of the order.

(4) Every copy of any prospectus which has been delivered for registration in

accordance with the of provisions of section 35 of the ordinance shall state at its head the following:

"A copy of this prospectus as been delivered to the Registrar of Companies, Tanzania, for registration. The Registrar has not checked and will not check the accuracy of any statements made and accepts no responsibility therefor or for the financial soundness of the company or the value of the securities concerned."

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

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

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

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

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

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

If any person acts in contravention of the provisions of this subsection he shall be liable to a fine not exceeding one hundred thousand shillings.

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

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

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

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

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

(5) This section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but subject as aforesaid, this section shall apply to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

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

lieu of prospectus

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

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

38. Liability for statement in prospectus

(1) Where a prospectus invites persons to subscribe for shares in or debentures of a company–

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

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

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

(d) every person who has authorised the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved–

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

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

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

(iv) that–

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

(b) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation; and

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

Provided that a person shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable grounds to believe that the person making any such mentioned in paragraph (iv)(b) of this subsection was competent to make it.

(2) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and he has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs, and expenses to which he may be liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(3) Every person who, by reason of his being a director or named as a director or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(4) For the purposes of this section–

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

(b) the expression "expert" includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him.

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

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

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

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

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

(3) Section 35 of this Act as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company, and section 36 of this Act as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus–

(a) the net amount of the consideration received or to be received by the company

in respect of the shares or debentures to which the offer relates; and

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

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

Allotment (ss 40-43)

40. Prohibition of allotment unless minimum subscription received

(1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as, the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph 5 in Part I of the Third Schedule to this Act has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company.

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

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

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

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

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

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

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

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

41. Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar (1) A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been delivered to the Registrar for registration a statement in lieu of a prospectus, signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set out in the Fourth Schedule to this Act.

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

(3) If a company acts in contravention of this section, the company and every director of the company who knowingly authorises or permits the contravention shall be liable to a fine not exceeding fifty thousand shillings.

42. Effect of irregular allotment

(1) An allotment made by a company to an applicant in contravention of the provisions of sections 40 and 41 of this Act, shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, or, in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

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

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

43. Return as to allotment

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

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

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

(2) Where such contract as mentioned in subsection (1) is not reduced to writing, the company shall within sixty days after the allotment deliver to the Registrar for registration the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Stamp Duty Act [iv]*, and the Registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section 37 of that Act.

(3) If default is made in complying with this section, every director, manager, secretary or other officer of the company who is knowingly a party to the default, shall be liable to a fine not exceeding one thousand shillings for every day during which the default continues:

Provided that, in case of default in delivering to the Registrar within sixty days after the allotment any document required to be delivered by this section, the company, or any person liable for the default, may apply to the court for relief, and the court, if satisfied that the omission to deliver the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for

the delivery of the document for such period as the court may think proper.

Commissions and Discounts (ss 44-46)

44. Power to pay certain commissions, and prohibition of payment of all other commissions, discounts, etc. (1) It shall be lawful for a company to pay commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company if–

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

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

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

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

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

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

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

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

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

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

45. Statement in balance sheet as to commissions and discounts

(1) Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off.

(2) If default is made in complying with this section, the company and every

officer of the company who is in default shall be liable to a default fine.

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

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

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

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

(c) the making by a company of loans to persons, other than directors, *bona fide* in the employment of the company with a view to enabling those persons to purchase fully-paid up shares in the company to be held by themselves by way of beneficial ownership.

(2) The aggregate amount of any outstanding loans made under the authority of provisos (b) and (c) to subsection (1) of this section shall be shown as a separate item in every balance sheet of the company.

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

***Issue of Redeemable Preference Shares and Shares at Discount* (ss 47-48)**

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

Provided that–

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

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

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

(d) where any such shares are redeemed out of the proceeds of a fresh issue, the premium, if any, payable on redemption, must have been provided for out of the profits of the company before the shares are redeemed.

(2) There shall be included in every balance sheet of a company which has issued redeemable preference shares a statement specifying what part of the issued capital of the company consists of such shares and the date on or before which those shares are, or are to be liable, to be redeemed.

If a company fails to comply with the provisions of this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding

twenty thousand shillings.

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

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

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

(5) Where new shares have been issued in pursuance of subsection (4), the capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company, up to an amount equal to the nominal amount of the shares so issued, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

48. Power to issue shares at a discount

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

Provided that–

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

(b) the resolution must specify the maximum rate of discount at which the shares are to be issued;

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

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

(2) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the court for an order sanctioning the issue, and on any such application the court, if, having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.

(3) Every prospectus relating to the issue of the shares and every balance sheet issued by the company subsequently to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the document in question.

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

Miscellaneous Provisions as to Share Capital (ss 49-55)

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

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

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

(b) accept from any member the whole or a part of the amount remaining unpaid on

any shares held by him, although no part of that amount has been called up;

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

50. Reserve liability of limited company

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) converted any shares into stock; or

(c) re-converted stock into shares; or

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

(e) redeemed any redeemable preference shares; or

(f) cancelled any shares, otherwise than in connection with a reduction of share capital under section 56 of this Act,

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

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

53. Notice of increase of share capital

(1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital it shall within fifteen days after the passing of the resolution authorising the

increasing, give to the Registrar notice of the increase, and the Registrar shall record the increase.

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

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

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

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

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

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

55. Power of company to pay interest out of capital in certain cases (1) Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the sum so paid by way of interest to capital as part of the cost of construction of the work or building, or the provision of plant:

Provided that–

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

(b) no such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Minister which sanction shall be conclusive evidence for the purpose of this section that the shares of the company in respect of which such sanction is given have been issued for a purpose specified in this section;

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

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

(e) the rate of interest shall in no case exceed four percent per annum or such other rate as the Minister may for the time being by notice in the *Gazette* prescribe;

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

(g) the accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate.

(2) If default is made in complying with proviso (g) to subsection (1) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding ten thousand shillings.

Reduction of Share Capital (ss 56-61)

56. Special resolution for reduction of share capital (1) No company limited by shares and no company limited by guarantee and having a share capital shall have power to buy its own shares unless a consequent reduction of capital is effected and sanctioned in manner hereinafter provided.

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

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

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

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

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

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

(4) Sections 56(1) and 60 shall not apply to an open ended investment company whose establishment has been duly authorised under the Capital Markets and Securities Act [v]*.

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

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

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

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

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

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

his debt or claim by appropriating, as the court may direct the following amount–

(i) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;

(ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court.

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

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

(1) The court, if satisfied, with respect to every creditor of the company who under section 57 is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming, the reduction on such terms and conditions as it thinks fit.

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

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

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

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

59. Registration of order and minute of reduction

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

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

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

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

(5) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum, and shall be valid and alterable as if it had been

originally contained therein.

(6) The substitution of any such minute as aforesaid for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning of section 25 of this Act.

60. Liability of members in respect of reduced shares

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

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

(a) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and

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

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

61. Penalty on concealment of name of creditor If any director, manager, secretary or other officer of the company–

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

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

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

he shall be punishable with imprisonment for a period not exceeding three years and shall also in lieu of or in addition thereto be liable to a fine not exceeding fifty thousand shillings.

***Variation of Shareholders' Rights* (s 62)**

62. Rights of holders of special classes of shares

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

is confirmed by the court.

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

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

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

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

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

Transfer of Shares and Debentures, Evidence of Title, etc. (ss 63-73)

63. Nature of shares

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

(2) Each share in a company having a share capital shall be distinguished by its appropriate number.

63A. Establishment by stock exchange of depository or issued securities (1) An approved stock exchange may establish a depository in which securities may be maintained provided that the Council or other ruling body of such exchange shall prescribe rules relating to safe custody all transfers and reports to be filed with the Registrar relating to transactions concerning the deposited securities.

(2) The rules prescribed under paragraph (1) shall be satisfactory to the Registrar.

(3) Transfer of securities deposited in a depository maintained by an approved stock exchange shall be effected in accordance with the transfer procedures prescribed under the rules of such exchange.

64. Transfer not to be registered except on production of instrument of transfer

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

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

65. Transfer by personal representative

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

66. Registration of transfer at request of transferor

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

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

(2) If default is made in complying with this section the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five hundred shillings for every day during which the default continues.

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

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

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five hundred shillings for every day during which the default continues.

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

69. Certificate to be evidence of title

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

70. Evidence of grant of probate

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

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

(b) the Administrator-General having undertaken administration of an estate under the Administrator-General (Powers and Functions) Act [vi]*,

shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of such grant or undertaking.

71. Issue and effect of share warrants to bearer

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

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

(3) A share warrant shall entitle the bearer thereof to the shares therein specified,

and the shares may be transferred by delivery of the warrant.

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

73. Offences in connection with share warrants (1) If any person–

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

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

he shall be guilty of an offence and shall on conviction be liable to imprisonment for life or for any term not less than five years.

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

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

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

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

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

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

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

he shall be guilty of an offence, and shall on conviction thereof be liable to imprisonment for any term not exceeding fourteen years and not less than five years.

Special Provisions as to Debentures (ss 74-78)

74. Right of debenture holders and share-holders to inspect register of debenture holders and to have copies of trust deed (1) Every register of holders of debentures of a company shall, except when duly closed, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that no less than two hours in each day shall be allowed for inspection.

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

(2) Every registered holder of debentures and every holder of shares in a company may require a copy of the register of the holders of debentures of the company

or any part thereof on payment of fifty cents for every hundred words required to be copied.

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

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

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

75. Perpetual debentures

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

76. Power to re-issue redeemed debentures in certain cases

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

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

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

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

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

(3) Where a company has power to re-issue debentures which have been redeemed, particulars with respect to the debentures which can so re-issued shall be included in every balance sheet of the company.

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

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

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debentures in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or but for his negligence

might have discovered that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

(6) Where any debentures which have been redeemed before the date of the commencement of this Act are re-issued subsequently to that date, the re-issue of the debentures shall not prejudice any right or priority which any person would have had under or by virtue of any mortgage or charge created before the date of the commencement of this Act, if section 127 of the Indian Companies Act, 1913, as formerly applied had been enacted in this Act instead of this section.

77. Specific performance of contracts to subscribe for debentures

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

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

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

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

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

PART IV

REGISTRATION OF CHARGES (ss 79-91)

Registration of Charges with Registrar (ss 79-86)

79. Registration of charges

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

(2) This section applies to the following charges–

(a) a charge for the purpose of securing any issue of debentures;
(b) a charge on uncalled share capital of the company;
(c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale;
(d) a charge on immovable property wherever situate, or any interest therein;
(e) a charge on book debts of the company;
(f) a floating charge on the undertaking or property of the company;
(g) a charge on calls made but not paid;
(h) a charge on a ship or any share in a ship;

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

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

(4) Where a charge is created in Tanzania but comprises property outside Tanzania, the instrument creating or purporting to create the charge may be sent for registration under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

(5) Where a charge comprises property situate outside Tanzania and registration in the country where the property is situate is necessary to make the charge valid or effectual according to the law of that country, the delivery to and the receipt by the Registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, together with a certificate in the prescribed form stating that the charge was presented for registration in the country where the property is situate on the date on which it was so presented shall, for the purposes of this section, have the same effect as the delivery and receipt of the instrument itself.

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

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

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

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

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

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

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

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the Registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(9) Where any commission, allowance, or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or

agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent or registered under this section shall include particulars as to the amount or rate percent, of the commission, discount or allowance so paid or made, but omission to do this shall not affect the validity of the debentures issued:

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

(10) In this Part of this Act–

(a) the expression "charge" includes mortgage;

(b) the expression "the fixed date" means in relation to the charges specified in paragraphs (a) to (f), both inclusive, of subsection (2) of this section, the first day of December, 1920, and in relation to the charges specified in paragraphs (g) to (i), both inclusive, of said subsection, the commencement of this Act.

80. Duty of company to register charges created by company (1) It shall be the duty of a company to send to the Registrar for registration the particulars of every charge created by the company and of the issues of debentures of a series, requiring registration under section 79, but registration of any such charge may be effected on the application of any person interested therein.

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

(3) If any company makes default in sending to the Registrar for registration the particulars of any charge created by the company, or of the issues of debentures of a series, requiring registration as aforesaid, then, unless the registration has been effected on the application of some other person, the company and every director, manager, secretary or other person, who is knowingly a party to the default shall be liable to a fine not exceeding two thousand shillings for every day during which the default continues.

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

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

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

82. Register of charges to be kept by Registrar

(1) The Registrar shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Part of this Act, and shall, on payment of the prescribed fee, enter in the register with respect to such

charges the following particulars–

(a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in subsection (8) of section 79 of this Act;

(b) in the case of any other charge–

(i) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property; and

(ii) the amount secured by the charge; and

(iii) short particulars of the property charged; and

(iv) the persons entitled to the charge.

(2) The Registrar shall give a certificate under his hand of the registration of any charge registered in pursuance of this Part of this Act, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Part of this Act as to registration have been complied with.

After making the entry required by subsection (1) the Registrar shall return the instrument if any or the verified copy thereof, as the case may be, delivered in accordance with the provisions of section 79 to the person who delivered the same.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one shilling for each inspection.

(4) The Registrar shall keep a chronological index, in the prescribed form and the prescribed particulars, of the charges entered in the register.

83. Endorsement of certificate of registration of debentures (1) The company shall cause a copy of every certificate of registration given under section 82 to be endorsed on every debenture stock which is issued by the company, and the payment of which is secured by the charge so registered:

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

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

84. Entry of satisfaction

The Registrar may, on evidence being given to his satisfaction that the debt for which any registered charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall, if required, furnish the company with a copy thereof.

85. Rectification of register of charges

The court, on being satisfied that the omission to register a charge within the time required by this Act, or that the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may on the application of the company or any person interested, and on such terms and conditions as seem to the court just and expedient, order that the time for registration shall be extended, or, as the case may be, that the

omission or mis-statement shall be rectified and may make such order as to the costs of the application as it thinks fit.

86. Registration of enforcement of security (1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the said powers, give notice of the fact to the Registrar, and the Registrar shall, on payment of the prescribed fee, enter the fact in the register of charges.

(2) Where any person appointed receiver or manager of the property of a company under the powers contained in any instrument ceases to act as such receiver or manager, he shall, on so ceasing, give the Registrar notice to that effect, and the Registrar shall enter the notice in the register of charges.

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

***Provisions as to Company's Register of Charges and as to Copies of Instruments Creating Charges* (ss 87-89)**

87. Copies of instruments creating charges to be kept by company

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

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

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

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

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

(1) The copies of instruments creating any charge requiring registration under this Part of this Act with the Registrar, and the register of charges kept in pursuance of section 88, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day shall be allowed for inspection to the inspector of any creditor or member of the company without fee), and the register of charges shall also be open to the inspection of any other person on payment of such fee, not exceeding one shilling for each inspection as the company may prescribe.

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

***Application of Part IV to Companies Incorporated outside Tanzania* (ss 90-91)**

90. Application of Part IV to charges created, and property subject to charge

acquired by company incorporated outside Tanzania

The provisions of this Part of this Act shall extend on property in to charges Tanzania which are created, and to charges on property in Tanzania which is acquired, after the commencement of this Act by a company (whether a company within the meaning of this Act or not) incorporated outside Tanzania which has an established place of business in Tanzania.

91. Provisions as to charges created, and charges on property acquired, by company before commencement of the Act

(1) It shall be the duty of a company within six months after the commencement of this Act to send to the Registrar for registration the prescribed particulars of–

(a) any charge created by the company before the date of commencement of this Act and remaining unsatisfied at that date, which would have been required to be registered under the provisions of paragraphs (g), and (i) of subsection (2) of section 79 of this Act or under the provisions of section 90 of this Act, if the charge had been created after the commencement of this Act; and

(b) any charge to which any property acquired by the company before the commencement of this Act is subject and which would have been required to be registered under the provisions of section 81 of this Act or under the provisions of section 90 of this Act, if the property had been acquired after the commencement of this Act.

(2) The Registrar, on payment of the prescribed fee, shall enter the said particulars on the register kept by him in pursuance of this Part of this Act.

(3) If a company fails to comply with this section, the company and every director, manager, secretary or other officer of the company, or other person who is knowingly a party to the default shall be liable to a fine not exceeding one thousand shillings for every day during which the default continues:

Provided that the failure of the company shall not prejudice any rights which any person in whose favour the charge was made may have thereunder.

(4) For the purposes of this section, the expression "company" includes a company (whether a company within the meaning of this Act or not) incorporated outside Tanzania which has an established place of business in Tanzania.

PART V
MANAGEMENT AND ADMINISTRATION (ss 92-156)
Registered Office and Name (ss 92-93)

92. Registered office of company (1) A company shall, as from the day on which it begins to carry on business or as from the twenty-eighth day after the date of its incorporation, whichever is the earlier, have a registered office in Tanzania to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office, and of any change therein, shall be given within twenty-eight days after the date of incorporation of the company or of the change, as the case may be, to the Registrar who shall record the same.

The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this subsection.

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

93. Publication of name by company (1) Every company–

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

(b) shall have its name engraven in legible Roman letters on its seal; and

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

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

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

(4) If a director, manager, or officer of a company, or any person on its behalf–

(a) uses or authorises the use of any seal purporting to be a seal of the company, whereon its name is not so engraven as aforesaid; or

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

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

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

Statement of Amount of Paid up Capital (s 94)

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

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

Restrictions on Commencement of Business (ss 95-107)

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

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

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

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

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

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

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

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

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

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

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

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

(7) Nothing in this section shall apply to a private company or to a company registered before the 1st day of December, 1920, which does not issue a prospectus inviting the public to subscribe for its shares or in so far as its provisions relate to shares, to a company limited by guarantee and not having a share capital.

96. Register of members

(1) Every company shall keep in one or more books a register of its members, and enter therein the following particulars–

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

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

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

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

97. Index of members of company

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

index.

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

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

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

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

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

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

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

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

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

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

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

99. Inspection of register of members (1) The register of members, commencing from the date of the registration of the company, and the index of the names of members, shall be kept at the registered office of the company, and, except when the register is closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge and of any other person on payment of one shilling, or such less sum as the company may prescribe, for each inspection.

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

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

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

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

sent to the person requiring them.

100. Power to close register

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

101. Power of court to rectify register

(1) If–

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

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

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

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

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

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

102. Trusts not to be entered on register

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

103. Register to be evidence

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

104. Power for company to keep branch register

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

(2) The company shall give to the Registrar notice of the situation of the office where any branch register is kept and of any change in its situation and, if it is discontinued, of its discontinuance, and any such notice shall be given within one month of the opening of the office or of the change or discontinuance, as the case may be.

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

(4) [Omitted.]

105. Regulations as to branch register

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

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

(3) The company shall transmit to its registered office in Tanzania a copy of

every entry in its branch register as soon as may be after the entry is made, and shall cause to be kept at its registered office duly entered up from time to time, a duplicate of its branch register.

Every such duplicate shall, for all the purposes of this Act be deemed to be part of the principal register.

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

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

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

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

106. Stamp duties in case of shares registered in branch registers

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

107. Provisions as to branch registers kept outside Tanzania (1) If by virtue of the law in force outside Tanzania companies incorporated under that law have power to keep in Tanzania branch registers of their members resident in Tanzania, the Minister may by order published in the *Gazette* direct that sections 99 and 101 of this Act shall, subject to any modifications and adaptations specified in the order, apply to and in relation to any such branch registers kept in Tanzania as they apply to and in relation to the registers of companies within the meaning of this Act.

(2) [Omitted.]

Annual Returns (ss 108-111)

108. Annual return to be made by company having a share capital (1) Every company having a share capital shall once at least in every year make a return containing a list of all persons who, on the fourteenth day after the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the last return or, in the case of the first return, of the incorporation of the company.

(2) The list must state the names, addresses and occupations of all the past and present members therein mentioned, and 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, of the incorporation of the company by persons who are still members and have ceased to be members, respectively, and the dates of registration of the transfers, and if the names therein are not arranged in alphabetical order, must have annexed to it an index sufficient to enable the name of any person in the list to be readily found:

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the list must state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares hereinbefore required.

(3) The return must also state the address of the registered office of the company and must contain a summary distinguishing between shares issued for cash and shares

issued as fully or partly paid up otherwise than in cash, and specifying the following particulars–

(a) the amount of the share capital of the company, and the number of the shares into which it is divided;

(b) the number of the shares taken from the commencement of the company up to the date of the return;

(c) the amount called upon on each share;

(d) the total amount of calls received;

(e) the total amount of calls unpaid;

(f) the total amount of the sums, if any, paid by way of commission in respect of any shares or debentures;

(g) particulars of the discount allowed on the issue of any shares issued at a discount, or of so much of that discount as has not been written off at the date on which the return is made;

(h) the total amount of the sums, if any, allowed by way of discount in respect of any debentures, since the date of the last return;

(i) the total number of shares forfeited;

(j) the total amount of shares for which share warrants are outstanding at the date of the return;

(k) the total amount of share warrants issued and surrendered respectively since the date of the last return;

(l) the number of shares comprised in each share warrant;

(m) all such particulars with respect to the persons who at the date of the return are the directors of the company as are by this Act required to be contained with respect to directors in the register of the directors of a company; and

(n) the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Registrar under this Act.

