A BILL
FOR
AN ACT
TO REPEAL
THE
COMPANIES AND ALLIED MATTERS ACT 1990
(CAP C20, LFN 2004)
AND
ENACT
THE
COMPANIES AND ALLIED MATTERS ACT, 2016
TO PROVIDE FOR
THE
INCORPORATION OF COMPANIES, REGISTRATION OF BUSINESS NAMES TOGETHER WITH INCORPORATION OF TRUSTEES OF CERTAIN COMMUNITIES, BODIES, ASSOCIATIONS
AND
INCIDENTAL MATTERS
COMPANIES AND ALLIED MATTERS ACT 2016

Commencement [ ]

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COMPANIES AND ALLIED MATTERS ACT, 2016

A BILL FOR AN ACT TO REPEAL THE COMPANIES AND ALLIED MATTERS ACT 1990 (CAP C20, LFN 2004) AND ENACT THE COMPANIES AND ALLIED MATTERS ACT, 2016 TO PROVIDE FOR THE INCORPORATION OF COMPANIES, REGISTRATION OF BUSINESS NAMES TOGETHER WITH INCORPORATION OF TRUSTEES OF CERTAIN COMMUNITIES, BODIES, ASSOCIATIONS AND INCIDENTAL MATTERS

Commencement [ ]

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows –

1. Establishment of the Corporate Affairs Commission
(1) There is hereby established under this Act, a body to be known as the Corporate Affairs Commission (in this Act referred to as “the Commission”).

(2) The Commission shall be—
(a) a body corporate with perpetual succession and a common seal;
(b) capable of suing and being sued in its corporate name; and
(c) capable of acquiring, holding or disposing of any property, movable or immovable, for the purpose of carrying out its functions.

(3) The headquarters of the Commission shall be situated in the Federal Capital Territory, Abuja, and there shall be established an office of the Commission in each State of the Federation.

2. Governing Board of the Commission
There shall be for the Commission, a governing Board (in this Act referred to as “the Board”), which shall comprise—

(a) a Chairman who shall be appointed by the President on the recommendation of the Minister, and who by reason of his ability, experience or specialised knowledge of corporate, industrial, commercial, financial or economic matters or of business or professional attainment, is capable of making outstanding contributions to the work of the Commission;

(b) one representative of the business community, appointed by the Minister on the recommendation of the Nigerian Association of Chambers of Commerce, Industries, Mines and Agriculture;

(c) one representative of the legal profession, appointed by the Minister on the recommendation of the Nigerian Bar Association;

(d) one representative of the accountancy profession, appointed by the Minister, after consultation with the professional bodies of accountants as are established by an Act;

(e) one representative of the Institute of Chartered Secretaries and Administrators of Nigeria appointed by the Minister on the recommendation of the Institute;
(f) one representative of the Manufacturers Association of Nigeria, appointed by the Minister on the recommendation of the Association;

(g) one representative of the Securities and Exchange Commission not below the grade level of a director or its equivalent;

(h) one representative each not below the grade level of a director of the following Federal Ministries -

(i) Industry, Trade and Investment,

(ii) Justice; and

(i) the Registrar-General of the Commission.”

3. Tenure of Office

   (1) Subject to the provisions of subsection (2) of this section, a person appointed as a member of the Board (not being an ex-officio member) shall hold office for three years and shall be eligible for re-appointment for one further term of three years.

   (2) The Minister may, with the approval of the President at any time remove any member of the Board from office if the Minister is of the opinion that it is not in the interest of the Commission for the member to continue in office and shall notify the member in writing to that effect.

   (3) The members of the Board except the Registrar-General shall be part-time members of the Board.

   (4) Any member of the Board shall cease to hold office if—

(a) he becomes of unsound mind or is incapable of carrying out his duties;

(b) he becomes bankrupt or has made arrangement with his creditors;

(c) he is convicted of a felony or any offence involving dishonesty;

(d) he is guilty of serious misconduct relating to his duties; or

(e) in the case of a person possessed of professional qualifications, he is disqualified or suspended (other than at his own request) from practising his profession in any part of Nigeria by the order of any competent authority made in respect of him personally.

4. Functions of the Board

   The Board shall—

(a) provide the general policy guidelines for the carrying out of the functions of the Commission;

(b) have general oversight on the administration of the Commission;

(c) review and approve the strategic plans of the Commission;

(d) receive and consider management reports and advise the Minister on the reports; determine the terms and conditions of service of employees of the Commission;

(e) fix the remuneration, allowances and benefits of employees of the Commission, in consultation with National Salaries, Income and Wages Commission;

(f) ensure compliance with the provisions of this Act; and
(g) do such other things as are necessary to ensure the effective and efficient performance of the functions of the Commission.

5. Remuneration and Allowance
Members of the Commission appointed under section 2 (a), (b), (c), (d), (e), (f), (g) and (h) shall be paid such remuneration and allowances as the President may, from time to time, direct.

6. Proceedings of the Commission
(1) Subject to this section and section 27 of the Interpretation Act, the Commission may make standing orders regulating its proceedings.

(2) The chairman shall preside at every meeting of the Commission but, in his absence, the members present shall elect one of their number present to preside at the meeting.

(3) The quorum for meetings of the Commission shall be five.

(4) The Commission may appoint any of its officers to act as secretary at any of its meetings.

7. Disclosure of Interest
(1) A member of the Commission who is directly interested in any company or enterprise, the affairs of which are being deliberated upon by the Commission, or is interested in any contract made or proposed to be made by the Commission shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Commission.

(2) A disclosure, under subsection (1) of this section, shall be recorded in the minutes of the Commission, and the member shall—
   (a) not take part after such disclosure in any deliberation or decision of the Commission with regard to the subject matter in respect of which his interest is thus disclosed;
   (b) be excluded for the purpose of constituting a quorum of the Commission for any such deliberation or decision.

8. Functions of the Commission
The functions of the Commission shall be to-

(a) administer this Act, including:-
   (i) the registration, regulation and supervision of the formation, incorporation, management, striking off and winding up of companies,
   (ii) the registration, regulation and supervision of business names, management and removal of names from the register, and
   (iii) the registration, regulation and supervision of the formation, incorporation, management and dissolution of incorporated trustees;

(b) establish and maintain a companies registry and office in each State of the Federation suitably and adequately equipped to discharge its functions under this Act or any other law in respect of which it is charged with responsibility;
(c) arrange or conduct an investigation into the affairs of any company, or incorporated trustees or business names where the interest of shareholders, or members, or partners, or public so demands;

(d) ensure compliance by companies, business names and incorporated trustees with the provisions of this Act and such other regulations as may be made from time to time by the Commission;

(e) perform such other functions as may be specified in this Act or any other legislation; and

(f) undertake such other activities as are necessary or expedient to give full effect to the provisions of this Act.

9. Appointment of Registrar-General
(1) There shall be appointed by the Commission a Registrar-General who shall be qualified to practise as a legal practitioner in Nigeria and has been so qualified for not less than 10 years and in addition, has had experience in company law practice or administration for not less than 8 years.

(2) The Registrar-General shall be the chief executive of the Commission and shall be subject to the directives of the Commission and shall hold office on such terms and conditions as may be specified in his letter of appointment and on such other terms and conditions as may be determined, from time to time, by the Commission with the approval of the President.

(3) The Registrar-General shall be the accounting officer for the purpose of controlling and disbursing amounts from the fund established pursuant to section 12 of this Act.

10. Appointment of Staff
The Commission may appoint such other staff as it may deem necessary for the efficient performance of the functions of the Commission under or pursuant to this Act.

11. Right to Appear in Court
Notwithstanding the provisions of any enactment to the contrary, a person appointed to the office of Registrar-General under section 8 of this Act or a person appointed under section 9 of this Act who is a legal practitioner shall, while so appointed, be entitled to represent the Commission as a legal practitioner for the purpose and in the course of his employment.

12. Service in the Commission to be Pensionable
(1) Service in the Commission shall be approved service for the purpose of the Pensions Reform Act, 2014 and accordingly, officers and other persons employed in the Commission shall in respect of their service in the Commission be entitled to pensions, gratuities and other retirement benefits enjoyed by persons holding equivalent grades in the public service of the Federation.

(2) Nothing in this Act shall prevent the appointment of a person to any office on terms in the Commission which preclude the grant of pension contributions or gratuity in that respect.

13. Fund of the Commission
The Commission shall establish a fund which shall consist of such sums as may be allocated to it by the Federal Government and such other funds as may accrue to it in the discharge of its functions.

14. Expenditure of the Commission
The Commission may, from time to time, apply the proceeds of the fund established in pursuance of section 12 of this Act—
(a) to the cost of administration of the Commission;
(b) for re-imbursements of members of the Commission or any Committee set up by the Commission for such expenses as may be authorised or approved by the Commission, in accordance with the rate approved in that behalf by the President;
(c) to the payment of salaries, fees or other remuneration or allowances, pensions and gratuities payable to the employees of the Commission;
(d) for the maintenance of any property acquired or vested in the Commission; and
(e) for, and in connection with, all or any of the functions of the Commission under this Act.

15. Annual Accounts, Audit and Estimates
(1) The Commission shall keep proper accounts and proper records in relation thereto and shall prepare in respect of each year a statement of accounts in such form as the President may direct.

(2) The accounts of the Commission shall be audited not later than six months after the end of the year by auditors appointed by the Commission from the list and in accordance with guidelines supplied by the Auditor-General for the Federation; and the fees of the auditors and the expenses of the audit generally shall be paid from the funds of the Commission.

(3) The Commission shall cause to be prepared, not later than 30 September in each year, an estimate of the expenditure and income of the Commission during the next succeeding year and when prepared they shall be submitted through the Minister to the President.

16. Annual Report
The Commission shall, not later than 30 June in each year, submit to the President a report on the activities of the Commission during the immediate preceding year, and shall include in such report the audited accounts of the Commission.

17. Pre-action Notice and Restriction on Levy of Execution
(1) No suit shall be commenced against the Commission before the expiration of a period of three months after a written notice of intention to commence the suit shall have been served upon the Commission by the intending plaintiff or his agent.

(2) The notice referred to in subsection (1) of this section shall clearly and explicitly state:
(a) the cause of action;
(b) the particulars of the claim;
(c) the name and place of abode of the intending plaintiff; and
(d) the relief which he claims.
(3) In any action or suit against the Commission, no execution or attachment or process in the nature thereof shall be issued against the Commission, but any sums of money which may by the judgment of the court be awarded against the Commission shall, subject to any directions given by the court where notice of appeal has been given by the Commission in respect of the said judgment, be paid by the Commission from the general reserve fund of the Commission.

PART A

INCORPORATION OF COMPANIES AND INCIDENTAL MATTERS

CHAPTER 1

FORMATION OF COMPANY

18. Right to Form a Company
(1) As from the commencement of this Act, any two or more persons may form and incorporate a company by complying with the requirements of this Act in respect of registration of such company.

(2) Notwithstanding subsection (1) of this section, one person may form and incorporate a private company by complying with the requirements of this Act in respect of a private company.

19. Partnership, etc., of More than 20 Members when Permitted
(1) No company, association, or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any business for profit or 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 other enactment in force in Nigeria.

(2) Nothing in this section shall apply to—
(a) any co-operative society registered under the provisions of any enactment in force in Nigeria; or
(b) any partnership for the purpose of carrying on practice—
   (i) as legal practitioners, by persons each of whom is a legal practitioner; or
   (ii) as accountants by persons each of whom is entitled by law to practise as an accountant.

(3) If at any time the number of members of a company, association or partnership exceeds 20 in contravention of this section and it carries on business for more than 14 days while the contravention continues, every person who is a member of the company, association or partnership during the time that it so carries on business after those 14 days shall be liable to a fine of N100 for every day during which the default continues.

20. Capacity of Individual to Form Company
(1) Subject to subsection (2) of this section, an individual shall not join in the formation of a company under this Act if—
(a) he is less than 18 years of age; or
(b) he is of unsound mind and has been so found by a court in Nigeria or elsewhere; or
(c) he is an undischarged bankrupt; or
(d) he is disqualified under sections 251 and 252 of this Act from being a director of a company.

(2) A person shall not be disqualified under paragraph (a) of subsection (1) of this section, if two other persons not disqualified under that subsection have subscribed to the memorandum.

(3) A corporate body in liquidation shall not join in the formation of a company under this Act.

(4) Subject to the provisions of any enactment regulating the rights and capacity of aliens to undertake or participate in trade or business, an alien or a foreign company may join in forming a company.

21. Types of Companies
(1) An incorporated company may be a company—
(a) 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) 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 company in the event of its being wound up (in this Act termed “a company limited by guarantee”); or
(c) not having any limit on the liability of its members (in this Act termed “an unlimited company”).

(2) A company of any of the foregoing types may either be a private company or a public company.

22. Private Company
(1) Private company is one which is stated in its memorandum to be a private company.

(2) Every private company shall by its articles restrict the transfer of its shares.

(3) The total number of members of a private company shall not exceed 50, not including persons who are bona fide in the employment of the company, or were while in that employment and have continued after the determination of that employment to be, members of the company.

(4) Where two or more persons hold one or more shares in a company jointly, they shall for the purpose of subsection (3) of this section be treated as a single member.

(5) A private company shall not, unless authorised by law, invite the public to—
(a) subscribe for any shares or debentures of the company; or
(b) deposit money for fixed periods or payable at call, whether or not bearing interest.
23. Consequences of Default in Complying with Conditions Constituting a Private Company

(1) Subject to subsection (2) of this section, where default is made in complying with any of the provisions of section 22 of this Act in respect of a private company, the company shall cease to be entitled to the privileges and exemptions conferred on private companies by or under this Act and this Act shall apply to the company as if it were not a private company.

(2) If a court, on the application of the company or any other person interested, is satisfied that the failure to comply with the provisions of section 22 of this Act was accidental or due to inadventure or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, the court may, on such terms and conditions as may seem to it to be just and expedient, order that the company be relieved from the consequences mentioned in subsection (1) of this section.

24. Public Company

Any company other than a private company shall be a public company and its memorandum shall state that it is a public company.

25. Unlimited Company to have Share Capital

As from the commencement of this Act, an unlimited company shall be registered with a share capital; and where an existing unlimited company is not registered with a share capital, it shall, not later than the appointed day, alter its memorandum so that it becomes an unlimited company having a share capital not below the minimum share capital permitted under section 97 of this Act.

26. Company Limited by Guarantee

(1) Where a company is to be formed for the promotion of commerce, art, science, religion, sports, culture, education, research, charity or other similar objects, and the income and property of the company are to be applied solely towards the promotion of its objects and no portion thereof is to be paid or transferred directly or indirectly to the members of the company except as permitted by this Act, the company shall not be registered as a company limited by shares, but may be registered as a company limited by guarantee.

(2) Every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company or purporting to divide the company’s undertaking into shares or interest shall be void.

(3) A company limited by guarantee shall not be incorporated with the object of carrying on business for the purpose of making profits for distribution to members.

(4) A company registered under this section shall not be registered with a share capital and every existing company limited by guarantee and having a share capital shall, not later than the appointed day, alter its memorandum so that it becomes a company limited by guarantee and not having a share capital:

Provided that:

(a) if the Commission is satisfied that the memorandum and articles of association have complied with the provisions of subsections (1) to (4) of this section, it shall cause
the application to be advertised in the prescribed form in three national daily newspapers;
(b) the advertisement shall invite objections, if any, to the incorporation of the company;
(c) the objection shall state the grounds on which it is made and shall be forwarded to reach the Commission within 28 days of the date of the last of the publications in the newspapers; and
(d) if any objection is made the Commission shall consider it and may require the objector and applicant to furnish further information or explanation and may uphold or reject the objection as it considers fit and inform the applicant accordingly.

(5) If-
(a) after the advertisement, no objection is received within the period specified in subsection (4) of this section or, where any objection is received, the same is rejected, the Commission, having regard to all the circumstances, may assent to the application or withhold its assent; and
(b) the Commission assents to the application, it shall register the company and issue a certificate of incorporation.

(6) If a company limited by guarantee carries on business for the purpose of distributing profits, all officers and members thereof who are cognisant of the fact that it is so carrying on business shall jointly and severally be liable for the payment and discharge of all the debts and liabilities of the company incurred in carrying on such business, and the company and every such officer and member shall be liable to penalty of N250 for every day during which it carries on such business.

(7) The total liability of a member of a company limited by guarantee to contribute to the assets of the company in the event of its being wound up shall not at any time be less than N100,000.

(8) Subject to compliance with subsection (6) of this section the articles of association of a company limited by guarantee may provide that a member can retire or be removed from membership of the company by a special resolution duly filed with the Commission.

(9) If in breach of subsection (7) of this section, the total liability of the members of any company limited by guarantee shall at any time be less than N100,000, every director and member of the company who is cognisant of the breach shall be liable to a penalty of N100.00 for every day during which the default continues.

(10) If, upon the winding up of a company limited by guarantee, there remains after the discharge of all its debts and liabilities any property of the company, the same shall not be distributed among the members but shall be transferred to some other company limited by guarantee having objects similar to the objects of the company or applied to some charitable object and such other company or association shall be determined by the members prior to dissolution of the company.

MEMORANDUM OF ASSOCIATION

27. Requirements with Respect to the Memorandum of a Company
(1) The memorandum of every company shall state—
(a) the name of the company;
(b) that the registered office of the company shall be situated in Nigeria;
(c) the nature of the business or businesses which the company is authorised to carry on as may be categorized by the Commission, from time to time;
(d) the restriction, if any, on the powers of the company;
(e) that the company is a private or public company, as the case may be;
(f) that the liability of its members is limited by shares or by guarantee or is unlimited, as the case may be.

(2) If the company has a share capital—
(a) the memorandum shall also state the amount of authorised share capital not being less than N100,000.00 in the case of a private company and N2,000,000.00, in the case of a public company, with which the company proposes to be registered, and the division thereof into shares of a fixed amount;
(b) the subscribers of the memorandum shall take among them a total number of shares of a value of not less than 25 per cent of the authorised share capital; and
(c) each subscriber shall write opposite to his name the number of shares he takes.

(3) A subscriber of the memorandum who holds the whole or any part of the shares subscribed by him in trust for any other person shall disclose in the memorandum that fact and the name of the beneficiary.

(4) The memorandum of a company limited by guarantee shall also state that—
(a) the income and property of the company shall be applied solely towards the promotion of its objects, and that no portion thereof shall be paid or transferred directly or indirectly to the members of the company except as permitted by or under this Act; and
(b) 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 debts and liabilities of the company, and of the costs of winding up, such amount as may be required not exceeding a specified amount and the total of which shall not be less than N100,000.

(5) The memorandum shall be signed by each subscriber in the presence of at least one witness who shall attest the signature.

(6) The memorandum shall be stamped as a deed.

28. Form of Memorandum
Subject to the provisions of section 27 of this Act, the form of memorandum of association of—
(a) a company limited by shares;
(b) a company limited by guarantee; and
(c) an unlimited company,
shall be as prescribed by the Commission, from time to time.

NAME OF COMPANY

29. Name as Stated in the Memorandum
(1) The name of a private company limited by shares shall end with the word “Limited”.
(2) The name of a public company limited by shares shall end with the words “Public Limited Company”.

(3) The name of a company limited by guarantee shall end with the words “(Limited by Guarantee)” in brackets.

(4) The name of an unlimited company shall end with the word “Unlimited”.

(5) A company may use the abbreviations “Ltd”, “PLC” “(Ltd/Gte)” and “Ultd” for the words “Limited”, “Public Limited Company”, “(Limited by Guarantee)” and “Unlimited” respectively in the name of the company.

30. Change of Name of Company

(1) If a company, through inadvertence or otherwise, on its first registration or on its registration by a new name, is registered under a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be likely to deceive, the first-mentioned company may, with the approval of the Commission, change its name; and if the Commission so directs, the company concerned shall change its name within a period of six weeks from the date of the direction or such longer period as the Commission may allow.

(2) If a company makes default in complying with a direction under subsection (1) of this section, it shall be liable to a penalty of N25.00 for every day during which the default continues.

(3) If a Company makes default in complying with the directive of Commission within the period specified, the Commission shall within 14 days after the expiration of such period send to the company a written notice referring to the directive and stating that if the directive is not complied with within six weeks of the date of the notice, the Commission shall proceed to strike out the name of the company from the register of companies by publication in the Gazette.

(4) The striking off shall not affect the validity of any contract entered into with or by the company or render defective any legal proceeding commenced by or against the company prior to the striking off.

(5) Any company may, by special resolution and with the approval of the Commission signified in writing, change its name: Provided that no such approval shall be required where the only change in the name of a company is the substitution of the words “Public Limited Company” for the word “Limited” or vice versa on the conversion of a private company into a public company or a public company into a private company in accordance with the provisions of this Act.

(6) Nothing in this Act shall preclude the Commission from requiring a company to change its name if it is discovered that such a name conflicts with an existing trade mark or business name registered in Nigeria prior to the registration of the company and the consent of the owner of the trade mark or business name was not obtained.
(7) Where a company changes its name, the Commission shall enter the new name on the register in place of the former name, and issue a certificate of incorporation altered to meet the circumstances of the case.

(8) 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 could have been continued or commenced against or by it in its former name may be continued or commenced against or by it in its new name.

(9) Any change made in the name under this section shall be published by the Commission in the Gazette.

(10) Where change is made in the name of a company pursuant to subsection (1) of this section, the Commission shall cause same to be published in a daily newspaper.

(11) If a company changes its name pursuant to subsection (5) of this section, it shall publish same in a daily newspaper and deliver a copy of the publication to the Commission within 30 days of the change of name.

31. Reservation of Name
(1) The Commission may on written application delivered to it either in hard copy or through electronic communications and on payment of the prescribed fees reserve a name pending registration of a company or change of name by a company.

(2) Such reservation as is mentioned in subsection (1) of this section shall be for such period as the Commission shall think fit not exceeding 60 days and during the period of reservation no other company shall be registered under the reserved name or under any other name which in opinion of the Commission bears too close a resemblance to the reserved name.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, the Commission may at any time before a certificate of incorporation is issued, withdraw or cancel a reserved name if it discovers that such name contravenes the provisions of section 30 of this Act.

(4) If any name becomes available in the event of a change of name or otherwise, the Commission shall have the power to approve the name for use by another company after a period of 60 days.

(5) The Commission may also withdraw or cancel approval for reservation of name where it is discovered that the approval was fraudulently, unlawfully or otherwise improperly procured.

(6) A person reserving a name under subsection (1) of this section may transfer the name to another person before the expiration of the reservation period if the Commission is satisfied that the transfer is not an attempt to sell access to or trade in or market the reserved name.

ARTICLES OF ASSOCIATION
32. Articles for Regulating Companies
There shall be registered, with the memorandum of association, articles of association signed by the subscribers to the memorandum of association, and prescribing regulations for the company.

33. Form and Contents of Articles
(1) The form and contents of the articles of association of a public company having a share capital, a private company having a share capital, a company limited by guarantee and an unlimited company shall be as in Parts I, II, III and IV respectively, of Table A in the First Schedule to this Act with such additions, omissions or alterations as may be required in the circumstances.

(2) In the case of a company limited by guarantee, the articles of association shall state the number of members with which the company proposes to be registered for the purpose of enabling the Commission to determine the fees payable on registration.

(3) The articles of association shall—
(a) be printed;
(b) be divided into paragraphs numbered consecutively; and
(c) be signed by each subscriber of the memorandum of association in the presence of at least one witness who shall attest the signature.

(4) The articles shall bear the same stamp duty as if they were contained in a deed.

REGISTRATION OF COMPANIES

34. Documents of Incorporation
(1) As from the commencement of this Act, a company shall be formed in the manner set out in this section.

(2) There shall be delivered to the Commission—
(a) the memorandum of association and articles of association complying with the provisions of this Part of this Act;
(b) the notice of the address of the registered office of the company and the head office if different from the registered office:
Provided that a postal box address or a private bag address shall not be accepted by the Commission as the registered office;
(c) a statement in the prescribed form containing the list and particulars together with the consent of the persons who are to be the first directors of the company;
(d) a statement of the authorised share capital signed by at least one director; and
(e) any other document required by the Commission to satisfy the requirements of any law relating to the formation of a company.

35. Registration
(1) The Commission shall register the memorandum and articles unless in its opinion—
(a) they do not comply with the provisions of this Act; or
(b) the business which the company is to carry on, or the objects for which it is formed, or any of them, are illegal; or
(c) any of the subscribers to the memorandum is incompetent or disqualified in accordance with section 20 of this Act; or

(d) there is non-compliance with the requirement of any other law as to registration and incorporation of a company; or

(2) Any person aggrieved by the decision of the Commission under subsection (1) of this section, may give notice to the Commission requiring it to apply to the court for directions and the Commission shall within 21 days of the receipt of such notice apply to the court for the directions.

(3) The Commission may, in order to satisfy itself as provided in subsection (1) (c) of this section, by instrument in writing require a person subscribing to the memorandum to make and lodge with the Commission, a statutory declaration to the effect that he is not disqualified under section 20 of this Act from joining in forming a company.

(4) Steps to be taken under this Act to incorporate a company shall not include any invitation to subscribe for shares or otherwise howsoever on the basis of a prospectus.

(5) Upon registration of the memorandum and articles, the Commission shall certify under its seal—

(a) that the company is incorporated;

(b) in the case of a limited company, that the liability of the members is limited by shares or by guarantee; or

(c) in the case of an unlimited company, that the liability of the members is unlimited; and

(d) that the company is a private or public company, as the case may be.

(6) The certificate of incorporation shall be prima facie evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental to it have been complied with and that the Association is a company authorised to be registered and duly registered under this Act.

(7) The Commission may withdraw, cancel or revoke certificate of registration issued under this Act where it is discovered that the certificate was fraudulently, unlawfully or otherwise improperly procured.

36. Effect of Registration
As from the date of incorporation mentioned in the certificate of incorporation, the subscriber of the memorandum together with such other persons as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the powers and functions of an incorporated company including the 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.

CAPACITY AND POWERS OF COMPANIES

37. Powers of Companies
(1) Except to the extent that the company’s memorandum or any enactment otherwise provides, every company shall, for the furtherance of its authorised business or objects, have all the powers of a natural person of full capacity.

(2) A company shall not have or exercise power either directly or indirectly to make a donation or gift of any of its property or funds to a political party or political association, or for any political purpose; and if any company, in breach of this subsection makes any donation or gift of its property to a political party or political association, or for any political purpose, the officers in default and any member who voted for the breach shall be jointly and severally liable to refund to the company the sum or value of the donation or gift and in addition, every such officer or member shall be guilty of an offence and liable to a fine equal to the amount or value of the donation or gift.

38. Effect of Ultra Vires Acts
(1) A company shall not carry on any business not authorised by its memorandum and shall not exceed the powers conferred upon it by its memorandum or this Act.

(2) A breach of subsection (1) of this section, may be asserted in any proceedings under sections 299 to 312 of this Act or under subsection (4) of this section.

(3) Notwithstanding the provisions of subsection (1) of this section, no act of a company and no conveyance or transfer of property to or by a company shall be invalid by reason of the fact that such act, conveyance or transfer was not done or made for the furtherance of any of the authorised business of the company or that the company was otherwise exceeding its objects or powers.

(4) On the application of—
(a) any member of the company; or
(b) the holder of any debenture secured by a floating charge over all or any of the company’s property or by the trustee of the holders of any such debentures, the court may prohibit, by injunction, the doing of any act or the conveyance or transfer of any property in breach of subsection (1) of this section.

(5) If the transactions sought to be prohibited in any proceeding under subsection (4) of this section are being, or are to be performed or made pursuant to any contract to which the company is a party, the court may, if it deems the same to be equitable and if all the parties to the contract are parties to the proceedings, set aside and prohibit the performance of such contract, and may allow to the company or to the other parties to the contract compensation for any loss or damage sustained by them by reason of the setting aside or prohibition of the performance of such contract but no compensation shall be allowed for loss of anticipated profits to be derived from the performance of such contract.

39. Effect of Reliance on Restrictions in the Memorandum
(1) Where there is provision in the memorandum of association of a company restricting the powers and capacity of the company to carry on its authorised business or object, the restriction may be relied on and have effect only for the purpose of—
(a) proceedings against the company by a director or member of the company, or where the company has issued debentures secured by a floating charge over all or
any of the company's property, by the holder of any of the debentures or the trustee for the holders of the debentures; or

(b) proceedings by the company or a member of the company against the present or former officers of the company for failure to observe any such restriction; or

(c) proceedings by the Commission or a member of the company to wind up the company; or

(d) proceedings for the purpose of restraining the company or other person from acting in breach of the memorandum or directing the company or such person to comply with the same.

(2) A person may not in proceedings referred to in subsection (1) (a), (b) or (c), of this section, rely on a restriction of the power or capacity of the company contained in the memorandum in any case where he voted in favour of, or otherwise expressly or by conduct agreed to the doing of an act by the company or the conveyance by or to the company of property which, it is alleged in the proceedings, was or would be contrary to such a restriction.

EFFECT OF MEMORANDUM AND ARTICLES

40. Effect of Memorandum and Articles

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

(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 and shall be of the nature of a speciality debt.

(3) Where the memorandum or articles empower any person to appoint or remove any director or other officer of the company, such power shall be enforceable by that person notwithstanding that he is not a member or officer of the company.

(4) In any action by any member or officer to enforce any obligation owed under the memorandum or articles to him and any other member or officer, such member or officer may, if any other member or officer is affected by the alleged breach of such obligation, with his consent, sue in a representative capacity on behalf of himself and all other members or officers who may be affected other than any who are defendants and the provisions of Part XI of this Act shall apply.

MEMBER'S RIGHT TO COPY OF MEMORANDUM AND ARTICLES

41. Member's Right to Copies of Memorandum, etc.

(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, and a copy of any enactment which alters the memorandum, subject to payment, in the case of a copy of the memorandum and of the articles, of N500 or such less sum as the company may prescribe and in the case of a copy of an enactment of such sum not exceeding the published price thereof as the company may require.
(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 penalty of N500.

42. Copies of Memorandum Issued to Embody Alterations
(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 the alteration issues any copies of the memorandum which are not in accordance with the alteration, it shall be liable to a penalty of N500 for each copy so issued, and every officer of the company who is in default shall be liable to the like penalty.

Alteration of memorandum and articles

43. Restriction on Alteration of Memorandum
(1) A company may not alter the conditions contained in its memorandum except in the cases and in the manner and to the extent for which express provision is made in this Act.

(2) Only those provisions which are required by section 27 of this Act or by any other specific provision contained in this Act, to be stated in the memorandum of the company concerned, shall be deemed to be conditions contained in its memorandum.

44. Alteration of Memorandum
(1) The name of the company shall not be altered except with the consent of the Commission in accordance with section 30 of this Act.

(2) The business which the company is authorised to carry on or, if the company is not formed for the purpose of carrying on business, the objects for which it is established, may be altered or added to in accordance with the provisions of section 45 or of Part XV of this Act.

(3) Any restriction on the powers of the company may be altered in the same way as the business or object of the company.

(4) The share capital of the company may be altered in accordance with the provisions of sections 98 to 109 of this Act, but not otherwise.

(5) Subject to section 48 of this Act, any other provision of the memorandum may be altered in accordance with section 45 of this Act, or as otherwise provided in this Act.

45. Mode of Alteration of Business or Objects
(1) A company may, at a meeting of which notice in writing has been duly given to all members (whether or not otherwise entitled thereto), by special resolution alter the provisions of its memorandum with respect to the business or objects of the company: Provided that if an application is made to the court in accordance with this section for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.
(2) An application under this section may be made to the court—
(a) by the holders of not less in the aggregate than 15 per cent in nominal value of the company’s issued share capital or any class thereof or, if the company is not limited by shares, not less than 15 per cent of the company’s members; or
(b) by the holders of not less than 15 per cent of the company’s debentures entitling the holders to object to alterations of its objects:
Provided that any such application shall not be made by any person who has consented to or voted in favour of the alteration.

(3) An application under this section shall be made not later than 28 days after the date on which the resolution altering the company’s business or objects was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) On an application under this section, the court may make an order confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interest of dissenting members, and the court may give such directions and make such orders as it thinks 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 purchase.

(5) The debentures entitling the holders to object to alterations of a company’s business or objects shall be any debentures secured by a floating charge.

(6) The special resolution altering a company’s business or objects shall require the same notice to the holders of any such debentures as to members of the company; and in default of any provisions regulating the giving of notice to any such debenture holders, the provisions of the company’s articles regulating the giving of notice to members shall apply.

(7) Where a company passes a resolution altering its business or objects and—
(a) application is thereafter made to the court for its confirmation under this section, the company shall forthwith give notice to the Commission of the making of the application, and thereafter shall be delivered to the Commission within 15 days from the date of its making—
(i) a certified true copy of the order in the case of refusal to confirm the resolution; and
(ii) a certified true copy of the order in the case of confirmation of the resolution together with a printed copy of the memorandum as thereby altered;
(b) no application is made with respect thereto to a court under this section, the company shall within 15 days from the end of the period for making such an application deliver to the Commission a copy of the resolution as passed.

(8) If the Commission—
(a) is satisfied, a printed copy of the memorandum as altered by the resolution shall forthwith thereafter be delivered to it;
(b) is not satisfied, it shall give notice in writing to the company of its decision and an appeal from its decision shall thereafter lie to the court at the suit of any person aggrieved, if made within 21 days from the date of the receipt by the company of the notice of the rejection, or within such extended time as the court may allow.
The court may at any time extend the time for the delivery of documents to the Commission under paragraph (a) of subsection (7) of this section for such period as the court may think proper.

If a company makes default in giving notice or delivering any document to the Commission as required by subsection (6) of this section, the company and every officer of the company who is in default shall be liable to a penalty of N5,000.

If a company makes default in delivering any document to the Commission as required by subsection (7) of this section, the company and every officer of the company shall be liable to a penalty of N100 for every day during which the default continues.

The validity of an alteration of the provision of a company's memorandum with respect to the business or objects of the company shall not be questioned on the ground that it was not authorised by subsection (1) of this section except in proceedings taken for the purpose (whether under this section or otherwise) before the expiration of 21 days after the date of the resolution in that behalf; and where any such proceedings are taken otherwise than under this section, subsections (6), (7), (8) and (9) of this section shall apply in relation thereto as if they had been taken under this section, and as if any order declaring the alteration invalid were an order cancelling it and as if any order dismissing the proceedings were an order confirming the alteration.

In this section “member” includes any person financially interested in the company.

**46. Power to Alter Provisions in the Memorandum in Certain Cases**

(1) Subject to the provisions of section 43 of this Act and of this section and of any part of Part A of this Act (which preserves the rights of minorities in certain cases) any provision in a company’s memorandum, which might lawfully have been in articles of association instead of in the memorandum, may be altered by the company by special resolution; but if an application is made to the court for the alteration to be cancelled, the alteration shall not have effect except in so far as it is confirmed by the court.

(2) This section shall not apply where the memorandum itself provides for or prohibits the alteration of all or any of the said provisions, and shall not authorise any variation or abrogation of the special rights of any class of members.

(3) Subsections (2), (3), (4), (7), (8) and (9) of section 45 of this Act (which relate to mode of alteration of business or objects) except paragraph (b) of subsection (2) thereof, shall apply in relation to any alteration and to any application made under this section as they apply in relation to alterations and to applications made under that section.

(4) This section shall apply to a company’s memorandum, whether registered before or after the commencement of this Act.

**47. Alteration of Articles**
Subject to the provisions of this Act and to the conditions or other provisions contained in its memorandum, a company may by special resolution alter or add to its articles.

Any alteration or addition so made in 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.

48. Limitation of Liability to Contribute to Share Capital if Memorandum, etc., Altered

Save to the extent to which a member of a company agrees in writing at any time to be bound thereby, and anything to the contrary in the memorandum or articles notwithstanding, the member shall not be bound by any alteration made in the memorandum or articles of the company requiring him on or after the date of the alteration to—

(a) take or subscribe for more shares than he held at the date on which he became a member; or
(b) increase his liability to contribute to the share capital of the company; or
(c) pay money by any other means to the company.

CHAPTER 2

CONVERSION AND RE-REGISTRATION OF COMPANIES

49. Re-registration of Private Company as Public

Subject to this section, a private company having a share capital may be re-registered as a public company if—

(a) a special resolution that it should be so re-registered is passed; and
(b) an application for re-registration is delivered to the Commission together with the documents prescribed in subsection (3) of this section.

The special resolution shall—

(a) alter the company’s memorandum so that it states that the company is to be a public company; and
(b) make such other alterations in the memorandum as are necessary to bring it in conformity with the requirements of this Act with respect to the memorandum of a public company in accordance with section 27 of this Act; and
(c) make such alterations in the company’s articles as are requisite in the circumstances.

The application shall be made to the Commission in the prescribed form and be signed by at least one director and the secretary of the company; and the documents to be delivered with it are the following—

(a) a printed copy of the memorandum and articles as altered in pursuance of the resolution; and
(b) a copy of a written statement by the directors and the secretary certified on oath by them, and showing that the paid up capital of the company as at the date of the application is not less than 25 per cent of the authorised share capital as at that date; and
(c) a copy of the balance sheet of the company as at the date of the resolution or the preceding 6 months, whichever is later; and

(d) a statutory declaration in the prescribed form by a director and the secretary of the company—
   (i) that the special resolution required under this section has been passed; and
   (ii) that the company’s net assets are not less than the aggregate of the paid up share capital and undistributable reserves; and

(e) a copy of any prospectus or statement in lieu of prospectus delivered within the preceding 12 months to the Securities and Exchange Commission established under the Investments and Securities Act, if any

(4) If the Commission is satisfied that a company has complied with the provisions of this section and may be re-registered as a public company, it shall—
   (a) retain the application and other documents delivered to it under this section;
   (b) register the application and other documents; and
   (c) issue to the company a certificate of incorporation, stating that the company is a public company.

(5) Upon the issue to a company of the certificate of incorporation under this section—
   (a) the company shall by virtue of the issue of that certificate become a public company; and
   (b) any alterations in the memorandum and articles set out in the resolution shall take effect accordingly.

(6) The certificate shall be prima facie evidence that—
   (a) the requirements of this Act in respect of re-registration and of matters precedent and incidental thereto have been complied with; and
   (b) the company is a public company.

(7) A company shall not be re-registered under this section if it has previously been re-registered as an unlimited company.

50. Re-registration of Company Limited by Shares as Unlimited

(1) Subject as follows, a company which is registered as limited by shares may be re-registered as unlimited in pursuance of an application in that behalf complying with the requirements of this section.

(2) A company shall be precluded from re-registering under this section if it is limited by virtue of re-registration under section 51 of this Act.

(3) A public company or a company which has previously been re-registered as an unlimited company shall not be registered under this section.

(4) An application under this section shall be in the prescribed form and signed by a director and the secretary of the company, and be lodged with the Commission together with the documents specified in subsection (6) of this section.

(5) The application shall set out such alterations in the company’s memorandum and articles as are requisite to bring it into conformity with the requirements of this Act with
respect to the memorandum and articles of a company to be formed as an unlimited company.

(6) The documents to be lodged with the Commission are as follows—
(a) the prescribed form of assent to the company being registered as unlimited, subscribed by or on behalf of all the members of the company;
(b) a statutory declaration made by the directors of the company—
   (i) that the persons by whom or on whose behalf the form of assent is subscribed constitute the whole membership of the company; and
   (ii) if any of the members have not subscribed that form themselves, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed to it on behalf of a member was lawfully empowered to do so; and
(c) a printed copy of the memorandum and the articles incorporating the alterations set out in the application.

(7) If the Commission is satisfied that the company be registered under this section as an unlimited company, it shall retain the application and other documents lodged with it under this section and—
(a) register the application and other documents; and
(b) issue to the company a certificate of incorporation appropriate to the status to be assumed by virtue of this section.

(8) On the issue of the certificate—
(a) the status of the company, by virtue of the issue, shall be changed from limited to unlimited; and
(b) the alterations in the memorandum set out in the application and any alteration in the articles so set out shall take effect as if duly made by resolution of the company; and
(c) the provisions of this Act shall apply accordingly to the memorandum and articles as altered.

(9) The certificate shall be prima facie evidence that the requirements of this section in respect of the re-registration and of matters precedent and incidental to it have been complied with, and that the company was authorised to be re-registered under this Act in pursuance of this section and was duly so re-registered.

51. Re-registration of Unlimited as Limited by Shares
(1) Subject as follows, a company which is registered as unlimited may be re-registered as limited by shares if a special resolution that it should be so registered is passed, and the requirements of this section are complied with in respect of the resolution and otherwise.

(2) A company shall not under this section be re-registered as a public company or company limited by guarantee; and a company shall be precluded from registering under it if it is unlimited by virtue of re-registration under section 50 of this Act.

(3) The special resolution shall state the proposed authorised share capital and provide for the making of such alterations in the memorandum as are necessary to bring it into conformity with the requirements of this Act with respect to the memorandum of a
company so limited, and such alterations in the articles as are requisite in the circumstances.

(4) An application in the prescribed form for the company to be re-registered as limited signed by a director and the secretary of the company shall be lodged with the Commission together with the necessary documents not earlier than the day on which the resolution was filed under section 234 of this Act.

(5) The documents to be lodged with the Commission shall be a printed copy of the—
(a) memorandum as altered in pursuance of the resolution; and
(b) articles as so altered.

(6) If the Commission is satisfied that the company be re-registered under this section as a company limited by shares, it shall retain the application and other documents lodged with it under this section and register them, and it shall issue to the company a certificate of incorporation appropriate to the status to be assumed by the company by virtue of this section.

(7) On the issue of the certificate—
(a) the status of the company shall, by virtue of the issue, change from unlimited to limited; and
(b) the alterations in the memorandum specified in the resolution and the alterations in, and additions to, the articles so specified shall take effect accordingly.

(8) The certificate shall be prima facie evidence that the requirements of this section in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company was authorised to be re-registered in pursuance of this section and was duly so re-registered.

(9) The re-registration of an unlimited company as a limited company shall not affect the rights and 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 re-registration, and those rights or liabilities may be enforced in the manner provided by Part III of this Act as in the case of a company registered pursuant to Part II of this Act.

52. Re-registration of Public Company as Private

(1) A public company may be re-registered as a private company if—
(a) a special resolution complying with subsection (2) of this section that it should be so re-registered is passed and has not been cancelled by the court under this section;
(b) an application for the purpose in the prescribed form, including a statutory declaration that the provisions of section 22 of this Act have been complied with, signed by a director and the secretary of the company is delivered to the Commission together with a printed copy of the memorandum and articles of the company as altered by the resolution; and
(c) either—
(i) the period during which an application for the cancellation of the resolution under this section may be made has expired without any such application having been made; or
(ii) where such an application has been made, the application has been withdrawn or an order has been made confirming the resolution and a copy of that order has been delivered to the Commission.

(2) The special resolution shall alter the company’s memorandum so that it states that the company is a private company and shall make such other alterations in the company’s memorandum and articles as are requisite in the circumstances.

(3) Where the special resolution is passed, an application may be made to the court for the cancellation of the resolution, and such application may be made by—
   (a) the holders of not less in the aggregate than five per cent in nominal value of the company’s issued share capital, or any class thereof; or
   (b) not less than five per cent of the company’s members; but not by a person who has consented to or voted in favour of the resolution.

(4) The application shall be made within 28 days after the passing of the resolution and the applicant shall forthwith give notice of the application in the prescribed form to the Commission and to the company.

(5) On the hearing of the application, the court shall make an order either cancelling or confirming the resolution and may make all such orders or give such directions as it may think expedient under the circumstances.

(6) The company shall, within 15 days from the making of the court’s order, or within such other period as the court may by order direct, deliver to the Commission a certified true copy of the order.

(7) If a company fails to deliver to the Commission a certified true copy of the order as required in subsection (6) of this section, the company and every officer of it shall be liable to a penalty of N1000 and for continued contravention, to a daily default fine of N100.

(8) If the Commission is satisfied that a company may be re-registered under this section, it shall—
   (a) retain the application and other documents delivered to it under this section;
   (b) register the application and other documents; and
   (c) issue the company with a certificate of incorporation as a private company.

(9) On the issue of the certificate—
   (a) the company shall become a private company; and
   (b) the alteration in the memorandum and articles set out in the resolution shall take effect accordingly.

(10) The certificate shall be prima facie evidence that—
   (a) the requirements of this section in respect of re-registration and of matters precedent and incidental to it have been complied with; and
   (b) the company is a private company.

CHAPTER 3
FOREIGN COMPANIES

53. Foreign Companies Intending to Carry on Business in Nigeria

(1) Subject to sections 55 to 58 of this Act, every foreign company which before or after the commencement of this Act was incorporated outside Nigeria, and having the intention of carrying on business in Nigeria, shall take all steps necessary to obtain incorporation as a separate entity in Nigeria for that purpose, but until so incorporated, the foreign company shall not carry on business in Nigeria or exercise any of the powers of a registered company and shall not have a place of business or an address for service of documents or processes in Nigeria for any purpose other than the receipt of notices and other documents, as matters preliminary to incorporation under this Act.

(2) Any act of the company in contravention of subsection (1) of this section shall be void.

(3) Nothing in this section shall affect the status of—
(a) any foreign company which before the commencement of this Act was granted exemption from compliance with Part X of the Companies Act 1968;
(b) any foreign companies exempted under any treaty to which Nigeria is a party.

54. Penalties
If any foreign company fails to comply with the requirements of section 54 of this Act in so far as they may apply to the company, the company shall be guilty of an offence and liable on conviction to a fine of not less than N300,000, and every officer or agent of the company who authorises or permits the default or failure to comply shall, whether or not the company is also convicted of any offence, shall be liable on conviction to a fine of not less than N50,000 and where the offence is a continuing one to a further fine of N200 for every day during which the default continues.

55. Power to Exempt Foreign Companies

(1) A foreign company may apply to the President for exemption from the provisions of section 53 of this Act if that foreign company belongs to one of the following categories, that is—
(a) foreign companies (other than those specified in paragraph (d) of this subsection) invited to Nigeria by or with the approval of the Federal Government to execute any specified individual project;
(b) foreign companies which are in Nigeria for the execution of specific individual loan projects on behalf of a donor country or international organisation;
(c) foreign government-owned companies engaged solely in export promotion activities; and
(d) engineering consultants and technical experts engaged on any individual specialist project under contract with any of the governments in the Federation or any of their agencies or with any other body or person, where such contract has been approved by the Federal Government.

(2) An application for exemption under this section shall be in writing addressed to the Secretary to the Government of the Federation and shall set out—
(a) the name and place of business of the foreign company outside Nigeria;
(b) the name and place of business or the proposed name and place of business of the
foreign company in Nigeria;
(c) the name and address of each director, partner or other principal officer of the
foreign company;
(d) a certified copy of the charter, statutes, or memorandum and articles of association
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;
(e) the names and addresses of some one or more persons resident in Nigeria
authorised to accept on behalf of the foreign company services of process and any
notices required to be served on the company;
(f) the business or proposed business in Nigeria of the foreign company and the
duration of such business;
(g) particulars of any project previously carried out by the company as an exempted
foreign company; and
(h) such other particulars as may be required by the Secretary to the Federal
Government.

(3) Where the President upon the receipt of an application for exemption is of the
opinion that the circumstances are such as to render it expedient that such an exemption
should be granted, the President may, subject to such conditions as it may prescribe,
exempt the foreign company from the obligations imposed by or under this Act.

(4) Every exemption granted in pursuance of this section shall specify the period or, as
the case may be, the project or series of projects, for which it is granted and shall lapse at
the end of such period or upon the completion of such project or series of projects.

(5) The President may at any time revoke any exemption granted to any company if it
is of the opinion that the company has contravened any provision of this Act or has failed
to fulfil any condition contained in the exemption order or for any other good or sufficient
reason.

(6) The President shall cause to be published in the Gazette the name of any
company—
(a) to which an exemption has been granted and the period or, as the case may be, the
project or series of projects for which the exemption is granted;
(b) whose exemption has been revoked and the effective date of such revocation.

(7) Every exempted company shall deliver to the Commission upon payment of a
prescribed fee a notice of its exemption within 30 days of the grant of such
exemption.

(8) If an exempted company fails to comply with the provisions of subsection (7) of this
section, it shall be liable to a penalty of N500.00 for every day during which the
default continues.

56. Annual Report
(1) Every exempted foreign company shall deliver to the Commission, every calendar
year, a report in the form prescribed by the Commission.
An exempted foreign company that fails to comply with the provisions of subsection (1) of this section, shall be liable to a penalty of N100,000.00 for every year of default.

57. Exempted Foreign Company to have Status of Unregistered Company
Subject to this Act and save as may be stated in the instrument of exemption, a foreign company exempted pursuant to this Act shall have the status of an unregistered company and accordingly, the provisions of this Act applicable to an unregistered company shall apply in relation to such an exempted company as they apply in relation to an unregistered company under this Act.

58. Penalties for False Information
(1) Any person who for the purpose of obtaining an exemption or of complying with any of the provisions of section 55 of this Act, makes any statement or presents any instrument which is false in a material particular shall be guilty of an offence unless he proves that he has taken all reasonable steps to ascertain the truth of the statement made or contained in the instrument so presented.

(2) Any person who is guilty of an offence under this section shall be liable on conviction to a fine of N500,000 or imprisonment for a term of three years.

59. Application of Certain Sections to Foreign Companies
For the avoidance of doubt, it is hereby declared that—
(a) save as provided in sections 53, 54, 55 and 56 of this Act, nothing in this Act shall be construed as authorising the disregard by any exempted foreign company of any enactment or rule of law; and
(b) nothing in this Chapter shall be construed as affecting the rights or liability of a foreign company to sue or be sued in its name or in the name of its agent.

CHAPTER 4
PROMOTERS

60. Persons Promoting a Company
Any person who undertakes to take part in forming a company with reference to a given project and to set it going and who takes the necessary steps to accomplish that purpose, or who, with regard to a proposed or newly formed company, undertakes a part in raising capital for it, shall prima facie be deemed a promoter of the company: Provided that a person acting in a professional capacity for persons engaged in pro-curing the formation of the company shall not thereby be deemed to be a promoter.

61. Duties and Liabilities of a Promoter
(1) A promoter stands in a fiduciary relationship to the company and shall observe the utmost good faith towards the company in any transaction with it or on its behalf and shall compensate the company for any loss suffered by reason of his failure so to do.

(2) A promoter who acquired any property or information in circumstances in which it was his duty as a fiduciary to acquire it on behalf of the company shall account to the company for such property and for any profit which he may have made from the use of such property or information.
(3) Any transaction between a promoter and the company may be rescinded by the company unless, after full disclosure of all material facts known to the promoter, such transaction shall have been entered into or ratified on behalf of the company—
(a) by the company’s board of directors independent of the promoter; or
(b) by all the members of the company; or
(c) by the company at a general meeting at which neither the promoter nor the holders of any shares in which he is beneficially interested shall vote on the resolution to enter into or ratify that transaction.

(4) No period of limitation shall apply to any proceedings brought by the company to enforce any of its rights under this section but in any such proceedings the court may relieve a promoter in whole or in part and on such terms as it thinks fit from liability hereunder if in all the circumstances, including lapse of time, the court thinks it equitable to do so.

PART III

ACTS BY OR ON BEHALF OF THE COMPANY

EXERCISE OF COMPANY’S POWERS

62. Division of Powers between General Meeting and Board of Directors
(1) A company shall act through its members in general meeting or its board of directors or through officers or agents, appointed by, or under authority derived from, the members in general meeting or the board of directors.

(2) Subject to the provisions of this Act, the respective powers of the members in general meeting and the board of directors shall be determined by the company’s articles.

(3) Except as otherwise provided in the company’s articles, the business of the company shall be managed by the board of directors who may exercise all such powers of the company as are not by this Act or the articles required to be exercised by the members in general meeting.

(4) Unless the articles shall otherwise provide, the board of directors, when acting within the powers conferred upon them by this Act or the articles, shall not be bound to obey the directions or instructions of the members in general meeting: Provided that the directors acted in good faith and with due diligence.

(5) Notwithstanding the provisions of subsection (3) of this section, the members in general meeting may—
(a) act in any matter if the members of the board of directors are disqualified or are unable to act because of a deadlock on the board or otherwise;
(b) institute legal proceedings in the name and on behalf of the company, if the board of directors refuse or neglect to do so;
(c) ratify or confirm any action taken by the board of directors; or
(d) make recommendations to the board of directors regarding action to be taken by the board.
(6) No alteration of the articles shall invalidate any prior act of the board of directors which would have been valid if that alteration had not been made.

63. Delegation to Committees and Managing Directors
Unless otherwise provided in this Act or in the articles, the board of directors may—
(a) exercise their powers through committees consisting of such members of the body as they think fit; or
(b) from time to time, appoint one or more of their body to the office of managing director and may delegate all or any of their powers to such managing director.

LIABILITY FOR ACTS OF THE COMPANY

64. Acts of General Meeting, Board of Directors, or of Managing Directors
Any act of the members in general meeting, the board of directors, or of a managing director while carrying on in the usual way the business of the company, shall be treated as the act of the company itself and the company shall be criminally and civilly liable therefor to the same extent as if it were a natural person:

Provided that—
(a) the company shall not incur civil liability to any person if that person had actual knowledge at the time of the transaction in question that the general meeting, board of directors, or managing director, as the case may be, had no power to act in the matter or had acted in an irregular manner or if, having regard to his position with or relationship to the company, he ought to have known of the absence of such power or of the irregularity;
(b) if in fact a business is being carried on by the company, the company shall not escape liability for acts undertaken in connection with that business merely because the business in question was not among the business authorised by the company’s memorandum.

65. Acts of Officers or Agents
(1) Except as provided in section 64 of this Act, the acts of any officer or agent of a company shall not be deemed to be acts of the company, unless—
(a) the company, acting through its members in general meeting, board of directors, or managing director, shall have expressly or impliedly authorised such officer or agent to act in the matter; or
(b) the company, acting as mentioned in paragraph (a) of this subsection, shall have represented the officer or agent as having its authority to act in the matter, in which event the company shall be civilly liable to any person who has entered into the transaction in reliance on such representation unless such person had actual knowledge that the officer or agent had no authority or unless having regard to his position with or relationship to the company, he ought to have known of such absence of authority.

(2) The authority of an officer or agent of the company may be conferred prior to any action by him or by subsequent ratification, and knowledge of such action by the officer or agent and acquiescence therein by all the members of the company or by the directors for the time being, or by the managing director for the time being, shall be equivalent to
ratification by the members in general meeting, board of directors, or managing director, as the case may be.

(3) Nothing in this section shall derogate from the vicarious liability of the company for the acts of its servants while acting within the scope of their employment.

66. When Provision Exempting, etc., Officer from Liability to the Company is Void
(1) Any provision, whether contained in the articles of the company or in any contract with a company or otherwise, for exempting any 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, or breach of trust of which he may be guilty in relation to the company, shall be void.

(2) Notwithstanding the provisions of subsection (1) of this section—
(a) a person shall not be deprived of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision as mentioned in that subsection was in force; and
(b) a company may, in pursuance of any such provision as mentioned in subsection (1) of this section, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 561 of this Act in which relief is granted to him by the court.

CONSTRUCTIVE NOTICE OF REGISTERED DOCUMENTS

67. Abolition of Constructive Notice of Registered Documents
Except as mentioned in section 188 of this Act, regarding particulars in the register of particulars of charges, a person shall not be deemed to have knowledge of the contents of the memorandum and articles of a company or of any other particulars, documents, or the contents of documents merely because such particulars or documents are registered by the Commission or referred to in any particulars or documents so registered, or are available for inspection at an office of the company.