(4) The return of every company shall, in addition to the particulars specified in subsection (3), include, in relation to the year of the return–

(a) an audited profit and loss account of the company;

(b) a copy of the company's balance sheet; and

(c) a copy of the auditors' report on the accounts of the company,

and, subject to such directions as the Registrar may from time to time give in that behalf by notice published in the *Gazette*, shall be in accordance with the form set out in the Fifth Schedule to this Act or as near to it as circumstances and the directions of the Registrar may permit.

(5) In the case of a company keeping a register, the particulars of the entries in that register shall, so far as they relate to matters which are required to be stated in the return, be included in the return made next after copies of those entries are received at the registered office of the company.

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

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

(a) the address of the registered office of the company; and

(b) all such particulars with respect to the persons who at the date of the return are the directors of the company as are by this Act required to be contained with respect to directors in the register of directors of a company.

(2) There shall be annexed to the return a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages and

charges which are required to be registered with the Registrar under this Act, or which would have been required so to be registered if created after the first day of December, nineteen hundred and twenty.

110. General provisions as to annual returns (1) The annual return must be contained in a separate part of the register of members, and must be completed within twenty-eight days after the first or only general meeting in the year, and the company must forthwith forward to the Registrar a copy signed by a director or by the manager or by the secretary of the company.

(2) Section 99 of this Act shall apply to the annual return as it applies to the register of members.

(3) Except where the company is a private company (other than a private company carrying on banking business), the annual return shall include a written copy, certified by a director or the manager or secretary of the company to be a true copy, of the last balance sheet which has been audited by the company's auditors, including every document required by law to be annexed thereto, together with a copy of the report of the auditors thereon certified as aforesaid, and if any such balance sheet is in a foreign language there shall also be annexed to it a translation thereof in English, certified in the prescribed manner to be a correct translation:

Provided that, if the said last balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets there shall be made such additions to and corrections in the said copy as would have been required to be made in the said balance sheet in order to make it comply with the said requirements, and the fact that the said copy has been so amended shall be stated thereon.

(4) If a company fails to comply with this section or section 108 or 109, the company shall be liable to a default fine, and every officer of the company or the person so in default shall be liable on conviction to a fine not exceeding one hundred and fifty shillings for every day during which the default continues, and the court shall order a statement of the required particulars or the annual return to be furnished to the Registrar within such time as may be specified in the order.

(5) For the purposes of subsection (4) of this section, the expression "officer", and for the purposes of sections 108 and 109 of this Act the expression "director", shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

111. Certificates to be sent by private company with annual return

A private company shall send with the annual return required by section 108 of this Act a certificate signed by a director or the secretary of the company that the company has not, since the date of the last return or, in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company and, where the annual return discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that the excess consists wholly of persons who under paragraph (b) of subsection (1) of section 27 of this Act, are not to be included in reckoning the number of fifty.

Meetings and Proceedings (ss 112-121)

112. Annual general meeting (1) A general meeting of every company shall be held once at the least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting.

(2) If default is made in holding a meeting of the company in accordance with the provisions of this section, the company and every director or manager of the company

who is knowingly a party to the default shall be liable to a fine not exceeding ten thousand shillings.

(3) If default is made as aforesaid, the court may, on the application of any member of the company, call, or direct the calling of, a general meeting of the company.

113. Statutory meeting and statutory report (1) Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month or more than three months from the date on which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called "the statutory meeting."

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

(3) The statutory report shall be certified by not less than two directors of the company or, where there are less than two directors, by the sole director and manager, and shall state–

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

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

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

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

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

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

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

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

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

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

meeting shall have the same powers as an original meeting.

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

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

114. Convening of extraordinary general meeting on requisition

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

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

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

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

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

(6) For the purposes of this section, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by section 117 of this Act.

115. Provisions as to meetings and votes

(1) The following provisions shall have effect so far as the articles of the company do not make other provisions in that behalf–

(a) a meeting of a company, other than a meeting for the passing of a special resolution, may be called by fourteen days' notice in writing;

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

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

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

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

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

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

116. Representation of companies at meeting of other companies and of creditors

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

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

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

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

117. Provisions as to extraordinary and special resolutions

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

(2) A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given:

Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

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

(4) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, a poll shall be taken to be effectively demanded, if demanded–

(a) by such number of members for the time being entitled under the articles to vote at the meeting, as may be specified in the articles, so however, that it shall

not in any case be necessary for more than five members to make the demand; or

(b) if no provision is made by the articles with respect to the right to demand the poll, by three members so entitled or by one member or two members so entitled, if that member holds or those two members together hold not less than fifteen percent of the paid-up share capital of the company.

(5) When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by virtue of this Act or of the articles of the company.

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

118. Registration and copies of certain resolutions and agreements (1) A printed copy of every resolution or agreement to which this section applies shall, within thirty days after the passing or making thereof, be forwarded to the Registrar and recorded by him.

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

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

(4) This section shall apply to–

(a) a special resolution;

(b) extraordinary resolutions;

(c) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless, as the case may be, they had been passed as special resolutions or as extraordinary resolutions;

(d) resolutions or agreements which have been agreed to by all the members or some class of shareholders, but which if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members; and

(e) resolutions requiring a company to be wound up voluntarily, passed under paragraph (a) of subsection (1) of section 221 of this Act.

(5) If a company fails to comply with subsection (1) of this section the company and every officer of the company who is in default shall be liable to a default fine of five hundred shillings.

(6) If a company fails to comply with subsection (2) or subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding twenty shillings for each copy in respect of which default is made.

(7) For the purposes of subsections (5) and (6), a liquidator of the company shall be deemed to be an officer of the company.

119. Resolutions passed at adjourned meetings

Where after the commencement of this Act a resolution is passed at an adjourned meeting of–

(a) a company;

(b) the holders of any class of share in a company; and

(c) the directors of a company,

the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

120. Minutes of proceedings of meetings, of company and directors

(1) Every company shall cause minutes of all proceedings of general meetings, and where there are directors or of managers, of all proceedings at meetings of its directors or of its managers to be entered in books kept for that purpose.

(2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Where minutes have been made in accordance with the provisions of this section of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers or liquidators, shall be deemed to be valid.

121. Inspection of minute books (1) The books containing the minutes of proceedings of any general meeting of a company held after the commencement of this Act shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that no less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge.

(2) Any member shall be entitled to be furnished, within seven days after he has made a request in that behalf to the company, with a copy of any such minutes as aforesaid at a charge not exceeding fifty cents for every hundred words.

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

(4) In the case of any such refusal or default, the court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them.

Accounts and Audit (ss 122-134C)

122. Keeping of books of account(1) Every company shall cause to be kept proper books of account with respect to–

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(b) all sales and purchases of goods by the company;

(c) the assets and liabilities of the company.

(2) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit and shall, at all times, be open to inspection by the directors.

(3) If any person being a director of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he shall, in respect of each offence be liable on summary conviction to imprisonment for a term not exceeding one year or to a fine not exceeding fifty thousand shillings:

Provided that a person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the court dealing with the case, the offence

was committed wilfully.

123. Profit and loss account and balance sheet (1) The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in a general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company, and, in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months or, in the case of a company carrying on business or having interests abroad, by more than twelve months:

Provided that the Minister, if for any special reason he thinks fit so to do, may, in the case of any company, extend the period of eighteen months aforesaid, and in the case of any company and with respect to any year extend the periods of nine and twelve months aforesaid.

(2) The directors shall cause to be made out in every calendar year, and to be laid before the company in general meeting, a balance sheet as at the date to which the profit and loss account, or the income and expenditure account, as the case may be, is made up, and there shall be attached to every such balance sheet a report by the directors with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend, and the amount, if any, which they propose to carry to the reserve fund, general reserve or reserve account shown specifically on the balance sheet, or to a reserve fund, general subsequent balance sheet.

(3) If any person being a director of a company fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding one year or to a fine not exceeding ten thousand shillings:

Provided that a person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

124. Contents of balance sheet

(1) Every balance sheet of a company shall contain a summary of the authorised share capital and of the issued share capital of the company, its liabilities and its assets, together with such particulars as are necessary to disclose the general nature of the liabilities and the assets of the company and to distinguish between the amounts respectively of the fixed assets and of the floating assets, and shall state how the values of the fixed assets have been arrived at.

(2) There shall be stated under separate headings in the balance sheet, so far as they are not written off–

(a) the preliminary expenses of the company; and

(b) any expenses incurred in connection with any issue of share capital or debentures; and

(c) if it is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company relating to stamp duty payable in respect of any such contract or the conveyance of any such property, the amount of the goodwill and of any patents and trade marks as so shown or ascertained.

(3) Where any liability of the company is secured otherwise than by operation of law on any assets of the company, the balance sheet shall include a statement that

liability is so secured, but it shall not be necessary to specify in the balance sheet the assets on which the liability is secured.

(4) The provisions of this section are in addition to other provisions of this Act requiring other matters to be stated in balance sheets.

125. Assets consisting of shares in subsidiary companies to be set out separately in balance sheet

Where any of the assets of a company consist of shares in, or amounts owing (whether on account of a loan or otherwise) from a subsidiary company or subsidiary companies the aggregate amount of those assets, distinguishing shares and indebtedness, shall be set out in the balance sheet of the first-mentioned company, separately from all its other assets, and where a company is indebted whether on account of a loan or otherwise, to a subsidiary company or subsidiary companies, the aggregate amount of that indebtedness shall be set out in the balance sheet of that company separately from all its other liabilities.

126. Balance sheet to include particulars as to subsidiary companies

(1) Where a company (in this section referred to as "the holding company") holds shares either directly or through a nominee in a subsidiary company or in two or more subsidiary companies, there shall be annexed to the balance sheet of the holding company a statement signed by the persons by whom in pursuance of section 129 of this Act, the balance sheet is signed stating how the profits and losses of the subsidiary company or, where there are two or more subsidiary companies, the aggregate profits and losses of those companies have, so far as they concern the holding company, been dealt with in, or for the purposes of, the accounts of the holding company and in particular how, and to what extent–

(a) provision has been made for the losses of a subsidiary company either in the accounts of that company or of the holding company, or of both; and

(b) losses of a subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of the holding company as disclosed in its accounts:

Provided that it shall not be necessary to specify in any such statement the actual amount of the profits or losses of any subsidiary company, or the actual amount of any part of any such profits or profits or losses which has been dealt with in any particular manner.

(2) If in the case of a subsidiary company the auditors' report on the balance sheet of the company does not state without qualification that the auditors have obtained all the information and explanations they have required and that the balance sheet is property drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company, the statement which is to be annexed as aforesaid to the balance sheet of the holding company shall contain particulars of the manner in which the report is qualified.

(3) For the purposes of this section, the profits or losses of a subsidiary company mean the profits or losses shown in any accounts of the subsidiary company made up to a date within the period to which the accounts of the holding company relate or, if there are no such accounts of the subsidiary company available at the time when the accounts of the holding company are made up, the profits or losses shown in the last previous accounts of the subsidiary company which became available within that period.

(4) If for any reason the directors of the holding company are unable to obtain such information as is necessary for the preparation of the statement aforesaid, the directors who sign the balance sheet shall so report in writing and their report shall be

annexed to the balance sheet in lieu of the statement.

127. Meaning of subsidiary company

(1) Where the assets of a company consist in whole or in part of shares in another company, whether held directly or through a nominee and whether that other company is a company within the meaning of this Act or not and–

(a) the amount of the shares so held is at the time when the accounts of the holding company are made up more than fifty percent of the issued share capital of that other company or such as to entitle the company to more than fifty percent, of the voting power in that other company; or

(b) the company has power (not being power vested in it by virtue only of the provisions of a debenture, trust deed or by virtue of shares issued to it for the purpose in pursuance of those provisions) directly or indirectly to appoint the majority of the directors of that other company,

that other company shall be deemed to be a subsidiary company within the meaning of this Act and the expression "subsidiary company" in the Act means a company in the case of which the conditions of this section are satisfied.

(2) Where a company the ordinary business of which includes the lending of money holds shares in another company as security only, no account shall for the purpose of determining under this section whether that other company is a subsidiary company be taken of the shares so held.

128. Accounts to contain particulars as to loans and remuneration of directors, etc.

(1) The accounts which in pursuance of this Act are to be laid before every company in general meeting shall, subject to the provisions of this section, contain particulars showing–

(a) the amount of any loans which during the period to which the accounts relate have been made either by the company or by any other person under a guarantee from or on a security provided by the company to any director or officer of the company, including any such loans which were repaid during the said period; and

(b) the amount of any loans made in manner aforesaid to any director or officer at any time before the period aforesaid and outstanding at the expiration thereof; and

(c) the total of the amount paid to the directors as remuneration for their services, inclusive of all fees, percentages or other emoluments, paid to or receivable by them, by or from the company or by or from any subsidiary company.

(2) The provisions of subsection (1) of this section with respect to loans shall not apply–

(a) in the case of a company the ordinary business of which includes the lending of money, to a loan made by the company in the ordinary course of its business; or

(b) to a loan made by the company to any employee of the company if the loan does not exceed forty thousand shillings and is certified by the directors of the company to have been made in accordance with any practice adopted or about to be adopted by the company with respect to loans to its employees.

(3) The provisions of subsection (1) of this section with respect to the remuneration paid to directors shall not apply in relation to a managing director of the company, and in the case of any other director who holds any salaried employment or office in the company there shall not be required to be included in the said total amount any sums paid to him except sums paid by way of directors' fees.

(4) If in the case of any such accounts as aforesaid the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the balance sheet of the company, so far as they are reasonably to do so, a statement giving the required particulars.

(5) In this section the expression "emoluments" includes fees, percentages and other payments made or consideration given, directly or indirectly, to a director as such, and the money value of any allowances or perquisites belonging to his office.

129. Signing of balance sheet (1) Every balance sheet of a company shall be signed on behalf of the board by two of the directors of the company, or, if there is only one director, by that director, and the auditors' report shall be attached to the balance sheet, and the report shall be read before the company in general meeting and shall be open to inspection by any member.

(2) In the case of a banking company the balance sheet must be signed by the secretary or manager, if any, and where there are more than three directors of the company by at least three of those directors, and where there are not more than three directors by all the directors.

(3) Where the total number of directors of the company for the time being is less than the number of directors whose signatures are required by this section, the balance sheet shall be signed by all the directors for the time being in Tanzania or, if there is only one director for the time being in Tanzania, by such director, but in such case there shall be subjoined to the balance sheet a statement signed by such directors or director explaining the reason for non-compliance with the provisions of this section.

(4) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated or published or if any copy of a balance sheet is issued, circulated or published without having a copy of the auditors' report attached thereto, the company, and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall on conviction be liable to a fine not exceeding five thousand shillings.

130. Right to receive copies of balance sheet and auditor's report

(1) In the case of a company not being a private company–

(a) a copy of every balance sheet, including every document required and by law to be annexed thereto, which is to be laid before the company in general meeting together with a copy of the auditor's report shall, not less than fourteen days before the date of the meeting, be sent to all persons entitled to receive notice of general meetings of the company;

(b) any member of the company, whether he is or is not entitled to have sent to him copies of the company balance sheets, and any holder of debentures of the company, shall be entitled to be furnished on demand without charge with a copy of the last balance sheet to the company including every document required by law to be annexed thereto, together with a copy of the auditor's report on the balance sheet.

If default is made in complying with paragraph (a) of this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding four hundred shillings, and if, where any person makes a demand for a document with which he is by virtue of paragraph (b) of this subsection entitled to be furnished, default is made in complying with the demand within seven days after the making thereof, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding one hundred shillings for every day during which the default continues unless

it is proved that that person has already made a demand for and been furnished with a copy of the document.

(2) In the case of a company being a private company, any member shall be entitled to be furnished, within seven days after he has made a request in that behalf to the company, with a copy of the balance sheet and auditors' report at a charge not exceeding fifty cents for every hundred words.

If default is made in furnishing such a copy to any member who demands it and tenders to the company the amount of the proper charge therefor, the company and every officer of the company who is in default shall be liable to a default fine.

131. Banking and certain other companies to publish periodical statements

(1) Every company, being an insurance company or a deposit, provident or benefit society shall, before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make a statement in the form set out in the Sixth Schedule to this Act, or as near thereto as circumstances admit.

(2) A copy of the statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum not exceeding fifty cents.

(4) If default is made in complying with this section, the company and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to a fine not exceeding one hundred shillings for every day during which the default continues.

132. Appointment and remuneration of auditors

(1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(2) If an appointment of auditors is not made at an annual general meeting the court may, on the application of any member of the company, appoint an auditor of the company, for the current year.

(3) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member to the company not less than fourteen days before the annual general meeting and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the member either by advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting:

Provided that if, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after the notice has been given, the notice though not given within the time required by this subsection, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this subsection be sent or given at the same time as the notice of the annual general meeting.

(4) Subject as hereinafter provided, the first auditors of the company may be appointed by the directors at any time before the first annual general meeting, and auditors so appointed shall hold office until that meeting:

Provided that–

(a) the company may at a general meeting of which notice has been served on the auditors in the same manner as on members of the company remove any such

auditors and appoint in their place any other persons being persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than seven days before the date of the meeting;

(b) if the directors fail to exercise their powers under this subsection, the company in general meeting may appoint the first auditors, and thereupon the said powers of the directors shall cease.

(5) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditors, if any, may act.

(6) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of an auditor appointed before the first annual general meeting or of an auditor appointed to fill a casual vacancy, may be fixed by the directors, and that the remuneration of an auditor appointed by the court may be fixed by the court.

133. Disqualification for appointment as auditor

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

(a) a director or officer of the company;

(b) except where the company is a private company, a person who is a partner of or in the employment of an office of the company;

(c) a body corporate.

134. Auditor's report and auditor's right of access to books and right to attend general meetings (1) The auditors shall make a report to the members on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and the report shall state–

(a) whether or not they have obtained all the information and explanations they have required; and

(b) whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.

(2) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors:

Provided that, in the case of a banking company which has branch banks beyond the limits of Tanzania, it shall be sufficient if the auditor is allowed access to such copies and extracts from such books and accounts of any such branch as have been transmitted to the head office of the company in Tanzania.

(3) The auditors of a company shall be entitled to attend any general meeting of the company at which any accounts which have examined or reported on by them are to be laid before the company and to make any statement or explanation they desire with respect to the accounts.

134A. Accounts and audit of parastatal organisations (1) For the purposes of this section and sections 134B and 134C–

"Board" in relation to a parastatal organisation, means the Board of Directors or other body of persons vested with the management of the affairs of the parastatal organisation concerned;

"financial year" in relation to a parastatal organisation, means any accounting period not exceeding twelve consecutive months, designated by the Board to be the

accounting period of the parastatal organisation concerned; save that in the case of a parastatal organisation incorporated on or after the commencement of this section, the first financial year may be shorter than twelve months or up to eighteen months.

(2) As soon as possible after the close of the financial year, the accounts including the balance sheet and the profit and loss account of each parastatal organisation in respect of the financial year shall be submitted to the Tanzania Audit Corporation established by the Tanzania Audit Corporation Act [vii]* and shall be audited as soon as practicable after they have been submitted, and in any case not later than six months from the close of the financial year of the parastatal organisation concerned.

(3) As soon as the accounts of a parastatal organisation have been audited, and in any case not later than seven months after the close of that financial year, the Board shall submit to the Minister responsible for the parent Ministry a copy of the audited statement of accounts together with a copy of the report on the accounts made by the auditors.

(4) Every such audited balance sheet shall be placed before a meeting of the Board and, if adopted by the Board, shall be endorsed with a certificate that it has been so adopted.

134B. Laying of accounts before the National Assembly (1) The Minister responsible for the parent Ministry of a parastatal organisation shall, as soon as may be practicable after he has received them, and in any case not later than eight months after the close of a financial year or such longer period as the National Assembly may, by resolution, approve in that behalf, lay before the National Assembly the following documents in relation to that financial year–

(a) a copy of the balance sheet and a profit and loss statement of the parastatal organisation;

(b) a copy of the auditors' report on the audited accounts of the parastatal organisation;

(c) a copy of the directors' report of the parastatal organisation dealing with its activities during that financial year.

(2) Where at the end of seven months from the close of the financial year of a parastatal organisation the Minister responsible for the parent Ministry has not received from the Board the documents specified in section 134A(3), he shall, before the expiry of the eighth month from the close of the financial year, or so soon after non-receipt of the documents as the National Assembly meets, cause the National Assembly, by resolution, to approve such longer period as it may determine within which that Minister shall lay the documents before the National Assembly.