68. Presumptions of Regularity
Any person having dealings with a company or with someone deriving title under the company, shall be entitled to make the following assumptions and the company and those deriving title under it shall be estopped from denying their truth that—
(a) the company’s memorandum and articles have been duly complied with;
(b) every person described in the particulars filed with the Commission pursuant to sections 34 and 290 of this Act as a director, managing director or secretary of the company, or represented by the company, acting through its members in general meeting, board of directors, or managing director, as an officer or agent of the company, has been duly appointed and has authority to exercise the powers and perform the duties customarily exercised or performed by a director, managing director, or secretary of a company carrying on business of the type carried on by the company or customarily exercised or performed by an officer or agent of the type concerned;
(c) the secretary of the company, and every officer or agent of the company having authority to issue documents or certified copies of documents on behalf of the
company, has authority to warrant the genuineness of the documents or the accuracy of the copies so issued;

(d) a document has been duly sealed by the company if it bears what purports to be the seal of the company attested by what purports to be the signatures of two persons who, in accordance with paragraph (b) of this section, can be assumed to be a director and the secretary of the company:

Provided that—

(i) a person shall not be entitled to make such assumptions as aforesaid, if he had actual knowledge to the contrary or if, having regard to his position with or relationship to the company, he ought to have known the contrary;

(ii) a person shall not be entitled to assume that any one or more of the directors of the company have been appointed to act as a committee of the board of directors or that an officer or agent of the company has the company’s authority merely because the company’s articles provided that authority to act in the matter may be delegated to a committee or to an officer or agent.

69. Liability of Company not Affected by Fraud or Forgery of Officer

Where, in accordance with sections 64 to 68 of this Act, a company would be liable to a third party for the acts of any officer or agent, the company shall, except where there is collusion between the officer or agent and the third party, be liable notwithstanding that the officer or agent has acted fraudulently or forged a document purporting to be sealed by or signed on behalf of the company.

COMPANY’S CONTRACTS

70. Form of Contract

(1) Contracts on behalf of a company may be made, varied or discharged as follows—

(a) any contract which if made between individuals would be by law required to be in writing under seal, or which would be varied, or discharged only by writing under seal, may be made, varied or discharged, as the case may be, in writing under the common seal of the company;

(b) any contract which if made between individuals would be by law required to be in writing, signed by the parties to be charged therewith, or which could be varied or discharged only by writing or written evidence signed by the parties to be charged, may be made, varied or discharged, as the case may be, in writing signed in the name or on behalf of the company; and

(c) any contract which if made between individuals would be valid although made by parol only and not reduced into writing or which could be varied or discharged by parol, may be made, varied or discharged, as the case may be, by parol on behalf of the company.

(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, their heirs, executors, or administrators, as the case may be; and may be varied or discharged in the same manner in which it is authorised by this section to be made.

71. Pre-incorporation Contracts

(1) Any contract or other transaction purporting to be entered into by the company or by any person on behalf of the company prior to its formation may be ratified by the company after its formation and thereupon the company shall become bound by and entitled to the
benefit thereof as if it has been in existence at the date of such contract or other transaction and had been a party thereto.

(2) Prior to ratification by the company, the person who purported to act in the name of or on behalf of the company shall, in the absence of express agreement to the contrary, be personally bound by the contract or other transaction and entitled to the benefit thereof.

72. Bills of Exchange and Promissory Note

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

(2) The company and its successors shall be bound thereby if the company is, in accordance with sections 64 to 66 of this Act, liable for the acts of those who made, accepted or endorsed it in its name or on its behalf or account, and a signature by a director or the secretary on behalf of the company shall not be deemed to be a signature by procuration for the purposes of section 25 of the Bills of Exchange Act.

73. Common Seal of the Company

A company shall have a common seal, the use of which shall be regulated by the articles.

74. Official Seal for Use Abroad

(1) A company whose objects require or comprise the transaction of business in foreign countries may, if authorised by its articles, have for use in any territory, district, or place outside Nigeria, 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 territory, district, or place where it is to be used.

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

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

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

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

75. Powers of Attorney
(1) A company may, by writing under seal, empower any person, either generally or in respect of any specified matter, as its attorney, to execute deeds on its behalf in any place within or outside Nigeria.

(2) A deed signed by a person empowered as provided in subsection (1) of this section shall bind the company and have the same effect as it would have if it were under the company’s common seal.

AUTHENTICATION AND SERVICE OF DOCUMENTS

76. 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 unless otherwise so required in this Part of this Act.

77. Service of Documents on Companies
A court process shall be served on a company in the manner provided by the Rules of Court and any other document may be served on a company by leaving it at, or sending it by post to, the registered office or head office of the company.

PART IV

MEMBERSHIP OF THE COMPANY

78. Definition of Member
(1) The subscribers of 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 in writing to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

(3) In the case of a company having a share capital, each member shall be a shareholder of the company and shall hold at least one share.

79. Capacity to be a Member
(1) As from the commencement of this Act, an individual shall not be capable of becoming a member of a company if—
   (a) he is of unsound mind and has been so found by a court in Nigeria or elsewhere; or
   (b) he is an undischarged bankrupt.

(2) A person under the age of 18 years shall not be counted for the purpose of determining the legal minimum number of members of a company.

(3) A corporate body in liquidation shall not be capable of becoming a member of a company.
(4) Where at the commencement of this Act, any person falling within the provisions of subsection (1) of this section is a member of a company by reason of being a shareholder of the company, his share shall vest in his committee or trustee, as the case may be.

(5) Where after the commencement of this Act, any shareholder purports to transfer any shares to a person falling within the provisions of subsection (1) of this section, the purported transfer shall not vest the title in the shares in that person, but the title shall remain in the purported transferor or his personal representative who shall hold the shares in trust for that person during the period of his incapacity.

80. Right of Member to Attend Meetings and Vote
Every member shall notwithstanding any provision in the articles, have a right to attend any general meeting of the company and to speak and vote on any resolution before the meeting: Provided that the articles may provide that a member shall not be entitled to attend and vote unless all calls or other sums payable by him in respect of shares in the company have been paid.

81. Personation of members
If any person falsely and deceitfully personates any member of a company and thereby obtains or endeavours to obtain any benefit due to any such member, he shall be guilty of an offence and be liable on conviction to imprisonment for a term of not more than 7 years or a fine of not more than N200,000.

REGISTRAR OF MEMBERS

82. Register of Members
(1) Every company shall keep a register of its members and enter in it the following particulars—

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

(b) the date on which each person was registered as a member; and

(c) the date on which any person ceased to be a member:
Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the Commission, the register shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified in paragraph (a) of this subsection.

(2) The entry required under paragraph (a) or (b) of subsection (1) of this section, shall be made within 28 days of the conclusion of the agreement with the company to become a member or, in the case of a subscriber of the memorandum, within 28 days of the registration of the company.

(3) The entry required under paragraph (c) of subsection (1) of this section, shall be made within 28 days of the date on which the person concerned ceased to be a member, or if he ceased to be a member otherwise than as a result of action by the company, within 28 days of production to the company of evidence satisfactory to the company of the occurrence of the event whereby he ceased to be a member.
Where a company makes default in complying with the provisions of this section, the company and every officer of the company shall be liable to a penalty of N20,000 and a daily default fine of N100.

Liability incurred by a company from the making or deletion of an entry in its register of members, or from a failure to make or delete any such entry, shall not be enforceable after the expiration of 20 years from the date on which the entry was made or deleted or, in the case of any such failure, from the date on which the failure first occurred.

83. Location of Register
(1) The register of members shall be kept at the registered office of the company, except that if—
   (a) the work of making it up is done at another office of the company, it may be kept at that other office; and
   (b) the company by arranging with some other person for the making up of the register to be undertaken on behalf of the company by that person, it may be kept at the office of that other person at which the work is done,
but the register shall not be kept in the case of a company registered in Nigeria at a place outside Nigeria.

(2) Every company shall send notice to the Commission of the place where the register is kept and of any change of that place.

(3) A company shall not be bound to send notice under this subsection where the register has, at all times since it came into existence or, in the case of a register in existence at the commencement of this Act, at all times since then, been kept at the registered office of the company.

(4) If a company makes default for 28 days in complying with subsection (2) of this section, the company and every officer of the company shall each be liable to a penalty of N50,000.

84. Index of Members to be Kept
(1) Every company having more than 50 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 14 days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

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

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

(4) If default is made in complying with the provisions of this section, the company and every officer of the company shall each be liable to a penalty of N50,000.

85. Inspection of Register and Index
(1) Except when the register of members is closed under the provisions of this Act, the register and the index of members’ names shall be open during business hours (subject to
such reasonable restrictions as the company in general meeting may impose, so however, that not less than 2 hours in each day shall be allowed for inspection) to the inspection of any member of the company without charge, and with the permission of the company, which permission shall not be unreasonably withheld, to any other person on payment of N200 or any less sum as the company may prescribe for each inspection.

(2) Any member or, with the permission of the company which permission shall not be unreasonably withheld, any other person may require a copy of the register, or of any part thereof, on payment of N50, or such less sum as the company may prescribe, for every page thereof required to be copied; and the company shall cause any copy so required by any person to be duly endorsed by an officer of the company and sent to that person within a period of 10 days commencing on the day next after the day on which the requirement is received by the company: Provided that the Commission may require such copy without any restriction or charge.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the prescribed period, the company and every officer of the company shall be liable in respect of each default to a penalty of N2,000.

(4) Notwithstanding the provisions of subsection (3) of this section, 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 persons requiring them.

86. Consequences of Failure by Agents’ Default to Keep Register
Where, by virtue of paragraph (b) of subsection (1) of section 83 of this Act, the register of members is kept at the office of some person other than the company, and by reason of any default of his, the company fails to comply with subsection (1) or (2) of section 84 of this Act, or with any requirements of this Act as to the production of the register, that other person shall be liable to the same penalties as if he were an officer of the company who was in default, and the power of the court under subsection (4) of section 85 of this Act shall extend to the making of orders against that other person and his officers and servants.

87. Power to Close Register
A company may, on giving notice by advertisement in a daily newspaper circulating in the district in which the registered office of the company is situated, close the register of members or any part of it for any time or times not exceeding on the whole 30 days in each year.

88. 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) The court may refuse the application, or order rectification of the register and payment by the company of any damages sustained by the 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 and 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 Commission, 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 Commission.

89. Register to be Evidence
The register of members shall be prima facie evidence of matters which are by this Act directed or authorised to be inserted in it.

LIABILITY OF MEMBERS

90. Liability of Members
(1) Prior to the winding up of a company, a member of the company with shares shall be liable to contribute the balance, if any, of the amount payable in respect of the shares held by him in accordance with the terms of the agreement under which the shares were issued or in accordance with a call validly made by the company pursuant to its articles.

(2) Where any contribution has become due and payable by reason of a call validly made by the company pursuant to the articles or where, under the terms of any agreement with the company, a member has undertaken personal liability to make future payments in respect of shares issued to him, the liability of the member shall continue notwithstanding that the shares held by him are subsequently transferred or forfeited under a provision to that effect in the articles, but his liability shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares.

(3) Subject to subsections (1) and (2) of this section, no member or past member shall be liable to contribute to the assets of the company, except in the event of its being wound up.

(4) In the event of a company being wound up, every present or past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and for the costs, charges and expenses of the winding up and for the adjustment of the rights of the members and past members among themselves, but subject to the following qualifications—
(a) a past member shall not be liable to contribute if he has ceased to be a member for a period of 1 year or upwards before the commencement of the winding up;
(b) 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 section;
(c) in the case of a company limited by shares, no contribution shall be required from any member or past member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;
(d) in the case of a company limited by guarantee, no contribution shall be required from any member or past member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up; and

(e) any sum due from the company to a member or past member, in his capacity as member, by way of dividends or otherwise shall not be set-off against the amount for which he is liable to contribute in accordance with this section but any such sum shall be taken into account for the purposes of final adjustment of the rights of the members and past members amongst themselves.

(5) For the purposes of this section, the expression “past member” includes the estate of a deceased member and where any person dies after becoming liable as a member or past member, such liability shall be enforceable against his estate.

(6) Except as contained in this section, a member or past member shall not be liable as a member or past member for any of the debts and liabilities of the company.

91. Liability for Company Debts Where Membership is Below Legal Minimum
If a public company carries on business without having at least two members and does so for more than 6 months, every director or officer of the company during the time that it so carries on business with only one or no member shall be liable jointly and severally with the company for the debts of the company contracted during that period.

DISCLOSURE OF BENEFICIAL INTEREST IN SHARES

92. Disclosure of Capacity by Shareholder

“(1) Notwithstanding the provisions of section 93 of this Act, every member of a company shall within seven days of becoming a member indicate to the company in writing—

(a) the capacity in which he holds any shares in the company; and

(b) if he holds them other than as beneficial owner, the particulars of the identity of persons interested in the shares in question and whether persons interested in the same shares are parties to any agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares.

(2) A company shall, not later than 14 days after receiving or coming into possession of the information required under subsection (1) of this section, notify the Commission of that information.

(3) The Commission shall maintain a register of beneficial owners of shares in which it shall enter the information received from every company under subsection (2) of this section.

(4) A company shall inscribe against the name of the every member in the register of members the information received in pursuance of the requirement of this section.

(5) If default is made by any member in complying with subsection (1) of this section or in purported compliance, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence and liable to imprisonment for six months or to a fine of N50,000.
If default is made by any company in complying with subsection (2) of this section, the company and every officer of the company shall be liable to a penalty of N100.00 for every day during which the default continues.

93. Obligation of Disclosure by Substantial Shareholder in Public Company
(1) A person who is a substantial shareholder in a public company shall give notice in writing to the company stating his name and address and giving full particulars of the shares held by him or his nominee (naming the nominee) by virtue of which he is a substantial shareholder.

(2) A person is a substantial shareholder in a public company if he holds himself or by his nominee, shares in the company which entitle him to exercise at least 5 per cent of the unrestricted voting rights at any general meeting of the company.

(3) A person required to give a notice under subsection (1) of this section, shall do so within 14 days after that person becomes aware that he is a substantial shareholder.

(4) The notice shall be so given notwithstanding that the person has ceased to be a substantial shareholder before the expiration of the period referred to in subsection (3) of this section.

(5) The company shall within 14 days of receipt of the notice or of becoming aware that a person is a substantial shareholder give notice in writing to the Commission of this fact.

(6) If any person or company fails to comply with the provisions of this section, the person or the company or both the person and the company shall respectively be liable to a penalty of N200.00 and N500.00 for every day during which the default continues.

94. Person Ceasing to be a Substantial Shareholder to Notify Company
(1) A person who ceases to be a substantial shareholder in a public company shall give notice in writing to the company stating his name and the date on which he ceased to be a substantial shareholder and giving full particulars of the circumstances by reason of which he ceased to be substantial shareholder.

(2) A person required to give notice under subsection (1) of this section, shall do so within 14 days after he becomes aware that he has ceased to be substantial shareholder.

(3) The company shall within 14 days of receipt of the notice or of becoming aware that a person has ceased to be a substantial shareholder give notice in writing to the Commission of this fact.

(4) If any person or company fails to comply with the provisions of this section, the person or the company or both the person and the company shall respectively be liable to a penalty of N50.00 and N200.00 for every day during which the default continues.

95. Register of Interests in Shares
(1) A public company shall keep a register in which it shall enter—
(a) in alphabetical order, the names of persons from whom it has received a notice under section 93 of this Act; and
(b) against each name so entered, the information given in the notice, and where it receives a notice under section 93 of this Act, the information given in that notice.

(2) The register shall be kept at the place where the register of members required to be kept under section 81 of this Act is kept and subject to the same right of inspection as the register of members.

(3) The Commission may, at any time, in writing, require the company to furnish it with a copy of the register or any part of the register and the company shall furnish the copy within 14 days after the day on which the requirement is received by the company.

(4) If the company ceases to be public company, it shall continue to keep the register until the end of the period of six years beginning with the day next following that on which it ceases to be such a company.

(5) A company shall not, by reason of anything done for the purposes of this section, be affected with notice of, or put on enquiry as to, a right of a person to or in relation to a share in the company.

(6) If default is made in complying with this section, the company and every officer of the company shall be liable to a penalty of N5,000 and a daily default fine of N100.

96. Registration of Interests to be Disclosed
The matter relating to beneficial interests in shares required by section 92 of this Act shall be entered in a different part of the register of interests which shall be so made up that the entries inscribed in it appear in chronological order.

PART V
SHARE CAPITAL
MINIMUM SHARE CAPITAL

97. Authorised Minimum Share Capital
(1) Where, after the commencement of this Act, a memorandum delivered to the Commission under section 34 of this Act states that the association to be registered is to be registered with shares, the amount of the share capital stated in the memorandum to be registered shall not be less than the authorised minimum share capital and not less than 25 per cent of that capital shall be taken by the subscribers of the memorandum.

(2) No company having a share capital shall, after the commencement of this Act, be registered with an authorised share capital less than the authorised minimum share capital.

(3) Where, at the commencement of this Act, the authorised share capital of an existing company is less than the authorised minimum share capital, the company shall, not later than 30 days after the appointed day, increase the share capital to an amount not less than the authorised minimum share capital of which not less than 25 per cent shall be issued.
(4) Subject to subsection (3) of this section and to section 101 of this Act, where a company is registered with shares, its issued capital shall not at any time be less than 25 per cent of the authorised share capital.

(5) Where a company to which subsections (3) and (4) of this section apply fails to comply with the applicable subsection, it shall be liable to a penalty of N5,000, and every officer who is in default shall be liable to a penalty of N100 for every day during which the default continues.

ALTERATION OF SHARE CAPITAL

98. Alteration of Share Capital by Consolidation, etc.
(1) A company having a share capital may in general meeting and not otherwise alter the conditions of its memorandum to the following extent, that is to say, it may—
(a) consolidate and divide all or any part of its share capital into shares of larger amount than its existing shares;
(b) convert all or any of its paid-up shares into stock, and re-convert that stock into paid-up shares of any denomination;
(c) 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;
(d) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) Cancellation of shares made in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

99. Notice Required Where Shares and Stock Consolidated, etc.
(1) If a company having 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) cancelled any shares, otherwise than in connection with a reduction of share capital under section 103 of this Act, it shall within one month after so doing, give notice of it to the Commission specifying, as the case may be, the shares consolidated, divided, converted, subdivided, cancelled, or the stock re-converted.

(2) If default is made in complying with this section, the company and every officer of the company shall be liable to a penalty of N100 for every day during which the default continues.

100. Increase of Share Capital and Notice of Increase
(1) A company having a share capital, whether or not the shares have been converted into stock, may in general meeting and not otherwise, increase its share capital by new shares of such amount as it thinks expedient.
(2) Where a company has increased its share capital it shall, within 15 days after the passing of the resolution authorising the increase, give to the Commission notice of the increase and the Commission shall record the increase.

(3) Where, in connection with the increase of shares, any approval is required to be obtained under any enactment other than this Act, the Commission may on application by a company extend the time within which to give notice of the increase to the Commission.

(4) The notice to be given under this section shall include any particulars prescribed with respect to the classes of shares affected and the condition subject to which the new shares have been or are to be issued and the notice shall be accompanied by a printed copy of the resolution authorising the increase.

(5) If default is made in complying with the provisions of this section, the company in default shall be liable to a penalty of N100 for every day during which the default continues.

101. Increase of Issued Capital on Increase of Shares
(1) Where a company passes a resolution increasing its authorised share capital, the increase shall not take effect unless—
(a) within three months of giving notice of the increase to the Commission not less than 25 per cent of the share capital including the increase has been issued; and
(b) the directors have delivered to the Commission a statutory declaration verifying that fact.

(2) If default is made in complying with subsection (1) of this section, the company shall be liable to a penalty of N1,000.00 for every day during which the default continues.

102. Power for Unlimited Company to Provide Reserve Share Capital on Re-registration
If an unlimited company resolves to be registered as a limited company under this Act, it may—
(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 purpose of the company being wound up; or
(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.

REDUCTION OF SHARE CAPITAL

103. Restriction on Reduction of Issued Share Capital
(1) Except as authorised by this Act, a company having a share capital shall not reduce its issued share capital.

(2) For the purposes of this and other sections relating to reduction of share capital, any issue of share capital shall include the share premium account and any capital
redemption reserve account of a company, and —issued share capital— shall be construed accordingly.

104. Special Resolution for Reduction of Share Capital

(1) Subject to confirmation by the court, a company having share capital may, if so authorised by its articles, by special resolution reduce its share capital in any way.

(2) In particular, and without prejudice to subsection (1) of this section, the company 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, cancel any paid-up share capital which is in excess of the company’s wants, and the company 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 shall in this Act be referred to as “a resolution for reducing share capital”.

105. Application to Court for Order of Confirmation

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

(2) If the proposed reduction of share capital involves either—
(a) diminution of liability in respect of unpaid share capital; or
(b) subject to subsection (6) of this section, the payment to a shareholder of any paid-up share capital, and in any other case if the court so directs, subsection (3), (4) and (5) of this section shall have effect.

(3) 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 of capital.

(4) The court shall settle a list of creditors entitled to object, and for that purpose—
(a) shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of the debts or claims;
(b) 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 of capital.

(5) If a creditor entered on the list whose debt or claim is not discharged or has not been determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating (as the court may direct) the following amount if—
(a) 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;
(b) the company does not admit, and is not willing to provide for, the full amount of the
debt or claim, or if the amount is contingent or not ascertained, then an amount
fixed by the court after the like enquiry and adjudication as if the company were
being wound up by the court.

(6) If 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 so, direct that subsections (3) to (5) of this section shall not apply as regards
any class or any classes of creditors.

106. Court Order Confirming Reduction
(1) The court, if satisfied—
(a) with respect to every creditor of the company who under section 107 of this Act is
entitled to object to the reduction of capital, that either—
(i) his consent to the reduction has been obtained; or
(ii) his debt or claim has been discharged or has determined, or has been
secured; and
(b) that the share capital does not by this reduction fall below the authorised mini-mum
share capital, may make an order confirming the reduction on such terms and
conditions as it thinks fit.

(2) Where the Court so orders, it may also—
(a) if for any special reason it thinks it proper to do so, 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 its last words “and
reduced”;
(b) make an order requiring the company to publish (as the court directs) the reasons
for reduction of capital or such other information in regard to it as the court thinks
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 the 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 company’s name.

107. Registration of Order and Minutes of Reduction
(1) The Commission, on production to it of the order of the court confirming the
reduction of a company’s share capital, and the delivery to it of a copy of the order and of
minutes of the meeting of the company (approved by the court) showing, with respect to
the company’s share capital as altered by the order—
(a) the amount of the share capital;
(b) the number of shares into which it is to be divided, and the amount of each share; and
(c) the amount (if any) at the date of the registration deemed to be paid up on each
share, shall register the order and minutes.

(2) On the registration of the order and minutes, and not before, the resolution for
reducing share capital as confirmed by the order so registered shall take effect.
A notice of the registration shall be published in such manner as the court may direct.

The Commission shall certify the registration of the order and minutes; and the certificate—
(a) may be either signed by the Registrar-General or authenticated by its official seal;
(b) shall be prima facie evidence that all the requirements of this Act with respect to the reduction of share capital have been complied with, and that the company’s share capital is as stated in the minutes.

The minutes, when registered, shall be deemed to be substituted for the corresponding part of the company’s memorandum, and valid and alterable as if it had been originally contained in it.

The substitution of such minutes for part of the company’s memorandum shall be deemed an alteration of the memorandum.

108. Liability of Members on Reduced Shares
(1) Where a company’s share capital is reduced, 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 minutes and the amount paid on the share or the reduced amount (if any), which is deemed to have been paid on it, as the case may be.

(2) Subsections (3) and (4) of this section shall apply if—
(a) a creditor, entitled in respect of a debt or claim to object to the reduction of share capital, by reason of his ignorance of the proceedings for reduction of share capital, or of their nature and effect with respect to his claim, is not entered on the list of creditors; and
(b) after the reduction of capital, the company is unable (within the meaning of section 411 of this Act) to pay the amount of his debt or claim.

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

(4) If the company is wound up, the Court, on application of the creditor in question and proof of ignorance referred to in subsection (2) (a), of this section, 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.

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

109. Penalty for Concealing Name of Creditor, etc.
If an officer of the company—
(a) wilfully conceals the name of a creditor entitled to object to the reduction of capital; 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 is mentioned above, he shall be guilty of an offence and liable on conviction to a fine of N100,000.

MISCELLANEOUS MATTERS RELATING TO CAPITAL

110. Duty of Directors on Serious Loss of Capital
(1) Where the net assets of a public company are half or less of its called-up share capital, the directors shall, not later than 30 days from the earliest day on which that fact is known to a director of the company, duly convene an extraordinary general meeting of the company, for a day not later than 60 days from that day for the purpose of considering whether any, and if so, what steps should be taken to deal with the situation.

(2) If there is a failure to convene an extraordinary general meeting as required by subsection (1) of this section, each of the directors of the company who—
(a) authorises or permits the failure; or
(b) after the expiry of the period during which that meeting should have been convened, authorises or permits the failure to continue, shall be liable to a penalty of N100,000.

(3) Nothing in this section shall authorise the consideration, at a meeting convened in pursuance of subsection (1) of this section, of any matter which could have been considered at that meeting apart from this section.

111. Power to Pay Interest Out of Capital in Certain Cases
Where any shares of a company are issued for the purposes 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 long period, the company may pay interest on so much of that share capital as if for the time being paid up for the period and subject to the conditions and restrictions mentioned in this section, and may charge the same 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 Commission;
(c) before sanctioning any such payment the Commission may, at the expense of the company, appoint a person to inquire and report to it 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 Commission which shall in no case extend beyond the close of six months after the half year during which the works or buildings have been actually completed or the plant provided;
(e) the rate of interest shall not exceed the current bank rate;
(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.
PART VI
SHARES

NATURE OF SHARES

112. Rights and Liabilities Attached to Shares
Subject to the provisions of this Act, the rights and liabilities attaching to the shares of a company shall—
(a) be dependent on the terms of issue and of the company’s articles; and
(b) notwithstanding anything to the contrary in the terms or the articles, include the right to attend any general meeting of the company and vote at such a meeting.

113. Shares as Transferable Property
The shares or other interests of a member in a company shall be property transferable in the manner provided in articles of association of the company.

114. Prohibition of Non-voting and Weighted Shares
(1) Unless otherwise provided by any other enactment—
(a) any share issued by a company after the date of commencement of this Act, shall carry the right on a poll at a general meeting of the company to one vote in respect of each share and no company may by its articles or otherwise authorise the issue of shares which carry more than one vote in respect of each share or which do not carry any right to vote; and
(b) where, at the commencement of this Act, any share of a company carries more than one vote or does not carry any vote at a general meeting of the company, such a share shall be deemed, as from the appointed day, to carry one vote only.

(2) If a company contravenes any of the provisions of this section, the company and any officer in default shall be liable to a daily default penalty of N100 and any resolution passed in contravention of this section shall be void.

(3) Nothing in this section shall affect any right attached to a preference share under section 141 of this Act.

ISSUE OF SHARES

115. Power of Companies to Issue Shares
Subject to any limitation in the articles of a company with respect to the number of shares which may be issued, and any pre-emptive rights prescribed in the articles in relation to the shares, a company shall have the power, at such times and for such consideration as it shall determine, to issue shares up to the total number authorised in the memorandum.

116. Issue of Classes of Shares
(1) A company may, where so authorised by its articles, issue classes of shares.

(2) Shares shall not be treated as being of the same class unless they rank equally for all purposes.

117. Issue with Rights Attached
Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, any share in a company may be issued with such preferred, deferred or other special rights or such restrictions, whether with regard to dividend, return of capital or otherwise, as the company may, from time to time, determine by ordinary resolution.

118. Issue of Shares at a Premium
(1) Shares of a company may be issued at a premium.

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

(3) Notwithstanding, anything to the contrary in subsection (2) of this section, the share premium account may be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully-paid bonus shares, in writing off—
   (a) the preliminary expenses of the company; or
   (b) the expenses of, or the commission paid or discount allowed on, any issue of shares of the company; or in providing for the premium payable on redemption of any redeemable share of the company.

(4) Where a company has before the commencement of this Act issued any shares at a premium, this section shall apply as if the shares had been issued after the commencement of this Act:
Provided that any part of the premium which has been so applied that it does not at the commencement of this Act form an identifiable part of the company's reserves within the meaning of the Second Schedule to this Act, shall be disregarded in determining the sum to be included in the share premium account.