134C. Minister may give directions to Board (1) Subject to subsection (2), the Minister responsible for the parent Ministry may give to the Board of a parastatal organisation for which his Ministry is responsible, directions of a general or specific character regarding the performance by that parastatal organisation of any of its functions and the Board shall give effect to every such direction given to it.

(2) Where any instructions intended to be given to a Board by the Minister responsible for the parent Ministry relate to or involve questions of investment of funds of the parastatal corporation or borrowing by the corporation, the Minister responsible for the parent Ministry shall not give those directions until he has consulted and secured the approval to the directions of the Minister for the time being responsible for finance.

***Investigation by the Registrar* (s 135)**

135. Investigation by Registrar (1) Where the Registrar on perusal of any document which a company is required to submit to him under the provisions of this Act, is of opinion that any information is necessary in order that such document may afford

full particulars of the matter to which it purports to relate, he may, by a written order, call on the company submitting the document to furnish in writing such information or explanation within such time as he may specify in his order.

(2) On receipt of an order under subsection (1) it shall be the duty of all persons who are or have been officers of the company to furnish such information or explanation to the best of their power.

(3) If any such person refuses or neglects to furnish any such information or explanation he shall be liable to a fine not exceeding one thousand shillings in respect of each offence.

(4) If such information or explanation is not furnished within the specified time, or if after perusal of such information or explanation the Registrar is of the opinion that the document in question discloses an unsatisfactory state of affairs, or that it does not disclose a full and fair statement of the matters to which it purports to relate, the Registrar shall report the circumstances of the case in writing to the court.

Inspection (ss 136-139)

136. Investigation of affairs of company by inspectors

(1) The court may appoint one or more competent inspectors to investigate affairs of any company and to report thereon in such manner as shall be directed–

(a) in the case of a banking company having a share capital, on the application of members holding not less than one-third of the shares issued;

(b) in the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued;

(c) in the case of a company not having a share capital, on the application of not less than one fifth in number of the persons on the company's register of members;

(d) in the case of any company, on a report by the Registrar under subsection (4) of section 135.

(2) The application shall be supported by such evidence as the court may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in, requiring the investigation, and the court may, before appointing an inspector, require the applicants to give security, to an amount not exceeding two thousand shillings, for payment of the costs of the enquiry.

(3) It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power.

(4) An inspector may examine on oath the officers and agents of the company in relation to its business and may administer an oath accordingly.

(5) If any officer or agent of the company refuses to produce to the inspectors 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 inspectors with respect to the affairs of the company, the inspectors may certify the refusal under their 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.

(6) On the conclusion of the investigation the inspectors shall report their opinion to the court, and a copy of the report shall be forwarded by the court to the registered office of the company and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

(7) The report made under subsection (6) shall be written or printed, as the court directs.

137. Proceedings on report by inspectors

(1) If from any report made under section 136 it appears to the court that any person has been guilty of any offence in relation to the company for which he is criminally liable the court shall refer the matter to the Attorney-General.

(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 and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the company, past and present (other than the defendant in the proceedings), to give to him all assistance in connection with the prosecution which they are reasonably able to give.

For the purposes of this subsection, the expression "agents" in relation to a company shall be deemed to include the bankers and solicitors of the company and any persons employed by the company as auditors, those persons are or are not officers of the company.

(3) The expenses of and incidental to an investigation under section 136 of this Act (in this subsection referred to as "the expenses") shall be defrayed as follows–

(a) where as a result of the investigation a prosecution is instituted by the Attorney-General, the expenses shall be defrayed by the Government;

(b) in any other case the expenses shall be defrayed by the company unless the court directs, as the court is hereby authorised to do, that they shall either be paid by the applicants or in part by the company and in part by the applicants:

Provided that–

(i) if the company fails to pay the whole or any part of the sum which it is liable to pay under this subsection, the applicants shall make good the deficiency up to the amount by which the security given by them under section 136 exceeds the amount, if any, which they have under this subsection been directed by the court to pay; and

(ii) any balance of the expenses not defrayed either by the company or the applicants shall be defrayed by the Government.

138. Power of company to appoint inspectors

(1) A company may by special resolution appoint inspectors to investigate its affairs.

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the court, except that instead of reporting to the court, they shall report in such manner and to such persons as the company in general meeting may direct.

(3) If any officer or agent of the company refuses to produce to the inspectors 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 inspectors with respect to the affairs of the company, he shall be liable to be proceeded against in the same manner as if the inspectors had been inspectors appointed by the court.

139. Report of inspectors to be evidence

A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report.

Directors and Managers (ss 140-152)

140. Number of directors

(1) Every company registered after the commencement of this Act shall have at least two directors.

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

141. Restrictions on appointment or advertisement of director (1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in a prospectus issued by or on behalf of the company, or as proposed director of an intended company, in a prospectus issued in relation to that intended company, or in a statement in lieu of prospectus delivered to the Registrar by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the delivery of the statement in lieu of prospectus, 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, his consent in writing to act as such director; and

(b) either–

(i) signed the memorandum for a number of shares not less than his qualification, if any; or

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

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

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

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

(3) 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 the list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding ten thousand shillings.

(4) This section shall not apply to–

(a) a company not having a share capital; or

(b) a private company; or

(c) a company which was a private company before becoming a public company; or

(d) a prospectus issued by or on behalf of a company after the expiration of one year from the date on which the company was entitled to commence business.

142. Qualification of director or manager(1) Without prejudice to the restrictions imposed by section 141, it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the articles.

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

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

(4) A person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.

(5) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding five hundred shillings for every day between the expiration of the said period or shorter time or the day on which he ceased to be qualified, as the case may be, and the last day on which it is proved that he acted as a director.

143. Provisions as to undischarged bankrupts acting as directors (1) If any person being an undischarged bankrupt in Tanzania or in any other country which is declared to be a reciprocating country under section 150 of the Bankruptcy Act [viii]* acts as director of, or directly or indirectly takes part in or is concerned in the management of, any company except with the leave of the court by which he was adjudged bankrupt, he shall be liable on conviction on information to imprisonment for a term not exceeding two years, or to a fine not exceeding fifty thousand shillings, or to both such imprisonment and fine:

Provided that a person shall not be guilty of an offence under this section by reason that he, being an undischarged bankrupt, has acted as director of, or taken part or been concerned in the management of, a company, if he was at the date of the coming into force of this Act acting as director of, or taking part or being concerned in the management of, that company and has continuously so acted, taken part or been concerned since that date and the bankruptcy was prior to that date.

(2) The leave of the court for the purposes of this section shall not be given unless notice of intention to apply therefor has been served on the official receiver, and it shall be the duty of the official receiver, if he is of the opinion that it is contrary to the public interest that any such application should be granted, to attend on the hearing of and oppose the granting of the application.

(3) In this section the expression "company" includes an unregistered company and a company incorporated outside Tanzania which has an established place of business within Tanzania, and the expression "official receiver" means the official receiver in bankruptcy.

144. Validity of acts of directors

(1) The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification:

Provided that nothing in this section shall be deemed to give validity to acts done by a director after the appointment of such director has been shown to be invalid.

145. Register of directors

(1) Every company shall keep at its registered office a register of its directors or managers containing with respect to each of them the following particulars, that is to say–

(a) in the case of an individual, his present first name and surname, any former first name or surname, his usual residential address, his nationality, and, if that nationality is not the nationality of origin, his nationality of origin 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; and

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

(2) The company shall, within the periods respectively mentioned in this subsection, 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 any of the particulars contained in the register.

The period within which the said return is to be sent shall be a period of fourteen days from the appointment of the first directors of the company, and the period within which the said notification of a change is to be sent shall be fourteen days from the happening thereof.

(3) 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 member of the company without charge and of any other person on payment of one shilling, or such less sum as the company may prescribe, for each inspection.

(4) If any inspection required under this section is refused or if default is made in complying with subsection (1) or subsection (2) of this section, the company and every officer of the company who is in default shall be liable to a default fine.

(5) In the case of any such refusal, the court may by order compel an immediate inspection of the register.

(6) For the purposes of this section, a person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director and officer of the company.

146. Particulars with respect to directors in catalogues, circulars, etc.

(1) Every company to which this section applies shall, in all trade catalogues, trade circulars, showcards and trade business letters on or in which the company's name appears and which are issued or sent by the company to any person, state in legible Roman letters with respect to every director being a corporation, the corporate name, and with respect to every director being an individual, the following particulars–

(a) his present first name and present surname;

(b) any former first names and surnames;

(c) his nationality;

(d) his nationality of origin, if his nationality is not the nationality of origin:

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

Any person aggrieved by a refusal to grant an exemption under this subsection may appeal to the High Court.

(2) This section shall apply to–

(a) every company registered under this Act or the Indian Companies Act, 1931, as it applied to Tanzania; and

(b) every company incorporated outside Tanzania which has an established place of business within Tanzania.

(3) If a company makes default in complying with this section, every director of the company shall be liable on summary conviction for each offence to a fine not exceeding one hundred shillings, and in the case of a director being a corporation, every director, secretary and officer of the corporation, who is knowingly a party to the default, shall be liable to a like penalty:

Provided that no proceedings shall be instituted under this section except by, or with the consent of, the Attorney-General.

(4) For the purposes of this section–

(a) the expression "director" includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

(b) the expression "first name" includes a forename;
(c) in the case of a peer or person usually known by a title different from his surname, the expression "surname" means that title;
(d) references to a former first name or surname do not include–
(i) in the case of a peer or a person usually known by a British title different from his surname the name by which he was known previous to the adoption of or succession to the title; or
(ii) in the case of natural born British subjects, a former first name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years; or
(iii) in the case of a married woman the name or surname by which she was known previous to the marriage;
(e) the expression "showcard" means cards containing or exhibiting articles dealt with, or samples or representations thereof.

147. Limited company may have directors with unlimited liability (1) In a limited company the liability of the directors or managers, or of the managing director may, if so provided by the memorandum, be unlimited.

(2) In a limited company in which the liability of a director or manager is unlimited, the directors or managers of the company, if any, and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters, directors, managers and secretary, if any, of the company, or one of them, shall before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

(3) If any director, manager or proposer makes default in adding such a statement, or if any promoter, director, manager or secretary makes default in giving such a notice, he shall be liable to a fine not exceeding five thousand shillings, and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

148. Special limited company making resolution of liability of directors unlimited

(1) A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or managers, or of any managing director.

(2) Upon the passing of any such special resolution the provisions thereof shall be as valid as if they had been originally contained in the memorandum.

149. Statements as to remuneration of directors to be furnished to shareholders

(1) Subject as hereinafter provided, the directors of a company shall, on a demand in that behalf made to them in writing by members of the company entitled to not less than one-fourth of the aggregate number of votes to which all the members of the company are together entitled, furnish to all the members of the company within a period of one month from the receipt of the demand a statement, certified as correct, or with such qualification as may be necessary by the auditors of the company showing as respects each of the last three preceding years in respect of which the accounts of the company have been made up the aggregate amount received in that year by way of remuneration or other emoluments by persons being directors of the company whether as such directors or otherwise in connection with the management of the affairs of the company, and there shall, in respect of any such director who is–

(a) a director of any other company which is in relation to the first mentioned company a subsidiary company; or

(b) by virtue of the nomination whether direct or indirect, of the company a director of any other company,

be included in the said aggregate amount any remuneration or other emoluments received by him for his own use whether as a director of, otherwise in connection with the management of the affairs of that other company:

Provided that–

(i) a demand for a statement under this section shall be of no effect if the company within one month after the date on which the demand is made resolve that the statement shall not be furnished; and

(ii) it shall be sufficient to state the total aggregate of all sums paid to or other emoluments received by all the directors in each year without specifying the amount received by any individual.

(3) If any director fails to comply with the requirements of this section, he shall be liable to a fine not exceeding one thousand shillings.

(4) In this section the expression "emoluments" includes fees, percentages and other payments made or consideration given, directly or indirectly, to a director as such, and the money value of any allowances or perquisites belonging to his office.

150. Disclosure by directors of interest in contracts

(1) Subject to the provisions of this section, it shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company.

(2) In the case of a proposed contract the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested, and in case where the director becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the directors held after the director becomes so interested.

(3) 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 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.

(4) Any director who fails to comply with the provisions of this section shall be liable to a fine not exceeding two thousand shillings.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

151. Provisions as to payments received by directors for loss of office or on retirement (1) It is hereby declared that it is not 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 or compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal approved by the company.

(2) Where a payment which is hereby declared to be illegal is made to a director of the company, the amount received shall be deemed to have been received by him in trust for the company.

(3) Where a payment is to be made as aforesaid to a director of a company in connection with the transfer to any persons, as a result of an offer made to the general body of shareholders, of all or any of the shares in the company, it shall be the duty of that director to take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof shall be included in or sent with any notice of the offer made for their shares which is given to any share holders.

(4) If any such director fails to take reasonable steps as aforesaid, or if any person who has been properly required by any such director to include the said particulars in or send them with any such notice fails so to do, he shall be liable to a fine not exceeding one thousand shillings, and if the requirements of subsection (3) are not complied with in relation to any such payment as is mentioned in the said subsection, any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made.

(5) If in connection with any such transfer as aforesaid the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares or any valuable consideration is given to any such director, the excess or the money value of the consideration, as the case may be, shall, for the purposes of this 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.

(6) Nothing in this section shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are mentioned in this section or with respect to any other like payments made or to be made to the directors of a company.

152. Provisions as to assignment of office by directors

If in the case of any company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any assignment of office made in pursuance of the said provision shall, notwithstanding anything to the contrary contained in the said provision be of no effect unless and until it is approved by a special resolution of the company.

Avoidance of Provisions in Articles or Contract Relieving Officers from Liability (s 153)

153. Provisions as to liability of officers and auditors

Subject as to hereinafter provided, any provision, whether contained in articles of a company or in any contract with a company or otherwise, for exempting any director, manager or officer of the company, or any person (whether an officer of the company or not) employed by the company as auditor from, or indemnifying him against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void:

Provided that–

(a) in relation to any such provision which is in force at the date of the commencement of this Act, this section shall have effect only on the expiration of a period of six months from that date; and

(b) nothing in this section shall operate to deprive any person of exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force; and

(c) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such director, manager, 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 345 of this Act in which relief if granted to him by the court.

Arrangements and Reconstructions (ss 154-156)

154. Power to compromise with creditors and members

(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the court may, on the application in a summary way of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) An order made under subsection (2) of this section shall have no effect until a certified copy of the order has been delivered to the Registrar for registration, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If a company makes default in complying with subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding twenty shillings for each copy in respect of which default is made.

(5) In this section the expression "company" means any company liable to be wound up under this Act, and the expression "arrangement" includes a re-organisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

155. Provisions for facilitating reconstruction of companies

(1) Where an application is made to the court under section 154 of this Act for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as "the transferor company") is to be transferred to another (in this section referred to as "the transferee company"), the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters–

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

(b) the allotting or appropriation by the transferee company of any shares,

debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

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

(d) the dissolution without winding up, of any transferor company;

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

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

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

(3) Where an order is made under this section, every company in relation to which the order is made shall cause a certified copy thereof to be delivered to the Registrar for registration within seven days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

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

(5) Notwithstanding the provisions of subsection (5) of section 154 the expression "company" in this section does not include any company other than a company within the meaning of this Act.

156. Power to acquire shares of shareholders dissenting from scheme or contract approved by majority

(1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as "the transferor company") to another company, whether a company within the meaning of this Act or not (in this section referred to as "the transferee company"), has within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than nine-tenths in value of the shares affected, the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and where such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given, the court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company:

Provided that where any such scheme or contract has been so approved at any time before the commencement of this Act, the court may by order, on an application made to it by the transferee company within two months after the commencement of this Act, authorise notice to be given under this section at any time within fourteen days after the making of the order, and this section shall apply accordingly, except that the terms on which the shares of the dissenting shareholder are to be acquired shall be such terms as the court may by order direct instead of the terms provided by the scheme or contract.

(2) Where a notice has been given by the transferee company under 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 one month from the date on which the notice has been given, or, if an application to the court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company 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.

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

(4) In this section the expression "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

PART VI
WINDING UP (ss 157-285)
(i) PRELIMINARY PROVISIONS (ss 157-162)
Modes of Winding Up (s 157)

157. Modes of winding up

(1) The winding up of a company may be–

(a) by the court; or

(b) voluntary; or

(c) subject to the supervision of the court.

(2) The provisions of this Act with respect to winding up apply unless the contrary appears, to the winding up of a company in any of those modes.

Contributories (ss 158-162)

158. Liability as to contributories of present and past member

(1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of subsection (2) of this section and the following qualifications–

(a) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;

(b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(c) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

(d) in the case of a company limited by shares no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;

(e) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of subsection (3) of this section, be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;

(f) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted or whereby the funds of the company are alone made liable in respect of the policy or contract;

(g) a sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other director not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a limited company, any director or manager whether past or present, whose liability is, under the provisions of this Act unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company:

Provided that–

(a) a past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up;

(b) a past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;

(c) subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

(3) In the winding up of a company limited by guarantee which has a share capital every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

159. Definition of contributory

The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

160. Nature of liability of contributory

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

161. Contributories in case of death of members

(1) If a contributory dies either before or after he has been placed on the list of contributories, his legal representatives, and his heirs, shall be liable in due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) If the legal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory, and for compelling payment thereout of the money due.

162. Contributories in case of bankruptcy

If a contributory becomes bankrupt, either before or after he has been placed the

list of contributories–

(a) his trustee in bankruptcy, shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and

(b) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

(ii) WINDING UP BY THE COURT (ss 163-220)

Jurisdiction (ss 163-166)

163. Jurisdiction to wind up companies registered in Tanzania

The High Court shall have jurisdiction to wind up any company registered in Tanzania.

164. Transfer of proceedings from High Court to district court Where the High Court makes an order for winding up a company under this Act, it may, if it thinks fit, direct all subsequent proceedings to be had in a district held by a civil magistrate court subordinate of the first class and thereupon such court shall for the purpose of winding up the company be deemed to be the court within the meaning of this Act, and shall have, for the purposes of such winding up, all the jurisdiction and powers of the High Court.

165. Transfer of proceedings from one district court to another If during the progress of a winding up in a district court it is made to appear to the High Court that the same could be more conveniently prosecuted in any other district court, the High Court may transfer the same to such other district court held by a civil magistrate and thereupon the winding up shall proceed in that court.

166. Statement of case for opinion of High Court If any question arises in any winding up proceeding in a district court which all the parties to the proceeding or which one of them and the magistrate of the court, desire to have determined in the and first instance in the High Court, the magistrate shall state the facts in the form of a special case for the opinion of the High Court and thereupon the special case and proceedings, or such of them as may be required shall, be transmitted to the High Court for the purposes of determination.

Cases in which a Company may be Wound up by Court (ss 167-168)

167. Circumstances in which company may be wound up by court

A company may be wound up by the court if–

(a) the company has by special resolution resolved that the company be wound up by the court;

(b) default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;

(c) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;

(d) the number of members is reduced, in the case of a private company below two or, in the case of any other company, below seven;

(e) the company is unable to pay its debts;

(f) the court is of opinion that it is just and equitable that the company should be wound up.

168. Definition of inability to pay debts

A company shall be deemed to be unable to pay its debts–

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding one thousand shillings then due, has served on the company,

by leaving it at the registered office of the company a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or

(b) if execution or other process issued on a decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) if it is proved to the satisfaction of the court that the company is unable to pay its debts,

and in determining whether a company is unable to pay its debts, that court shall take into account the contingent and prospective liabilities of the company.

Petition for Winding Up and Effects thereof (ss 169-173)

169. Provisions as to applications for winding up

An application to the court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors) contributory or contributories, or by all or any of those parties, together or separately:

Provided that–

(a) a contributory shall not be entitled to present a winding up petition unless–

(i) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; or

(ii) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder; and

(b) a winding-up petition shall not, if the ground of the petition is default in delivering the statutory report to the Registrar or in holding the statutory meeting, be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and

(c) the court shall not give a hearing to a winding-up petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a *prima facie* case for winding up has been established to the satisfaction of the court.

170. Power of court on hearing petition

(1) On hearing a winding-up petition the court may dismiss it, adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets.

(2) Where the petition is presented on the ground of default in delivering the statutory report to the Registrar or in holding the statutory meeting, the court may–

(a) instead of making a winding-up order, direct that the statutory report shall be delivered or that a meeting shall be held; and

(b) order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

171. Power to stay or restrain proceedings against company

The court may, at any time after the presentation of the petition for winding up a company under this Act, and before making an order for winding up the company, upon the application of the company or any creditor or contributory, restrain further

proceedings in any suit or proceeding against the company upon such terms as the court thinks fit.

172. Avoidance of dispositions of property, etc., after commencement of winding up

In a winding up by the court, any disposition of the property of the company, including actionable claims, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

173. Avoidance of attachment, etc.

Where any company is being wound up by the court, any attachment, distress, or execution suit in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

***Commencement of Winding Up* (s 174)**

174. Commencement of winding up by the court

(1) Where before the presentation of a petition for the winding up of a company by the court a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

***Consequences of Winding-Up Order* (ss 175-177)**

175. Copy of order to be forwarded to Registrar

(1) On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company to the Registrar who shall make a minute thereof in his books relating to the company.