119. Issue of Shares at a Discount
(1) Subject to the provisions of this section, it shall be lawful for a company to issue at a discount shares in the company of a class of shares already issued:
Provided that—
   (a) the issue of the shares at a discount is authorised by resolution passed in general meeting of the company, and thereafter is sanctioned by the court;
   (b) the resolution specifies the maximum rate of discount at which the shares are to be issued; and
   (c) the shares to be issued at a discount are issued within the 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, having regard to all the circumstances of the case, and if it thinks fit so to do on such terms and conditions as it may impose, may make an order sanctioning the issue.
(3) Every prospectus relating to the issue of the shares, shall 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 prospectus.

(4) 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 penalty of N100 for every day during which the default continues.

120. Issue of Redeemable Preference Shares
Subject to the provisions of section 155 of this Act, a company limited by shares may, if so authorised by its articles, issue preference shares which shall, or at the option of the company, be liable to be redeemed.

121. Validation of Improperly Issued Shares
(1) Where a company has purported to issue or allot shares and the creation, issue or allotment of those shares was invalid by reason of any provision of this Act or any other enactment or of the articles of the company or otherwise, or the terms of issue or allotment were inconsistent with or unauthorised by any such provision, the court may upon application made by the company or by a holder or mortgagee of those shares or by a creditor of the company, and upon being satisfied that in all the circumstances it is just and equitable to do so, validate the issue or allotment of those shares or confirm the terms of the issue and allotment, as the case may be.

(2) In every case where the court validates an issue or allotment of shares or confirms the terms of an issue or allotment in accordance with subsection (1) of this section, it shall make, upon payment of the prescribed fees, an order which shall be proof of the validation or confirmation and upon the issue of the order, those shares shall be deemed to have been issued or allotted upon the relevant terms of issue or allotment.

ALLOTMENT OF SHARES

122. Authority to Allot Shares
Subject to the provisions of the Investment and Securities Act, the power to allot shares shall be vested in the company, which may delegate it to the directors, subject to any conditions or directions that may be imposed in the articles or from time to time by the company in general meeting.

123. Method of Application and Allotment
Without prejudice to the provisions of The Investment and Securities Act, the following provisions shall apply in respect of an application for an allotment of issued shares of a company—

(a) in the case of a private company or a public company where the issue of shares is not public, there shall be submitted to the company a written application signed by the person wishing to purchase shares and indicating the number of shares required;

(b) in the case of a public company, subject to any conditions imposed by the Securities and Exchange Commission where the issue of shares is public, there shall be returned to the company a form of application as prescribed in the
company's articles, duly completed and signed by the person wishing to purchase shares;
(c) upon the receipt of an application, a company shall, where it wholly or partially accepts the application, make an allotment to the applicant and within 42 days after the allotment notify the applicant of the fact of allotment and the number of shares allotted to him;
(d) an applicant under this section shall have the right at any time before allotment, to withdraw his application by written notice to the company.

124. Allotment as Acceptance of Contract
An allotment of shares made and notified to an applicant in accordance with section 123 of this Act shall be an acceptance by the company of the offer by the applicant to purchase its shares and the contract takes effect on the date on which the allotment is made by the company.

125. Payment on Allotment
Subject to the provisions of sections 133 to 136 of this Act, a company may, in its articles, make provision with respect to payments on allotment of its shares.

126. Effect of Irregular Allotment
(1) An allotment made by a company before the holding of the statutory meeting to an applicant in contravention of the provisions 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 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 the allotment shall be so voidable notwithstanding that the company is in the 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 this Act with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby: Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

127. Return as to Allotment
(1) Whenever a company limited by shares makes any allotment of its shares, the company shall within one month thereafter deliver to the Commission 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 description of the allottees, and the amount, if any, paid or due and payable on each share;
(b) in the case of shares allotted as fully or partly paid up otherwise than in cash—
   (i) 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;
   (ii) 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; and
   (iii) particulars of the valuation of the consideration in accordance with section 135 of this Act, if any; and
(c) such other documents and particulars as may be required by the Commission from time to time.

(2) If default is made in complying with this section, every officer of the company shall be liable to a penalty of N100 for every day during which the default continues: Provided that, in case of default in delivering to the Commission within one month after the allotment any document required to be delivered by this section, the company or any officer 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

128. Prohibition of Payments of Commissions, Discounts Out of Shares and Capital

(1) Except as provided in section 129 of this Act, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or capital money are 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 any such money is paid out of the nominal purchase money or contract price, or otherwise.

(2) Nothing in this section shall affect the payment of any brokerage as is usual for a company to pay.

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

129. Power to Pay Commission in Certain Cases

(1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company or procuring or agreeing to procure subscription, 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 per cent of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the lesser;

(c) the amount or rate per cent of the commission paid or agreed to be paid is—

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

(ii) in the case of shares not offered to the public for subscription, disclosed in 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 Commission 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 the manner specified in this section.

(2) If default is made in delivering to the Commission any document required to be delivered to the Commission under this section, the company and every officer in default shall be liable to a penalty of N20,000.

130. Statement in Balance Sheet as to Commission

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

(2) If default is made in complying with this section, the company and every officer of the company shall be liable to a penalty of N1,000 for every day during which the default continues.

CALL ON AND PAYMENT FOR SHARES

131. Call on Shares

(1) Subject to the terms of the issue of the shares and of the articles, the directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment of the shares made payable at fixed times:

Provided that no call shall exceed one fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call, and each member shall (subject to receiving at least 14 days’ notice specifying the time or times and place of payment) pay to the company at the time or times and place so specified the amount called on his shares, so however that a call may be revoked or postponed as the directors may determine.

(2) A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed, and may be required to be paid by instalments.

(3) The joint holders of a share shall be jointly and severally liable to pay all calls in respect of the share.

(4) If a sum called in respect of a share is not paid before or on the day appointed for payment, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment to the time of actual payment at such rate not exceeding the current bank rate per annum, as the directors may determine, but the directors shall be at liberty to waive payment of such interest wholly or in part.

(5) Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the shares or by way of premium shall, for the purposes of these provisions, be deemed to be a call duly made and payable on the date on which by the terms of issue the same becomes payable, and in case of non-payment, all the relevant provisions of this Act as to payment of interest and
expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.

(6) 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 payable) pay interest at such rate not exceeding (unless the company in general meeting shall otherwise direct) the current bank rate per annum as may be agreed upon between the directors and the member paying such sum in advance.

132. Reserve Liability of Company Having Share Capital
A company limited by shares 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 specified in this section.

133. Payment for Shares
Subject to the provisions of sections 134 and 135 of this Act, the shares of a company and any premium on them shall be paid up in cash, or where the articles so permit, by a valuable consideration other than cash or partly in cash and partly by a valuable consideration other than cash.

134. Meaning of Payment in Cash
Shares shall not be deemed to have been paid for in cash except to the extent that the company shall actually have received cash for them at the time of, or subsequently to, the agreement to issue the shares, and where shares are issued to a person who has sold or agreed to sell property or rendered or agreed to render services to the company or to persons nominated by him, the amount of any payment made for the property or services shall be deducted from the amount of any cash payment made for the shares and only the balance (if any) shall be treated as having been paid in cash for such shares notwithstanding any exchange of cheques or other securities for money.

135. Payment Other Than in Cash
(1) Where a company agrees to accept payment for its shares otherwise than wholly in cash, it shall appoint an independent valuer who shall determine the true value of the consideration other than cash and prepare and submit to the company a report on the value of the consideration.

(2) The valuer shall be entitled to require from the officers of the company such information and explanation as he thinks necessary to enable him to carry out the valuation or make the report under subsection (3) of this section.

(3) The company shall, not more than three days after the receipt by it of the valuer’s report, send a copy of it to the proposed purchaser of shares, and indicate to the proposed purchaser whether or not it intends to accept the consideration as payment or part-payment for its shares.

(4) A company shall not accept as payment or part-payment for its shares consideration other than cash unless the cash value of the consideration as determined by
the valuer is worth at least as much as may be credited as paid up in respect of the shares allowed to the proposed purchaser.

(5) A valuer who, in his report or otherwise, knowingly or recklessly makes a statement which is misleading, false or deceptive in a material particular, shall be guilty of an offence and liable to imprisonment for 12 months or to a fine of $250,000 or both such imprisonment and fine.

(6) For the purposes of this section “valuer” means an auditor, a valuer, a surveyor or engineer or an accountant not being a person in the employment of the company nor an agent or associate of the company or any of its directors or officers.

136. Power to Pay Different Amounts on Shares
To the extent to which it is so authorised by its articles, a company may—
(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.

LIEN AND FORFEITURE OF SHARES

137. Lien on Shares
(1) A company shall have a first and paramount lien on every share, (not being a fully paid share for all moneys (whether currently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a first and paramount 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 subsection.

(2) A company’s lien, if any, on a share shall extend to all dividends payable on it.

(3) A 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 a sum in respect of which the lien exists is currently payable, nor until the expiration of 14 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 currently payable, has been given to the registered holder for the time being of the shares, or the person entitled to them by reason of his death or bankruptcy.

(4) For the purpose of giving effect to any such sale, the directors may authorise some person to transfer the shares sold to the purchaser of the shares and the purchaser shall be registered as the holder of the shares comprised in any such transfer.

(5) The purchaser shall not be bound to see to the application of the purchase money and his title to the shares shall not be affected by any irregularity or invalidity in the proceedings in reference to the sale.

138. Forfeiture of Shares
(1) If a member fails to pay any call or instalment of a call on the day appointed for payment, the directors may, at any time thereafter during such time as any part of the 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.

(2) The notice shall name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made, and it 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 shall be liable to be forfeited.

(3) If the requirements of any such notice as is mentioned in subsections (1) and (2) of this section are not complied with, any share in respect of which 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.

(4) 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.

(5) 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 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 all such moneys in respect of the shares.

(6) A statutory declaration that the declarant is a director or the secretary of the company, and that a share in the company has been duly forfeited on a date stated in the declarations, shall be prima facie evidence of the facts stated in it as against all persons claiming to be entitled to the shares.

(7) The company may receive the consideration, if any, given for the share on any sale or disposition of it 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.

(8) The provisions of this section 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 nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

CLASSES OF SHARES

139. Power to Vary Rights
(1) If at any time the share capital of a company is divided into different classes of shares under section 116 of this Act, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the company is being wound up, be varied with the consent, in writing, of the holders of three-
quarters of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class.

(2) To every such separate general meeting as is mentioned in subsection (1) of this section, the provisions of this Act relating to general meetings shall apply, so however 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.

(3) The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking pari passu with them.

140. Application for Cancellation of Variation
(1) Where in pursuance of section 139 of this Act, the rights attached to any class of shares are at any time varied, the holder of not less in the aggregate than fifteen per cent 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 to the court under this section shall, in a proper case, be made within 21 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 or by such one or more of their number as they may appoint in writing for the purpose.

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

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

(5) The company shall, within 15 days after the making of an order by the court on an application to it under this section, forward a copy of the order to the Commission and if default is made in complying with the provisions of this subsection, the company and every officer of the company shall be liable to a penalty of N100 for every day during which the default continues.

(6) In this section, “variation” includes abrogation and cognate expressions shall be constructed accordingly.

141. Right of a Preference Share to More Than One Vote
(1) Notwithstanding the provisions of section 114 of this Act, the articles may provide that preference shares issued after the commencement of this Act shall carry the rights to attend general meetings and on a poll at the meetings, to more than one vote per share in the following circumstances, but not otherwise, that is to say—
(a) upon any resolution during such period as the preferential dividend or any part of it remains in arrears and unpaid, such period starting from a date not more than 12 months or such lesser period as the articles may provide, after the due date of the dividend; or
(b) upon any resolution which varies the rights attached to such shares; or
(c) upon any resolution to remove an auditor of the company or to appoint another person in place of such auditor; or
(d) upon any resolution for the winding up of the company or during the winding up of the company.

(2) Notwithstanding the provisions of section 114 of this Act, any special resolution of a company increasing the number of shares of any class, may validly resolve that any existing class of preference shares shall carry the right to such votes additional to one vote per share as shall be necessary in order to preserve the existing ratio which the votes exercisable by the holders of such preference shares at a general meeting of the company bear to the total votes exercisable at the meeting.

(3) For the purposes of subsection (2) of this section, a dividend shall be deemed to be due on the date appointed in the articles for the payment of the dividend for any year or other period, or if no such date is appointed, upon the day immediately following the expiration of the year or other period, and whether or not such dividend shall have been earned or declared.

142. Construction of Class Rights
In construing the provisions of a company’s articles in respect of the rights attached to shares, the following rules of construction shall be observed—
(a) unless the contrary intention appears, no dividend shall be payable on any shares unless the company shall resolve to declare such dividend;
(b) unless the contrary intention appears, a fixed preferential dividend payable on any class of shares is cumulative, that is to say, no dividend shall be payable on any shares ranking subsequent to them until all the arrears of the fixed dividend have been paid;
(c) unless the contrary intention appears, in a winding up arrears of any cumulative preferential dividend, whether earned or declared or not, are payable up to the date of actual payment in the winding up;
(d) if any class of shares is expressed to have a right to a preferential dividend, then, unless the contrary intention appears, such class has no further right to participate in dividends;
(e) if any class of shares is expressed to have preferential rights to payment out of the assets of the company in the event of winding up, then, unless the contrary intention appears, such class has no further right to participate in the distribution of assets in the winding up;
(f) in determining the rights of the various classes to share in the distribution of the company’s property on a winding up, no regard shall be paid, unless the contrary intention appears, to whether or not such property represents accumulated profits or surplus which would have been available for dividend while the company remained a going concern;
(g) subject to this section, all shares rank equally in all respects unless the contrary intention appears in the company’s articles.
NUMBERING OF SHARES

143. Shares to be Numbered
Each share in a company having a share capital shall be distinguished by its appropriate number:
Provided that, if at any time all the issued shares in a company, or all of its issued shares of a particular class, are fully paid up and rank pari passu for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks pari passu for all purposes with all shares of the same class for the time being issued and fully paid up.

SHARE CERTIFICATES

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

(2) Every person whose name is entered as a member in the register of members shall be entitled, without payment, to receive within three months of allotment or lodgement of transfer or within such other period as the conditions of issue shall provide, one certificate for all his shares or several certificates each for one or more of his shares upon payment of a fee as the directors shall, from time to time, determine.

(3) Every certificate issued by a company shall be under the company’s seal and shall specify the shares to which it relates and the amount paid up on them:
Provided that in respect of shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for shares to one of several joint holders shall be sufficient delivery to all such holders.

(4) If a share certificate is defaced, lost or destroyed, it may be replaced on such terms (if any), as to evidence and indemnity and the payment of out-of-pocket expenses of the company of investigating evidence as the directors think fit.

(5) If any company on which a notice has been served requiring it to make good any default in complying with the provisions of subsection (1) of this section, fails to make good the default within 10 days after the service of the notice, the court may, on the application of the person entitled to have the certificate 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.

(6) If default is made in complying with this section, the company and every officer of the company shall be liable to a **penalty of N100** for every day during which the default continues.

145. Effect of Share Certificate
(1) 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.

(2) If any person changes his position to his detriment in good faith on the continued accuracy of the statements made in a certificate, the company shall be estopped from denying the continued accuracy of such statements and shall compensate the person for any loss suffered by him in reliance on them and which he would not have suffered had the statements been or continued to be accurate.

(3) Nothing contained in subsection (2) of this section shall derogate from any right the company may have to be indemnified by any other person.

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

CONVERSION OF SHARES INTO STOCK

147. Conversion of Shares into Stock
(1) The provisions of this section shall apply with respect to the conversion of all or any of the shares of a company into stock and the re-conversion of such stock into shares under the provisions of section 98 of this Act.

(2) The conversion of any paid-up shares into stock and the re-conversion of any stock into paid-up shares shall be by ordinary resolution of the company at a general meeting.

(3) The holders of stock may transfer the same, or any part of it, in the same manner and subject to the same conditions, as and subject to which the shares from which the stock arose might, previous to the conversion, have been transferred, or as near to it as circumstances admit; and the directors may, from time to time, fix the minimum amount of stock transferable, so however that such minimum shall not exceed the nominal amount of the shares from which the stock arose.

(4) The holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profit of the company and in the assets on winding up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.

(5) Such of the articles of the company as are applicable to paid-up shares shall apply to stock, and the words “shares” and “shareholder” in those articles shall include “stock” and “stockholder”.

TRANSFER AND TRANSMISSION

148. Transfer of Shares
(1) The transfer of a company's shares shall be by instrument of transfer and except as expressly provided in the articles, transfer of shares shall be without restrictions.

(2) Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in 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, any person to whom the right to any shares in the company has been transmitted by operation of law.

(3) 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 of the share.

(4) Subject to such of the restrictions of a company's articles as may be applicable, any member may transfer all or any of his shares by instrument in writing in any usual or common form or any other form which the directors may approve.

148. Entry in Register of Transfers
(1) 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 conditions as if the application for the entry were made by the transferee.

(2) Until the name of the transferee is entered in the register of members in respect of the transferred shares, the transferor shall, so far as concerns the company, be deemed to remain the holder of the shares.

(3) The company may refuse to register the transfer of a share (not being a fully paid share) to a person of whom they do not approve, and may also refuse to register the transfer of a share on which the company has a lien.

(4) The company may refuse to recognise any instrument of transfer unless—
(a) a fee as the company may, from time to time, determine is paid to the company in respect of the instrument; 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; and
(c) the instrument of transfer is in respect of only one class of shares.

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

(2) If default is made in complying with this section, the company and every officer of the company shall be liable to a penalty of N25,000.

151. Transfer by Personal Representative
A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal 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.

152. Transmission of Shares

(1) In case of the death of a member, the survivor or survivors where the deceased was a joint holder, or the legal personal representative of the deceased where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares; but nothing in this section shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

(2) Any person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as may, from time to time, properly be required by the directors and subject as hereafter provided in this section, elect either to be registered himself as holder of the share, or to have some person nominated by him registered as the transferee of the share; but the company 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 that member before his death or bankruptcy, as the case may be.

(3) If the person so becoming entitled elects to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects and if he elects to have another person registered, he shall testify his election by executing to that person a transfer of the share.

(4) All the limitations, restrictions and provisions of this Act and the company’s articles relating to the rights to transfer and the registration of transfers of share, shall be applicable to any such notice or transfer as mentioned in subsection (3) of this section as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

(5) 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, unless the articles otherwise provide, 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:

Provided that the directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within 90 days the directors may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

153. Protection of Beneficiaries

(1) Any person claiming to be interested in any shares or the dividends or interest on them, may protect his interest by serving on the company concerned a notice and affidavit of interest.
(2) The company shall enter on the register of members, the fact that such notice has been served and shall not register any transfer or make any payment or return in respect of the shares contrary to the terms of the notice until the expiration of 42 days’ notice to the claimant of the proposed transfer or payment.

(3) In the event of any default by the company in complying with this section, the company shall compensate any person injured by the default.

154. Certification of Transfers

(1) When the holder of any shares of a company wishes to transfer to any person only a part of the shares represented by one or more certificates, the instrument of transfer together with the relevant certificates shall be delivered to the company with a request that the instrument of transfer be recognised and registered.

(2) A company to which a request is made under subsection (1) of this section, may recognise the instrument of transfer by endorsing on it the words ―certificate lodged‖ or words to the like effect.

(3) The recognition by a company of any instrument of transfer of shares in the company shall be taken as a representation by the company to any person acting on the faith of the recognition that there have been produced to the company such documents as on the face of them show a prime facie title to the shares in the transferor named in the instrument of transfer, but not as a representation that the transferor has any title to the shares.

(4) Where any person acts on the faith of a false recognition by a company made negligently, the company shall be under the same liability to that person as if the recognition has been made fraudulently.

(5) For the purposes of this section—

(a) an instrument of transfer shall be deemed to be recognised if it bears the words “certificate lodged” or words to the like effect;

(b) the recognition of an instrument of transfer shall deemed to be made by a company if—

(i) the person issuing the instrument is a person authorised to issue certificated instruments of transfers on the company’s behalf; and

(ii) the recognition is signed by a person authorised to recognise transfers of shares on the company’s behalf or by any officer or servant either of the company or of a body corporate so authorised;

(c) a recognition shall be deemed to be signed by any person if—

(i) it purports to be authenticated by his signature or initials (whether handwritten or not); and

(ii) it is not shown that the signature or initials was or were placed there by any person other than him or a person authorised to use the signature or initials for the purpose of transfers on the company’s behalf.

TRANSACTIONS BY COMPANY IN RESPECT OF ITS OWN SHARES

155. Redemption of Redeemable Preference Shares
(1) The provisions of this section shall apply with respect to the redemption by a company of any redeemable preference shares issued by it under section 120 of this Act.

(2) The shares shall not be redeemed unless they are fully paid, and redemption shall be made only out of—
(a) profits of the company which would otherwise be available for dividend; or
(b) the proceeds of a fresh issue of shares made for the purposes of the redemption.

(3) Before the shares are redeemed, the premium, if any, payable on redemption, shall be provided for out of the profits of the company or out of the company’s share premium account.

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

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

(6) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of the company’s authorised share capital.

(7) 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.

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

156. Prohibition of Financial Assistance by Company for Acquisition of Its Shares

(1) In this section, financial assistance includes a gift, guarantee, security or indemnity, loan, any form of credit and any financial assistance given by a company, the net assets of which are thereby reduced to a material extent or which has no net assets.

(2) Subject to the provisions of this section—
(a) where a person is acquiring or is proposing to acquire shares in a company, it shall not be lawful for the company or any of its subsidiaries to give financial assistance
directly or indirectly for the purpose of that acquisition before or at the same time as the acquisition takes place; and

(b) where a person has acquired shares in a company and any liability has been incurred (by that or any other person), for the purpose of this acquisition, it shall not be lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability so incurred.

(3) Nothing in subsection (1) of this section shall be taken to prohibit—

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

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

(c) the making by a company of loans to persons, other than directors, bona fide in the employment of the company with a view to enabling those persons to purchase or subscribe for fully-paid shares in the company or its holding company, to be held themselves by way of beneficial ownership;

(d) any act or transaction otherwise authorised by law.

(4) If a company acts in contravention of this section, the company and every officer of the company who is in default shall be liable on conviction to a fine of N100.

157. Acquisition by a Company of Its Own Shares

(1) Subject to the provisions of subsection (2) of this section and its articles, a company may not purchase or otherwise acquire shares issued by it.

(2) A company may acquire its own shares for the purpose of—

(a) settling or compromising a debt or claim asserted by or against the company; or

(b) eliminating fractional shares; or

(c) fulfilling the terms of a non-assignable agreement under which the company has an option or is obliged to purchase shares owned by an officer or an employee of the company;

(d) satisfying the claim of a dissenting shareholder; or

(e) complying with a court order.

(3) A company may accept from any shareholder, a share in the company surrendered to it as a gift, but may not extinguish or reduce a liability in respect of an amount unpaid on any such share, except in accordance with section 106 of this Act.

158. Conditions for Purchase by a Company of Its Own Shares

Notwithstanding any provision in the articles, a company shall not purchase any of its own shares except on compliance with the following conditions, that is—

(a) shares shall only be purchased out of profits of the company which would otherwise be available for dividend or the proceeds of a fresh issue of shares made for the purpose of the purchase;
redeemable shares shall not be purchased at a price greater than the lowest price at which they are redeemable or shall be redeemable at the next date thereafter at which they are due or liable to be redeemed;

(c) no purchase shall be made in breach of section 159 of this Act.

159. Limit on Number of Shares Acquired
No transaction shall be entered into by or on behalf of a company whereby the total number of its shares, or of its shares of any one class, held by persons other than the company or its nominees becomes less than 85 per cent of the total number of shares, or of shares of that class, which have been issued:

Provided that—

(a) redeemable shares shall be disregarded for the purposes of this section; and

(b) where, after shares of any class have been issued, the number of such shares has been reduced, this section shall apply as if the number originally issued (including shares of that class cancelled before the reduction took effect) has been the number as so reduced.

160. Enforceability of Contract to Acquire Shares
(1) A contract with a company providing for the acquisition by the company of shares in the company is specifically enforceable against the company, except to the extent that the company cannot perform the contract without thereby being a breach of the provisions of section 157 of this Act.

(2) In any action brought on a contract referred to in subsection (1) of this section, the company shall have the burden of proving that performance of the contract is prevented by the provisions of section 157 of this Act.

161. Re-issue of Shares Acquired
Where shares in a company are redeemed, purchased, acquired or forfeited, such shares shall, unless the company by alteration of its articles of association cancels the shares, be available for re-issue by the company.

162. Acquisition of Shares of Holding Company
(1) A company which is a subsidiary may acquire shares in its holding company where the subsidiary company is concerned as personal representative or trustee, unless the holding company or any subsidiary of it is beneficially interested otherwise than by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(2) A subsidiary which is, at the commencement of this Act, a holder of shares of its holding company or a subsidiary which acquired shares in its holding company before it became a subsidiary of that holding company, may continue to hold such shares but, subject to subsection (1) of this section, shall have no right to vote at meetings of the holding company or any class of shareholders of the holding company and shall not acquire any future shares in it except on a capitalisation issue.

PART VII
DEBENTURES
CREATION OF DEBENTURE AND DEBENTURE STOCK

163. Power to Borrow Money, to Charge Property and to Issue Debentures
A company may borrow money for the purpose of its business or objects and may mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the company or of any third party.

164. Documents of Title to Debentures or Certificate of Debenture Stock
(1) Every company shall, within 60 days after the allotment of any of its debentures or after the registration of the transfer of any debentures, deliver to the registered holder thereof, the debenture or a certificate of the debenture stock under the common seal of the company.

(2) If a debenture or debenture stock certificate is defaced, lost or destroyed, the company, at the request of the registered holder of the debenture, shall issue a certified copy of the debenture or renew the debenture stock certificate on payment of a fee of N500 and on such terms as to evidence and indemnity and the payment of the company's out-of-pocket expenses of investigating evidence, as the company may reasonably require.

(3) If default is made in complying with this section, the company and any officer of the company who is in default, shall be liable to a fine of N20,000; and on application by any person entitled to have the debentures or debenture stock certificate delivered to him, the court may order the company to deliver the debenture or debenture stock certificate and may require the company and any such officer to bear all the costs of and incidental to the application.

165. Statements to be Included in Debentures
Every debenture shall include a statement on the following matters, that is—
(a) the principal amount borrowed;
(b) the maximum discount which may be allowed on the issue or re-issue of the debentures, and the maximum premium at which the debentures may be made redeemable;
(c) the rate of and the dates on which interest on the debentures issued shall be paid and the manner in which payment shall be made;
(d) the date on which the principal amount shall be repaid or the manner in which redemption shall be effected, whether by the payment of instalments of principal or otherwise;
(e) in the case of convertible debentures, the date and terms on which the debentures may be converted into shares and the amounts which may be credited as paid up on those shares, and the dates and terms on which the holders may exercise any right to subscribe for shares in respect of the debentures held by them;
(f) the charges securing the debenture and the conditions subject to which the debenture shall take effect.

166. Effect of statements in debentures
(1) Statements made in debenture or debenture stock certificates shall be prima facie evidence of the title to the debentures of the person named therein as the registered holder and of the amounts secured thereby.

(2) If any person shall change his position to his detriment in reliance in good faith on the continued accuracy of any statements made in the debenture or debenture stock certificate, the company shall be estopped in favour of such person from denying the continued accuracy of such statements and shall compensate such person for any loss suffered by him in reliance thereon and which he would not have suffered had the statement been or continued to be accurate: Provided that nothing in this subsection shall derogate from any right the company may have to be indemnified by any other person.

167. Enforcement of Contracts Relating to Debentures
A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

TYPES OF DEBENTURES

168. Perpetual Debentures
A company may issue perpetual debentures, and a condition contained in any debentures, or in any deed for securing any debentures, shall not be invalid by reason only that the debentures are 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.

169. Convertible Debentures
Debentures may be issued upon the terms that in lieu of redemption or repayment, they may, at the option of the holder or the company, be converted into shares in the company upon such terms as may be stated in the debentures.

170. Secured or Naked Debentures
(1) Debentures may either be secured by a charge over the company’s property or may be unsecured by any charge.

(2) Debentures may be secured by a fixed charge on certain of the company’s property or a floating charge over the whole or a specified part of the company’s undertaking and assets, or by both a fixed charge on certain property and a floating charge.

(3) A charge securing debentures shall become enforceable on the occurrence of the events specified in the debentures or the deed securing the same.

(4) Where any legal proceedings are brought by a debenture holder to enforce the security of a series of debentures of which he holds part, the debenture holder shall sue in a representative capacity on behalf of himself and all other debenture holders of that series.

171. Redeemable Debentures
A company limited by shares may issue debentures which are, or at the option of the company are to be liable, to be redeemed.
172. 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 unless—

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

(b) 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 re-issuing the same debentures or by issuing other debentures in their place.

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

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

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

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped, may give the debenture in evidence in any 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.

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

173. Rights of Debenture Holders

(1) The trustee of a debenture trust deed shall hold all contracts, stipulations and undertakings given to him and all mortgages, charges and securities vested in him in connection with the debentures covered by the deed, or some of those debentures, exclusively for the benefit of the debenture holders concerned (except in so far as the deed otherwise provides) and the trustee shall exercise due diligence in respect of the enforcement of those contracts, stipulations, undertakings, mortgages, charges and securities and the fulfilment of his functions generally.

(2) A debenture holder may sue—

(a) the company which issued the debentures he holds for payment of any amount payable to him in respect of the debentures; or
(b) the trustee of the debenture trust deed covering the debentures he holds for compensation for any breach of the duties which the trustee owes him, and in any such action, it shall not be necessary for any other debenture holders of the same class, or if the action is brought against the company, the trustee of the covering trust deed, to be joined as a party.

(3) This section shall apply notwithstanding anything contained in a debenture or trust deed or other instrument, but a provision in a debenture or trust deed shall be valid and binding on all the debenture holders of the class concerned in so far as it enables a meeting of the debenture holders by a resolution supported by the votes of the holders of at least three quarters in value of the debentures of that class in respect of which votes are cast on the resolution to—

(a) release any trustee from liability for any breach of his duties to the debenture holders which he has already committed, or generally from liability for all such breaches (without necessarily specifying them) upon his ceasing to be trustee;

(b) consent to the alteration or abrogation of any of the rights, powers or remedies of the debenture holders and the trustee of the debenture trust deed covering their debentures (except the powers and remedies under section 206 of this Act); or

(c) consent to the substitution for the debentures of a different class issued by the company or any other company or corporation, or the cancellation of the debentures in consideration of the issue to the debenture holders of shares credited as fully paid in the company or any other company.

174. Meetings of Debenture Holders
(1) The terms of any debentures or trust deed may provide for the convening of general meetings of the debenture holders and for the passing, at such meetings, of a resolution binding on all the holders of the debentures of the same class.

(2) Whether or not the debentures or trust deed contain such provisions as are referred to in subsection (1) of this section, the Commission may at any time direct a meeting of the debenture holders of any class to be held and conducted in such manner as the Commission thinks fit to consider ancillary or consequential direction as it shall think fit.

(3) Notwithstanding anything contained in a debenture trust deed, or in any debenture or contract or instrument, the trustee of a debenture deed shall, on the requisition of persons holding, at the date of the deposit of the acquisition debentures covered by the trust deed which carry not less than one tenth of the total voting rights attached to all the issued and outstanding debentures of that class, forthwith, proceed duly to convene a meeting of that class of debenture holders.

FIXED AND FLOATING CHARGES

175. Meaning of “Floating” and “Fixed” Charges
(1) A “floating charge” means an equitable charge over the whole or a specified part of the company’s undertakings and assets, including cash and uncalled capital of the company both present and future, but so that the charge shall not preclude the company from dealing with such assets until—

(a) the security becomes enforceable and the holder thereof, pursuant to a power in that behalf in the debenture or the deed securing the same, appoints a receiver or manager or enters into possession of such assets; or
(b) the court appoints a receiver or manager of such assets on the application of the holder; or
(c) the company goes into liquidation.

(2) On the happening of any of the events mentioned in subsection (1) of this section, the charge shall be deemed to crystallise and to become a fixed equitable charge on such of the company’s assets as are subject to the charge, and if a receiver or manager is withdrawn with the consent of the chargee, or the chargee withdraws from possession before the charge has been fully discharged, the charge shall thereupon be deemed to cease to be a fixed charge and again to become a floating charge.

176. Priority of Fixed Over Floating Charge
A fixed charge on any property shall have priority over a floating charge affecting that property, unless the terms on which the floating charge was granted prohibited the company from granting any later charge having priority over the floating charge and the person in whose favour such later charge was granted had actual notice of that prohibition at the time when the charge was granted to him.

177. Powers of the Court
(1) Whenever a fixed or floating charge has become enforceable, the court shall have power to appoint a receiver and in the case of a floating charge, a receiver and manager of the assets subject to the charge.

(2) In the case of a floating charge, the court may, notwithstanding that the charge has not become enforceable, appoint a receiver or manager if satisfied that the security of the debenture holder is in jeopardy; and the security of the debenture holder shall be deemed to be in jeopardy if the court is satisfied that events have occurred or are about to occur which render it unreasonable in the interests of the debenture holder that the company should retain power to dispose of its assets.

(3) A receiver or manager shall not be appointed as a means of enforcing debentures not secured by any charge.

178. Advertisement of Appointment of Receiver and Manager
Where a receiver or a receiver and manager is appointed by the court, advertisement to this effect shall be made by the receiver or the receiver and manager in the Gazette and in two daily newspapers.

179. Preferential Payment to Debenture Holders in Certain Cases
(1) Where a receiver is appointed on behalf of the holders of any debentures of a registered company secured by a floating charge, or possession is taken by, or on behalf of those debenture holders of any property comprising 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 relating to preferential payments in Part XV of this Act 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) In the application of the provisions relating to preferential payments—
(a) Section 496 of this Act shall be construed as if the provision for payment of accrued holiday remuneration becoming payable on the termination of employment before or by the effect of the winding-up order or resolution, were a provision for payment of such remuneration becoming payable on the termination of employment before or by the effect of appointment of the receiver or possession being taken as aforesaid; and

(b) The periods of time mentioned therein shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be, and if such date occurred before the commencement of this Act, the provisions relating to preferential payments which would have applied but for this Act, shall be deemed to remain in full force.

(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.

DEBENTURE TRUST DEED

180. Execution of Debenture Trust Deed

(1) Every company which offers debentures to the public for subscription or purchase shall, before issuing any of the debentures, execute a debenture trust deed in respect of them and procure the execution of the deed by the trustee for the debenture holders appointed by the deed.

(2) No debenture trust deed shall cover more than one class of debentures, whether or not the trust deed is required by this section to be executed.

(3) Where a trust deed is required to be executed by this section but has not been executed, the court, on the application of a debenture holder concerned, may—

(a) Order the company to execute a trust deed;
(b) Direct that a person nominated by the court shall be appointed to be trustee; and
(c) Give such consequential directions as it thinks fit, as to the contents of the trust deed and its execution by the trustee thereof.

(4) For the purposes of this Act, debentures shall belong to different classes if different rights attach to them in respect of—

(a) The rate of, or dates for payment of interest;
(b) The dates when, or the instalments by which, the principal of the debenture shall be repaid, unless the difference is solely that the class of debentures shall be repaid during a stated period of time and particular debentures may be repaid at different dates during that period according to selections made by the company or by drawings, ballot or otherwise;
(c) Any right to subscribe for or convert the debentures into shares in, or other debentures of, the company or any other company; or (d) The powers of the debenture holders to realise any security.

(5) Debentures further belong to different classes, if they do not rank equally for payment when any security invested in the debenture holders under any trust deed is realised or when the company is wound up, that is to say, if, in the circumstances mentioned in subsection (4) of this section the subject matter of any such security or the proceeds thereof, or any assets available to satisfy the debentures, is or are
not to be applied in satisfying the debentures strictly in proportion to the amount of principal, premiums and arrears of interest to which the holders of them are respectively entitled.

(6) A debenture is covered by a trust deed if—
(a) the holder of the debenture is entitled to participate in any money payable by the company under the deed; or
(b) is entitled to the benefit of any mortgage, charge or security created by the deed, whether alone or together with other persons.

(7) If a company issues debentures in circumstances in which this section requires a debenture trust deed to be executed, without such a deed having been executed in compliance with this section, or if the company issues debentures under a trust deed which covers two or more classes of debentures, the directors of the company who are in default are guilty of an offence and liable on conviction to a fine of N200,000 jointly or severally.

181. Contents of Debenture Trust Deed
(1) Every debenture trust deed, whether required by section 180 of this Act or not, shall state—
(a) the maximum sum which the company may raise by issuing debentures of the same class;
(b) the maximum discount which may be allowed on the issue or re-issue of the debentures, and the maximum premium at which the debentures may be made redeemable;
(c) the nature of any assets over which a mortgage, charge or security is created by the trust deed in favour of the trustee for the benefit of the debenture holders equally, and except where such a charge is a floating charge or a general floating charge, the identity of the assets subject to it;
(d) the nature of any assets over which a mortgage, charge or security has been or will be created in favour of any person other than the trustee for the benefit of the debenture holders equally, and except where such a charge is a floating charge or a general floating charge, the identity of the assets subject to it;
(e) whether the company has created or will create any mortgage, charge or security for the benefit of some, but not all, of the holders of debentures issued under the trust deed;
(f) any prohibition or restriction on the power of the company to issue debentures or to create mortgages, charges or any security on any of its assets ranking in priority to, or equally with the debentures issued under the trust deed;
(g) whether the company shall have power to acquire debentures issued under the trust deed before the date of their redemption and to re-issue the debentures;
(h) the rate of and the dates on which interest on the debentures issued under the trust deed shall be paid and the manner in which payment may be made;
(i) the date or dates on which the principal or the debentures issued under the trust deed shall be repaid, and unless the whole principal is to be repaid to all the debenture holders at the same time, the manner in which redemption shall be effected, whether by the payment of equal instalments of principal in respect of each debenture, or by the selection of debentures for redemption by the company, or by drawing, ballot, or otherwise;
in the case of convertible debentures, the dates and terms on which the debentures may be converted into shares and the amounts which may be credited as paid up on those shares in right of the debentures held by them;

(k) the circumstances in which the debenture holders shall be entitled to realise any mortgage, charge or security invested in the trustee or any other person for their benefit (other than the circumstances in which they are entitled to do so by this Act);

(l) the powers of the company and the trustee to call meetings of the debenture holders and the rights of debenture holders to require the company or the trustee to call such meetings;

(m) whether the rights of debenture holders may be altered or abrogated and if so, the conditions which must be fulfilled, and the procedure which must be followed, to effect such an alteration or abrogation; and

(n) the amount or rate of remuneration to be paid to the trustee and the period for which it shall be paid, and whether it shall be paid in priority to the principal, interest and costs in respect of debentures issued under the trust deed.

(2) If debentures are issued without a covering debenture trust deed being executed, the statements required by subsection (1) of this section shall be included in each debenture or in a note forming part of the same document or endorsed thereon, and in applying that subsection references therein to “the debenture trust deed” shall be construed as references to all or any of the debentures of the same class.

(3) Subsection (2) of this section shall not apply if the debenture is the only debenture of the class to which it belongs which has been or may be issued, and the rights of the debenture holder may not be altered or abrogated without his consent.

(4) Any director who issues a debenture in violation of the provisions of this section shall be liable to a penalty of N50,000.

182. Contents of Debenture Covered by Trust Deed

(1) Every debenture covered by a debenture trust deed shall state, either in the body thereof or in a note forming part of the same document or endorsed thereon—

(a) the matters required to be stated in a debenture trust deed by paragraphs (a), (b), (f), (h), (i), (j), (l) and (m) of subsection (1) of section 181 of this Act;

(b) whether the trustee of the covering debenture trust deed holds the mortgages, charges and securities vested in him by the trust deed in trust for the debenture holders equally, or in trust for some only of the debenture holders, and if so, which debenture holders; and

(c) whether the debenture is secured by a general floating charge vested in the trustee of the covering debenture trust deed or in the debenture holders.

(2) A debenture issued by a company shall state on its face in clearly legible print, that it is unsecured if no mortgage, charge or security is vested in the holder of the debenture or in any other person for his benefit as security for payment of principal or interest.

(3) Any director of a company who issues a debenture in violation of the provisions of subsections (1) and (2) of this section shall be liable to a penalty of N50,000.

183. Trustees for Debenture Holders
(1) Whether or not a debenture is secured by a charge over the company’s property, it may be secured by a trust deed appointing trustees for the debenture holders.

(2) It shall be the duty of such trustees to safeguard the rights of the debenture holders and, on behalf of and for the benefit of the debenture holders, to exercise the rights, powers and discretions conferred upon them by the trust deed.

(3) Charges securing the debentures may be created in favour of the debenture holders by vesting them in the trustees.

(4) Any provision contained in a trust deed or in any contract with the holders of debentures secured by a trust deed shall be void in so far as it would have the effect of exempting a trustee thereof from, or indemnifying him against, liability for any breach of trust or failure to show the degree of care and diligence required of him as trustee having regard to the powers, authorities or discretions conferred on him by the trust deed: Provided that nothing herein contained shall be deemed to invalidate any release otherwise validly given in respect of anything done or omitted to be done by a trustee on the agreement to such release of a majority of not less than three quarters in value of the debenture holders present in person, or where proxies are permitted, by proxy at a meeting summoned for the purpose.

(5) Notwithstanding any provisions contained in the debentures or trust deed, the court may, on the application of any debenture holder or of the Commission remove any trustee and appoint another in his place if satisfied that such trustee has interests which conflict or may conflict with those of the debenture holders or that for any reason it is undesirable that such trustee should continue to act: Provided that where any such application is made by a debenture holder, the court if it thinks fit, may order the applicant to give security for the payment of the costs of the trustee and may direct that the application shall be heard in Chambers.

184. Disqualification for Appointment as Trustee of Debenture Trust Deed

(1) A person is not qualified for appointment as a trustee of a debenture trust deed if he is—

(a) an officer or an employee of the company which issues debentures covered by the trust deed or of a company in the same group of companies as the company so issuing debentures;

(b) less than 18 years of age;

(c) of unsound mind and has been so found by a court in Nigeria or elsewhere;

(d) an undischarged bankrupt;

(e) disqualified under section 255 of this Act from being appointed as a director of a company;

(f) a substantial shareholder (as defined in section 95 of this Act) of the company.

(2) If a trustee becomes subject to any of the disqualifications mentioned in subsection (1) of this section after he has been appointed, he shall immediately cease to be qualified to act as a trustee of the debenture trust deed.

(3) Any person who acts as a trustee of a debenture trust deed whose appointment is invalid under subsection (1) of this section or who is disqualified from acting under
subsection (2) of this section shall be guilty of an offence, and liable on conviction to a fine of N250,000.00.

185. Liability of Trustees for Debenture Holders

(1) Subject to the provisions of this section, anything contained in a trust deed for securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from or indemnifying him against liability for breach of trust, where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.

(2) Subsection (1) of this section shall not invalidate—

(a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or

(b) any provision enabling such a release to be given—

(i) on the agreement thereto of a majority of not less than three quarters in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and

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

(3) Subsection (1) of this section shall not operate to—

(a) invalidate any provision in force at the commencement of this Act in any such trust deed or contract, so long as any person entitled to the benefit of that provision, or afterwards given the benefit thereof under subsection (4) of this section, remains a trustee of the trust deed in question; or

(b) deprive any person of any 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.

(4) While any trustee of a trust deed remains entitled to the benefit of a provision saved by subsection (3) of this section, the benefit of that provision may be given—

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

(b) to any named trustees or proposed trustees thereof, by a resolution, passed by a majority of not less than three quarters in value of the debenture holders present in person or, where proxies are permitted by proxy at a meeting summoned for the purpose in accordance with the provisions of the trust deed or, if the trust deed makes no provision for summoning meetings, a meeting summoned for the purpose in any manner approved by the court.

186. Restrictions on Transferability of Debentures

(1) Except as expressly provided in the terms of any debentures, debentures shall be transferable without restriction by a written transfer in common form and so that the transferee shall be entitled to the debenture and to the moneys secured thereby without regard to any equities, set-off, or cross-claim between the company and the original or any intermediate holder.

(2) The terms of any debenture may impose restrictions of any nature whatsoever on the transferability of debentures, including power for the company to refuse to register any transfer and provisions for compulsory acquisition or rights of first refusal in favour of other debenture holders, or members or officers of the company:
Provided that if any restriction is imposed on the right to transfer any debenture, notice of the restriction shall be endorsed on the face of the debenture or debenture stock certificate and in the absence of such endorsement, the restriction shall be ineffective as regards any transferee for value, whether or not he has notice of the restriction.

PROVISIONS AS TO COMPANY’S REGISTER OF CHARGES, DEBENTURE HOLDERS AND AS TO COPIES OF INSTRUMENTS CREATING CHARGES

187. Company to Keep Copies of Instruments Creating Charges
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.

188. 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 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 guilty of an offence and liable on conviction to a fine not exceeding N50,000.

189. Inspection of Register and Copies of Instruments
(1) The copies of instruments creating any charge requiring registration under this Part of this Act with the Commission and the register of charges kept in pursuance of section 191 of this Act, 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 inspection by any creditor or member of the company without fee and the register of charges shall also be open to inspection by any other person on payment of such fee, not exceeding N200 for each inspection, as the company may prescribe.

(2) If inspection of copies of instruments creating charges or of the register is refused, every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding N500 for every day during which the refusal continues.

(3) If any such refusal occurs in relation to a company registered in Nigeria or, in so far as a foreign company has an established place of business within Nigeria and an instrument creates a charge over any of its property in Nigeria and the refusal relates to that charge, the court may by order compel an immediate inspection of the copies of instruments or register.

190. Register of Debenture Holders
(1) A company which issues or has issued debentures shall maintain a register of the holders thereof.

(2) The register shall contain the following information that is—
(a) the names and addresses of the debenture holders;
(b) the principal of the debentures held by each of them;
(c) the amount or the highest amount of any premium payable on redemption of the debentures;
(d) the issue price of the debenture and the amount paid up on the issue price;
(e) the date on which the name of each person was entered on the register as a debenture holder; and
(f) the date on which each person ceased to be a debenture holder.

(3) The entry required under this section shall be made within 30 days of the conclusion of the agreement with the company to become a debenture holder or within 30 days of the date at which he ceases to be one.

191. Inspection of Register of Debentures, etc.
(1) Every register of holders of debentures of a company shall, except when duly closed (but subject to such reasonable restrictions as the company may in general meeting impose, so that not less than two hours in each day shall be allowed for inspection), be open to the inspection of the registered holder of any such debentures or any holder of shares in the company without fee, and of any other person on payment of a fee of N200 or such less sum as may be prescribed by the company.
Provided that the Commission may at any time during working hours request for and obtain such copy without any restriction or charge

(2) Any such registered holder of debentures as aforesaid or any other person may require a copy of the register of the holders of debentures of the company or any part thereof on payment of N50 for every page.

(3) A copy of any trust deed for securing any issue of debentures shall be duly endorsed by an officer of the company and 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 N100 or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of N50 for every page 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 guilty of an offence and liable to a fine of N20,000 and in case of a continuing default, to a further fine of N200 for every day during which the default continues.

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

(6) For the purposes of this section, a register shall be deemed to be duly closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debenture stock, during such periods, not exceeding in the whole 30 days in any year, as may be therein specified.

192. Entry in Register of Transfer
On the application of the transferor of any debenture in a company, the company shall enter in its register of debenture holders, 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.

193. Notice of Refusal to Register
(1) If a company refuses to register a transfer of any 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 any default is made in complying with the provisions of this section, the company and every officer of the company shall be liable to a penalty of N50,000.

REGISTRATION OF CHARGES WITH COMMISSION

194. Registration of Charges Created by Companies
(1) Subject to the provisions of this Part of this Act, every charge created by a company, being a charge to which this section applies, shall so far as any security on the company's property or undertaking is conferred, 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, have been or are delivered to or received by the Commission for registration in the manner required by this Act or by any enactment repealed by this Act within 90 days after the 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 thereby secured shall immediately become payable.

(2) The provisions of this section shall apply to the following charges that is—
(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 land, wherever situate, or any interest therein, but not including a charge for rent or other periodical sum issuing out of land;
(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 aircraft or any share in a ship;
(i) a charge on goodwill, on a patent or a licence under a patent, on trademark or on a copyright or a licence under a copyright.

(3) Where a charge affects or relates to property situated in Nigeria and in addition to registration under subsection (1) of this section, registration elsewhere in Nigeria is necessary to make the charge valid or effectual, it shall, subject to this subsection, be sufficient evidence of compliance with the requirements of subsection (1) of this section, if, instead of delivery of the original instrument creating or evidencing the charge, there is delivered to and received by the Commission within the prescribed period of 90 days, or such extended time as the court may allow, a true copy of it duly certified as such by the secretary to the company.
(4) A reference in any enactment to the date of execution of an instrument for the purposes of computation of time within which registration is to be effected with or without penalty, shall be construed as a reference to the date of presentation of a copy of the instrument to the Commission under this Act, and time shall be computed accordingly; and if a certified copy is delivered to the Commission under this subsection, the original of it shall be produced to it for inspection and comparison, if the Commission so requires.

(5) In the case of a charge created out of Nigeria, affecting or in relation to property situate outside Nigeria, the delivery to and the receipt by the Commission 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 90 days after the date on which the instrument or copy could, in due course of post, and if despatched with diligence, have been received in Nigeria shall be substituted for 90 days after the date of the creation of the charges as the time within which the particulars and instrument or copy are to be delivered to the Commission.

(6) Where a charge is created in Nigeria but affects or relates to property outside Nigeria, 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.

(7) 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 the purposes of this section, be treated as a charge on those book debts.

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

(9) 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 Commission within 90 days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debenture of the series, the following particulars—

(a) the total amount secured by the whole series; and
(b) the dates of the resolutions authorising the issues 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, 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 Commission 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.
(10) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent of commission, discount or allowance so paid or made, but an 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.

(11) In this Part of this Act, “charge” includes mortgage.

195. Register of Particulars of Charges
(1) The Commission 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 such fee as may be specified by regulations made by the Commission, 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 section 194 (9) 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 its creation and the date of the acquisition of the property;
(ii) the amount secured by the charge;
(iii) short particulars of the property; and (iv) the persons entitled to the charge.

(2) Where a charge is registered under this Part of this Act, the Commission shall issue a registration certificate setting out the parties to the charge, the amount thereby secured, with such other particulars as the Commission may consider necessary; and the certificate shall be prima facie evidence of due compliance with the requirements as to registration under this Part of this Act.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of such fees as may be prescribed by the Commission from time to time.

196. Duty of Company to Register Charges
(1) It shall be the duty of a company to send to the Commission for registration, the particulars of every charge created by the company and of the issues of debentures of a series requiring registration under section 194 of this Act, 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 Commission on the registration.
(3) If any company makes default in sending to the Commission 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 officer of the company who is in default shall be guilty of an offence and liable to a **penalty of N50,000**.

197. Duty of Company Acquiring Property to Register Subsisting Charges

(1) Where a company acquires any property which is subject to a charge of any such kind as would, if it has 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 Commission for registration in the manner required by this Act within 90 days after the date on which acquisition is completed:

Provided that, if the property is situated and the charge was created outside Nigeria, 90 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 Nigeria shall be substituted for 90 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 Commission.

(2) If default is made in complying with this section, the company and every officer of the company shall be liable to a **penalty of N100 for every day during which the default continues**.

(3) It shall be sufficient compliance with this section in any case affecting land registered under any enactment in a State, where the charge is registered thereunder before the land is acquired by the company, if a true copy of the charge duly certified by the Registrar of Land is delivered to the Commission within the time prescribed by this section.

198. Existing charges

(1) Where, at the date of commencement of this Act, a company has property on which there is a charge, particulars of which would require registration if it had been created by the company after the date of such commencement, then, unless the charge has been discharged or the property has ceased to be held by the company prior to the expiration of six months from the date of such commencement, the company shall, within that time, cause particulars of the charge as prescribed by section 195 of this Act to be delivered to the Commission for registration together with the document, if any, by which the charge was created or a copy thereof, certified as required by that section.

(2) Every existing company shall, prior to the expiration of six months from the commencement of this Act, deliver to the Commission for registration a statutory declaration made by a director and the secretary of the company stating whether or not there are any charges on the company’s property of which particulars require to be registered under this section and confirming that particulars of any such charges have been duly delivered to the Commission for registration.

(3) In the event of default in complying with subsection (2) of this section, the company and every officer of shall be **liable to a penalty not exceeding N100** for every day during which the default continues.
(4) Failure to comply with the provisions of this section shall not affect the validity of the charge.

199. Charges to Secure Fluctuating Amounts
Where a charge, particulars of which require registration under section 195 of this Act, is expressed to secure all sums due or to become due or some other uncertain or fluctuating amount, the particulars required under paragraph (a) of subsection (9) of section 194 of this Act shall state the maximum sum deemed to be secured by such charge (being the maximum sum covered by the stamp duty paid thereon) and such charge shall be void, so far as any security on the company’s property is thereby conferred, as respects any excess over the stated maximum:
Provided that, if—
(a) additional stamp duty is subsequently paid on such charge; and
(b) at any time thereafter prior to the commencement of the winding up of the company, amended particulars of the said charge stating the increased maximum sum deemed to be secured thereby (together with the original instrument by which the charge was created or evidenced) are delivered to the Commission for registration, then, as from the date of such delivery, the charge, if otherwise valid, shall be effective to the extent of such increased maximum sum except as regards any person who, prior to the date of such delivery, has acquired any proprietary rights in, or a fixed or floating charge on, the property subject to the charge.

200. Endorsement of Certificate of Registration on Debentures
(1) The company shall cause a copy of every certificate of registration given under section 197 of this Act to be endorsed on every debenture or certificate of 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 enforced on any debenture or certificate of debenture stock issued by the company before the charge was created.

(2) If any person 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 penalty of N50,000.

201. Entries of Satisfaction of Charges
If the Commission is satisfied with respect to any registered charge that—
(a) the debt for which the charge was given has been paid or satisfied in whole or in part; or
(b) part of the property or undertaking charged has been released from the charge or has ceased to form part of the company’s property or undertaking, it may enter on the register a memorandum of satisfaction to the extent necessary to give effect thereto and, where it enters a memorandum of satisfaction it shall, if required, furnish the company with a copy of the entry, and any such entry shall have effect, subject to the requirement of any other enactment as to registration.

202. Rectification of Register
The court, on being satisfied that the omission to register a charge within the time required by this Act or that the omission or misstatement 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 seems 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 misstatement shall be rectified.

203. Registration of Appointment Order, etc.
(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 the appointment under the said powers, give notice of the fact to the Commission and the Commission shall, on payment of such fee as may be specified by regulations made under this Act, 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 Commission notice to that effect, and the Commission 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 penalty of N20,000.

204. Inspection of Register and Copies of Instruments
(1) The copies of instruments creating any charge requiring registration under this Part of this Act with the Commission and the register of charges kept in pursuance of section 197 of this Act, 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 inspection by any creditor or member of the company without fee, and the register of charges shall also be open to inspection by any other person on payment of a fee of N200; Provided that the Commission may request for and obtain such copy without any restriction or charge.

(2) If inspection of copies of instruments creating charges or of the register is refused, every officer of the company shall be liable to a penalty of N500 for every day during which the refusal continues.

(3) If any such refusal occurs in relation to a company registered in Nigeria or, in so far as a foreign company has an established place of business within Nigeria and an instrument creates a charge over any of its property in Nigeria and the refusal relates to that charge, the court may by order compel an immediate inspection of the copies or register.