(2) Such order shall be deemed to be notice of discharge to the servants of the company except when the business of the company is continued.

176. Actions stayed on winding-up order

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

177. Effect of winding-up order

An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

***Official Receiver in Winding Up* (ss 178-181)**

178. Official receiver in bankruptcy to be official receiver for winding up purposes

(1) For the purposes of this Act so far as it relates to the winding up of companies by the court, the term "official receiver" means the official receiver appointed for bankruptcy purposes.

(2) Such officer shall for the purpose of his duties under this Act be styled "the official receiver".

179. Appointment of official receiver by court in certain cases

If in the case of the winding up of any company by the court it appears to the court desirable, with a view to securing the more convenient and economical conduct of the winding up, that some officer, other than the person who would by virtue of section 178 of this Act be the official receiver, should be the official receiver for the purposes of

that winding up, the court may appoint that other officer to act as official receiver in that winding up, and the person so appointed shall be deemed to be the official receiver in that winding up for all the purposes of this Act.

180. Statement of company's affairs to be submitted to official receiver (1) Where the court has made a winding-up order or appointed a provisional liquidator, there shall, unless the court thinks fit to order otherwise and so orders, be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when there were respectively given and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary or other chief officer of the company, or by such of the persons hereinafter in this subsection mentioned as the official receiver, subject to the direction of the court, may require to submit and verify the statement that is to say, persons–

(a) who are or have been directors or officers of the company;

(b) who have taken part in the formation of the company at any time within one year before the relevant date;

(c) who are in the employment of the company or have been in the employment of the company within the said year, and are in the opinion of the official receiver capable of giving the information required;

(d) who are or have been within the said year officers of or in the employment of a company, which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within fourteen days from the relevant date, or within such extended time as the official receiver or the court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable subject to an appeal to the court.

(5) If any person without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding five hundred shillings for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of an offence and shall, on the application of the liquidator or of the official receiver, be liable to a fine not exceeding one thousand shillings.

(8) In this section the expression "the relevant date" means, in a case where a provisional liquidator is appointed, the date of his appointment and in a case where no such appointment is made, the date of the winding-up order.

181. Report by official receiver

(1) In a case where a winding-up order is made, the official receiver shall, as soon as practicable after receipt of the statement to be submitted under section 180 or in

a case where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court–

(a) as to the amount of capital issued, subscribed and paid up, and the estimated amount of assets and liabilities; and

(b) if the company has failed, as to the causes of the failure; and

(c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of the business thereof.

(2) The official receiver may also, if he thinks fit, make a further report or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof and any other matters which in his opinion it is desirable to bring to the notice of the court.

(3) If the official receiver states in any such further report that in his opinion a fraud has been committed, the court shall have the further powers provided in sections 212 and 213 of this Act.

Liquidators (ss 182-195)

182. Power of court to appoint liquidators

For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.

183. Appointment and power of provisional liquidator

(1) Subject to the provisions of this section the court may appoint a liquidator provisionally at any time after the presentation of a winding up petition and before the making of a winding up order, and either the official receiver or any other fit person may be appointed.

(2) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.

184. Appointment, style, etc., of liquidators

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

(a) the official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;

(b) the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver;

(c) the court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations in respect of the matter aforesaid, the court shall decide the difference and make such order thereon as the court may think fit;

(d) in a case where a liquidator is not appointed by the court the official receiver shall be the liquidator of the company;

(e) the court may determine whether any and what security is to be given by a liquidator on his appointment;

(f) the official receiver shall by virtue of his office be the liquidator during any vacancy;

(g) a liquidator shall be described, where a person other than the official receiver is

liquidator by the style of "the liquidator", and where the official received is liquidator by the style "the official receiver and liquidator", of the particular company in respect of which he is appointed, and not by his individual name.

185. Provisions where person other than official receiver is appointed liquidator

Where in the winding up of a company by the court a person other than the official receiver is appointed liquidator, that person–

(a) shall not be capable of acting as liquidator until he has notified his appointment to the Registrar and given security in the prescribed manner to the satisfaction of the Registrar;

(b) shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

186. Provisions as to liquidator on an order for winding up by court after order for winding up subject to supervision

Where an order has been made for winding up a company subject to supervision, and an order is afterwards made for winding up by the court, the court may by the last-mentioned or by any subsequent order appoint any person who is then liquidator, either provisionally or permanently and either with or without any other person, to be liquidator in the winding up by the court.

187. General provisions as to liquidators

(1) A liquidator appointed by the court may resign or, on cause shown, be removed by the court.

(2) Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct and, if more such persons than one are appointed liquidators their remuneration shall be distributed among them in such proportion as the court directs.

(3) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

(4) If more than one liquidator is appointed by the court, the court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) Subject to the provisions of section 272 of this Act, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification:

Provided that nothing in this subsection shall be deemed to give validity to acts done by a liquidator or provisional liquidator after his appointment has been shown to be invalid.

(6) A receiver shall not be appointed of assets in the hand of a liquidator or provisional liquidator.

188. Custody of company's property

Where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator, as the case may be, shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled.

189. Vesting of property of company in liquidator

Where a company is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon the property to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity, if any,

as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

190. Powers of liquidator

(1) The liquidator in a winding up by the court shall have power with the sanction either of the court or of the committee of inspection–

(a) to bring or defend any action or other legal proceeding in the name and on behalf of the company;

(b) to carry on the business of the company, so far as may be necessary for the beneficial winding up thereof;

(c) to appoint an advocate to assist him in the performance of his duties, provided that where the liquidator is an advocate, he shall not appoint his partner unless the latter consents to act without remuneration;

(d) to pay any classes of creditors in full;

(e) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;

(f) to compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company on such terms as may be agreed and take any security the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) The liquidator shall have power–

(a) to sell the movable and immovable property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;

(b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal;

(c) to prove, rank and claim in the bankruptcy of any contributory for any balance against his estate, and to receive dividends in the bankruptcy in respect of that balance, as a separate debt due from the bankrupt, and rateably with the other separate creditors;

(d) to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted made or endorsed by or on behalf of the company in the course of its business;

(e) to raise on the security of the assets of the company any money requisite;

(f) to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act, necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself:

Provided that nothing herein shall be deemed to affect the rights, duties

and privileges of the Administrator General;

(g) to appoint an agent to do any business which the liquidator is unable to do himself;

(h) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding up by the court of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

(4) The court may provide by any order that the liquidator may, where there is no committee of inspection, exercise any of the powers mentioned in paragraph (a) or paragraph (b) of subsection (1) of this section without the sanction or intervention of the court.

whether payable for time or for piecework, in respect of services rendered to the company during four months next before the relevant date:

Provided that, where any workman or labourer has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the period of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the relevant date.

For the purposes of section 2(1) of Ordinance No. 38 of 1952 a liquidation shall be deemed to commence–

(a) in the case of a company ordered to be wound up compulsorily, which had not previously commenced to be wound up voluntarily, on the date of the winding up order; and

(b) in any other case, on the date of the commencement of the winding up;

(c) all sums of money deposited for safe custody except where such money was deposited, for the purposes of banking.

(2) Where any payment on account of wages or salary has been made to any clerk, servant, workman or labourer in the employment of a company out of money advanced by some person for that purpose, that person shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which that clerk, servant, workman or labourer would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(3) The foregoing debts shall–

(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(4) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up; the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(5) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(6) In this section the expression "the relevant date" means–

(a) in the case of a company ordered to be wound up compulsorily, which had not previously commenced to be wound up voluntarily, the date of the winding up order; and

(b) in any other case, the date of the commencement of the winding up.

Effect of Winding Up on Antecedent and Other Transactions (ss 260-264)

260. Fraudulent preferences

(1) Any transfer, mortgage, delivery of goods, payment, execution or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference,shall, if made or done by against a company,

be deemed in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

(2) For the purposes of this section, the commencement of the winding up shall be deemed to correspond with the presentation of the bankruptcy petition in the case of an individual.

(3) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

261. Effect of floating charge

Where a company is being wound up, a floating charge on the undertaking or property of the company created within six months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company, at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five percent per annum.

262. Disclaimer of onerous property

(1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, may, with the leave of the court and subject to the provisions of this section by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the court, disclaim the property:

Provided that, where any such property has not come the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the court.

(2) The disclaimer shall operate to determine as from the date of disclaimer, the rights, interests and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights of liabilities of any other person.

(3) The court, before or on granting leave to disclaim, may require notice to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case, where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he intends to apply to the court for leave to disclaim, and in the case of a contract, if the liquidator, after such an application as aforesaid, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it.

(5) The court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to

either party of damages for the performance of the contract, or otherwise as the court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any person entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid or a trustee for him, and on such terms as the court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that, where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee by demise, including a charge by way of legal mortgage, except upon the terms of making that person–

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or

(b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

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

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

263. Restriction of rights of creditor as to execution or attachment in case of company being wound up

(1) Where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up:

Provided that–

(a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall for the purposes of the foregoing provision be substituted for the date of the commencement of the winding up; and

(b) a person who purchases in good faith under a sale by order of the court any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator.

(2) For the purposes of this section, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be

completed by receipt of the debt, and an execution against land shall be deemed to be completed by seizure and, in the case of an equitable interest, by the appointment of a receiver.

(3) In this section the expression "goods" includes all chattels personal.

264. Duties of court as to goods taken in execution

(1) Where any goods of a company are taken in execution and before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, the court is notified that a provisional liquidator has been appointed or that a winding up order has been made or that a resolution for voluntary winding up has been passed, the court shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Where under an execution in respect of a judgment for a sum exceeding four hundred shillings the goods of a company are sold or money is paid in order to avoid sale, the court shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on the court of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the court shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(3) In this section the expression "goods" includes all chattels personal, and the expression "court" includes any officer charged with the execution of a writ or other process.

***Offences Antecedent to or in Course of Winding Up* (ss 265-271)**

265. Offences by officers of companies in liquidation (1) If any person, being a past or present director, manager or other officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the court or voluntarily, or is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up–

(a) does not, to the best of his knowledge and belief, fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company; or

(b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up; or

(c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up; or

(d) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of two hundred shillings or upwards, or conceals any debt due to or from the company; or

(e) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of two hundred shillings or upwards; or

(f) makes any material omission in any statement relating to the affairs of the company; or

(g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof; or

(h) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company; or

(i) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property; or

(j) within twelve months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company; or

(k) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters, or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company; or

(l) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up attempts to account for any part of the property of the company by fictitious losses or expenses; or

(m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for; or

(n) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or

(o) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges, or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging, or disposing is in the ordinary way of the business of the company; or

(p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up,

he shall be guilty of an offence and in the case of the offences mentioned respectively in paragraphs (m), (n) and (o) of this subsection, be liable on conviction to imprisonment for a term not exceeding three years, and in the case of any other offence shall be liable on conviction to imprisonment for a term not exceeding two years:

Provided that it shall be a good defence to a charge under any of paragraphs (a), (b), (c), (d), (f), (n) and (o), if the accused proves that he had no intent to defraud, and to a charge under any of the paragraphs (h), (i) and (j), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under paragraph (o) of subsection (1) of this section, every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall be guilty of an offence, and on conviction thereof shall be liable to be punished in

the same way as if he had received the property knowing it to have been obtained in circumstances amounting to an offence under section 311 of the Penal Code [ix]*.

(3) For the purposes of this section, the expression "director" shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

266. Penalty for falsification of books

If any director, manager or other officer, or contributory of any company being wound up destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person, he shall be liable to imprisonment for any term not exceeding seven years, with or without hard labour and shall also be liable to a fine.

267. Fraud by officers of companies which have gone into liquidation If any person being at the time of the commission of the alleged offence a director, manager or other officer of a company which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up–

(a) has by false pretences or by means of any other fraud induced any person to give credit to the company; or

(b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, has caused or connived at the levying of any execution against, the property of the company; or

(c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company,

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

268. Liability where proper accounts not kept

(1) If where a company is wound up it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, every director, manager or other officer of the company who was knowingly a party to or connived at the default of the company shall, unless he shows that he acted honestly or that in the circumstances in which the business of the company was carried on the default was excusable, be liable on conviction to imprisonment for a term not exceeding one year.

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and where the trade or business has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

269. Responsibility of directors for fraudulent trading (1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court, on the application of the liquidator or any creditor or contributory of the company may, if it thinks proper so to do, declare that any of the creditors, whether past or present of the company who were knowingly parties to the

carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct.

(2) Where the court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any such director under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the director, company or person, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

For the purpose of this subsection, the expression "assignee" includes any person whom or in whose favour, by the direction of the director, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1) of this section, every director of the company who was knowingly a party to the carrying on of the business in manner aforesaid shall be liable on conviction to imprisonment for a term not exceeding three years.

(4) The court may, in the case of any person in respect of whom a declaration has been made under subsection (1) of this section or who has been convicted of an offence under subsection (3) of this section, order that that person shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period, not exceeding five years, from the date of the declaration or of the conviction, as the case may be, as may be specified in the order, and if any person acts in contravention of an order made under this subsection he shall, in respect of each offence be liable on conviction to imprisonment for a term not exceeding five years, or to a fine not exceeding one hundred thousand shillings, or to both such imprisonment and fine.

In this subsection the expression "the court" in relation to the making of an order, means the court by which the declaration was made or the court before which the person was convicted, as the case may be, and in relation to the granting of leave means any court having jurisdiction to wind up the company.

(5) For the purposes of this section, the expression "director" shall include any person in accordance with whose direction or instructions the directors of a company have been accustomed to act.

(6) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made, and where the declaration is made under subsection (1) of this section, the declaration shall be deemed to be a final judgment within the meaning of paragraph (g) of subsection (1) of section 3 of the Bankruptcy Act [x]*.

(7) It shall be the duty of the official receiver or of the liquidator to appear on the hearing of an application for leave under subsection (4) of this section, and on the hearing of an application under that subsection or under subsection (1) of this section the official receiver or the liquidator, as the case may be, may himself give evidence or call witnesses.

270. Powers of court to assess damages against delinquent directors, etc.

(1) If in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator or any officer of the company has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator or officer, and compel him to repay or restore the money or property or any part thereof, respectively, with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the court thinks just.

(2) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.

(3) The Law of Limitation Act [xi]* shall apply to an application under this section as if such application were a suit.

271. Prosecution of delinquent officers and members of company (1) If it appears to the court in the course of a winding up by, or subject to the supervision of, the court that any past or present director, manager or other officer, or any members of the company has been guilty of any offence in relation to the company for which he is criminally liable, the court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator either himself to prosecute the offender or to refer the matter to the Attorney-General.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager or other officer, or any member of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Attorney-General and shall furnish to the Attorney-General such information and give to him such access to any facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as he may require.

(3) Where any report is made under subsection (2) to the Attorney-General he may, if he thinks fit, refer the matter to the Minister for further inquiry, and the Minister may if he thinks it expedient, give directions for an application to be addressed to the court for an order conferring on the Attorney-General or any person designated by the Attorney-General for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided for by this Act in the case of a winding up by the court.

(4) If on any report to the Attorney-General under subsection (2) of this section it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, subject to the previous sanction of the court, the liquidator may himself take proceedings against the offender.

(5) If it appears to the court in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Attorney-General under subsection (2) of this section, the court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report, being made accordingly the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of subsection (2) of this section.

(6) If, where any matter is reported or referred to the Attorney-General under this section, he considers that the case is one in which a prosecution ought to be instituted and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give.

For the purposes of this subsection, the expression "agent" in relation to a company shall be deemed to include any banker or legal counsel of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(7) If any person fails or neglects to give assistance in manner required by subsection (6) of this section, the court may, on the application of the Attorney-General direct that person to comply with the requirements of the said subsection and where any such application is made with respect to a liquidator the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

(8) The Minister may direct that the whole or any part of any costs and expenses properly incurred by the liquidator in proceedings duly brought by him under this section shall be defrayed by the Government.

(9) Subject to any direction under subsection (8) and to any mortgages or charges on the assets of the company and any debts to which priority is given by section 259 of this Act, all such costs and expenses as aforesaid shall be payable out of those assets in priority to all other liabilities payable thereout.

Supplementary Provisions as to Winding Up (ss 272-279)

272. Disqualification for appointment as liquidator

(1) A body corporate shall not be qualified for appointment as liquidator of a company, whether in a winding up by or under the supervision of the court or in a voluntary winding up, and any appointment made in contravention of this provision shall be void.

(2) [Omitted.]

273. Enforcement of duty of liquidator to make returns, etc.

(1) If any liquidator, who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so the court may, on an application made to the court by any contributory or creditor of the company or by the Registrar, make an order directing the liquidator to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default as aforesaid.

274. Notification that a company is in liquidation (1) Where a company is being wound up, whether by or under the supervision of the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company, and every liquidator of the company and every receiver or manager, who knowingly and wilfully authorises or permits the default, shall be liable to a fine of ten thousand shillings.

275. Exemption of certain documents from stamp duty on winding up of companies

(1) In the case of a winding up by the court, or of a creditor's voluntary winding up of a company–

(a) every assurance relating solely to freehold or leasehold property, or to any mortgage, charge or other encumbrance on, or any estate right or interest in, any movable or immovable property, which forms part of the assets of the company and which, after the execution of the assurance, either at law or in equity, is or remains part of the assets of the company; and

(b) every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any company which is being so wound up or to any proceeding under any such winding up,

shall be exempt from duties chargeable under the Stamp Duty Act [xii]*.

(2) In this section the expression "assurance" includes deed, transfer, assignment and surrender.

276. Books of company to be evidence

Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

277. Disposal of books and papers of company (1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, that is to say–

(a) in the case of a winding up by, or subject to the supervision of, the court, in such way as the court directs;

(b) in the case of a member's voluntary winding up, in such way as the company by extraordinary resolution directs, and, in the case of a creditor's voluntary winding up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the company, may direct.

(2) After three years from the dissolution of the company no responsibility shall rest on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) The Minister may make rules to prevent, for any period not exceeding five years from the dissolution of a company, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or contributory of the company to appeal to the court from any direction which may be given in the matter.

(4) If any person acts in contravention of any rules made for the purposes of this section he shall be liable to a fine not exceeding five thousand shillings.

278. Information as to pending liquidations (1) If where a company is being wound up the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the Registrar a statement in the prescribed form and containing prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) Any person stating himself in writing, to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement and to receive a copy thereof or

extract therefrom.

(3) If a liquidator fails to comply with this section, he shall be liable to a fine not exceeding one thousand shillings for each day during which the default continues, and any person untruthfully stating himself as aforesaid to be a creditor or contributory shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand shillings.

279. Resolutions passed at adjourned meetings of creditors and contributories

Where after the commencement of this Act a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

***Supplementary Powers of Court* (ss 280-281)**

280. Meetings to ascertain wishes of creditors or contributories

(1) The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

281. Affidavits, etc., in Tanzania

(1) Any affidavit required to be sworn under the provisions or for the purposes of this Part of this Act may be sworn in Tanzania before any court, judge or person lawfully authorised to take and receive affidavits or in any place outside Tanzania before any of Tanzania's Ambassadors or High Commissioners, or their senior officers empowered to act on their behalf.

(2) All courts, judges, justices of the peace, commissioners for oaths and persons acting judicially in Tanzania shall take judicial notice of the seal or stamp or signature, as the case may be, of any such court, judge or other person which is attached, appended or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part of this Act.

***Provisions as to Dissolution* (ss 282-284)**

282. Power of court to declare dissolution of company void (1) Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, or such further time as the court may allow, to deliver to the Registrar for registration an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding five hundred shillings for every day during which the default continues.

283. Registrar may strike defunct company off register

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

inquiring whether the company is carrying on business or in operation.

(2) If the Registrar does not within 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 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 the subsection (3).

(5) At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the *Gazette*, and on the publication in the *Gazette* of this notice the company shall be dissolved:

Provided that–

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

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

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

(7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or if an office has not 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, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

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

Where a company is dissolved all property and rights whatsoever vested in or

held on trust for the company immediately before its dissolution (including leasehold property but not including property held by the company on trust for any other person) shall, subject and without prejudice to any order which may at any time be made by the court under sections 282 and 283 of this Act, be deemed to be *bona vacantia*.

***Rules and Fees* (s 285)**

285. General rules for winding up (1) The High Court may, with the approval of the Minister, from time to time, make rules consistent with this Act and with the law for the time being relating to procedure in civil courts concerning the mode of proceedings to be had for winding up a company in such court and in the courts subordinate thereto, and for giving effect to the provisions hereinbefore contained as to the reduction of the capital and the subdivision of the shares of a company.

(2) Without prejudice to the generality of the foregoing power, the High Court may by such rules enable or require all or any of the powers and duties conferred and imposed on the court by this Act, in respect of the matters following, to be exercised or performed by the liquidator, and subject to the control of the court, that is to say, the powers and duties of the court in respect of–

(a) holding and conducting meetings to ascertain the wishes of creditors and contributories;
(b) settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets;
(c) requiring delivery of property or documents to the liquidator;
(d) making calls;
(e) fixing a time within which debts and claims must be proved:

Provided that the liquidator shall not either make any call or rectify the register of members, without the special leave of the court.

(3) There shall be paid in respect of proceedings under this Act in relation to the winding up of companies such fees as the High Court may, with the approval of the Minister, provide for.

PART VII
DISSOLUTION OF SCHEDULED COMPANIES (ss 285A-285C)

285A.-285C. Omitted

[Omitted.]

PART VIII
RECEIVERS AND MANAGERS (ss 286-291)

286. Disqualification for appointment as receiver (1) A body corporate shall not be qualified for appointment as receiver of the property of a company.

(2) Nothing in this section shall disqualify a body corporate from acting as receiver as aforesaid if acting under an appointment made before the commencement of this Act but subject as aforesaid any body corporate which acts as receiver as aforesaid shall be liable to a fine not exceeding five thousand shillings.

287. Power to appoint official receiver as the receiver for debenture holders or creditors

Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by court, the official receiver may be so appointed.

288. Notification that receiver or manager appointed (1) Where a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been

appointed.

(2) If default is made in complying with the requirement of this section, the company and every director, manager, secretary, or other officer of the company, and every liquidator of the company, and every receiver or manager, who knowingly and wilfully authorises or permits the default, shall be liable to a fine of one thousand shillings.

289. Power of court to fix remuneration on application of liquidator

The court may, on an application made to the court by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company, and may from time to time, on an application made either by the liquidator or by the receiver or manager, vary or amend any order so made.

290. Delivery to Registrar of accounts of receiver or manager (1) Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall, within one month, or such longer period as the Registrar may allow, after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months, and within one month after he ceases to act as receiver or manager, deliver to the Registrar for registration an abstract in the prescribed form showing his receipts and his payments during that period of six months or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amount of his receipts and of his payments during all preceding periods since his appointment.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a fine not exceeding two hundred shillings for every day during which the default continues.

291. Enforcement of duty of receiver to make returns, etc.

(1) If–

(a) any receiver of the property of a company, who has made default in filing, delivering or making any return, account or other document or in giving any notice, which a receiver is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so; or

(b) any receiver or manager of the property of a company who has been appointed under the powers contained in any instrument has, after being required at any time by the liquidator of the company so to do, fails to render proper accounts of his receipts and payments and to pay over to the liquidator the amount properly payable to him,

the court may, on an application made for the purpose, make an order directing the receiver or manager, as the case may be, to make good the default within such time as may be specified in the order.

(2) In the case of any such default as is mentioned in paragraph (a) of subsection (1) an application for the purposes of this section may be made by any member or creditor of the company or by the Registrar and the order may provide that all costs of and incidental to the application shall be borne by the receiver, and in the case of any such default as is mentioned in paragraph (b) of that subsection the application shall be made by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on receivers in respect of such default as is mentioned in

paragraph (a) of subsection (1) of this section.

PART IX
GENERAL PROVISIONS AS TO REGISTRATION (ss 292-295)

292. Registration offices (1) For the purposes of the registration of companies under this Act there shall be offices in Tanzania at such places as the Minister shall direct.

(2) The Minister may appoint such registrars, assistant registrars, clerks and servants as he may think necessary for the registration of companies under this Act and may make regulations with respect to their duties, and may remove any persons so appointed.

(3) Every assistant Registrar may, subject to the directions of the Registrar, perform any act or discharge any duty which the Registrar may lawfully do or is required by this Act to do, and for such purpose shall have the powers, privileges and authority of the Registrar.

(4) The Minister may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

293. Fees

(1) There shall be paid to the Registrar in respect of the several matters mentioned in the table set out in the Eighth Schedule to this Act the several fees therein specified.

(2) All fees paid to the Registrar in pursuance of this Act shall be accounted for to the Government.

294. Inspection, production and evidence of documents kept by Registrar (1) No process for compelling the production of any document kept by the Registrar shall be issued 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.

(2) A copy of or extract from any document kept and registered at any of the offices for the registration of companies certified to be a true copy under the hand of the Registrar (whose official position it shall not be necessary to prove), shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

295. Enforcement of duty of company to make returns to Registrar

(1) If a company, having made default in complying with any provision of this Act which requires it to file with, deliver or send to the Registrar any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the court may, on an application made to the court by any member or creditor of the company or by the Registrar make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any 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.

PART X
APPLICATION OF ACT TO COMPANIES FORMED OR REGISTERED UNDER THE REPEALED INDIAN COMPANIES ACT (ss 296-297)

296. Application of Act to companies formed under the Indian Companies Act

In the application of this Act to existing companies, it shall apply in the same manner–

(a) in the case of a limited company, other than a company limited by guarantee,

as if the company had been formed and registered under this Act as a company limited by shares;

(b) in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee; and

(c) in the case of a company other than a limited company, as if the company had been formed and registered under this Act as an unlimited company:

Provided that–

(i) nothing in Table A in the First Schedule shall apply to a company formed and registered under the Indian Companies Act, 1913, as it then applied unless adopted by special resolution; and

(ii) reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Indian Companies Act, 1913, as it then applied.

297. Application of Act to companies registered under the repealed Indian Companies Act

This Act shall apply to every company registered but not formed under the Indian Companies Act, 1913, as it then applied in the same manner as it is in Part X of this Act declared to apply to companies registered but not formed under this Act:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Indian Companies Act, 1913, as it then applied.

PART XI
COMPANIES NOT FORMED UNDER THIS ACT AUTHORISED TO REGISTER UNDER THIS ACT (ss 298-313)

298. Companies capable of being registered

(1) With the exception and subject to the provisions contained in this section–

(a) any company consisting of seven or more members, which was in existence on the 1st day of December, 1920; and

(b) any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of [xiii]* Parliament other than this Act, or of letters patent, or being otherwise duly constituted according to law, and consisting of seven or more members,

may at any time register under this Act as an unlimited company or as a company limited by shares, or as a company limited by guarantee; and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up:

Provided that–

(i) a company registered under the Indian Companies Act, 1913 as it then applied shall not register in pursuance of this section;

(ii) a company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint stock company as hereinafter defined, shall not register in pursuance of this section;

(iii) a company having the liability of its members limited by Act of Parliament or letters patent, shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee;

(iv) a company that is not a joint stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares;

(v) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy in cases where proxies are allowed by the regulation of the company at a general meeting summoned for the purpose;

(vi) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member or within one year after he ceases to be a member for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(2) In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

299. Definition of joint stock company

For the purposes of this Part of this Act, as far as relates to registration of companies as companies limited by shares, a joint stock company means a company having permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of these shares or that stock, and no other persons; and such a company when registered with limited liability under this Act shall be deemed to be a company limited by shares.

300. Requirements for registration of joint stock companies

Before the registration in pursuance of this Part of this Act of a joint stock company, there shall be delivered to the Registrar the following documents–

(a) a list showing the names, addresses and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number;

(b) a copy of any Act of Parliament, royal charter, letters patent, deed of settlement, contract of co-partnery, cost book regulations, or other instrument constituting or regulating the company; and

(c) if the company is intended to be registered as a limited company, a statement specifying the following particulars–

(i) the nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists;

(ii) the number of shares taken and the amount paid on each share;

(iii) the name of the company, with the addition of the word "limited" as the last word thereof; and

(iv) in the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

301. Requirements for registration by other than joint stock companies

Before the registration in pursuance of this Part of this Act of any company not being a joint stock company, there shall be delivered to the Registrar–

(a) a list showing the names, addresses and occupation of the directors or other managers (if any) of the company; and

(b) a copy of any Act of Parliament, letters patent, deed of settlement, contract of co-partnery, cost book regulations, or other instrument constituting or regulating the company; and

(c) in the case of a company intended to be registered as a company limited the

amount of the guarantee.

302. Authentication of statements of existing companies

The lists of members and directors and any other particulars relating to the company required to be delivered to the Registrar shall be verified by a statutory declaration of any two or more directors or other limited by guarantee a copy of the resolution declaring the amount of the guarantee.

303. Registrar may require evidence as to nature of company

The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as hereinafter defined.

304. Exemption of certain companies from payment of fees

No fees shall be charged in respect of the registration in pursuance of this Part of this Act of a company if it is not registered as a limited company, or if before its registration as a limited company the liability of the shareholders was limited by some other Act of Parliament or by letters patent.

305. Addition of "limited" to name

When a company registers in pursuance of this Part of this Act with limited liability, the word "limited" shall form, and be registered as, part of its name.

306. Certificate of registration of existing companies

On compliance with the requirements of this Part of this Act with respect to registration, and on payment of such fees, if any, as are payable under the Eighth Schedule to this Act, the Registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act and in the case of a limited company that it is limited and thereupon the company shall be so incorporated and shall have perpetual succession and a common seal.

307. Vesting of property on registration

All property, movable and immovable, including all interests and rights in, and arising out of property movable and immovable, and including obligations and actionable claims belonging to or vested in a company at the date of its registration in pursuance of this Part of this Act shall, on registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

308. Saving of existing liabilities

Registration of a company in pursuance of this Part of this Act shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with or on behalf of, the company before registration.

309. Continuation of existing actions

All actions and other legal proceedings which at the time of the registration of a company in pursuance of this Part of this Act are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place:

Provided that execution shall not issue against the effects of any individual member of the company on any decree or order obtained in any such action or proceeding but, in the event of the property and effects of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company.

310. Effect of registration under Part XI of this Act

(1) When a company is registered in pursuance of this Part of this Act, the following provisions of this section shall have effect.

(2) All provisions contained in any Act of Parliament or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee and the resolution declaring the amount of the

guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.

(3) All the provisions of this Act shall apply to the company, and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act subject as follows–

(a) Table A shall not apply unless adopted by special resolution;

(b) the provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered;

(c) subject to the provisions of this section the company shall not have power to alter any provision contained in any Act of Parliament relating to the company;

(d) subject to the provisions of this section the company shall not have power to alter any provision contained in any letters patent relating to the company;

(e) the company shall not have power to alter any provisions contained in a royal charter or letters patent with respect to the objects of the company;

(f) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debtor liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any debt or liability, or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid;

(g) in the event of the company being wound up every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid, and, in the event of the death, bankruptcy or insolvency, of any contributory, the provisions of this Act with respect to the legal representatives and heirs of deceased contributories, to the trustees of bankruptcy or insolvent or insolvent contributories, shall apply.

(4) The provisions of this Act with respect to–

(a) the registration of an unlimited company as limited;

(b) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up;

(c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up,

shall apply notwithstanding any provisions contained in any Act of Parliament, royal charter or other instrument constituting or regulating the company.

(5) Nothing in this section shall authorise the company to alter any such provisions contained in any instrument constituting or regulating the company, as would, if the company had originally been formed under this Act have been required to be contained in the memorandum and are not authorised to be altered by this Act.

(6) Nothing in this Act shall derogate from any power of altering its constitution or regulations which may, by virtue of any Act of Parliament or other instrument constituting or regulating the company, be vested in the company.

(7) In this section the expression "instrument" includes a deed of settlement,

contract of co-partnery, cost book regulations and letters patent.

311. Power to substitute memorandum and articles for deed of settlement

(1) Subject to the provisions of this section, a company registered in pursuance of this Part of this Act may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of this Act with respect to confirmation by the court and registration of an alteration of the objects of a company shall so far as applicable apply to an alteration under this section with the following modifications–

(a) there shall be substituted for the printed copy of the altered memorandum required to be delivered to the Registrar a printed copy of the substituted memorandum and articles; and

(b) on the registration of the alteration being certified by the Registrar, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section the expression "deed of settlement" includes any contract of co-partnery or other instrument constituting or regulating the company, not being an Act of Parliament, a royal charter or letters patent.

312. Power of court to stay or restrain proceedings

The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall in the case of a company registered in pursuance of this Part of this Act, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

313. Actions stayed on winding up order

Where an order has been made for winding up a company registered in pursuance of this Part of this Act, no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

PART XII
WINDING UP OF UNREGISTERED COMPANIES (ss 314-319)

314. Meaning of unregistered company

For the purposes of this Part of this Act, the expression "unregistered company" shall include any partnership, whether limited or not, any association and any company with the following exceptions–

(a) a railway company incorporated by Act of Parliament, or under the Indian Companies, Act, 1913 as it then applied;

(b) a partnership, association or company which consist of less than eight members and is not a partnership, association or company formed outside Tanzania.

315. Winding up of unregistered company

(1) Subject to the provisions of this Part of this Act, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions–

(a) no unregistered company shall be wound up under this Act voluntarily or subject to supervision;

(b) the circumstances in which an unregistered company may be wound up are as follows–

(i) if the company is dissolved or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(ii) if the company is unable to pay its debts;

(iii) if the court is of opinion that it is just and equitable that the company should be wound up;

(c) an unregistered company shall, for the purposes of this Act be deemed to be unable to pay its debts–

(i) if a creditor, by assignment or otherwise, to whom the company is indebted in sum exceeding one thousand shillings then due, has served on the company, by leaving at its principal place of business or by delivering to the secretary or some director, manager or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor;

(ii) if any suit or other legal proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company; or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, manager or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within ten days after service of the notice paid, secured or compounded for the debt or demand, or procured the suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;

(iii) if execution or other process issued on a decree or order obtained in any court in favour of a creditor against the company or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied;

(iv) if it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.

(2) Where a company incorporated outside Tanzania which has been carrying on business in Tanzania ceases to carry on business in Tanzania it may be wound up as an unregistered company under this Part of this Act notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

(3) Nothing in this Part of this Act shall affect the operation of any enactment which provides for any partnership, association or company, being wound up, or being wound up as a company or as an unregistered company, under any enactment repealed by this Act except that references in any such first-mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Act.

316. Contributories in winding up of unregistered company

(1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable of to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid.

(2) In the event of the death, bankruptcy or insolvency of any contributory, the provisions of this Act with respect to the legal representatives and heirs of deceased contributories, to the trustees of bankrupt or insolvent contributories shall apply.

317. Power of court to stay or restrain proceedings

The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

318. Actions stayed on winding-up order

Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

319. Provisions of Part XII cumulative

The provisions of this Part of this Act with respect to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore in this Act contained with respect to winding up companies by the court, and the court or liquidator may exercise any powers or do any act in case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act:

Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part of this Act.

PART XIII
COMPANIES INCORPORATED OUTSIDE TANZANIA CARRYING ON BUSINESS WITHIN TANZANIA (ss 320-328)

320. Companies to which Part XIII applies

This Part of this Act shall apply to all companies incorporated outside Tanzania which, after the commencement of this Act, establish a place of business within Tanzania, and to all companies incorporated outside Tanzania which have, before the commencement of this Act, established a place of business within Tanzania and continue to have an established place of business within Tanzania at the commencement of this Act.

320A. Companies incorporated outside Tanzania to establish place of business within Tanzania with the approval only of the Registrar (1) No company established outside Tanzania shall establish a place of business within Tanzania unless it has applied for and obtained approval of the Registrar.

(2) Where an application is made to the Registrar under subsection (1) he may, in his absolute discretion and without assigning any reason therefor, refuse to give his approval to such company to establish a place of business within Tanzania.

(3) Where any company incorporated outside Tanzania establishes a place of

business within Tanzania without having first obtained the approval of the Registrar, the company, as well as every director, agent or other officer of the company concerned with its management, or any agent of the company, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings, or in the case of a director, agent or other officer, to imprisonment for a term not exceeding seven years, or to both such fine and imprisonment:

Provided that in the case of a director, officer or agent it shall be a good defence if he satisfies the court that he had no knowledge, and could not, by the exercise of reasonable diligence, have had knowledge of the commission of the offence.

321. Documents, etc., to be delivered to Registrar by companies carrying on business in Tanzania

Every company incorporated outside Tanzania which, at the commencement of this Act, has a place of business in Tanzania and every such company which, after the commencement of this Act, establishes a place of business within Tanzania, shall, within six months from the commencement of this Act or within one month from the establishment of the place of business, deliver to the Registrar for registration–

(a) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company and, if the instrument is not written in the English language, a certified translation thereof;

(b) the full address of the registered or principal office of the company;

(c) a list of the directors of the company, containing such particulars with respect to the directors as are by this Act required to be contained with respect to directors in the register of the directors of a company;

(d) the names and addresses of some one or more persons resident in Tanzania authorised to accept on behalf of the company service of process and any notices required to be served on the company,

and in the event of any alteration being made in any such instrument or in such address or in the directors or managers or in the names or addresses of any such person as aforesaid, the company shall within three months of such alteration deliver to the Registrar a notice of the alteration.

322. Power of companies incorporated outside to hold lands

A company incorporated outside Tanzania which has delivered to the Registrar the documents and particulars specified in paragraphs (a), (b), (c) and Tanzania (d) of section 321 shall have same power to hold lands in Tanzania as if it were a company incorporated under this Act.

323. Balance sheet of company business in Tanzania

(1) Every company to which this Part of this Act applies shall in every calendar year make out a balance sheet in such form and containing such particulars and including such documents, as under the provisions of this Act it would, if it had been a company within the meaning of this Act have been required to make out and lay before the company in general meeting, and deliver a copy of that balance sheet to the Registrar for registration.

(2) If any such balance sheet is not written in the English language there shall be annexed to it a certified translation thereof.

324. Obligation to state name of company, whether limited, and country where incorporated

Every company to which this Part of this Act applies shall–

(a) in every prospectus inviting subscriptions for its share or debentures in Tanzania state the country in which the company is incorporated; and

(b) conspicuously exhibit on every place where it carries on business in Tanzania the name of the company and the country in which the company is incorporated; and

(c) cause the name of the company and of the country in which the company is incorporated to be stated in legible Roman letters in all bill-heads and letter paper, and in all notices, advertisements and other official publications of the company; and

(d) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible Roman letters in every such prospectus as aforesaid and in all bill-heads, letter paper, notices, advertisements and other official publications of the company in Tanzania and to be affixed on every place where it carries on its business.

325. Service on company to which Part XII applies

Any process or notice required to be served on a company to which this Part of this Act applies shall be sufficiently served if addressed to any person whose name has been delivered to the Registrar under this Part of this Act and left at or sent by post to the address which has been so delivered:

Provided that–

(a) where any such company makes default in delivering to the Registrar the name and address of a person resident in Tanzania who is authorised to accept on behalf of the company service of process or notices; or

(b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company or for any reason cannot be served,

a document may be served on the company by leaving it at or sending it by post to any place of business established by the company in Tanzania.

326. Where company ceases to have place of business If any company to which this Part of this Act applies, ceases to have a place of business in Tanzania, or if it ceases to do any business for the purpose of which it was incorporated–

(a) it shall forthwith give notice of either fact to the Registrar and as from the date on which notice is so given the obligation of the company to deliver any document to the Registrar shall cease, and he may, in his discretion, strike the company off the register; or

(b) where the company does not give notice of either fact to the Registrar pursuant to paragraph (a), if the Registrar, either of his own motion or through any other way, becomes aware of those facts, the company shall be deemed to be defunct, the provisions of section 283 of this Act shall apply to it *mutatis mutandis* and the Registrar shall proceed accordingly in relation to the company concerned.

327. Penalties If any company to which this Part of this Act applies fails to comply with any of the foregoing provisions of this Part of this Act the company, and every officer or agent of the company, shall be liable to a fine not exceeding one thousand shillings, or, in the case of a continuing offence, five thousand shillings for every day during which the default continues.

328. Interpretation of Part XIII

For the purposes of this Part of this Act–

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

"director" in relation to a company includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

"place of business" includes a share transfer or share registration office;

"prospectus" has the same meaning as when used in relation to a company incorporated under this Act.

PART XV
RESTRICTIONS ON SALE OF SHARES AND OFFERS OF SHARES FOR SALE (ss 329-331E)

329. Provisions with respect to prospectuses of foreign companies inviting subscriptions for shares or offering shares for sale (1) It shall not be lawful for any person–

(a) to issue, circulate or distribute in Tanzania any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Tanzania, whether the company has or has not or established, or when formed will or will not establish a place of business in Tanzania, unless–

(i) before the issue, circulation or distribution of the prospectus in Tanzania a copy thereof, certified by the chairman and two other directors of the company having been approved by resolution of the managing body, has been delivered for registration to the Registrar and it has been registered by the Registrar;

(ii) the prospectus states on the face of it that the copy has been so delivered and the fact that it has been registered by the Registrar at the date of registration;

(iii) the prospectus is dated;

(iv) the prospectus otherwise complies with this Part of this Act; or

(b) to issue to any person in Tanzania a form of application for shares in or debentures of such a company or intended company as aforesaid, unless the form is issued with a prospectus which complies with this Part of this Act:

Provided that this provision shall not apply if it is shown that the form of application was issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(2) This section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(3) Where any document by which any shares in or debentures of a company incorporated outside Tanzania are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section 39 of this Act to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this section a prospectus issued by the company.