REALISATION OF SECURITY

205. Realisation of Debenture Holder’s Security
A debenture holder shall be entitled to realise any security vested in him or in any other person for his benefit if—

(a) the company fails to pay any instalment of interest, or the whole or part of the principal or any premium, owing under the debenture or the debenture trust deed covering the debenture, within one month after it becomes due; or

(b) the company fails to fulfil any of the obligations imposed on it by the debentures or the debenture trust deed;

(c) any circumstances occur which by the terms of the debentures or debenture trust deed entitled the holder of the debenture to realise his security; or

(d) the company is wound up.

A debenture holder whose debenture is secured by a general floating charge vested in him or the trustee of the covering debenture trust deed, or any other person, shall additionally be entitled to realise his security if—

(a) any creditor of the company issues a process of execution against any of its assets or commences proceedings for winding up of the company by order of any court of competent jurisdiction; or

(b) the company ceases to pay its debts as they fall due; or

(c) the company ceases to carry on business; or

(d) the company suffers, after the issue of debentures of the class concerned, losses or diminutions in the value of its assets which in the aggregate amount to more than one half of the total amount owing in respect of debentures of the class held by the debenture holder who seeks to enforce his security and debentures whose holder ranks before him for payment of principal or interest; or

(e) any circumstances occur which entitles a debenture holder who ranks for payment of principal or interest in priority to the debentures secured by the general floating charges to realise his security.

206. Remedies Available to Debenture Holders

(1) At any time after a debenture holder or a class of debenture holders becomes entitled to realise his or their security, a receiver of any assets subject to a mortgage, charge or security in favour of the class of debenture holders or the trustee of the covering trust deed, or any other person, may be appointed by—

(a) that trustee;

(b) the holders of debentures of the same class containing power to appoint; or

(c) debenture holders having more than one half of the total amount owing in respect of all the debentures of the same class; or

(d) the court on the application of the trustee.

(2) Subject to any conditions imposed in the debenture or debenture trust deed, a debenture holder, or a trustee in the case of a trust deed, may—

(a) bring an action in a representative capacity against the company for payment and enforcement of the security; or

(b) realise his security by—

(i) bringing a foreclosure action; or

(ii) commencing a winding-up proceeding.

(3) A receiver appointed under this section shall have, subject to the order made by the court, power to take possession of the assets subject to the mortgage, charge or security and to sell those assets and, if the mortgage, charge or security extends to such property,
to collect debts owed to the property, to enforce claims vested in the company, to compromise, settle and enter into arrangements in respect of claims by or against the company, on the company’s business with a view to selling it on the most favourable terms, to grant or accept leases of land and licences in respect of patents, designs, copyright or trademarks, and to recover any instalment unpaid on the company’s issued shares.

(4) Where a representative action is being brought under paragraph (a) of subsection (2) of this section, the approval of the court shall be obtained where the company is being wound up.

(5) The remedies given by this section shall be in addition to, and not in substitution for, any other powers and remedies conferred on the trustee of the debenture trust deed or on the debenture holders by the debentures or debenture trust deed, and any power or remedy which is expressed in any instrument to be exercisable if the debenture holders become entitled to realise their security, is exercisable on the occurrence of any of the events specified in subsection (1) of section 205 of this Act or in the case of a general charge in subsections (1) and (2) of section 205 of this Act; but a manager of the business or of any of the assets of a company may not be appointed for the benefit of debenture holders unless a receiver has also been appointed and has not ceased to act.

(6) The provisions of sections 388 to 401 of this Act shall apply to receivers and managers under this Part of this Act. (7) No provision in any instrument which purports to exclude or restrict the remedies given by this section shall be valid.

207. Application of Certain Sections
Subject to the provisions of this Part of this Act and unless the context otherwise admits, the provisions of sections 144, 145, 148, 150, 153 and 154 of this Act relating to share certificates and transfer of shares shall apply in respect of shares as if “debentures” were substituted for “shares” and “debenture holders” for “shareholders”.

PART VIII
MEETINGS AND PROCEEDINGS OF COMPANIES

208. Statutory Meeting
(1) Every public company shall, within a period of six months from the date of its incorporation, hold a general meeting of the members of the company (in this Act referred to as “the statutory meeting”).

(2) The directors shall, at least 21 days before the day on which the statutory meeting is held, forward to every member of the company a copy of the statutory report.

(3) The statutory report shall be certified by not less than two directors or by a director and the secretary of the company 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) the names, addresses and descriptions of the directors, auditors, managers, if any, and secretary of the company;
(d) the particulars of any pre-incorporation contract together with the particulars of any modification or proposed modification thereon;
(e) any underwriting contract that has not been carried out and the reasons therefor;
(f) the arrears, if any, due on calls from every director;
(g) the particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares or debentures to any director or to the manager.

(4) The report shall also contain an abstract of the receipts of the company and of the payments made from them 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 from such receipts and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company.

(5) 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.

(6) The directors shall cause a copy of the statutory report, certified as required by this section, to be delivered to the Commission for registration within seven days after the sending of copies to the members of the company.

(7) 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 statutory meeting.

(8) The members of the company present at the statutory meeting shall be at liberty to discuss any matter relating to the formation of the company, and its commencement of business or arising out of the statutory report.

(9) Any member who wishes a resolution to be passed on any matter arising out of the statutory report shall give further 21 days notice from the date on which the statutory report was received to the company of his intention to propose such a resolution, in which case, the statutory meeting shall not be held until the expiration of the 21 days notice given to the company by the member.

(10) The statutory 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.

209. Non-compliance and Penalty
Without prejudice to the provisions of section 410 of this Act, if a company fails to comply with the requirements of section 208 of this Act, the company and any officer in default shall be guilty of an offence and liable to a fine of N50 for every day during which the default continues.

GENERAL MEETING

210. Annual General Meeting

(1) Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than 15 months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that—

(a) so long as a company holds its first annual general meeting within 18 months of its incorporation it need not hold it in that year or in the following year;

(b) except for the first annual general meeting, the Commission shall have power to extend the time within which any annual general meeting shall be held, by a period not exceeding three months, however so that not more than 18 months shall elapse between the date of the last annual general meeting and the date of any meeting so extended.

(2) If default is made in holding a meeting of a company in accordance with subsection (1) of this section, the Commission, may, on its own or on the application of any member of the company call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as the Commission thinks expedient, including directions modifying or supplementing, in relation to the calling, holding and conducting of the meeting, the operation of the company’s articles; and it is hereby declared that the directions that may be given under this subsection shall include a direction that one member of the company present in person or by proxy may apply to the court for an order to take a decision which shall bind all the members.

(3) A general meeting held in pursuance of subsection (2) of this section shall, subject to any directions of the Commission, be deemed to be an annual general meeting of the company; but, where a meeting so held is not held in the year in which the default in holding the company’s annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the company resolves that it shall be so treated.

(4) Where a company resolves that a meeting shall be treated as its annual general meeting, a copy of the resolution shall, within 15 days after the passing thereof, be filed with the Commission.

(5) If default is made in holding a meeting of the company in accordance with subsection (1) of this section, or in complying with any directions of the Commission under subsection (2) thereof, the company and every officer of the company shall be liable to a penalty of N5,000, and if default is made in complying with subsection (4) of this section, the company and every officer of the company shall be liable to a penalty of N2,500.

(6) Notwithstanding the provisions of this section or any other provisions in this Act, the Commission may at any time suspend, prevent or stop the convening or holding of Annual
General Meeting of a company if in its opinion any provisions of this Act relating to the convening or holding of such Annual General Meeting has not been complied with.

(7) If default is made by any company in complying with any directive given by the Commission under subsection (6) of this section, the company shall be liable to a penalty of ₦50,000.00; and every director or officer of the company shall be liable to a penalty of ₦25,000.00; and in addition, no resolution passed at such a meeting shall be registered by the Commission.

(8) Where a public company fails to comply with any directive of the Commission issued pursuant to this section, the Commission shall have the power to suspend or remove from office, the directors of such a company, and direct the shareholders to convene an extraordinary general meeting within a period of 90 days for the purpose of electing directors.

211. Businesses Transacted at Annual General Meeting
All businesses transacted at annual general meetings shall be deemed special business, except declaring a dividend, the presentation of the financial statements and the reports of the directors and auditors, the election of directors in the place of those retiring, the appointment, and the fixing of the remuneration of the auditors, appointment of the members of the audit committee and the choice of venue of the next annual general meeting which shall be ordinary business.

EXTRAORDINARY GENERAL MEETING

212. Extraordinary General Meeting
(1) The board of directors may convene an extraordinary general meeting whenever they deem fit, and if at any time there are not within Nigeria sufficient directors capable of acting to form a quorum, any director may convene an extraordinary general meeting.

(2) An extraordinary general meeting of a company may be requisitioned by any member or members of the company holding at the date of the requisition not less than one tenth of the paid up capital of the company as at the date of the deposit carrying the right of voting, 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 meetings of the company, and the directors shall on receipt of the requisition forthwith proceed duly to convene an extraordinary general meeting of the company, notwithstanding anything in its articles.

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

(4) If the directors do not within 21 days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any one or more of them representing more than one half of the total voting rights of all of them, may themselves convene a meeting:
Provided that any meeting so convened shall not be held after the expiration of three months from that date.
A meeting convened under this section by a requisitionist or requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

Any reasonable expenses incurred by the requisitionist or requisitionists by reason of the failure of the directors duly to convene a meeting, shall be repaid to the requisitionists by the company.

For the purpose 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 as is required by section 214 of this Act.

All businesses transacted at an extraordinary general meeting shall be deemed special.

213. Place of Meeting

All statutory and annual general meetings shall be held in Nigeria.

A private company may hold its general meetings electronically provided that such meetings are conducted in accordance with regulations made by the Commission from time to time.

NOTICE OF MEETINGS

214. Length of Notice for Calling Meetings

The notice required for all types of general meetings from the commencement of this Act shall be 21 days from the date on which the notice was sent out.

A general meeting of a company shall, notwithstanding that it is called by a shorter notice than that specified in subsection (1) of this section, be deemed to have been duly called if it is so agreed in the case of—

(a) a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and

(b) any other general meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than 95 per cent in nominal value of the shares giving a right to attend and vote at the meeting or, in the case of a company not having a share capital, together representing not less than 95 per cent of the total voting rights at that meeting of all the members.

215. Contents of Notice

The notice of a meeting shall specify the place, date and time of the meeting, and the general nature of the business to be transacted thereat in sufficient detail to enable those to whom it is given to decide whether to attend or not, and where the meeting is to consider a special resolution, shall set out the terms of the resolution.

In the case of notice of an annual general meeting, a statement that the purpose is to transact the ordinary business of an annual general meeting shall be deemed to be a sufficient specification that the business is for the declaration of dividends, presentation of
the financial statements, reports of the directors and auditors, the election of directors in the place of those retiring, the fixing of the remuneration of the auditors, the choice of venue for the next annual general meeting and, if the requirements of sections 363 and 364 of this Act are duly complied with, the removal and election of auditors and directors.

(3) No business may be transacted at any general meeting unless notice of it has been duly given.

(4) In every case in which a member is entitled, pursuant to section 229 of this Act, to appoint a proxy to attend and vote instead of him, the notice shall contain with reasonable prominence, a statement that the member has the right to appoint a proxy to attend and vote instead of him and that the proxy need not be a member of the company, and if default is made in complying with this subsection as respects any meeting, every officer of the company shall be liable to a penalty of N50,000.

(5) An error or omission in a notice with respect to the place, date, time or general nature of the business of a meeting shall not invalidate the meeting, unless the officer of the company responsible for the error or omission acted in bad faith or failed to exercise due care and diligence: Provided that in the case of accidental error or omission, the officer responsible shall effect the necessary correction either before or during the meeting.

216. Persons Entitled to Notice

(1) The following persons shall be entitled to receive notice of a general meeting—
(a) every member;
(b) every person upon whom the ownership of a share devolves by reason of his being a legal representative, receiver or a trustee in bankruptcy of a member;
(c) every director of the company;
(d) every auditor for the time being of the company;
(e) the secretary, and
(f) the Commission in the case of public companies or companies with multiple shareholders as the Commission may determine from time to time.

(2) No other person shall be entitled to receive notices of general meetings.

217. Service of Notice

(1) A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within Nigeria) to the address, if any, supplied by him to the company for the giving of notice 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 to have been effected in the case of a notice of a meeting at the expiration of seven days after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

(3) A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.
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 trustee of the bankrupt, or by any like description, at the address, if any, within Nigeria supplied for the purpose by the person 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.

"Registered address" means, in the case of a member, any address supplied by him to the company for the giving of notice to him.

218. Failure to Give Notice

(1) Failure to give notice of any meeting to a person entitled to receive it shall invalidate the meeting unless such failure is an accidental omission on the part of the person or persons giving the notice.

(2) Failure to give notice to a person entitled to it due to a misrepresentation or misinterpretation of the provisions of this Act, or of the articles, shall not amount to an accidental omission for the purposes of the foregoing subsection.

219. Additional Notice

In addition to the notice required to be given to those entitled to receive it in accordance with the provisions of this Act, every public company shall, at least 21 days before any general meeting, advertise a notice of such meeting in at least two daily newspapers.

220. Power of Court to Order Meetings

(1) If for any reason it is impracticable to call a meeting of a company or of the board of directors in any manner in which meetings of that company or board may be called, or to conduct the meeting of the company or board 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, in the case of the meeting of the company, and of any director of the company, in case of the meeting of the board, order a meeting of the company or board, as the case may be, 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.

(2) It is hereby declared that the directions that may be given under subsection (1) of this section shall include a direction that one member of the company present in person or by proxy in the case of a meeting of the company, and one director in the case of the board may, apply to the court for an order to take a decision which shall bind all the members.

(3) Any meeting called, held and conducted in accordance with an order under subsection (1) of this section, shall for all purposes be deemed to be a meeting of the company or of the board of directors duly called, held and conducted.

VOTING

221. Procedure of Voting
(1) At any general meeting, a resolution put to the vote 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—
(a) the chairman, where he is a shareholder or a proxy;
(b) at least three members present in person or by proxy;
(c) any member or members present in person or by proxy and representing not less than one tenth of the total voting rights of all the members having the right to vote at the meeting; or
(d) any member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one tenth of the total sum paid up on all the shares conferring that right.

(2) 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 containing the minutes of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, the resolution.

222. Right to Demand Poll
(1) Any provision contained in a company’s articles shall be void in so far as it would have the effect either of—
(a) excluding the right to demand a poll at a general meeting on any question other than the election of the chairman of the meeting or the adjournment of the meeting; or
(b) making ineffective a demand for a poll on any such question which is made by any of the persons mentioned in section 221 of this Act.

(2) The instrument appointing a proxy to vote at a meeting of a company shall be deemed also to confer authority to demand or join in demanding a poll, and for the purposes of subsection (1) of this section, a demand by a person as proxy for a member shall be the same as a demand by the member.

(3) Notwithstanding section 221 of this Act and subsections (1) and (2) of this section, there shall be no right to demand a poll on the election of members of the audit committee under section 357 of this Act.

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

(2) Except as provided in subsection (4) of this section, 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.

(3) 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.

(4) A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith, and on any other question shall be taken at such time as the chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

224. Right of Attendance at General Meeting
Subject to section 225 of this Act, every member shall have a right to attend any general meeting of the company in accordance with the provisions of section 80 of this Act.

In the case of joint holders, the vote of the senior joint holder 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.

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, receiver, curator bonis, or other person in the nature of a committee, receiver or curator bonis appointed by that court, and any such committee, receiver, curator bonis or other person may vote by proxy.

225. Attendance at Meetings
Every person who is entitled to receive notice of a general meeting of the company as provided by section 216 of this Act, shall be entitled to attend such a meeting.

226. Objections as to Qualification to Vote
No objections shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes and any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

227. Proxies
(1) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him, and a proxy appointed to attend and vote instead of a member shall also have the same right as the member to speak at the meeting: Provided that, unless the articles otherwise provide, this section shall not apply in the case of a company not having a share capital.

(2) In every notice calling a meeting of a company having a share capital, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy or, where that is allowed, two or more proxies, to attend and vote instead of him, and that a proxy need not be a member and if default is made in complying with this subsection as respects any meeting, every officer of the company shall be liable to a penalty of N5,000.

(3) Any provision contained in a company’s articles shall be void in so far as it would have the effect of requiring the instrument appointing a proxy or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than 48 hours before a meeting or adjourned meeting in order that the appointment may be effective at the meeting.

(4) If, for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company’s expense only to some only of the members entitled to be sent notice of the meeting and to vote by proxy at the meeting, every officer of the company who authorises or permits their issue as aforesaid shall be liable to a penalty of N10,000.
Provided that an officer shall not be liable under this subsection by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy or of a list of persons willing to act as proxy if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(5) A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the share in respect of which the proxy is given: Provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid has been received by the company before the commencement of the meeting or adjourned meeting at which the proxy is used.

(6) The instrument appointing a proxy shall be in writing, under the hand of the appointer or of his attorney duly authorised in writing or, if the appointer is a corporation, either under seal, or under the hand of an officer or attorney duly authorised.

(7) The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a certified copy of that power or authority shall be deposited at the registered office or head office of the company or at such other place within Nigeria as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll; and in default, the instrument of proxy shall not be treated as valid.

(8) This section shall apply to meetings of any class of members of a company as it applies to general meetings of the company.

228. Corporation Representation at Meetings of Companies, etc.

(1) A corporation, whether a company within the meaning of this Act or not, may if it is—
   (a) 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 any meeting of the company or at any meeting of any class of members of the company;
   (b) 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 provided in subsection (1) of this section, shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation might exercise if it were an individual shareholder, creditor or holder of debentures of that other company.

229. Quorum
(1) Unless otherwise provided in the articles, 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 and throughout the meeting.

(2) Unless otherwise provided in the articles, the quorum for the meeting of a company shall be one third of the total number of members of the company or 25 members (whichever is less) present in person or by proxy: Provided that where the number of members is not a multiple of three, then the number nearest to one third, and where the number of members is six or less, the quorum, shall be two members.

(3) For the purpose of determining a quorum, all members or their proxies shall be counted.

(4) Where a member or members withdraw from the meeting for what appears to the chairman to be insufficient reasons and for the purpose of reducing the quorum, and in fact the quorum is no longer present, the meeting may continue with the number present, and their decision shall bind all the shareholders and where there is only one member, he may seek direction of the court to take a decision.

(5) Where there is a quorum at the beginning, but no quorum later due to some shareholders leaving for what appears to the chairman to be sufficient reasons, the meeting shall be adjourned to the same place, and time, in a week’s time, and if there is no quorum still at the adjourned meeting, the members present shall then be the quorum and their decision shall bind all shareholders and where only one member is present, he may seek direction of the court to take a decision.

**RESOLUTIONS**

230. Resolutions

(1) A resolution shall be an ordinary resolution when it has been passed by a simple majority of votes cast by such members of the company as, being entitled to do so, vote in person or by proxy at a general meeting.

(2) A resolution shall be a special resolution when it has been passed by not less than three fourths of the votes cast by such members of the company as, being entitled to do so, vote in person or by proxy at a general meeting of which 21 days’ notice, specifying the intention to propose the resolution as a special resolution, has been duly given: Provided that, if it is so agreed by majority in number of the members having the right to attend and vote at any such meeting, being a majority together holding not less than 95 per cent in nominal value of the shares giving that right or, in the case of a company not having a share capital, together representing not less than 95 per cent of the total voting rights at that meeting of all the members, a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days’ notice has been given.

(3) At any meeting at which 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) In computing the majority of a poll demanded on the question that a special resolution be passed, reference shall be had to the number of votes cast for and against the resolution.

(5) 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 the manner provided by this Act or the articles.

(6) A company may, by its articles, provide that any matter not required by the articles or by this Act to be passed by a special resolution, shall be passed by an ordinary resolution.

231. Written Resolutions
All resolutions shall be passed at general meetings and shall not be effective unless so passed:
Provided that in the case of a private company a written resolution signed by all the members entitled to attend and vote shall be as valid and effective as if passed in a general meeting.

232. Circulation of Members’ Resolutions
(1) Subject to the following provisions of this section, it shall be the duty of a company, on the requisition in writing of such number of members as is hereinafter specified and (unless the company otherwise resolves) at the expense of the company to—
(a) give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution submitted by a member which may properly be moved and is intended to be moved at that meeting;
(b) circulate to members entitled to have notice of any general meeting sent to them, any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting, and where the statement has more than 1,000 words to circulate a summary of it.

(2) The number of members necessary for a requisition under subsection (1) of this section shall be—
(a) any one or more members representing not less than one twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or
(b) not less than one hundred members holding shares in the company on which there has been paid up an average sum, per member, of not less than N500.

(3) Notice of any such resolution shall be given, and any such statement shall be circulated, to members of the company entitled to have notice of the meeting sent to them, by serving a copy of the resolution or statement on each such member in any manner permitted for service of notice of the meeting, and notice of any such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving notice of meetings of the company:
Provided that the copy shall be served, or notice of the effect of the resolution shall be given, as the case may be, in the same manner and so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.
(4) A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless—

(a) a copy of the requisition signed by the requisitionists (or two or more copies which between them contain the signatures of all the requisitionists) is deposited at the registered office of the company—

(i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting; and

(ii) in the case of any other requisition, not less than one week before the meeting; and

(b) there is deposited or tendered with the requisition, a sum reasonably sufficient to meet the company’s expenses in giving effect thereto:

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less after the copy has been deposited, the copy, though not deposited within the time required by this subsection, shall be deemed to have been properly deposited for the purposes thereof.

(5) The company shall also not be bound under this section to circulate any statement if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company’s costs on an application under this section to be paid in whole or in part by the requisitionist, notwithstanding that the requisitionist is not party to the application.

(6) Notwithstanding anything in the company’s articles, the business which may be dealt with at an annual general meeting shall include any resolution of which notice is given in accordance with this section and for the purposes of this subsection, notice shall be deemed to have been so given, notwithstanding the accidental omission in giving it to one or more members.

(7) In the event of any default in complying with the provisions of this section, every officer of the company shall be liable to a penalty of N20,000.

233. Resolutions Requiring Special Notice
Where by any provision contained in this Act, special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than 28 days before the meeting at which it is to be moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting, or if that is not practicable, shall give them notice thereof, either by advertisement in a newspaper having an appropriate circulation, or in any other mode allowed by the articles, not less than 21 days before the meeting:

Provided that if, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice, though not given within the time required by this section, shall be deemed to have been properly given for purposes thereof.

234. Registration and Copies of Certain Resolutions
(1) Subject to subsection (7) (b) of section 45 of this Act, a printed copy of every resolution or agreement to which this section applies shall, within 15 days after the passing
or making of the resolution or agreement, as the case may be, be forwarded to the
Commission.

(2) Where, pursuant to the provisions of sections 43 to 46 of this Act, a company by
special resolution alters the provisions of its memorandum and the Commission is satisfied
that the alteration is not in compliance with the applicable provisions of those sections, it
may refuse to file a copy of the resolution in its records and shall notify the company
accordingly and any person aggrieved by the refusal may appeal to the court within 21
days from the receipt of the notification.

(3) 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.

(4) This section shall apply to—
(a) special resolutions;
(b) 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 resolution; or
(c) resolutions or agreements which have been agreed to by all the members of any
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
(d) resolutions requiring a company to be wound up voluntarily, passed under
paragraph (a) of section 459 of this Act.

(5) If a company fails to comply with subsection (1) of this section, the company and
every officer of the company shall be liable to a penalty of N20,000.

(6) If a company fails to comply with subsection (3) of this section, the company and
every officer of the company shall be liable to a penalty of N200 for each copy in respect of
which default is made.

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

235. Effect of Resolutions Passed at Adjourned Meetings
Where a resolution is passed at an adjourned meeting of—
(a) a company;
(b) the holders of any class of shares in a company; or
(c) the directors of a company, the resolution shall for all purposes be 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.

MISCELLANEOUS MATTERS RELATING TO MEETINGS AND PROCEEDINGS

236. Adjournment
(1) 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.

(2) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting; but otherwise it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

(3) If within one 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, but in any other case, it shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the chairman, and in his absence the directors, may direct.

(4) If a meeting stands adjourned under subsection (3) of this section any two or more members present at the place and time to which it so stands adjourned shall form a quorum and their decision shall bind all shareholders, and where only one member is present, he may seek the direction of the court to take a decision.

237. Powers and Duties of the Chairman of the General Meeting
(1) The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he is not present within one hour after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.

(2) If at any meeting no director is willing to act as chairman or if no director is present within one hour after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

(3) The duties and powers of the chairman shall include a duty to—
   (a) preserve order and powers to take such measures as are reasonably necessary to do so;
   (b) see that proceedings are conducted in a regular manner;
   (c) ensure that the true intention of the meeting is carried out in resolving any issue that arises before it;
   (d) ensure that all questions that arise are promptly decided; and
   (e) act bona fide in the interest of the company.

(4) The chairman shall cast his vote bona fide in the interest of the company as a whole, provided that if he is also a shareholder, he may cast it in his own interest.
(5) The chairman shall have power to adjourn a meeting in accordance with section 236 (1) of this Act.

238. Minutes of Proceedings and Effect
(1) Every company shall cause minutes of—
   (a) all proceedings of general meetings;
   (b) all proceedings at meetings of its directors; and
(c) where there are managers, all proceedings at meetings 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 held, or by the chairman of the next succeeding meeting, shall be prima facie 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 at the meeting to have been duly had, and all appointments of directors, managers or liquidators shall be deemed to be valid.

(4) If a company fails to comply with the provisions of subsection (1) of this section, the company and every officer of the company shall be liable to a penalty of N200 for each day the default continues.

239. Inspection of Minute Books and Copies

(1) The books containing the minutes of proceedings of any general meeting of a company held on or 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, but so that no less than six hours in each day be allowed for inspection) be open to inspection by members without charge.

(2) Any member shall be entitled to be furnished within seven days after receipt of his request in that behalf to the company, with a copy of any such minutes certified by the secretary at a charge not exceeding N200 for every page.

(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 shall be liable in respect of each default to a penalty of N1,000.

(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 person requiring them.

240. Class Meetings
The provisions of the foregoing sections shall apply to any class meetings except where expressly excluded by this Act.

PART IX
DIRECTORS AND SECRETARIES OF THE COMPANY

CHAPTER 1
DIRECTORS
MEANING OF DIRECTORS

241. Meaning of “Directors”
(1) Directors of a company registered under this Act are persons duly appointed by the company to direct and manage the business of the company.

(2) In favour of any person dealing with the company there shall be a rebuttable presumption that all persons who are described by the company as directors, whether as executive or otherwise, have been duly appointed.

(3) Where a person not duly appointed acts or holds himself out as a director, he shall be guilty of an offence, and on conviction shall be liable to imprisonment for two years or to a fine of ₦5,000 for each day he so acts or holds out himself as a director, or to both such imprisonment and fine and shall be restrained by the company.

(4) If it is the company that holds him out as a director, it shall be liable to a fine of ₦10,000 each day it holds him out, and he and the company may be restrained by any member from so acting unless or until he is duly appointed.

242. Shadow Director
(1) Without prejudice to the provisions of sections 241 and 247, and for the purposes of sections 250, 275 and 279 of this Act, “director” shall include any person on whose instructions and directions the directors are accustomed to act.

(2) Subject to sections 273, 278 and 279 of this Act, nothing contained in section 249 of this Act shall be deemed to derogue from the duties or liabilities of the duly appointed directors.

(3) For the avoidance of doubt, the fact that a person in his professional capacity gives advice and a director acts on it shall not be construed to make such a person under this Act a person in accordance with whose directions or instructions the director of a company is accustomed to act.

APPOINTMENT OF DIRECTORS

243. Number of Directors
(1) Every company registered on or after the commencement of this Act shall have at least two directors and every company registered before that date shall before the expiration of six months from the commencement of this Act have at least two directors.

(2) Any company whose number of directors falls below two, shall within one month of its so falling appoint new directors and shall not carry on business after the expiration of one month, unless such new directors are appointed.