(4) An offer of shares or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.

(5) Section 38 of this Act shall extend to every prospectus to which this section applies.

(6) Any person who is knowingly responsible for the issue, circulation or distribution of any prospectus, or for the issue of a form of application for shares or

debentures, in contravention of the provisions of this section shall be liable to a fine not exceeding ten thousand shillings.

(7) In this section and in section 330 the expressions "prospectus," "shares" and "debentures" have the same meanings as when used in relation to a company incorporated under this Act.

330. Requirements as to prospectus

(1) In order to comply with this Part of this Act a prospectus, in addition to complying with the provisions of subparagraphs (ii) and (iii) of paragraph (a) of subsection (1) of section 329, must–

(a) contain particulars with respect to the following matters–

(i) the objects of the company;

(ii) the instrument constituting or defining the constitution of the company;

(iii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;

(iv) an address in Tanzania where the said instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof certified in the prescribed manner, can be inspected;

(v) the date on which and the country in which the company was incorporated;

(vi) whether the company has established a place of business in Tanzania, and, if so, the address of its principal office in Tanzania:

Provided that the provisions of subparagraphs (i), (ii) and (iv) of this paragraph shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business;

(b) subject to the provisions of this section, state the matters specified in Part I of the Third Schedule to this Act (other than those in paragraph 1 of the said Part) and set out the reports specified in Part II of that Schedule subject always to the provisions contained in Part III of the said Schedule:

Provided that–

(i) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus must specify the objects of the company if the advertisement specifies the primary object with which the company was formed; and

(ii) in paragraph 3 of Part I of the said Third Schedule, a reference to the constitution of the company shall be substituted for the reference to the articles; and

(iii) paragraph 1 of Part III of that Schedule shall have effect as if the reference to the memorandum were omitted therefrom.

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

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

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

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

(c) the non-compliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or were otherwise

such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be executed:

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

(4) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act, apart from this section.

331. Restriction on offering of shares for subscription or sale (1) It shall not be lawful for any person to go from house to house offering shares for subscription or purchase to the public or any member of the public; and for the purposes of this subsection the expression "house" shall not include an office used for business purposes.

(2) Subject as hereinafter provided in this subsection, it shall not be lawful to make an offer in writing to any member of the public (not being a person whose ordinary business or part of whose ordinary business it is to buy or sell shares, whether as principal or agent, of any shares for purchase unless the offer is accompanied by a statement in writing and dated, containing such particulars as are required by this section to be included therein and otherwise complying with the requirements of this section or, in the case of shares in a company incorporated outside Tanzania, either by such a statement as aforesaid, or by such a prospectus as complies with this Part of this Act:

Provided that the provisions of this subsection shall not apply–

(a) where the shares to which the offer relates are shares which are quoted on, or in respect of which permission to deal has been granted by any recognised stock exchange in Tanzania and the offer so states and specifies the stock exchange; or

(b) where the shares to which the offer relates are shares which a company has allotted or agreed to allot with a view to their being offered for sale to the public; or

(c) where the offer was made only to persons with whom the person making the offer has been in the habit of doing regular business in the purchase or sale of shares.

(3) The written statement aforesaid shall not contain any matter other than the particulars required by this section to be included therein, and shall not be in characters less large or less legible than any characters used in the offer or in any document sent therewith.

(4) The said statement shall contain particulars with respect to the following matters–

(a) whether the person making the offer is acting as principal or agent, and if as agent the name of his principal and an address in Tanzania where that principal can be served with process;

(b) the date on which and the country in which the company was incorporated and the address of its registered or principal office in Tanzania;

(c) the authorised share capital of the company and the amount thereof which has been issued, the classes into which it is divided and the rights of each class of shareholders in respect of capital, dividends and voting;

(d) the dividends, if any, paid by the company on each class of shares during each of the three financial years immediately preceding the offer, and if no dividend has been paid in respect of shares of any particular class during any of those

years, a statement to that effect;

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

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

(g) whether or not the shares offered are fully paid up and, if not, to what extent they are paid up;

(h) whether or not the shares are quoted on, or permission to deal therein has been granted by, any recognised stock exchange in Tanzania or elsewhere, and, if so which, and, if not, a statement that they are not so quoted or that no such permission has been granted;

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

(ii) such other matters as may be prescribed by the Minister.

In this subsection the expression "company" means the company by which the shares to which the statement relates were or are to be issued.

(5) If any person acts, or cites, causes or procures any person to act, in contravention of this section, he shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding ten thousand shillings or to both such imprisonment and fine, and in the case of a second or subsequent offence to imprisonment for a term not exceeding twelve months or to a fine not exceeding fifty thousand shillings or to both such imprisonment and fine.

(6) Where a person convicted of an offence under this section is a company (whether a company within the meaning of this Act or not), every director and every officer concerned in the management of the company shall be guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

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

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

(9) Where a court subordinate to the High Court makes an order under this subsection (whether with or without consequential directions) an appeal against the order and the consequential directions, if any, shall lie to the High Court.

***Special Provisions relating to Statutory Corporations* (ss 331A-331C)**

331A. Interpretation of "subsidiary company" For the purposes of section 331B and section 331C, "subsidiary company" means a company (in this section referred to as "the first subsidiary") all the shares which are vested in a statutory corporation, and includes–

(a) a company (in this section referred to as "the second subsidiary") all the shares

of which are vested in the first subsidiary;

(b) a company (in this section referred to as "the second subsidiary") all the shares of which are vested in the second subsidiary or another subsequent subsidiary,

or, in the case of a company limited by guarantee, a company of which a statutory corporation or a subsidiary company is sole member.

331B. Special provisions relating to statutory corporations and their subsidiaries

(1) A statutory corporation or a subsidiary company may acquire all the shares in any company and may become the sole member of any company.

(2) Where a statutory corporation or a subsidiary company acquires all the shares in a company or becomes the sole member of the company, every provision in this Act or other written law or in the articles or other charter or instrument of the company the shares of which are so acquired, providing for any consequence to follow, or requiring any act or thing to be done, or entitling any person to do any act or thing or to take any action whatsoever, as the result of the reduction in the number of members of such company below a certain number, shall be of no effect in relation to the company.

(3) Where a company or its agent owns shares undergoes divestiture in accordance with the provisions of any written law relating to privatisation, the provisions of this Act, or any other written law, articles or other charter or instrument of the company the shares of which are undergoing divestiture, which relate to pre-emptive right of share holders, shall not apply in relation to that company

(4) The Minister may, by order published in the *Gazette*, exempt a subsidiary company from any of the provisions of this Act.

331C. Dissolution of subsidiary companies (1) The Minister may, by order published in the *Gazette*, dissolve a subsidiary company.

(2) Every order made under subsection (1) shall specify the date (in this section referred to as the "effective date") on which the same shall come into operation.

(3) Where an order is made under subsection (1) in respect of a subsidiary company (hereinafter referred to as "the specified company")–

(a) all the assets of the specified company subsisting upon the effective date shall, without further assurance, vest in the statutory corporation of which such company is a subsidiary, or any other company which is a subsidiary of such statutory corporation, as may be specified in such order (such statutory corporation or subsidiary company is hereinafter referred to as "the holding company");

(b) all the liabilities of the specified company subsisting on the effective date shall, without further assurance, be vested in the holding company and the specified company shall be discharged from its obligations in respect of those liabilities;

(c) all instruments (including contracts, guarantees, agreements, bonds, authorities, mortgages, charges, bills of exchange, promissory notes, bank drafts, bank cheques, letters of credit and securities)–

(i) to which the specified company is a party;

(ii) under which any money is or may become payable, or any other property is to be or may become liable to be transferred, conveyed or assigned to the specified company; or

(iii) under which any money is or may become payable or any other property is to be or may become liable to be transferred, conveyed or assigned by the specified company,

which are subsisting at the effective date shall continue in full force and effect and the holding company shall–

(a) be deemed to have been substituted for the specified company as a party thereto;
(b) be entitled to receive and enforce payment of any money payable thereunder;
(c) be entitled to obtain a transfer, conveyance or assignment of, and enforce possession of, any property which is to be transferred, conveyed or assigned thereunder;
(d) be liable to make payment of any money payable thereunder;
(e) be liable to transfer, convey or assign any property which is to be transferred, conveyed or assigned thereunder as the case may be.

(4) Where the Minister makes an order under subsection (1) he may by order transfer any person who is an employee of the specified company to the service of the holding company or the statutory corporation of which the specified company is a subsidiary.

(5) Where by an order made under subsection (4), the Minister transfers any employee of a specified company to the service of the holding company or the statutory corporation–

(a) such employee shall, as from the date of such transfer, be deemed to be an employee of the holding company or, as the case may be of the corporation to which he is transferred;
(b) the terms and conditions of service applicable to such employees after such transfer shall be not less favourable than those which were applicable to him immediately before the transfer, and for the purpose of determining any right to gratuity or any other superannuation benefit the service of such employee with the holding company or the corporation to which he is transferred shall be regarded as continuous with his service in the specified corporation immediately preceding such transfer; and
(c) the employment of such employee immediately prior to his transfer and his employment by the holding company or the statutory corporation to which he is transferred shall be deemed to be continuous employment by one employer within the meaning of section 9 of the Severance Allowance Act [xiv]*, and that Act shall apply to the parties in the same manner as it applies to the cases set out in subsection (1) of the said section 9.

(6) The power conferred upon the Minister by this section shall be in addition to and without prejudice to the powers conferred upon any other authority in relation to the company by or under any written law.

Powers of the President (ss 331D-331E)

331D. Power of the President to require company to be wound up (1) The President may, where in his opinion it is in the public interest so to do, by order published in the *Gazette*, require any company registered under this Act to be wound up.

(2) Where an order is made under subsection (1) the Registrar shall, as soon as may be practicable, cause a copy of such order to be filed in the High Court.

(3) Where an order made under subsection (1) is filed in the High Court pursuant to the provisions of subsection (2), the High Court shall, within four weeks from the date on which such order is so filed make a winding up order in respect of the company.

(4) For the purposes of making an order for the winding up of a company pursuant to subsection (3), and of such winding up, the High Court shall have all the jurisdiction and powers conferred upon it by Part VI, and it is hereby declared that all the provisions of that Part shall apply with respect to such winding up with, and subject to, all necessary modifications, including any modifications thereof which in the opinion of the

High Court, are necessary or expedient to give effect to the order made under subsection (1):

Provided that–

(a) an order made under subsection (1) shall not be challenged or otherwise questioned in any court;

(b) an order for the winding up or for dissolution of a company made pursuant to an order under subsection (1) shall not be stayed or set aside by any court.

(5) The President may, at any time before the completion of the winding up of a company in respect of which an order under subsection (1) has been made, by order published in the *Gazette*, cancel such order made under subsection (1) and upon such cancellation the court shall rescind any winding up order made by it under this section.

331E. President may order foreign company to cease to carry on business (1) The President may, where in his opinion it is in the public interest so to do, order any company incorporated outside Tanzania to cease to carry on business in Tanzania with effect from such date as may be specified in the order.

(2) Any company which continues to carry on business in contravention of an order made under subsection (1) shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding five hundred thousand shillings.

(3) If, after conviction for an offence under subsection (2) the company continues the contravention, it shall be liable upon conviction to a fine not exceeding five thousand shillings for every day on which the offence has been continued.

(4) Where a company is, by reason of subsection (2) or (3), guilty of an offence or a continuing offence, each and every one of the following persons shall be deemed to have also committed the offence or, as the case may be, the continuing offence, namely–

(a) every officer and agent of the company; and

(b) every person who, in Tanzania, manages or acts or takes part in the management, administration or government of the business in Tanzania of the company,

and shall be liable to be proceeded against accordingly and shall upon conviction be liable to a fine not exceeding twenty thousand shillings (or, in the case of a continuing offence, one thousand shillings for every day on which the offence has been continued) or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

PART XV
MISCELLANEOUS PROVISIONS (ss 332-350)

Prohibition of Partnerships with more than Twenty Members (s 332)

332. Prohibition of partnership with More than twenty members No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business that has for its object the requisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some Act of Parliament, or of letters patent.

Provisions relating to Banks (ss 333-334)

333.-334. Repealed

[Repealed by Ordinance No. 31 of 1960 s. 27.]

Miscellaneous Offences (ss 335-337)

335. Penalty for false statement If any person in any return, report, certificate, balance sheet or other document, required by or for the purposes of any of the provisions of this Act specified in the Ninth Schedule hereto, wilfully makes a statement

false in any material particular, knowing it to be false, he shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding ten years, and shall also be liable to a fine in lieu of or in addition to such imprisonment as aforesaid.

336. Penalty for perjury

If any person on examination on oath authorised under this Act or in any affidavit or deposition in or about the winding up of any company or otherwise in or about any matter arising under this Act, wilfully and corruptly gives false evidence, he shall be liable to imprisonment for a term not exceeding fifteen years and shall also be liable to a fine.

337. Penalty for improper use of word "Limited" If any person trades or carries on business under any name or title of which "Limited", or any contraction or limitation of that word is the last word, that person shall, unless duly incorporated with limited liability, be liable to a fine not exceeding five hundred shillings for every day upon which that name or title has been used.

***General Provisions as to Offences* (ss 338-342)**

338. Cognisance of offences

No court subordinate to a District court shall try any offence against this Act.

339. Provision with respect to default fines and meaning of "officer" in default

(1) Where in any provision of this Act it is provided that a company and every officer of the company who is in default shall be liable to a default fine, the company and every such officer shall, for every day during which the default, refusal or contravention continues, be liable to a fine not exceeding such amount as is specified in the said provision, or, if the amount of the fine is not so specified, to a fine not exceeding ten thousand shillings.

(2) For the purpose of any provision in this Act which provides that an officer of a company who is in default shall be liable to a fine or penalty, the expression "officer who is in default" means any director, manager, secretary or other officer of the company, who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the provision.

340. Application of fines

The court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards rewarding the person on whose information the fine is recovered.

341. Saving as to private prosecutors

Nothing in this Act relating to the institution of criminal proceedings by the Attorney-General shall be taken to preclude any person from instituting or carrying on any such proceedings.

342. Saving for privileged communications

Where proceedings are instituted under this Act against any person by the Attorney-General, nothing in this Act shall be taken to require any person who has acted as advocate for the defendant to disclose any privileged communication made to him in that capacity.

***Service of Documents and Legal Proceedings* (ss 343-347A)**

343. Service of documents

(1) A document may be served on a company by leaving it at or sending it by post to the registered office of the company in Tanzania.

(2) A document may be served on the Registrar by leaving it at or sending it by post to his office.

344. Costs in actions by certain limited companies

Where a limited company is plaintiff in any action or other legal proceeding, any

judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

345. Power of court to grant relief in certain cases

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

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

(3) The persons to whom this section applies are the following–

(a) directors of a company;
(b) managers of a company;
(c) officers of a company;
(d) persons employed by a company as auditors, whether they are or are not officers of the company.

346. Power to enforce orders

Orders made by the High Court under this Act may be enforced in the same manner as orders made in an action pending therein.

347. Power to alter tables and forms (1) The Minister may alter Table A, the form in the Sixth Schedule and the tables of fees in the Eighth Schedule to this Act, so that the amount of fees payable to the Registrar under the said Eighth Schedule is not thereby increased, and may alter or add to Tables B, C, D and E in the First Schedule, and the forms in the Fifth Schedule to this Act.

(2) Any such table or form, when altered, shall be published in the *Gazette*, and henceforth shall have the same force as if it were included in one of the Schedules to this Act, but no alteration made by the Minister in Table A shall affect any company registered before the alteration, or repeal, as respects that company, any portion of that Table.

(3) In addition to the powers hereinbefore conferred by this section, the Minister may make rules providing for all or any matters which by this Act are to be prescribed by his authority.

347A. Minister to make variations (1) The Minister may vary, alter or add to the provisions of the Second, Third and Fourth Schedules to provide for further matters required to be stated in a prospectus or a statement in lieu of a prospectus.

(2) Any such variation, alteration or addition shall be published in the *Gazette* and thereupon shall have effect.

***Companies (Winding Up) Rules, 1929 (Imperial), Applied to Tanzania* (s 348)**

348. Companies (Winding Up) Rules applied to Tanzania

(1) Unless and until the High Court makes rules under the powers conferred by section 285 of this Act, the Companies (Winding Up) Rules, 1929, made pursuant to the

Companies Act, 1929 (Imperial), dated the 29th August, 1929 are declared to be in force in Tanzania and shall be read with and considered part of this Act:

Provided always that it shall be lawful for the High Court by rules to amend or revoke any of the said rules in their application to Tanzania:

Provided further that it shall be lawful for any court to construe the said rules with such verbal alteration not affecting the substance as may be deemed expedient to render the same applicable to local circumstances and to any matters before the court, provided always that any such construction or alteration shall not be inconsistent with the provisions of this Act.

Construction of the court to be final

(2) In any proceedings taken in Tanzania for the winding up of companies the decision of the court on the construction to be placed on any of the provisions of the Companies (Winding Up) Rules, 1929, with respect to practice and procedure shall be final, and no action, suit or other legal proceedings or process shall be brought, taken, issued or allowed in Tanzania against any person in respect of any act or thing purporting to be done in pursuance of any order or direction of the court under the aforesaid Rules.

Repeal and Savings (ss 349-350)

349. Repeal

[Repeals the Indian Companies Act, 1913, with savings.]

350. Omitted

[Omitted.]

PART XVI (ss 351-355)
COMPANIES (TAX ON NOMINAL CAPITAL)

R.L. Cap. 188

351. Levy of tax on nominal capital of companies incorporated in Tanzania

There shall be raised, levied, collected and paid on the nominal capital of every company incorporated in Tanzania after the commencement of this Part and on every addition to the registered capital of any company incorporated or to be incorporated either before or after the commencement of this Part a tax (hereinafter referred to as "the tax") of five shillings for every one thousand shillings or part of such nominal capital or addition as the case may be.

[s. 2]

352. Tax, when payable

The tax shall become due and payable on the date of incorporation of the company or on the date of the resolution authorising an increase of the registered capital, as the case may be.

[s. 3]

353. Power of Registrar of Companies to refuse registration unless tax is paid

Notwithstanding anything contained in this Act the Registrar of Companies may refuse to register the memorandum and articles of association of a company and may refuse to record an increase of the registered capital of an incorporated company unless he is first satisfied that the full amount of the tax due under this Part has been paid.

[s. 4]

354. Remission in case of certain companies Where a company incorporated in Tanzania (hereinafter referred to as "the company") acquires all the property and undertaking in Tanzania of a company incorporated outside Tanzania (hereinafter referred to as "the foregoing company"), and–

(a) such acquisition is effected within two years of the incorporation of the company in Tanzania; and

(b) the foreign company has, prior to such acquisition, paid in the country of its incorporation any tax or duty due under any law of that country corresponding to the tax payable under this Part; and

(c) at the time of such acquisition, the members of the company comprise the members of the foreign company and hold the shares or stock of the foreign company in the same proportion as they hold the shares or stock of the company,

there shall be remitted to the company such sum as shall bear the same proportion to the amount of tax or duty paid by the foreign company in the country of its incorporation under any law of that country corresponding to the tax payable under this Part as the value of the assets of the foregoing company in Tanzania immediately before such acquisition bears to the value of all the assets of the foreign company, wherever situate, immediately before such acquisition:

Provided that where any sum remissible under the provisions of this section exceeds or together with any sums previously remitted exceeds, the amount of tax paid under the provisions of this Part, there shall be remitted a sum equal to the amount of the tax so paid or such sum as, together with any sums previously remitted, is equal to the amount of the tax so paid, as the case may be.

[s. 5]

355. General power to remit by Minister The Minister responsible for finance may, by Order published in the *Gazette*, provide that a company shall be exempt from tax to the extent specified in the Order.

[s. 6]

SCHEDULES

FIRST SCHEDULE

(Sections 2, 10, 115, 310, 347)

TABLE A

REGULATIONS FOR THE MANAGEMENT OF A COMPANY LIMITED BY SHARES

Preliminary

1. (1) These Regulations may be cited as the Management of Limited Companies Regulations.

(2) In these regulations unless the context otherwise requires–

"the Act" means the Companies Act.

Shares

2. Subject to the provisions, if any, in that behalf of the memorandum of association, and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of share capital or otherwise, as the company may from time to time by special resolution determine, and any preference share may, with the sanction of a special resolution, be issued on the terms that it is, or at the option of the company it is liable, to be redeemed.

3. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations

relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

4. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

5. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding one shilling, and on such terms, if any, as to evidence and indemnity, as the directors think fit.

6. No part of the funds of the company shall directly be employed in the purchase of, or in loans upon the security of, the company's shares, but nothing in this regulation shall prohibit transactions mentioned in the proviso to section 46(1) of the Act.

Lien

7. The company shall have a lien on every share not being a fully paid share for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's lien, if any, on a share shall extend to all dividends payable thereon.

8. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.

9. For giving effect to any such sale the directors may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

10. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale.

Calls on Shares

11. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares.

12. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

13. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of eight *per centum* per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

14. The provisions of these regulations as to the liability of joint holders and as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

15. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

16. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six percent) as may be agreed upon between the member paying the sum in advance and the directors.

Transfer and Transmission of Shares

17. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

18. Shares shall be transferred in the following form, or in any usual or common form which the directors shall approve–

> "I, A. B., of.....in consideration of the sum of Shs.....paid to me by C. D, of.....(hereinafter called "the said transferee") do hereby transfer to the said transferee the share (or shares) numbered in the undertaking called the ..... Company, Limited, to hold unto the said transferee, subject to the several conditions on which I hold the same: and I, the said transferee, do hereby agree to take the said share (or shares) subject to the conditions aforesaid.
>
> As witness our hands the.....day of.....19..
>
> Witness to the signatures of, etc."

19. (1) The directors may decline to register any transfer of shares, not being fully paid shares to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless–

(a) a fee not exceeding two shillings is paid to the company in respect thereof; and

(b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

(2) If the directors refuse to register a transfer of any shares, they shall within two months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

20. The legal personal representatives of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased survivor, shall be the only persons

recognised by the company as having any title to the share.

21. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be properly required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

22. 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.

Forfeiture of Shares

23. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

24. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

25. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

26. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

27. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receives payment in full of the nominal amount of the shares.

28. A statutory declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

29. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Conversion of Shares into Stock

30. The company may by ordinary resolution convert any paid-up shares into stock, and reconvert any stock into paid-up shares of any denomination.

31. 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; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

32. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

33. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder".

Alteration of Capital

34. The company may from time to time by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

35. Subject to any direction to the contrary that may be given by the company in general meeting, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time, within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of those shares in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this regulation.

36. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise as the shares in the original share capital.

37. The company may by ordinary resolution–

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

(b) subdivide its existing shares, or any of them, into shares of smaller amount than is fixed by the memorandum of association subject, nevertheless, to the provisions of section 51(1)(d) of the Act;

(c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

38. The company may by special resolution, reduce its share capital and any capital redemption reserve fund in any manner and with, and subject to, any incident authorised, and consent required, by law.

General Meetings

39. A general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

40. The general meetings referred to in regulation 39 shall be called ordinary general meetings; all other general meetings shall be called extraordinary general meetings.

41. 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 114 of the Act. If at any time there are not within Tanzania sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Notice of General Meetings

42. Subject to the provisions of section 117(2) of the Act relating to special resolutions, seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

43. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any members shall not invalidate the proceedings at any meeting.

Proceedings at General Meetings

44. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

45. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

46. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

47. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

48. If there is no such chairman, or if at any meeting he is not present within

fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose one of their number to be chairman.

49. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which adjournment took place. When a meeting is adjourned for ten 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.

50. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members present in person or by proxy entitled to vote or by one member or two members so present and entitled, if that member or those two members together hold not less than fifteen percent of the paid-up capital of the company and, unless a poll is 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 of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

51. 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.

52. 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.

53. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members

54.

On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

55. In the case of joint holders the vote of the senior who tenders a vote whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

56. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian appointed by that court, and any such committee or other legal guardian may, on a poll, vote by proxy.

57. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

58. On a poll, votes may be given either personally or by proxy:

Provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions of section 116 of the Act is in force.

59. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under seal, or under the hand of an officer or attorney duly authorised. A proxy

need not be a member of the company.

60. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than seventy-two 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.

61. An instrument appointing a proxy may be in the following form, or any other form which the directors shall approve–

"..... Company, Limited.

I, ..., of....., in the district of....., being a member of the ..... Company, Limited, hereby appoint .....of....., as my proxy, to vote for me and on my behalf at the (*ordinary or extraordinary, as the case may be)* general meeting of the company to be held on the.....day of ....., 20....., and at any adjournment thereof.

Signed this ..... day of ..... 20....."

62. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

Corporations acting by Representatives at Meetings

63. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

Directors

64. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

65. The remuneration of the directors shall from time to time be determined by the company in general meeting.

66. The qualification of a director shall be the holding of at least one share in the company.

Powers and Duties of Directors

67. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company, as are not, by the Act, or by these articles, required to be exercised by the company in general meeting, subject, nevertheless, to any of these articles, to the provisions of the Act and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

68. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term and at such remuneration (whether by way of salary, or commission, or participation in profits or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

69. The amount for the time being remaining undischarged of moneys borrowed

or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

70. 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.

The Seal

71. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary or such other person as the directors may appoint for the purpose and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualification of Directors

72. The office of director shall be vacated, if the director–

(a) ceases to be a director by virtue of section 142 of the Act; or
(b) without the consent of the company in general meeting, holds any other office of profit under the company except that of managing director or manager; or
(c) becomes bankrupt in Tanzania or in any other country which is declared to be a reciprocating country under section 150 of the Bankruptcy Act [xv]*; or
(d) becomes prohibited from being a director by reason of any order made under sections 213 or 269 of the Act; or
(e) is found lunatic or becomes of unsound mind; or
(f) resigns his office by notice in writing to the company; or
(g) is directly or indirectly interested in any contract with the company or participates in the profits of any contract with the company; or
(h) is punished with imprisonment for a term exceeding six months without the option of a fine:

Provided, however, that a director shall not vacate his office by reason of his being a member of any corporation which has entered into contracts with or done any work for the company if he shall have declared the nature of his interest in manner required by section 150 of the Act, but the director shall not vote in respect of any such contract or work or any matter arising thereout, and if he does so vote, his vote shall not be counted.

Rotation of Directors

73. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one-third of the directors for the time being or, if their number is not three or a multiple of three, then the number nearest one-third shall retire from office.

74. 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.

75. A retiring director shall be eligible for re-election.

76. The company at the general meeting at which a director retires in manner

aforesaid may fill up the vacated office by electing a person thereto and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office.

77. The company may from time to time in general meeting 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.

78. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

79. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

80. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors

81. The directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

82. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall, when the number of directors exceeds three, be three, and when the number of directors does not exceed three, be two.

83. 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 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.

84. 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.

85. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

86. 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.

87. 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 case of an equality of votes the chairman shall have a second or casting vote.

88. 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 is 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.

Dividends and Reserve

89. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

90. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

91. No dividend shall be paid otherwise than out of profits.

92. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this regulation as paid on the share.

93. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose of which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

94. If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend or other moneys payable on or in respect of the share.

95. Any dividend may be paid by cheque or warrant sent through the post to the registered address of the member or person entitled thereto or in the case of joint holders to any one of such joint holders at his registered address or to such person and such address as the member or person entitled or such joint holders, as the case may be, may direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent or to the order of such other person as the member or person entitled or such joint holders, as the case may be, may direct.

96. No dividend shall bear interest against the company.

Accounts

97. The directors shall cause proper books of account to be kept with respect to–

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(b) all sales and purchases of goods by the company; and

(c) the assets and liabilities of the company.

98. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

99. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

100. The directors shall from time to time in accordance with section 123 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets and reports as are referred to in that section.

101. The profit and loss account shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting and, in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reason why only a portion of such expenditure is charged against the income of the year.

102. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the auditor's report shall, not less than seven days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company.

Audit

103. Auditors shall be appointed and their duties regulated in accordance with sections 132, 133 and 134 of the Act.

Notices

104. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address within Tanzania) to the address, if any, within the country supplied by him to the company for the giving of notices to him.

(2) 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 unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

105. If a member has no registered address within Tanzania and has not supplied to the company an address within Tanzania for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly given to him at noon on the day on which the advertisement appears.

106. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register of members in respect of the share.

107. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or receiver of the bankrupt, or by any like description, at the address, if any, within Tanzania supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

108. (1) Notice of every general meeting shall be given in some manner hereinbefore authorised to–

(a) every member except those members who (having no registered address within Tanzania) have not supplied to the company an address within Tanzania for the giving of notices to them; and

(b) every person entitled to a share in consequence of the death or bankruptcy of a

member, who, but for his death or bankruptcy would be entitled to receive notice of the meeting.

(2) No other person shall be entitled to receive notices of general meetings.

TABLE B
FORM OF MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES

(Sections 13 and 347)

1st. The name of the company is "The Eastern Steam Packet Company, Ltd."

2nd. [Repealed by Ord. No. 10 of 1955.]

3rd. The object for which the company is established is, "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object".

4th. The liability of the members is limited.

5th. The share capital of the company is two hundred thousand shillings divided into one thousand shares of two hundred shillings each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of capital of the shares in the company set opposite our respective names.

Names, Addresses and Descriptions	Number of shares taken of Subscribers by each Subscriber
1. John Jones, of ....., merchant	200
2. John Smith, of ....., "	25
3. Thomas Green, of ....., "	30
4. John Thompson, of ....., "	40
5. Caleb White, of ....., "	15
6. Andrew Brown, of ....., "	5
7. Caesar White, of ....., "	10
Total shares taken	325

Dated the ..... day of ..... 20.....

Witness to the above signatures, A.B., Acacia Avenue, Dar es Salaam.

TABLE C
FORM OF MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND NOT HAVING A SHARE CAPITAL

(Sections 13 and 347)

Memorandum of Association

1st. The name of the company is "The Iringa School Association Limited".

2nd. [Repealed by Ord. No. 10 of 1955.]

3rd. The objects for which the company is established are "the carrying on of a school for boys in the District of Iringa and the doing all such other things as are incidental or conducive to the attainment of the above objects".

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he

ceases to be a member, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding two hundred shillings.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers

1. John Jones, of ....., Schoolmaster
2. John Smith, of ....., "
3. Thomas Green, of ....., "
4. John Thompson, of ....., "
5. Caleb White, of ....., "
6. Andrew Brown, of ....., "
7. Caesar White, of ....., "

Dated the ..... day of ..... 20.....

Witness to the above signatures, A.B., Acacia Avenue, Dar es Salaam.

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION

Preliminary

1. In these regulations–

"the Act" means the Companies Act.

Members

2. The number of members with which the company proposes to be registered is five hundred, but the directors may from time to time register an increase of members.

3. The subscribers to the memorandum of association and such other persons as the directors shall admit to membership shall be members of the company.

General Meetings

4. The first general meeting shall be held at such time, not being less than one month nor more than three months after the incorporation of the company, and at such place, as the directors may determine.

5. A general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting or, in default at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

6. The general meetings referred to in regulation 5 shall be called ordinary general meetings and all other general meetings shall be called extraordinary general meetings.

7. The directors may, whenever they think fit, convene an extraordinary general meeting and extraordinary general meetings shall also be convened on such requisition in default, may be convened by such requisitionists, as provided by section 11 of the Act. If at any time there are not within Tanzania sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Notice of General Meetings

8. Subject to the provisions of section 117(2) of the Act relating to special resolutions, seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

9. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting.

Proceedings at General Meetings

10. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

11. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

12. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

13. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

14. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose one of their number to be chairman.

15. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten 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.

16. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least two members present in person or by proxy entitled to vote and unless a poll is 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 of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

17. 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.

18. 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.

19. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members

20. Every member shall have one vote.

21. A member of unsound mind, or in respect of whom an order has been made, by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, or other legal guardian appointed by that court, and any such committee, or other legal guardian or other person may, on a poll, vote by proxy.

22. No member shall be entitled to vote at any general meeting unless all moneys presently payable by him to the company have been paid.

23. On a poll, votes may be given either personally or by proxy:

Provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions of section 116 of the Act is in force.

24. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation either under the seal, or under the hand of an officer or attorney so authorised. A proxy need not be a member of the company.

25. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than seventy-two 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.

26. An instrument appointing a proxy may be in the following form, or any other form which the directors shall approve–

"..... Company, Limited.

I, ..., of ....., in the District of ....., being a member of the ..... Company, Limited, hereby appoint ....., of ....., as my proxy to vote for me and on my behalf at the (*ordinary or extraordinary, as the case may be*) general meeting of the company to be held on the ..... day of ....., 20..... Signed this ..... day of ....., 20..... and at any adjournment thereof.

27. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

Corporations Acting by Representatives at Meetings

28. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

Directors

29. The number of directors and the names of the first directors shall be determined in writing by a majority of the subscribers to the memorandum.

30. The remuneration of the directors shall from time to time be determined by

the company in general meeting.

Powers and Duties of Directors

31. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Act or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the Act, and to such regulations being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

32. 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.

The Seal

33. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary or such other person as the directors may appoint for that purpose; and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualifications of Directors

34. (1) The office of director shall be vacated, if the director–

(a) without the consent of the company in general meeting holds any other office of profit under the company; or
(b) becomes bankrupt; or
(c) becomes prohibited from being a director by reason of any order made under section 213 or 269 of the Act;
(d) is found lunatic or becomes of unsound mind; or
(e) resigns his office by notice in writing to the company;
(f) is directly or indirectly interested in any contract with the company and fails to declare the nature of his interest in manner required by section 150 of the Act;
(g) is punished with imprisonment for a term exceeding six months without the option of a fine.

(2) A director shall not vote in respect of any contract in which he is interested or any matter arising thereout, and if he does so vote his vote shall not be counted.

Rotation of Directors

35. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one-third of the directors for the time being or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

36. 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.

37. A retiring director shall be eligible for re-election.

38. The company at the general meeting at which a director retires in the manner aforesaid may fill up the vacated office by electing a person thereto and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office.

39. The company may from time to time in general meeting 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.

40. Any casual vacancy occurring in the board of directors may be filled up by the directors but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

41. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

42. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors

43. The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

44. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall, when the number of directors exceeds three, be three and shall, when the number of directors does not exceed three, be two.

45. 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 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.

46. 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.

47. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

48. 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.

49. 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 case of an equality of votes the chairman shall have a second or casting vote.

50. 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 is afterwards discovered that there was some defect in the appointment of any such directors or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Accounts

51. The directors shall cause proper books of account to be kept with respect to–

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(b) all sales and purchases of goods by the company; and

(c) the assets and liabilities of the company.

52. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of directors.

53. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

54. The directors shall from time to time in accordance with section 123 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets and reports as are referred to in that section.

55. The profit and loss account shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting and, in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

56. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the auditor's report shall, not less than seven days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company.

Audit

57. Auditors shall be appointed and their duties regulated in accordance with sections 132, 133 and 134 of the Act.

Notices

58. (1) A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address within Tanzania) to the address, if any, within Tanzania supplied by him to the company for the giving of notices to him.

(2) 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

unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

59. If a member has no registered address within Tanzania and has not supplied to the company an address within Tanzania for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company, shall be deemed to be duly given to him on the day on which the advertisement appears.

60. Notice of every general meeting shall be given in some manner hereinbefore authorised to every member except those members who (having no registered address within Tanzania) have not supplied to the company an address within Tanzania for the giving of notices to them. No other person shall be entitled to receive notices of general meetings.

Names, Addresses and Descriptions of Subscribers

1. John Jones, of ....., Schoolmaster
2. John Smith, of ....., "
3. Thomas Green, of ....., "
4. John Thompson, of ....., "
5. Caleb White, of ....., "
6. Andrew Brown, of ....., "
7. Caesar White, of ....., "

Dated the ..... day of ..... 20.....

Witness to the above signatures, A.B., Main Avenue, Dar es Salaam.

TABLE D
MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND HAVING A SHARE CAPITAL

(Sections 13 and 347)

Memorandum of Association

1st. The name of the company is "The Highland Hotel Company, Limited."

2nd. [Repealed by Ord. No. 10 of 1955.]

3rd. The objects for which the company is established are "the facilitating travelling in the Highlands of Tanganyika, by providing hotels and conveyances by sea and by land, for the accommodation of travellers, and the doing of all such other things as are incidental or conducive to the attainment of the above objects."

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding four hundred shillings.

6th. The share capital of the company shall consist of five hundred thousand shillings, divided into five thousand shares of one hundred shillings each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares on the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers	Number of shares taken by each Subscriber

1.	John Jones, of ....., merchant		200
2.	John Smith, of .....,	"	25
3.	Thomas Green, of .....,	"	30
4.	John Thompson, of .....,	"	40
5.	Caleb White, of .....,	"	15
6.	Andrew Brown, of .....,	"	5
7.	Caesar White, of .....,	"	10
Total shares taken			325

Witness to the above signatures, A.B., Main Avenue, Dar es Salaam.

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION

1. The Articles of Table A set out in the First Schedule to the Companies Act shall be the articles of association of the company and apply to the company.

Names, Addresses and Descriptions of Subscribers

1. John Jones, of ....., merchant
2. John Smith, of ....., "
3. Thomas Green, of ....., "
4. John Thompson, of ....., "
5. Caleb White, of ....., "
6. Andrew Brown, of ....., "
7. Caesar White, of ....., "

Dated the ..... day of ..... 20.....

Witness to the above signatures, A.B., Main Avenue, Dar es Salaam.

TABLE E
MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A SHARE CAPITAL

(Sections 13 and 347)

Memorandum of Association

1st. The name of the company is "The Patent Stereotype Company".

2nd. [Repealed by Ord. No. 10 of 1955.]

3rd. The objects for which the company is established are "the working of a patent method of founding and casting stereotype plates, of which method John Smith, of Dodoma, is the sole patentee, and the doing of all such things as are incidental or conducive to the attainment of the above objects."

WE, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers

1.	John Jones, of ....., merchant		3
2.	John Smith, of .....,	"	2
3.	Thomas Green, of .....,	"	1
4.	John Thompson, of .....,	"	2
5.	Caleb White, of .....,	"	2
6.	Andrew Brown, of .....,	"	1
7.	Caesar White, of .....,	"	1
Total shares taken			12

Dated the ..... day of ..... 20.....

Witness to the above signatures, A.B., Main Avenue, Dar es Salaam.

ARTICLES OF ASSOCIATION TO ACCOMPANY THE PRECEDING MEMORANDUM OF ASSOCIATION

1. The share capital of the company is twenty thousand shillings divided into twenty shares of one thousand shillings each.

2. The company may by special resolution–

(a) increase the share capital by such sum to be divided into shares of such amount as the resolution may prescribe;
(b) consolidate its shares into shares of a larger amount than its existing shares;
(c) subdivide its shares into shares of a smaller amount than its existing shares;
(d) cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person;
(e) reduce its share capital in any way.

3. The Articles of Table A set out in the First Schedule to the Companies Act (other than Articles 30, 31, 32, 33, 34, 37 and 38), shall be deemed to be incorporated with these articles and shall apply to the company.

Names, Addresses and Descriptions of Subscribers

1. John Jones, of ....., merchant
2. John Smith, of ....., "
3. Thomas Green, of ....., "
4. John Thompson, of ....., "
5. Caleb White, of ....., "
6. Andrew Brown, of ....., "
7. Caesar White, of ....., "

Dated the ..... day of ..... 20.....

Witness to the above signatures, A.B., Main Avenue, Dar es Salaam.

SECOND SCHEDULE
FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR BY A PRIVATE COMPANY ON BECOMING A PUBLIC COMPANY

(Section 28)

THE COMPANIES ACT

Statement in lieu of Prospectus delivered for registration by

(Insert the name of the Company)

Pursuant to section 28 of the Companies Act

(1)	Delivered for registration by	
(2)	The nominal share capital of the Company	Shs. .....
(3)	Divided into	Shares of Shs. ..... each
(4)	Amount (if any) of above capital each which consists of redeemable preference shares.	Shares of Shs. ..... each
(5)	The date on or before which these shares are, or are liable to be redeemed.	
(6)	Names, descriptions and addresses of directors or proposed directors	
(7)	Amount of shares issued	Shares .....
(8)	Amount of commissions paid in connection therewith.	
(9)	Amount of discount, if any, allowed on the issue of any shares, or so much thereof as has not been written off at the date of the statement.	

(10)	Unless more than one year has elapsed since the date on which the Company was entitled to commence business– Amount of preliminary expenses ..... Amount paid to any promoter ..... Consideration for payment.	Shs. ..... Name of promoter ..... Shs. ..... Shs. .....
(11)	If the share capital of the Company is divided into different classes of shares, the right of voting at meeting of the Company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
(12)	Number and amount of shares and debentures issued within the two years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement.	1. Shares of Shs. ..... fully paid. 2. Shares upon which Shs. ..... per share credited as paid. 3. Debenture Shs. ..... Consideration for the issue of those shares or debentures. 4. Consideration .....
(13)	Names and addresses of vendors of property (a) purchased or acquired by the Company within the two years preceding the date of this statement or (b) agreed or proposed to be purchased or acquired by the Company.	
(14)	Amount (in cash, shares or debentures) paid or payable to each separate vendor.	
(15)	Amount paid or payable in cash, shares or debentures for any such property, specifying the amount paid or payable for goodwill.	Total purchase price Shs. ..... Cash ..... Shs. Shares ..... Shs. Debentures ..... Shs. Goodwill ..... Shs. ..... Debentures Shs. ..... Goodwill Shs. .....
(16)	Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of business or entered into more than two years before the delivery of this statement).	
(17)	Time and place at which the contracts or copies thereof may be inspected.	
(18)	Names and addresses of the auditors of the Company.	
(19)	Full particulars of the nature and extent of the interest of every director in any property purchased or acquired by the Company within the two years preceding the date of this statement or proposed to be purchased or acquired by the Company or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the	

firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become or to qualify him as, a director, or otherwise for services rendered or to be rendered to the Company by him or by the firm.