(3) A director or member of a company who knows that a company carries on business after the number of directors has fallen below two for more than 60 days shall be liable for all liabilities and debts incurred by the company during that period when the company so carried on business.
244. Appointment of first Directors
Subject to section 243 of this Act, the number of directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them or the directors may be named in the articles.

245. Subsequent Appointments of Directors
(1) The members at the annual general meeting shall have power to re-elect or reject directors and appoint new ones.

(2) In the event of all the directors and shareholders dying, any of the personal representatives shall be able to apply to the court for an order to convene a meeting of all the personal representatives of the shareholders entitled to attend and vote at a general meeting to appoint new directors to manage the company, and if they fail to convene a meeting, the creditors, if any, shall be able to do so.

246. Casual Vacancy
(1) The board of directors shall have power to appoint new directors to fill any casual vacancy arising out of death, resignation, retirement or removal.

(2) Where a casual vacancy is filled by the directors, the person may be approved by the general meeting at the next annual general meeting, and if not so approved, he shall forthwith cease to be a director.

(3) The directors may increase the number of directors so long as it does not exceed the maximum allowed by the articles, but the general meeting shall have power to increase or reduce the number of directors generally and may determine in what rotation the directors shall retire: Provided that such reduction shall not invalidate any prior act of the removed director.

247. Liability of a Person Where not Duly Appointed
Where a person not duly appointed as a director acts as such on behalf of the company, his act shall not bind the company and he shall be personally liable for such action: Provided that where it is the company which holds him out as director, the company shall be bound by his acts.

248. Share Qualification of Directors
(1) The shareholding qualification for directors may be fixed by the articles of association of the company and unless and until so fixed no shareholding qualification shall be required.

(2) 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 so qualified, to obtain qualification within two months after his appointment.

(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, obtain his qualification or after the expiration of the said period, he ceases at any time to hold his shareholding 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 shareholding qualification.
(5) If, after the expiration of the said period, any unqualified person acts as a director of the company, he shall be liable to a **penalty of N500** for every day between the expiration of the said period 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.

**249. Duty of Directors to Disclose Age and Multiple Directorship to the Company**

(1) Any person who is appointed or to his knowledge proposed to be appointed director of a public company and who is 70 or more years old shall disclose this fact to the members at the general meeting.

(2) Any person who is proposed to be appointed a director of a public company shall disclose any position he holds as a director in any other public company at the meeting in which he is proposed for appointment as a director.

(3) Any person who fails to disclose his age or multiple directorship as required under this section shall, without prejudice to the provisions of section 279 subsection (4) of this Act, be liable to a penalty of N50,000.

**250. Provisions as to Insolvent Persons Acting as Directors**

(1) If any person, being an insolvent person, acts as director of or directly or indirectly takes part in or is concerned in the management of any company, he shall be guilty of an offence and liable on conviction to a fine of **not less than N50,000 or more than N200,000**, or to imprisonment for a term not less than six months or more than two years, or both.

(2) In this section, “company” includes an unregistered company.

**251. Restrained of Fraudulent Persons**

(1) Where—

(a) a person is convicted by a High Court of any offence in connection with the promotion, formation or management of a company; or

(b) in the course of winding up a company it appears that a person—

(i) has been guilty of any offence for which he is liable (whether he has been convicted or not) under sections 504 to 508 of this Act; or

(ii) has otherwise been guilty, while an officer of the company, of any fraud in relation to the company or of any breach of his duty to the company,

the court shall make an order that that person shall not be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of a company for a specified period not exceeding 10 years.

(2) The period of disqualification referred to in subsection (1) of this section shall commence after the sentence for the offence has been served or on the date the fine for the offence is paid.

(3) In the foregoing subsection, the High Court and the court, where used in relation to the making of an order against any person by virtue of paragraph (a) of subsection (1) of this section, include the court before which he is convicted, as well as any court having jurisdiction to wind up the company, and in relation to the granting of leave means any court having jurisdiction to wind up the company as respects which leave is sought.
A person intending to apply for the making of an order under this section by the court having jurisdiction to wind-up a company shall give not less than ten days’ notice of his intention to the person against whom the order is sought, and on the hearing of the application, the last mentioned person may appear and himself give evidence or call witnesses.

An application for the making of an order under this section by the court having jurisdiction to wind up a company, may be made by the official receiver, or by the liquidator of the company or by any person who is or has been a member or creditor of the company; and on the hearing of any application for an order under this section by the official receiver or the liquidator, or of any application for leave under this section by a person against whom an order has been made on the application of the official receiver or liquidator, the official receiver or liquidator shall appear and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

An order may be made by virtue of paragraph (b) (ii) of subsection (1) of this section, notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made, and for the purposes of the said paragraph (b) (ii) “officer” includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

If any person acts in contravention of an order made under this section, he shall be guilty of an offence and in respect of each offence, be liable on conviction to a fine of not less than N50,000 or more than N200,000 or to imprisonment for a term of not less than six months or more than two years, or both.

252. Prohibition of Persons Convicted of Fraudulent Offences from being Directors of Public Company

(1) Any person convicted of an offence involving fraud shall not be made a director or take part in the management of a public company.

(2) A High Court shall, upon the conviction of a person under subsection (1) of this section, make an order that the person shall not be a director or take part in the management of a public company.

(3) If any person acts in contravention of an order made under this section, he shall be guilty of an offence and liable on conviction to a fine of N200,000.00 or imprisonment for a term of two years or to both.

253. Appointment of Director for Life

A person may be appointed a director for life provided that he shall be removable under section 260 of this Act.

254. Right to Appoint a Director at Any Age

Subject to the provisions of this Act, a person may be appointed a director of a public company notwithstanding that he is 70 years or more of age but special notice shall be required of any resolution appointing or approving the appointment of such a director for the purposes of this section, and the notice given to the company and by the company to its members shall state the age of the person to whom it relates.
255. Disqualification for Directorship

The following persons shall be disqualified from being director—

(a) an infant, that is, a person under the age of 18 years;
(b) a lunatic or person of unsound mind;
(c) a person suspended or removed under section 211(8) of this Act;
(d) a person disqualified under sections 250, 251, 252 or 256 of this Act;
(e) a corporation other than its representative appointed to the board for a given term.

256. Vacation of office of director

(1) The office of director shall be vacated if the director—

(a) ceases to be a director by virtue of section 248 of this Act; or
(b) becomes bankrupt or makes any arrangement or composition with his creditors generally; or
(c) becomes prohibited from being a director by reason of any order made under sections 251 or 252 of this Act; or
(d) becomes of unsound mind;
(e) resigns his office by notice in writing to the company; or
(f) is suspended or removed from office under section 210(8) of this Act.

(2) Where a director presents himself for re-election, a record of his attendance at the meetings of the board during the preceding one year shall be made available to members at the general meeting where he is to be re-elected.

257. Rotation of Directors

(1) Unless the articles otherwise provide, at the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one third of the directors for the time being, or if their number is not three or a multiple of three, then the number nearest one third shall retire from office.

(2) 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.

(3) The company at the meeting at which a director retires in the manner mentioned in subsections (1) and (2) of this section, may fill the vacated office by electing a person to that office and in default, the retiring director shall, if offering himself for re-election, be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost.

(4) No person other than a director retiring at the meeting shall, unless recommended by the directors, be eligible for election to the office of director at any general meeting unless not less than three nor more than 21 days before the date appointed for the meeting there shall have been left at the registered office or head office of the company notice in writing, signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.

258. Validity of Acts of Directors
The acts of a director, manager, or secretary shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

259. Mode of Voting on Appointment of Directors
(1) At a general meeting of a company other than a private company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be made, unless resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

(2) A resolution moved in contravention of this section shall be void, whether or not its being so moved was objected to at the time:
Provided that—
(a) this subsection shall not be taken as excluding the operation of section 259 of this Act; and
(b) where a resolution so moved is passed, no provision for automatic re-appointment of retiring directors in default of another appointment shall apply.

(3) For the purposes of this section, a motion for approving a person’s appointment or for nominating a person for appointment shall be treated as a motion for his appointment.

(4) Nothing in this section shall apply to a resolution altering the company’s articles.

REMOVAL OF DIRECTORS

260. Removal of Directors
(1) A company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and him.

(2) A special notice shall be required of any resolution to remove a director under this section, or to appoint some other person instead of a director so removed, at the meeting at which he is removed, and on receipt of notice of an intended resolution to remove a director under this section, the company shall forthwith send a copy of it to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.

(3) Where notice is given of an intended resolution to remove a director under this section and the director concerned makes with respect to it representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so—
(a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and
(b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company),
and if a copy of the representations is not sent as required in this section because it is received too late or because of the company’s default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:
Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and the court may order the company's costs on an application under this section to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

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

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

(6) Nothing in this section shall be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as a director or of any appointment terminating with that as director, or as derogating from any power to remove a director which may exist apart from this section.

**PROCEEDINGS OF DIRECTORS**

261. Proceedings of Directors

(1) The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit: Provided that the first meeting of the directors shall be held not later than six months after the incorporation of the company.

(2) Any question arising at any meeting shall be decided by a majority of votes, and in case of an equality of votes, the chairman shall have a second or casting vote.

(3) A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

(4) 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.

(5) The directors may delegate any of their powers to a managing director or to committees consisting of such member or members of their body as they think fit and the managing director or any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be made by the directors.

(6) A committee may elect a chairman of its meeting; and 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.
(7) A committee may meet and adjourn as it thinks proper, and any questions arising shall be determined by a majority of votes of the members present, and in the case of equality of votes the chairman shall have a second or casting vote.

(8) A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

(9) In all the directors’ meetings, each director shall be entitled to one vote.

262. Quorum
(1) Unless the articles otherwise provide, the quorum necessary for the transaction of the business of directors shall be two where there are not more than six directors, but where there are more than six directors, the quorum shall be one third of the number of directors, and where the number of directors is not a multiple of three, then the quorum shall be one third to the nearest number.

(2) Where a committee of directors is appointed by the board of directors, the board shall fix its quorum, but where no quorum is fixed, the whole committee shall meet and act by a majority.

263. Failure to Have a Quorum
Where the board is unable to act because a quorum cannot be formed, the general meeting may act in place of the board and where a committee is unable to act because a quorum cannot be formed, the board may act in place of the committee.

264. Notice of Meeting
(1) Every director shall be entitled to receive notice of the directors’ meetings, unless he is disqualified by any reason under the Act from continuing with the office of director.

(2) There shall be given 14 days’ notice in writing to all directors entitled to receive notice unless otherwise provided in the articles.

(3) Failure to give notice in accordance with subsection (2) of this section shall invalidate the meeting.

(4) Unless the articles otherwise provide, it shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Nigeria, provided that if he has given an address in Nigeria, the notice shall be sent to such an address.

REMUNERATION AND OTHER PAYMENTS

265. Remuneration of Directors
(1) The remuneration of the directors shall, from time to time, be determined by the company in general meeting and such remuneration shall be deemed to accrue from day to day.

(2) The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any
committee of the directors or general meetings of the company or in connection with the business of the company.

(3) Where remuneration has been fixed by the articles, it shall be alterable only by a special resolution.

(4) A company shall not be bound to pay remuneration to directors, but where the company agrees to pay, the directors shall be paid such remuneration out of the fund of the company.

(5) The amount of remuneration shall be a debt from the company so that if directors take office on the basis of the articles, they shall be able to sue the company on account of the debt or prove it in the liquidation.

(6) A director who receives more money than he is entitled to, shall be guilty of misfeasance and shall be accountable to the company for such money.

(7) The remunerations of directors shall be apportionable.

266. Remuneration of a Managing Director
(1) A managing director shall receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the directors may determine.

(2) Where a managing director is removed for any reason whatsoever under section 260 of this Act, he shall have a claim for breach of contract if there is any or where a contract could be inferred from the terms of the articles.

(3) Where he performs some services without a contract, he shall be entitled to payment on a quantum meruit.

267. Prohibition of Tax-free Payments to Directors
(1) It shall not be lawful for a company to pay a director remuneration (whether as director or otherwise) free of income tax, or otherwise calculated by reference to or varying with the amount of his income tax, or at or with the rate or standard rate of income tax, except under a contract which was in force at the commencement of this Act, and provides expressly, and not by reference to the articles, for payment or remuneration as aforesaid.

(2) Any provision contained in a company’s articles or in any contract other than such a contract as mentioned in subsection (1) of this section, or in any resolution of a company or the resolution of a company’s directors for payment to a director of remuneration as mentioned in subsection (1) of this section, shall have effect as if it provided for payment, as a gross sum subject to income tax, of the net sum for which it actually provides.

(3) This section shall not apply to remuneration due before this Act comes into force or in respect of a period before it comes into force.

268. Prohibition of Loans to Directors in Certain Circumstances
(1) It shall not be lawful for a company to make a loan to any person who is its director or a director of its holding company, or to enter into any guarantee or provide any security
in connection with a loan made to such a person as earlier mentioned by any other person:
Provided that nothing in this section shall apply—
(a) subject to subsection (2) of this section, to anything done to provide any such person as mentioned in this subsection with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company; or
(b) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business.

(2) Proviso (a) to subsection (1) of this section shall not authorise the making of any loan, or the entering into any guarantee, or the provision of any security except—
(a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed; or
(b) on condition that, if the approval of the company is not given as in subsection (2) (a) of this section at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within six months from the conclusion of that meeting.

(3) Where the approval of the company is not given as required by any such condition, the directors authorising the making of the loan, or the entering into the guarantee, or the provision of the security, shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

269. Payment by Company for Loss of Office, etc., to be Approved
It shall not be lawful for a company to make to any director of the company, any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars with respect to the proposed payment and the amount have been disclosed to members of the company and the proposal is approved by the company.

270. Payment to Director for Loss of Office, etc., or Transfer of Property Illegal
(1) If in connection with the transfer of the whole or any part of the undertaking or property of a company, it is proposed to make any payment to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, the payment shall be unlawful unless particulars with respect to the proposal and the amount have been disclosed to members of the company and the proposal is approved by the company.

(2) Where a payment declared by this section to be illegal is made to a director of a company, the amount received shall be deemed to have been received by him in trust for the company.

271. Directors to Disclose Payment for Loss of Office, etc., in Certain Cases
(1) Where, in connection with the transfer to any persons of all or any of the shares in a company, being a transfer resulting from—
(a) an offer made to the general body of shareholders;
(b) an offer made by or on behalf of some other body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company;
an offer made by or on behalf of an individual with a view to his obtaining the right to exercise or control the exercise of not less than one third of the voting power at any general meeting of the company; or

any other offer which is conditional on acceptance to a given extent payment is to be made to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, it shall be the duty of that director to do all things reasonably necessary to secure that particulars with respect to the proposed payment and the amount, are included in or sent with any notice of the offer made for their shares which is given to any shareholders.

If—

(a) any such director fails to do all things reasonably necessary as mentioned in this section; or

(b) any person who has been properly required by any such director to include the said particulars in or send them with any such notice as aforesaid fails so to do, he shall be liable to a penalty of N20,000.

If—

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

(b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved by a meeting summoned for the purpose of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of the said shares, any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any person who has sold his shares as a result of the offer made, and the expenses incurred by him in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.

Where the shareholders referred to in subsection (3) (b) of this section are not all the members of the company and no provision is made by the articles for summoning or regulating such a meeting as is mentioned in that paragraph, the provisions of this Act and of the company's articles relating to general meetings of the company shall, for that purpose, apply to the meeting either without modification or with such modification as the Commission on the application of any person concerned may direct for the purpose of adapting them to the circumstances of the meeting.

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

272. Provisions Supplementary to Sections 269 to 271

(1) Where, in proceedings for the recovery of any payment which has been received by any person in trust by virtue of subsections (1) and (2) of section 270 or subsections (1) and (3) of section 271 of this Act, it is shown that—

(a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question, or within one year but before two years after that agreement or the offer leading thereto; and
(b) the company or any person to whom the transfer was made was privy to that arrangement, the payment shall be deemed, except in so far as the contrary is shown, to be one to which the subsections apply.

(2) If in connection with any such transfer as is mentioned in sections 270 and 271 of this Act—

(a) 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 obtainable at the time by other holders of the like shares; or

(b) 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 that section, be deemed to have been a payment made to him by way of compensation for loss of office, or as consideration for or in connection with his retirement from office.

(3) It is hereby declared that references in sections 269 to 271 of this Act to payments made to any director of a company by way of compensation for loss of office or as consideration for or in connection with his retirement from office shall not include any bona fide payment by way of damages for breach of contract or by way of pension in respect of past services and for the purposes of this subsection, “pension” includes any superannuation allowance, superannuation gratuity or similar payment.

(4) Nothing in section 270 or 271 of this Act 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 there, or with respect to any other like payments made, or to be made, to the directors of a company.

DISCLOSURE OF DIRECTORS’ INTERESTS

273. Register of Directors’ Shareholding etc.
(1) Every company shall keep a register showing as respects each director of the company (not being its holding company) the number, description and amount of any shares in or debentures of the company or any other body corporate, being the company’s subsidiary or holding company, or a subsidiary of the company’s holding company, which are held by or in trust for him or of which he has any right to become the holder (whether on payment or not):
Provided that the register need not include shares in any body corporate which is the wholly-owned subsidiary of another body corporate, and for this purpose, a body corporate shall be deemed to be the wholly-owned subsidiary of another if it has no members but that other and that other’s wholly-owned subsidiaries and its or their nominees.

(2) Where any shares or debentures fall to be or cease to be recorded in the said register in relation to any director by reason of a transaction entered into after the commencement of this Act and while he is a director, the register shall also show the date of, and price or other consideration for the transaction:
Provided that where there is an interval between the agreement for any such transaction and the completion thereof, the date shall be that of the agreement.
(3) The nature and extent of a director's interest or right in or over any shares or debentures recorded in relation to him in the said register shall, if he so requires, be indicated in the register.

(4) The company shall not by virtue of anything done for the purposes of this section, be affected with notice of, or put upon inquiry as to the rights of any person in relation to any shares or debentures.

(5) The said register shall, subject to the provisions of this section, be kept at the company's registered or head office and shall be open to inspection 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) as follows—

(a) during the period beginning 14 days before the date of the company's annual general meeting and ending three days after the date of its conclusion, it shall be open to the inspection of any member or holder of debentures of the company; and

(b) during that or any other period, it shall be open to the inspection of any person acting on behalf of the Commission.

(6) In computing the 14 days and the three days mentioned in subsection (5) of this section, any day which is a Saturday or Sunday or a public holiday shall be disregarded.

(7) Without prejudice to the rights conferred by subsection (5) of this section, the Commission may, at any time, request for the production to it of a copy of the register, or any part thereof.

(8) The register shall also be produced at the commencement of the company's annual general meeting and remain open and accessible during the continuance of the meeting to any person attending the meeting.

(9) If default is made in complying with subsection (1) or (2) of this section, or if any inspection required under this section is refused, or any copy required thereunder is not sent within a reasonable time, the company and every officer of the company shall be liable to a penalty of N20,000, and if default is made in complying with subsection (8) of this section, the company and every officer of the company shall be liable to a penalty of N10,000.

(10) If any inspection required under this section is refused, the court may, by order, compel an immediate inspection of the register.

(11) For the purposes of this section—

(a) any person, in accordance with whose directions or instructions the directors of a company are accustomed to act, shall be deemed to be a director of the company; and

(b) a director of a company shall be deemed to hold or to have any interest or right in or over, any shares or debentures, if a permanent representative of the body corporate other than the company holds them or has that interest or right in or over them, and either—

(i) that permanent representative is accustomed to act in accordance with his directions or instructions; or
(ii) he is entitled to exercise or control the exercise of one third or more of the voting power at any general meeting of that body corporate.

274. General Duty to Give Notice, etc.

(1) It shall be the duty of any director of a company to give notice to the company of such matters relating to himself as may be necessary for the purposes of sections 273 and 276 of this Act except so far as it relates to loans made by the company or by any other person under a guarantee from or on a security provided by the company, to an officer thereof.

(2) Any such notice given for the purposes of section 273 of this Act, shall be in writing and if it is not given at a meeting of the directors, the director giving it shall do all things reasonably necessary to secure that it is brought up and read at the next meeting of directors after it is given.

(3) Subsection (1) of this section shall, to the extent to which it applies in relation to directors, apply to the like extent for—

(a) the purposes of section 275 of this Act in relation to officers other than directors;

(b) the purposes of sections 274 and 275 of this Act in relation to persons who are or have at any time during the preceding five years been officers of the company.

(4) Any person who makes default in complying with the foregoing provisions of this section shall be liable to a penalty of N50,000.

275. Disclosure by Directors of Interests 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 a 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 he 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: Provided that any such notice shall not have effect unless it is given at a meeting of the directors or the director does all things reasonably necessary to secure that it is brought up and read at the next meeting of the directors after it is given.

(4) Any director who fails to comply with the provisions of this section shall be guilty of an offence and liable to a fine of N100,000.
(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.

276. Particulars with Respect to Directors in Trade Catalogues, etc.
(1) Every company to which this section applies shall, in all trade circulars, showcards and business letters on or in which the company's name appears and which are issued or sent by the company to any person in Nigeria, state in legible characters with respect to every director the following particulars—
(a) his present forename, or the initials thereof, and present surname;
(b) any former forenames and surnames;
(c) his nationality, if not a Nigerian:
Provided that, if special circumstances exist which the Commission is of the opinion render it expedient that such an exemption should be granted, the Commission may, subject to such conditions as it may prescribe by notice published in the Gazette, exempt a company from the obligations imposed by this subsection.

(2) This section shall apply to every company incorporated under this Act, or any enactment repealed by it.

(3) If a company makes default in complying with this section, every officer of the company shall be liable to a penalty of N20,000.

(4) For the purposes of this section—
(a) “initials” includes a recognised abbreviation of a forename;
(b) references to a former forename or surname in the case of a married woman do not include the name or surname by which she was known previous to the marriage; and
(c) “showcards” means cards containing or exhibiting articles dealt with, or samples or representations thereof.

Duties of directors

277. Duties of Directors
(1) A director of a company stands in a fiduciary relationship towards the company and shall observe the utmost good faith towards the company in any transaction with it or on its behalf.

(2) A director shall also owe fiduciary relationship with the company in the following circumstances—
(a) where a director is acting as agent of a particular shareholder;
(b) where even though he is not an agent of any shareholder, such a shareholder or other person is dealing with the company’s securities.

(3) A director shall act at all times in what he believes to be the best interests of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed, and in such manner as a faithful, diligent, careful and ordinarily skilful director would act in the circumstances.
(4) The matters to which the director of a company is to have regard in the performance of his functions include the interests of the company’s employees in general, as well as the interests of its members.

(5) A director shall exercise his powers for the purpose for which he is specified and shall not do so for a collateral purpose, and the power, if exercised for the right purpose, does not constitute a breach of duty, if it, incidentally, affects a member adversely.

(6) A director shall not fetter his discretion to vote in a particular way.

(7) Where a director is allowed to delegate his powers under any provision of this Act, such a director shall not delegate the power in such a way and manner as may amount to an abdication of duty.

(8) No provision, whether contained in the articles or resolutions of a company, or in any contract, shall relieve any director from the duty to act in accordance with this section or relieve him from any liability incurred as a result of any breach of the duties conferred upon him under this section.

(9) Any duty imposed on a director under this section shall be enforceable against the director by the company.

278. Conflicts of Duties and Interests
(1) The personal interest of a director shall not conflict with any of his duties as a director under this Act.

(2) A director shall not—
(a) in the course of management of affairs of the company; or
(b) in the utilisation of the company’s property, make any secret profit or achieve other unnecessary benefits.

(3) A director shall be accountable to the company for any secret profit made by him or any benefit derived by him contrary to the provisions of subsection (2) of this section.

(4) The inability or unwillingness of the company to perform any functions or duties under its articles and memorandum shall not constitute a defence to any breach of duty of a director under this Act.

(5) The duty not to misuse corporate information shall not cease by a director or an officer having resigned from the company, and he shall still be accountable and can be restrained by an injunction from misusing the information received by virtue of his previous position.

(6) Where a director discloses his interests before the transaction and before the secret profits are made before the general meeting, which may or may not authorise any resulting profits, he may escape liability, but he shall not escape liability if he discloses only after he has made the secret profits, and in this case, he shall account for the profits.

279. Multiple Directorships
(1) The fact that a person holds more than one directorship shall not derogate from his fiduciary duties to each company, including a duty not to use the property, opportunity or information obtained in the course of the management of one company for the benefit of the other company, or to his own or other person’s advantage.

(2) Subject subsection (3) of this section, a person shall not be a director in more than five public companies.

(3) Any person who is a director in more than five public companies shall, at the next annual general meeting of the companies after the expiration of two years from the commencement of this Act, resign from being a director from all but five of the companies.

(4) Any person who acts as a director of a public companies in contravention of the provisions of the section shall be liable to a daily penalty of N2,000.00 and shall refund to each of the companies every remuneration and allowances paid to him as a director in each of the companies.

280. Duty of Care and Skill
(1) Every director of a company shall exercise the powers and discharge the duties of his office honestly, in good faith and in the best interests of the company, and shall exercise that degree of care, diligence and skill which a reasonably prudent director would exercise in comparable circumstances.

(2) Failure to take reasonable care in accordance with the provisions of section 280 of this Act, shall ground an action for negligence and breach of duty.

(3) Each director shall be individually responsible for the actions of the board in which he participated, and the absence from the board’s deliberations, unless justified, shall not relieve a director of such responsibility.

(4) The same standard of care in relation to the director’s duties to the company shall be required for both executive and non-executive directors:
Provided that additional liability and benefit may arise under the master and servant law in the case of an executive director if there is an express or implied contract to that effect.

281. Legal Position of Directors
(1) Directors are trustees of the company’s moneys, properties and their powers and as such must account for all the moneys over which they exercise control and shall refund any moneys improperly paid away, and shall exercise their powers honestly in the interest of the company and all the shareholders, and not in their own or sectional interests.

(2) A director may, when acting within his authority and the powers of the company, be regarded as agents of the company under Part III of this Act.

PROPERTY TRANSACTIONS BY DIRECTORS

282. Substantial Property Transactions Involving Directors, etc.
(1) Subject to the exceptions provided by section 283 of this Act, a company shall not enter into an arrangement—
(a) whereby a director of the company or its holding company, or a person connected with such a director, acquires or is to acquire one or more non-cash assets of the requisite value from the company; or

(b) whereby the company acquires or is to acquire one or more non-cash assets of the requisite value from such a director or a person so connected, unless the arrangement is first approved by a resolution of the company in general meeting and if the director or connected person is a director of its holding company or a person connected with such a director, by a resolution in general meeting of the holding company.

(2) For the purpose of subsection (1) of this section, a non-cash asset is of the requisite value if, at the time the arrangement in question is entered into, its value is not less than N2,000 but (subject to that) exceeds N100,000 or twenty per cent of the company’s asset value, that is—

(a) except in a case falling within paragraph

(b) of this subsection the value of the company’s net asset determined by reference to the accounts prepared and laid under Part XI in respect of the last preceding year in respect of which such accounts were so laid; and

(c) where no accounts have been so prepared and laid before that time, the amount of the company’s called-up share capital.

(3) For the purposes of this section and sections 283 and 284 of this Act, a shadow director shall be treated as a director.

283. Exceptions from Section 282

(1) No approval shall be required to be given under section 282 of this Act by any body corporate unless it is a company within the meaning of this Act, or if it is a wholly-owned subsidiary of any body corporate.

(2) Section 281 of this Act shall not apply to an arrangement for the acquisition of a non-cash asset if—

(a) the asset is to be acquired by a holding company from any of its wholly-owned subsidiaries or from a holding company by any of its wholly-owned subsidiary of a holding company from another wholly-owned subsidiary of that same holding company; or

(b) the arrangement is entered into by a company which is being wound up, unless the winding up is a member’s voluntary winding up.

(3) Subsection (1) (a) of section 282 of this Act shall not apply to an arrangement whereby a person is to acquire an asset from a company of which he is a member, if the arrangement is made with that person in his character as a member.