(20) Rates of the dividends (if any) paid by the Company in respect of each class of shares in the Company in each of the three financial years immediately preceding the date of this statement or since the incorporation of the Company whichever period is the shorter.

(21) Particulars of the cases in which dividends have been paid in respect of any class of shares in any of these years.

(22) If any of the unissued shares or debentures are to be applied in the purchase of any business the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement, provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirement shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.

(Signatures of the persons above-named as directors or proposed directors or of their agents authorised in writing).

Dated ..... 20..... .....

.....

.....

Note: In this Form the expression "vendor" includes a vendor as defined in Part III of the Third Schedule to this Act, and the expression "financial year" has the meaning assigned to it in that Part of the said Schedule.

THIRD SCHEDULE

(Sections 36 and 330)

PART I

MATTERS REQUIRED TO BE STATED IN PROSPECTUS

1. Except where the prospectus is published as a newspaper advertisement, the contents of the memorandum, with the names, descriptions and addresses of the signatories, and the number of shares subscribed for by them respectively.

2. The number of founders' or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.

3. The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors.

4. The names, descriptions and addresses of the directors or proposed directors and of the managers or proposed managers (if any).

5. Where shares are offered to the public for subscription, particulars as to–

(a) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters–

(i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;

(ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;

(iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;

(iv) working capital; and

(b) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

6. The amount payable on application and allotment on each share and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.

7. The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

8. The names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor.

9. The amount, if any, paid or payable as purchase money in case of shares or debentures, for any such property as aforesaid, specifying the amount if any, payable for goodwill.

10. The amount, if any, paid within the two preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission.

11. The amount or estimated amount of preliminary expenses.

12. The amount paid within the two preceding years or intended to be paid or given to any promoter, and the consideration for any such payment.

13. The dates of, and parties to, every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of issue of the prospectus, and a reasonable time and place at which any such material contract or a copy thereof may be inspected.

14. The names and addresses of the auditors, if any, of the company.

15. Full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

16. If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

17. In the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

PART II
REPORTS TO BE SET OUT IN PROSPECTUS

1. A report by the auditors of the company with respect to the profits of the company in respect of each of the three financial years immediately preceding the issue of the prospectus, and with respect to the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the said three years, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years and, if no accounts have been made up in respect of any part of the period of three years ending on a date three months before the issue of the prospectus, containing a statement of that fact.

2. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants who shall be named in the prospectus upon the profits of the business in respect of each of the three financial years immediately preceding the issue of the prospectus.

PART III
PROVISIONS APPLYING TO PARTS I AND II OF THIS SCHEDULE

1. The provisions of this Schedule with respect to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors or proposed directors, and the amount or estimated amount of the preliminary expenses, shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

2. Every person shall for the purposes of this Schedule be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property, to be acquired by the company in any case where–

(a) the purchase money is not fully paid at the date of the issue of the prospectus;

(b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;

(c) the contract depends for its validity or fulfilment on the result of that issue.

3. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the

expression "sub-purchaser" included a sublessee.

4. For the purposes of paragraph 8 of Part I of this Schedule where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

5. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the accounts of the company or business have only been made up in respect of two years or one year, Part II of this Schedule shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years.

6. The expression "financial year" in Part II of this Schedule means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of the said Part of this Schedule be deemed to be a financial year.

FOURTH SCHEDULE

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR BY A COMPANY WHICH DOES NOT ISSUE A PROSPECTUS OR WHICH DOES NOT GO TO ALLOTMENT ON A PROSPECTUS ISSUED

(Section 41)

THE COMPANIES ACT

Statement in lieu of Prospectus delivered for registration by

(Insert the name of the company)

Pursuant to section 41 of the Companies Act

(1)		Delivered for registration by	
(2)		The nominal share capital of the Company	Shs.
(3)		Divided into	Shares of Shs. ..... each
(4)	(a)	Amount (if any) of above capital which consists of redeemable preference shares.	Shares of Shs. ..... each
	(b)	The date on or before which these shares are, or are liable to be redeemed.	
(5)		Names, descriptions and addresses of directors or proposed directors.	
(6)		If the share capital of the Company is divided into different classes of shares, the right of voting at meetings of the Company conferred by, and the rights in respect of capital and dividends attached to the several classes of shares respectively.	
(7)	(a)	Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	1. Shares of Shs. fully paid ..... 2. Shares upon which Shs. per share credited as paid. Shs. ..... 3. Debenture Shs. ..... 4. Consideration–
	(b)	The consideration for the intended issue of those shares and debentures.	
(8)		Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company.	
(9)		Amount (in cash, shares or debentures) payable to each separate vendor.	

(10)	Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid specifying amount (if any) paid or payable for goodwill.	Total purchase Shs ..... Cash ..... Shs. Shares ..... Shs. Debentures ..... Shs. Goodwill ..... Shs.
(11)	Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the Company; or	Amount paid ..... Amount payable .....
(12)	Rate of the commission	Rate percent .....
(13)	The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.	
(14)	Estimated amount of preliminary expenses.	Shs. .....
(15)	Amount paid or intended to be paid to any promoter.	Name of promoter. Amount Shs. .....
(16)	Consideration for the payment.....	Consideration–
(17)	Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the Company or entered into more than two years before the delivery of this statement).	
(18)	Time and place at which the contracts or copies thereof may be inspected.	
(19)	Names and addresses of the auditors of the Company (if any).	
(20)	Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the Company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the Company.	
(21)	If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement, provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirement shall have effect as if references to two	

years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.

(Signatures of the persons above-named as directors or proposed directors, or their agents authorise in writing).

.....
.....
.....
.....

Dated ..... 20.....

Note: In this Schedule the expression "vendor" includes a vendor as defined in Part III of the Third Schedule to this Act, and the expression "financial year" has the meaning assigned to it in that Part of the said Schedule.

FIFTH SCHEDULE
FORM OF ANNUAL RETURN OF A COMPANY HAVING A SHARE CAPITAL

(Sections 108 and 347)

Annual Return of the ..... Company, Limited, made up to the ..... day of ....., 20..... (being the fourteenth day after the date of the first or only ordinary general meeting in 20.....)

The address of the registered office of the company is as follows–

.....
.....

Summary of Share Capital and Shares

Nominal Share Capital Shs. ..... divided into [xvi]1	Shs.	..... shares of ..... Shs. each.
Total number of shares taken up [xvii]2 to the ..... day of ....., 20....., being the date of the return (which number must agree with the total shown in the list as held by existing members).	Shs.	
Number of shares issued subject to payment wholly in cash.		
Number of shares issued as fully paid up otherwise than in cash.		
Number of shares issued as partly paid up to the extent of ..... per share otherwise than in cash.		
[xviii]3 Number of ..... shares (if any) issued at a discount.		
[xix]4 Total amount of discount on the issue of shares which has not been written off at the date of this Return.	Shs.	..... shares of ..... Shs. each.
[xx]5 There has been called up on each of ..... shares.	Shs.	..... shares of ..... Shs. each.
[xxi]6 Total amount of calls received, including payments on application and allotment.	Shs.	
Total amount (if any) agreed to be considered as paid on ..... shares which have been issued as partly paid up to the extent of ..... per share otherwise than in cash.	Shs.	
Total amount of calls unpaid	Shs.	
Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures or allowed by way of discount in respect of any debentures since the date of the last Return.	Shs.	
Total number of shares forfeited.	Shs.	

Total amount of share for which share warrants to bearer are outstanding. Shs.

Total amount of share warrants bearer issued and surrendered since the date of the last Return. Issued/Surrendered. Shs.

Number of shares comprised in share warrant to bearer.

Total amount of the indebtedness of the Company in respect of all mortgages and charges of the kind which are required to be registered with the Registrar of Companies under the Companies Act.

Copy of Last Audited Balance Sheet of Company

Note: Except where the Company is a "Private Company" within the meaning of section 27 of the Companies Act this Return must include a written copy, certified by a Director or by the Manager or Secretary of the Company to be a true copy, of the last balance sheet which has been audited by the Company's auditors (including every document required by law to be annexed thereto) together with a copy of the report of the auditors thereon (certified as aforesaid), and if any such balance sheet is in a foreign language there must also be annexed to it a translation thereof in English certified in the prescribed manner to be a correct translation. If the said last balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets there must be made such additions to and corrections in the said copy as would have been required to be made in the said balance sheet in order to make it comply with the said requirements, and the fact that the said copy has been so amended must be stated thereon.

Private Company

Certificate to be given by a Private Company.

(a) "I certify that the Company has not since the date of the [xxii]7 last Actual Return issued any invitation to the public to subscribe for any share debentures of the Company."

.....

(Signature)

(State whether Director or Secretary)

(b) Should the number of members of the Company exceed fifty the following certificate is also required–

"I certify that the excess of members of the Company above fifty consists wholly of persons who are in the employment of the Company and/or of persons who, having been formerly in the employment of the Company were while in such employment, and have continued after the determination of such employment to be, members of the Company."

.....

(Signature)

(State whether Director or Secretary)

Note: Banking companies must add a list of all their places of business.

The Return must be signed at the end by a Director or by the Manager or Secretary of the Company.

Delivered for filing by .....

Particulars of the [xxiii]8 Directors of the ..... Company, Limited, at the date of the Annual Return.

[xxiv]9 *The present First Name or Names and Surname*	*Any former First Name or Names or Surname*	*Nationality*	*Nationality of origin (if other than the present nationality)*	*Usual residential address*	[xxv]10 Other business occupation if any. If none state so

List of Persons holding Shares in the ..... Company, Limited, on the ..... day of ....., 20....., and of Persons who have held Shares therein at any time since the date of the last Return, or (in the case of the first Return) of the incorporation of the Company, showing their Names and Addresses, and an Account, of the Shares so held.

Note: If the names in this list are not arranged in alphabetical order, an index sufficient to enable the name of any person in the list to be readily found must be annexed to this list.

Folio in Register Ledger Containing Particulars	*Names, Addresses and Occupations*						*Account of S*	
Surname	*First name*	*Address*	*Occupation*	[xxvi]11 *Number of Shares held by existing Members at date of Return* [xxvii]12	[xxviii]13 *Particulars of Shares Transferred since the date of the last Return or (in the case of the first Return of) the incorporation of the Company, by persons who are still Members.*		[xxix]14 *Particulars of Share Transferred since the da of the last Return or (in th case of the first Return) the incorporation of the Company, by persons wh have ceased to be Membe*	
						Number [xxx]15	Date of Registration of Transfer	Number

(*Signature*)

(State whether Director or Manager or Secretary)

SIXTH SCHEDULE
FORM OF STATEMENT TO BE PUBLISHED BY BANKING AND INSURANCE COMPANIES AND DEPOSIT, PROVIDENT OR BENEFIT SOCIETIES

(Section 131)

[xxxi]1 The share capital of the company is ..... divided into ..... shares of ..... each.

The number of shares issued is .....

Calls to the amount of ..... shillings per share have been made under which the sum of ..... shillings has been received.

The liabilities of the company on the first day of January (or July) were–

Debts owing to sundry persons by the company:

On judgment	Shs.
On speciality	Shs.
On notes or bills	Shs.
On simple contracts	Shs.
On estimated liabilities	Shs.

The assets of the company on that day were–

Government securities (stating them).	
Bills of exchange and promissory notes	Shs.
Cash at the bankers	Shs.
Other securities	Shs.

SEVENTH SCHEDULE
PROVISIONS WHICH DO NOT APPLY IN THE CASE OF A WINDING UP SUBJECT TO SUPERVISION OF THE COURT

(Section 256)

Statements of companies affairs to be submitted to Official Receiver.	s. 180
Report by Official Receiver.	s. 181
Power of Court to appoint liquidator.	s. 182
Appointment and powers of provisional liquidator.	s. 183
Appointment, style, etc., of liquidators.	s. 184
Provisions where person other than Official Receiver is appointed liquidator.	s. 185
Provisions as to liquidators.	s. 186
General provisions as to liquidators.	s. 187 [except sub-s. (52)]
Exercise and control of liquidator's powers.	s. 191
Books to be kept by liquidator.	s. 192
Audit of liquidator's accounts in winding up.	s. 193
Control of Registrar over liquidators.	s. 194
Release of liquidators.	s. 195
Meeting of creditors and contributories to determine whether committee of inspection shall be appointed.	s. 196
Constitution and proceedings of committee of inspection.	s. 197
Appointment of special manager.	s. 205
Power to order public examination of promoters, directors, etc.	s. 212
Power to restrain fraudulent persons from managing companies.	s. 213
Delegation to liquidator of certain powers of court.	s. 285(2)
Power to appoint Official Receiver as receiver for debenture holders or creditors.	s. 297

EIGHTH SCHEDULE
TABLE OF FEES TO BE PAID TO THE REGISTRAR (Sections 293, 306 and 347)

1. BY A COMPANY HAVING A SHARE CAPITAL

Registration Company whose nominal share capital is:

	Shs.	*Cts.*
(a) not more than Shs. 20,000/=	2,400	00
(b) more than Shs. 20,000/= but not more than Shs. 100,000/=	4,800	00
(c) more than Shs. 100,000/ = but not more than Shs. 500,000/=	7,200	00
(d) more than Shs. 500,000/= but not more than Shs. 1,000,000/=	9,600	00

(e) more than Shs. 1,000,000/ = but not more than Shs. 2,000,000/=	12,000	00
(f) more than Shs. 2,000,000/= but not more than Shs. 3,000,000/=	14,400	00
more than Shs. 3,000,000/= but not more than Shs. 5, 000, 000/=	18,000	00
more than Shs. 5,000,000/= but not more than Shs. 10,000,000/=	24,000	00
more than Shs. 10,000,000/=	120,000	00
For registering any documents by this Ordinance required to be delivered, sent or forwarded to the Registrar other than the memorandum of the abstract required to be delivered to the Registrar by a receiver or manager to be sent to the Registrar by the liquidator in a winding up in the United Republic	2,400	00
Late registration fee per month or part thereof of any document required to be delivered, sent or forwarded to the Registrar other than the memorandum of the abstract required to be delivered to the Registrar by a receiver or manager to be sent to the Registrar by the liquidator in a winding up in the United Republic	1,200	00

2. BY A COMPANY NOT HAVING A SHARE CAPITAL

For the registration of a company where the number of members as stated in the Articles of Association–	*Shs.*	*Cts.*
(a) does not exceed 25	4,800	00
(b) exceeds 25 but does not exceed 50	7,200	00
(c) exceeds 50 but does not exceed 100	9,600	00
(d) exceeds 100 but does not exceed 150	12,000	00
(e) exceeds 150 but does not exceed 200	21,000	00
(f) is unlimited	24,000	00
For certification of any document	500	00
For making a search in any file	600	00

3. A COMPANY TO WHICH PART XII OF THIS ORDINANCE APPLIES

For the registration of a certified y of a charter, statute or memorandum and articles of the company, or either instrument, constituting or defining the Constitution of the company	US $ 500
For registration of any document required to be delivered to the Registrar under Part XII of this Ordinance, other than the balance sheet	US $ 100
For filing of a Balance Sheet	US $ 100
For filling of any other document	US $ 100
For late filling fees	US $ 100

4. STAMP DUTY

Stamp Duty on:	*Shs.*	*Cts.*
Declaration of compliance	1,200	00
Memorandum of Association	1,200	00
Articles of Association	1,200	00
Duplicate of the Memorandum of Association	600	00
Duplicate of Articles of Association	600	00
Transfer of share/stock, mortgages, debentures, stamp duty	To be computed on the basis of formula.	

NINTH SCHEDULE

(Section 335)

PROVISIONS REFERRED TO IN SECTION 335 OF THE ACT

	Provisions relating to–
s. 16	Conclusiveness of certificate of incorporation;
s. 36	Specific requirements as to particulars in prospectus;

s. 41	Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar;
s. 43	Return as to allotments;
s. 79	Registration of charges created by company;
s. 80(1)	Duty of company to register charges created by company;
s. 81	Duty of company to register charges existing on property acquired;
s. 90	Application of Part IV to companies incorporated outside Tanzania;
s. 95	Restriction on commencement of business;
s. 108(3)(n) and (o)	The particulars as to directors and indebtedness of the company;
s. 113	Statutory meeting and statutory report;
s. 134(1)	Auditor's report and right to information and and (2) explanations;
s. 141	Restrictions on appointment or advertisement of director;
s. 246	Notice by liquidator of his appointment;
s. 290	Delivery to Registrar of accounts of receivers and managers;
s. 321	Documents, etc., to be delivered to Registrar by companies carrying on business in Tanzania; Return to be delivered to Registrar where documents, etc., attend;
s. 323	Balance sheet of company carrying on business in Tanzania;
s. 324	Obligations to state name of company, etc.

CHAPTER 213
THE BUSINESS NAMES (REGISTRATION) ACT

---

[i]*Note I:*

1. Sections 119-121 of the United Kingdom Companies Act, 1948 extend to Tanganyika (G.N. No. 166 of 1951).
2. ss. 29, 96, 97, 98, 99, 100, 101–111, 117, 145 and 146 of this Ord. shall not apply to the Scheduled firms under Act No. 2 of 1967 – vide G.N. No. 175 of 1967.
3. ss. 29, 96–111, 117, 145 and 146 shall not apply to the Schedule firms under Act No. 19 of 1967 vide G.Ns. Nos. 90 and 200 of 1968.

Note II:

This Chapter consists of the following legislation–

1. The Companies Ordinance (R.L. Cap. 212) – (Parts I to XIII) which come into force on 1st October, 1932.
2. The Companies (Tax on Nominal Capital) Ordinance (R.L. Cap. 188) (Part XIV) which came into force on 17th November, 1933.

[ii]Cap. 79
[iii]Cap. 79
[iv]Cap. 189
[v]Cap. 79
[vi]Cap. 27
[vii]Cap. 56
[viii]Cap. 25
[ix]Cap. 16
[x]Cap. 25
[xi]Cap. 89
[xii]Cap. 189
[xiii]British Parliament (Cap. 152)

[xiv]Cap. 386
[xv]Cap. 25
[xvi]Where there are shares of different kinds or amounts (e.g. Preference and Ordinary or Shs. 20 and 1 sh.) state the number and nominal values separately.
[xvii]Where there are shares of different kinds or amounts (e.g. Preference and Ordinary or Shs. 20 and 1 sh.) state the number and nominal values separately.
[xviii]If the shares are of different kinds, state them separately.
[xix]Where various amounts have been called, or there are shares of different kinds, state them separately.
[xx]Where various amounts have been called, or there are shares of different kinds, state them separately.
[xxi]Include what has been received on forfeited as well as on existing shares.
[xxii]In the case of the first Annual Return strike out the words "last Annual Return" and substitute therefor the words "Incorporation of the Company".
[xxiii]"Director" includes any person who occupies the position of a Director by whatever name called and any person in accordance with whose directions or instructions the Directors of a Company are accustomed to act.
[xxiv]In the case of a Corporation its corporate name and registered or principal office should be shown.
[xxv]In the case of an individual who has no business occupation but holds any other directorship or directorships particulars of that directorship or of some one of those directorships must be entered.
[xxvi]The aggregate number of shares held, and not the distinctive numbers, must be stated, and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.
[xxvii]When the shares are of different classes these columns may be subdivided so that the number of each class held, or transferred may be shown separately. Where any shares have been converted into stock the amount of stock held by each member must be shown.
[xxviii]The date of Registration of each transfer should be given as well as the number of Shares transferred on each date. The particulars should be place opposite the name of the transferor, and not opposite that of the Transferee, but the name of the transferee may be inserted in the "Remarks" column immediately opposite the particulars of each Transfer.
[xxix]The date of Registration of each transfer should be given as well as the number of Shares transferred on each date. The particulars should be place opposite the name of the transferor, and not opposite that of the Transferee, but the name of the transferee may be inserted in the "Remarks" column immediately opposite the particulars of each Transfer.
[xxx]When the shares are of different classes, these columns may be subdivided so that the number of each class held, or transferred may be shown separately. Where any shares have been converted into stock the amount of stock held by each member must be shown.
The date of Registration of each transfer should be given as well as the number of Shares transferred on each date. The particulars should be place opposite the name of the transferor, and not opposite that of the Transferee, but the name of the transferee may be inserted in the "Remarks" column immediately opposite

the particulars of each transfer.

[xxxi] If the company has no share capital, the portion of the statement relating to capital and shares must be omitted.