284. Liabilities Arising from Contravention of Section 282

(1) An arrangement entered into by a company in contravention of section 282 of this Act and any transaction entered into in pursuance of the arrangement (whether by the company or any other person), shall be voidable at the instance of the company, unless one or more of the conditions specified in subsection (2) of this section is satisfied.

(2) The conditions are that—
(a) restitution of any money or other asset which is the subject-matter of the arrangement or transaction is no longer possible or the company has been indemnified in pursuance of this section by any other person for the loss or damage suffered by it; or
(b) any rights acquired bona fide for value and without actual notice of the contravention by any person who is a party to the arrangement or transaction would be affected by its avoidance; or
(c) the arrangement is, within a reasonable period, affirmed by the company in general meeting and, if it is an arrangement for the transfer of an asset to or by a director of its holding company or a person who is connected with such a director, is so affirmed with the approval of the holding company given by a resolution in general meeting.

(3) If an arrangement is entered into with a company by a director of the company or its holding company or a person connected with him in contravention of section 282 of this Act, that director and the person so connected, and any other director of the company who authorises the arrangement or any transaction entered into in pursuance of such an arrangement, shall be guilty of an offence and liable—
(a) to account to the company for any gain which he has made directly or indirectly by the arrangement or transaction; and
(b) (jointly and severally with any other person liable under this subsection) to indemnify the company for any loss or damage resulting from the arrangement or transaction.

(4) Subsection (3) of this section shall be without prejudice to any liability imposed otherwise than by that subsection, and is subject to the following two subsections; and the liability under subsection (3) of the section arises whether or not the arrangement or transaction entered into has been avoided in pursuance of subsection (1) of this section.

(5) If an arrangement is entered into by a company and a person connected with a director of the company or its holding company in contravention of section 282 of this Act, that director shall not be liable under subsection (3) of this section if he shows that he took all reasonable steps to secure the company's compliance with that section.

(6) In any case, a person so connected and any such other director as is mentioned in subsection (3) of this section, shall not be so liable if he shows that at the time the arrangement was entered into, he did not know the relevant circumstances constituting the contravention.

(7) This section shall have effect with respect to references in sections 282, 283 and 284 of this Act to a person being “connected” with a director of a company, and to a director being “associated with” or “controlling” a body corporate.

(8) A person is connected with a director of a company if he (not being himself a director of it) is—
(a) that director's spouse, child or step-child, including illegitimate child;
(b) except where the context otherwise requires, a body corporate with which the director is associated; or
(c) a person acting in his capacity as trustee of any trust, the beneficiaries of which include—
(i) the director, his spouse, any children or step-children; or
(ii) a body corporate with which he is associated, or of a trust whose terms confer a power on the trustees that may be exercised for the benefit of the director, his spouse or any children or step-children of his, or any such body corporate; or
(d) a person acting in his capacity as partner of that director or of any person who, by virtue of paragraphs (a), (b) or (c) of this subsection, is connected with that director.

285. Prohibition of Secret Benefits
(1) A director shall not accept a bribe, a gift, or commission either in cash or kind from any person or a share in the profit of that person in respect of any transaction involving his company in order to introduce his company to deal with such a person.

(2) If a director contravenes the provisions of section 285 (1) of this Act, he commits a breach of duty and the company shall recover from the director the actual gift and then sue him and the other person jointly and severally for damages sustained without any deduction in respect of what the director has returned.

(3) Where the gift is made after the transaction has been completed in a form of unsolicited gift as a sign of gratitude, the director may be allowed to keep the gift, provided he declares it before the board and that fact shall also appear in the minutes book of the directors.

(4) In all cases concerning secret benefits, the plea that the company benefited or that the gift was accepted in good faith shall be no defence.

MISCELLANEOUS MATTERS RELATING TO DIRECTORS

286. Directors with Unlimited Liability in Respect of a Limited Company
(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 and any managers of the company 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 shall be unlimited, and before the person accepts the office or acts therein, notice in writing that his liability shall be unlimited shall be given to him by the following or one of the following persons, namely, the promoters of the company, the directors of the company, any managers of the company and the secretary of the company.

(3) If any director, manager, or promoter 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 penalty of N20,000 and shall also be liable for any damage which the person so elected or appointed may sustain from the default.

287. Special Resolution of Limited Company Making 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 of it shall be as valid as if they had been originally contained in the memorandum.

288. Personal Liability of Directors and Officers

(1) Where a company—
(a) receives money by way of loan for specific purpose; or
(b) receives money or other property by way of advance payment for the execution of a contract or project; and
(c) with intent to defraud, fails to apply the money or other property for the purpose for which it was received,
every director or other officer of the company who is in default shall be personally liable to the party from whom the money or property was received for a refund of the money or property so received and not applied for the purpose for which it was received:
Provided that nothing in this section shall affect the liability of the company itself.

289. Director's Contract of Employment for More Than Five Years

(1) The provisions of this section shall apply in respect of any term of an agreement whereby a director’s employment with the company of which he is a director or, where he is the director of a holding company, his employment within the group, is to continue or may be continued, otherwise than at the instance of the company (whether under the original agreement entered into in pursuance of it or not), for a period of more than five years during which the employment—
(a) cannot be terminated by the company by notice; or
(b) can be so terminated only in specified circumstances.

(2) In any such case where—
(a) a person is or is to be employed with a company under an agreement which cannot be terminated by the company by notice or can be so terminated only in specified circumstances; and
(b) more than six months before the expiration of the period for which he is or to be so employed, the company enters into a further agreement otherwise than in pursuance of a right conferred by or under the original agreement on the other party to it under which he is to be employed with the company or, where he is a director of a holding company, within the group, this section shall apply as if to the period for which he is to be employed under that further agreement there were added a further period equal to the unexpired period of the original agreement.

(3) A company shall not incorporate in an agreement such a term as is mentioned in subsection (1) of this section unless the term is first approved by a resolution of the company in general meeting and in the case of a director of a holding company, by a resolution of that company in general meeting.

(4) No approval shall be required to be given under this section by any body corporate unless it is a company within the meaning of this Act, or if it is a wholly-owned subsidiary of any body corporate.

(5) A resolution of a company approving such a term as is mentioned in subsection (1) of this section, shall not be passed at a general meeting of the company unless a written
memorandum setting out the proposed agreement incorporating the term is available for inspection by members of the company both—
(a) at the company’s registered office for not less than 15 days ending with the date of the meeting; and
(b) at the meeting itself.

(6) A term incorporated in an agreement in contravention of this section shall to the extent that it contravenes the section, be void; and that agreement and in a case where subsection (2) of this section applies, the original agreements shall be deemed each to contain a term entitling the company to terminate it at any time by the giving of reasonable notice.

(7) In this section—
(a) “employment” includes employment under a contract for services; and
(b) “group” in relation to a director of a holding company, means the group which consists of that company and its subsidiaries and for purposes of this section, a shadow director shall be treated as a director.

290. Register of Directors and Secretaries
(1) Every company shall keep at its registered office, a register of its directors and secretaries.

(2) The register shall contain the following particulars with respect to each director, that is to say his present forename and surname, any former forename and surname, his usual residential address, his nationality, his business occupation, if any, particulars of any other directorships held by him and the date of his birth:
Provided that it shall not be necessary for the register to contain particulars of directorships held by a director in companies of which the whole company is the wholly-owned subsidiary, or which are the wholly-owned subsidiaries either of the company or of another company of which the company is the wholly-owned subsidiary, and for the purpose of this proviso—
(i) “company” includes any body corporate incorporated in Nigeria; and
(ii) a body corporate shall be deemed to be the wholly-owned subsidiary of another if it has no members except that other and that other’s wholly-owned subsidiaries and its or their nominees.

(3) The register shall contain the following particulars with respect to the secretary, in the case of an individual, his present forename and surname, any former forenames and surname and his usual residential address; and in the case of a corporation its registered name and registered or head office.

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

(5) The periods referred to in subsection (4) of this section shall be the period within which—
(a) the return is to be sent which shall be a period of 14 days from the date of incorporation of the company; and
(b) the notification of a change is to be sent which shall be 14 days from the happening thereof:
Provided that, in the case of a return containing particulars with respect to any person who is the company’s secretary at the commencement of this Act, the period shall be 14 days from the commencement of this Act.

(6) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that no less than two hours in each day be allowed for inspection) be open to inspection by any member of the company without charge and by any other person on payment of N200 or such less sum as the company may prescribe, for each inspection.

(7) If any inspection required under this section is refused, or if default is made in complying with the provisions of subsections (1), (2), (3) and (4) of this section, the company and every officer of the company shall be liable to a penalty of N10,000.

(8) In case of any such refusal or default as mentioned in subsection (7) of this section, the court may by order compel an inspection of the register or that the copies required be sent as provided in this section.

(9) For the purpose of this section—
(a) a person in accordance with whose directions or instruction the directors of a company are accustomed to act shall be deemed to be a director and officer of the company;
(b) references to a former forename or surname in the case of a married woman shall not include the name or surname by which she was known previous to the marriage.

CHAPTER 2
SECRETARIES

291. Secretaries
(1) Every company shall have a secretary who shall be appointed within six months of the date of incorporation of the company.

(2) Where at the commencement of this Act a company has not appointed a secretary, the company shall not later than six months after the commencement of this Act appoint a secretary.

(3) Anything required or authorised to be done by or of the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or of any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or of any officer of the company authorised generally or specially in that behalf by the directors.
If any company acts in contravention of the provisions of this section, the company and the directors of the company shall be liable to a penalty of N20,000 and for continued contravention, to a daily penalty of N100.

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

293. Qualification of a Secretary
It shall be the duty of a director of a company to take all reasonable steps to ensure that the secretary of the company is a person who appears to have the requisite knowledge and experience to discharge the functions of a secretary of a company, and in the case of a public company, he shall be—
(a) a member of the Institute of Chartered Secretaries and Administrators; or
(b) a legal practitioner within the meaning of the Legal Practitioners Act; or
(c) a member of any professional body of accountants established from time to time by an Act; or
(d) a body corporate or firm consisting of members each of whom is qualified under paragraphs (a), (b), or (c) of this section.

294. Appointment and Removal of a Secretary
(1) A secretary shall be appointed by the directors and, subject to the provisions of this section, may be removed by them.

(2) Where it is intended to remove the secretary of a public company, the board of directors shall give him notice—
(a) stating that it is intended to remove him;
(b) setting out the grounds on which it is intended to remove him;
(c) giving him a period not less than seven working days within which to make his defence; and
(d) giving him an option to resign his office within a period of seven working days.

(3) Where, following the notice prescribed in subsection (2) of this section, the secretary does not within the given period resign his office or make a defence, the board may remove him from office and shall make a report to the next general meeting; but where the secretary, without resigning his office, makes a defence and the board does not consider it sufficient, if the ground—
(a) on which it is intended to remove him is that of fraud or serious misconduct, the board may remove him from office and shall report to the next general meeting; and
(b) is other than of fraud or serious misconduct, the board shall not remove him without the approval of the general meeting, but may suspend him and shall report to the next general meeting.

(4) Notwithstanding any rule of law, where a secretary suspended under paragraph (b) of subsection (3) of this section is removed with the approval of the general meeting, the removal may take effect from such time as the general meeting may determine.

295. Fiduciary Interests of a Secretary
A secretary shall not owe fiduciary duties to the company, but where he is acting as its agent he shall owe fiduciary duties to it, and as such shall be liable to the company where he makes secret profits or lets his duties conflict with his personal interests, or uses confidential information he obtained from the company for his own benefit.

296. Duties of a Secretary

(1) The duties of a secretary shall include the following—
(a) attending the meeting of the company, the board of directors and its committees, rendering all necessary secretarial services in respect of the meeting and advising on compliance by the meetings with the applicable rules and regulations;
(b) maintaining the registers and other records required to be maintained by the company under this Act;
(c) rendering proper returns and giving notification to the Commission required under this Act; and
(d) carrying out such administrative and other secretarial duties as directed by the director, or the Company.

(2) The secretary shall not without the authority of the board exercise any powers vested in the directors.

PART X

PROTECTION OF MINORITY AGAINST ILLEGAL AND OPPRESSIVE CONDUCT

ACTION BY OR AGAINST THE COMPANY

297. Only Company May Sue for Wrong or Ratify Irregular Conduct

Subject to the provisions of this Act, where an irregularity has been committed in the course of a company's affairs or any wrong has been done to the company, only the company can sue to remedy that wrong and only the company can ratify the irregular conduct.

298. Protection of Minority: Injunction and Declaration in Certain Cases

Without prejudice to the rights of members under sections 301 to 306 and sections 308 to 310 of this Act or any other provisions of this Act, the court, on the application of any member, may by injunction or declaration restrain the company from the following—
(a) entering into any transaction which is illegal or ultra vires;
(b) purporting to do by ordinary resolution any act which by its constitution or the Act requires to be done by special resolution;
(c) any act or omission affecting the applicant's individual rights as a member;
(d) committing fraud on either the company or the minority shareholders where the directors fail to take appropriate action to redress the wrong done;
(e) where a company meeting cannot be called in time to be of practical use in redressing a wrong done to the company or to minority shareholders; and
(f) where the directors are likely to derive a profit or benefit, or have profited or benefited from their negligence or from their breach of duty.

299. Personal and Representative Action
(1) Where a member institutes a personal action to enforce a right due to him personally, he shall not be entitled to any damages but a declaration or injunction to restrain the company and/or the directors from doing a particular act.

(2) Where a member institutes a representative action on behalf of himself and other affected members to enforce any rights due to them, he shall not be entitled to any damages but to a declaration or injunction to restrain the company and/or directors from doing a particular act.

(3) Where any member institutes an action under this section, the court may award costs to him personally whether or not his action succeeds.

(4) In any proceedings by a member under section 298 of this Act, the court may, if it thinks fit, order that the member shall give security for costs.

300. Definition of Member
For the purpose of sections 298 and 299 of this Act, “member” includes-
(a) the personal representative of a deceased member; and
(b) any person to whom shares have been transferred or transmitted by operation of law.

301. Commencing Derivative Action
(1) Subject to the provisions of subsection (2) of this section, an applicant may apply to the court for leave to bring an action in the name or on behalf of a company, or to intervene in an action to which the company is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the company.

(2) No action may be brought and no intervention may be made under subsection (1) of this section, unless the court is satisfied that—
(a) the wrongdoers are the directors who are in control, and will not take necessary action;
(b) the applicant has given reasonable notice to the directors of the company of his intention to apply to the court under subsection (1) of this section if the directors of the company do not bring, diligently prosecute or defend or discontinue the action;
(c) the applicant is acting in good faith; and
(d) it appears to be in the best interest of the company that the action be brought, prosecuted, defended or discontinued.

302. Powers of the Court
(1) In connection with an action brought or intervened under section 301 of this Act, the court may, at any time, make any such order or orders as it thinks fit.

(2) Without prejudice to the generality of subsection (1) of this section, the court may make one or more of the following orders, that is an order—
(a) authorising the applicant or any other person to control the conduct of the action;
(b) giving directions for the conduct of the action;
(c) directing that any amount adjudged payable by a defendant in the action shall be paid, in whole or in part, directly to former and present security holders of the company instead of to the company;
(d) requiring the company to pay reasonable legal fees incurred by the applicant in connection with the proceedings.

303. Evidence of Shareholders’ Approval not Decisive
An application made or an action brought or intervened in under section 301 of this Act shall not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or a duty owed to the company has been or may be approved by the shareholders of such company, but evidence of approval by the shareholders may be taken into account by the court in making an order under section 302 of this Act.

304. Court’s Approval to Discontinue
An application made or an action brought or intervened in under section 301 of this Act shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given upon such terms as the court thinks fit and, if the court determines that the rights of any applicant may be substantially affected by such stay, discontinuance, settlement or dismissal, the court may order any party to the application or action to give notice to the applicant.

305. No Security for Costs
An applicant shall not be required to give security for costs in any application made or action brought or intervened in under section 301 of this Act.

306. Interim Costs
In an application made or an action brought or intervened in under section 301 of this Act, the court may at any time order the company to pay to the applicant interim costs before the final disposition of the application or action.

307. Definition
In sections 301 to 306 of this Act, “applicant” means—
(a) a registered holder or a beneficial owner and a former registered holder or beneficial owner, of a security of a company;
(b) a director or an officer or a former director or officer of a company;
(c) the Commission; or
(d) any other person who in the discretion of the court, is a proper person to make an application under section 301 of this Act.

RELIEF ON THE GROUNDS OF UNFAIRLY PREJUDICIAL AND OPPRESSIVE CONDUCT

308. Application
(1) An application to the court by petition for an order under section 309 of this Act in relation to a company may be made by any of the following persons—
(a) a member of the company;
(b) a director or officer or former director or officer of the company;
(c) a creditor;
(d) the Commission; or
(e) any other person who, in the discretion of the court, is the proper person to make an application under section 309 of this Act.

(2) In sections 309 to 311 of this Act, “member” includes—
(a) the personal representative of a deceased member; and
(b) any person to whom shares have been transferred or transmitted by operation of law.

309. Grounds upon Which an Application May be Made

(1) An application for relief on the ground that the affairs of a company are being conducted in an illegal or oppressive manner may be made to the court by petition.

(2) An application to the court by petition for an order under this section in relation to a company may be made—

(a) by a member of the company who alleges—

(i) that the affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members, or in a manner that is in disregard of the interests of a member or the members as a whole; or

(ii) that an act or omission or a proposed act or omission, by or on behalf of the company or a resolution, or a proposed resolution, of a class of members, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or was or would be in a manner which is in disregard of the interests of a member or the members as a whole; or

(b) by any of the persons mentioned under paragraphs (b), (c) and (e) of subsection (1) of section 308 of this Act who alleges—

(i) that the affairs of the company are being conducted in a manner oppressive or unfairly prejudicial to or discriminatory against or in a manner in disregard of the interests of that person;

(ii) that an act or omission, or a proposed act or omission was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against or which is in a manner in disregard of the interests of that person; or

(c) by the Commission in a case where it appears to it in the exercise of its powers under the provisions of this Act or any other enactment that—

(i) the affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against a member or members or in manner which is in disregard of the public interest; or

(ii) any actual or proposed act or omission of the company (including an act or omission on its behalf) which was or would be oppressive, or unfairly prejudicial to, or unfairly discriminatory against a member or members in a manner which is in disregard of the public interest.

310. Powers of the Court

(1) If the court is satisfied that a petition under sections 308 and 309 of this Act is well founded, it may make such order or orders as it thinks fit for giving relief in respect of the matter complained of.

(2) Without prejudice to the generality of subsection (1) of this section, the court may make one or more of the following orders that is, an order—

(a) that the company be wound up;
(b) for regulating the conduct of the affairs of the company in future;
(c) for the purchase of the shares of any member by other members of the company;
(d) for the purchase of the shares of any member by the company and for the reduction accordingly of the company’s capital;
(e) directing the company to institute, prosecute, defend or discontinue specific proceedings, or authorising a member or the company to institute, prosecute, defend or discontinue specific proceedings in the name or on behalf of the company;
(f) varying or setting aside a transaction or contract to which the company is a party and compensating the company or any other party to the transaction or contract;
(g) directing an investigation to be made by the Commission;
(h) appointing a receiver or a receiver and manager of property of the company;
(i) restraining a person from engaging in specific conduct or from doing a specific act or thing;
(j) requiring a person to do a specific act or thing.

(3) Where an order that a company be wound up is made under this section, the provisions of this Act relating to winding up of companies shall apply, with such adaptations as are necessary, as if the order had been made upon an application duly filed in the court by the company.

(4) Where an order under this section makes any alteration or addition to the memorandum or articles of a company, then, notwithstanding anything in any other provision of this Act but subject to the provisions of the order, the company shall not have power, without the leave of the court, to make any further alteration or addition to the memorandum and articles inconsistent with the provisions of the order but, subject to the foregoing provisions of this subsection, the alteration or addition shall have effect as if it had been duly made by a resolution of the company.

(5) A certified true copy of an order made under this section altering or giving leave to alter a company’s memorandum or articles shall, within 14 days from the making of the order or such longer period as the court may allow, be delivered by the company to the Commission for registration; and if the company makes default in complying with the provisions of this subsection, the company and every officer of it shall be liable to a penalty of N5,000 and, for continued contravention, to a daily penalty of N100.

311. Penalty for Failure to Comply with Order of the Court
Any person who contravenes or fails to comply with an order made under section 310 of this Act that is applicable to him, shall be guilty of an offence and be liable to a fine of N100,000 or imprisonment for a term of one year or to both such fine and imprisonment.

INVESTIGATION OF COMPANIES AND THEIR AFFAIRS

312. Investigation of a Company on Its Own Application or that of Its Members
(1) The Commission may appoint one or more competent inspectors to investigate the affairs of a company and to report on them in such manner as it may direct.
(2) The appointment may be made—
(a) in the case of a company having a share capital, on the application of members holding not less than one tenth of the class of shares issued;
(b) in the case of a company not having a share capital, on the application of not less than one tenth in number of the persons on the company’s register of members; and
(c) in any other case, on application of the company.
(3) The application shall be supported by such evidence as the Commission may require for the purpose of showing that the applicant or applicants have good reason for requiring the investigation.

313. Other Investigations of Company
(1) The Commission shall appoint one or more competent inspectors to investigate the affairs of a company and report on them in such manner as it directs, if the court by order declares that its affairs ought be so investigated.
(2) The Commission may make such an appointment if it appears to it that there are circumstances suggesting that—
(a) the company’s affairs are being or have been conducted with intent to defraud its creditors or the creditors of any other person, or in a manner which is unfairly prejudicial to some part of its members; or
(b) any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial, or that the company was formed for any fraudulent or unlawful purpose; or
(c) persons concerned with the company’s formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members; or
(d) the company’s members have not been given all the information with respect to its affairs which they might reasonably expect.
(3) Subsections (1) and (2) of this section shall be without prejudice to the powers of the Commission under section 320 of this Act, and the power conferred by subsection (2) of this section shall be exercisable with respect to a body corporate, notwithstanding that it is in a course of being voluntarily wound up.
(4) Reference in subsection (2) of this section to a company’s members, includes any of the following persons—
(a) the personal representatives of a deceased member; and
(b) any person to whom shares have been transferred or transmitted by operation of law.

314. Inspectors’ Powers during Investigation
(1) If an inspector appointed under section 312 or 313 of this Act to investigate the affairs of a company thinks it necessary for the purposes of his investigation to investigate also the affairs of another body corporate which is or at any relevant time has been the company’s subsidiary or holding company, or a subsidiary of its holding company or a holding company of its subsidiary, he shall report on the affairs of the other body corporate so far as he thinks that the results of his investigation of its affairs are relevant to the investigation of the affairs of the company first mentioned above.

(2) An inspector appointed under either section 312 or 313 of this Act may at any time in the course of his investigation, without the necessity of making an interim report, inform the Commission of matters coming to his knowledge as a result of the investigation tending to show that an offence has been committed.

315. Production of Documents and Evidence to Inspectors
(1) When an inspector is appointed under section 312 or 313 of this Act, it shall be the duty of all officers and agents of the company, and of all officers and agents of any other body corporate whose affairs are investigated under section 314 of this Act—
(a) to produce to the inspector all books and documents of or relating to the company or, as the case may be, the other body corporate which are in their custody or power;
(b) to attend before the inspector when required to do so; and
(c) otherwise to give the inspector all assistance in connection with the investigation which he is reasonably able to give.

(2) If the inspector considers that a person other than an officer or agent of the company or other body corporate is or may be in possession of information concerning its affairs, he may require that person to produce to him any books or documents in his custody or power relating to the company or other body corporate, to attend before him and otherwise to give him all assistance in connection with the investigation which he is reasonably able to give; and it is that person’s duty to comply with the requirement.

(3) An inspector may examine on oath the officers and agents of the company or other body corporate, and any such person as is mentioned in subsection (2) of this section in relation to the affairs of the company or other body, and administer an oath accordingly.

(4) In this section, a reference to officers or to agents includes past, as well as present, officers or agents (as the case may be); and “agent” in relation to a company or other body corporate, includes its bankers and solicitors and persons employed by it as auditors, whether these persons are or are not officers of the company or other body corporate.

(5) An answer given by a person to a question put to him in exercise of powers conferred by this section (whether as it has effect in relation to an investigation under any of sections 312 to 314 of this Act as applied by any other section in this Act) may be used in evidence against him.

316. Power of Inspector to Call for Directors’ Bank Accounts

(1) If an inspector has reasonable grounds for believing that a director, or past director, of the company or other body corporate whose affairs he is investigating maintains or has maintained a bank account of any description (whether alone or jointly with another person and whether in Nigeria or elsewhere), into or out of which there has been paid—
(a) the emoluments or part of the emoluments of his office as such director, particulars of which have not been disclosed in the financial statements of the company or other body corporate for any financial year, contrary to the provisions of Part V of the Fourth Schedule to this Act (in relation to particular in accounts of directors);
(b) any money which has resulted from or been used in the financing of an undisclosed transaction, arrangement or agreement; or
(c) any money which has been in any way connected with an act or omission or series of acts or omissions, which on the part of that director constituted misconduct (whether fraudulent or not) towards the company or body corporate or its members, the inspector may require the director to produce to him all documents in the director’s possession, or under his control, relating to that bank account.

(2) For purposes of subsection (1) (b), of this section, an “undisclosed” transaction, arrangement or agreement is one the particulars of which have not been disclosed in the
financial statement of any company or in a statement annexed thereto for any financial
year, including the disclosure of contracts between companies and their directors.

317. Obstruction of Inspectors to be Treated as Contempt of Court
(1) When an inspector is appointed under section 312 or 313 of this Act to investigate
the affairs of a company, the following applies in the case of—
(a) any officer or agent of the company;
(b) any officer or agent of another body corporate whose affairs are investigated under
section 314 of this Act; and
(c) any such person as is mentioned in section 315 (2) of this Act.

(2) Subsection (4) of section 315 of this Act shall apply with regards to references in
subsection (1) of this section to an officer or agent.

(3) If that person—
(a) refuses to produce any book or document which it is his duty under section 315 or
316 of this Act to produce; or
(b) refuses to attend before the inspector when required to do so; or
(c) refuses to answer any question put to him by the inspector with respect to the
affairs of the company or other body corporate (as the case may be), the inspector
may certify the refusal in writing to the court.

(4) The court may thereupon enquire 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, the court may punish the offender
in like manner as if he had been guilty of contempt of court.

318. Inspector's Report
(1) The inspector may, and if so directed by the Commission shall, make interim
reports to the Commission, and on the conclusion of his investigation shall make a final
report to it and any such report shall be written or printed, as the Commission may direct.

(2) The Commission may direct that a copy of the inspector's report be forwarded to
the company at its registered or head office.

(3) Where an inspector is appointed under section 312 of this Act in pursuance of an
order of the court, the Commission shall furnish a copy of any of its reports to the court.

(4) In any other case, the Commission may, if it thinks fit—
(a) furnish a copy on request and on payment of the prescribed fee to—
   (i) any member of the company or other body corporate which is the subject of
   the report;
   (ii) any person whose conduct is referred to in the report;
   (iii) the auditors of that company or body corporate;
   (iv) the applicants for the investigation;
   (v) any other person whose financial interests appear to the Commission to be
       affected by the matters dealt with in the report, whether as creditors of the
       company or body corporate, or otherwise; and
   (b) cause any such report to be printed and published.
319. Power to Bring Civil Proceedings on Company's Behalf
(1) If, from any report made under section 318 of this Act it appears to the Commission that any civil proceedings ought in the public interest to be brought by the company or any body corporate, the Commission may itself bring such proceedings in the name and on behalf of the company or the body corporate.

(2) The Commission shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with proceedings brought under this section; and any costs or expenses so incurred shall, if not otherwise recoverable, be defrayed out of the Consolidated Revenue Fund.

320. Criminal Proceedings and other Proceedings by the Attorney-General of the Federation
(1) If, from any report made under section 318 of this Act, it appears that any person has, in relation to the company or any body corporate whose affairs have been investigated by virtue of section 314 of this Act, been guilty of any offence for which he is criminally liable, the report shall be referred to the Attorney-General of the Federation.

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

(3) If, from any report made under section 318 of this Act, it appears to the Commission that proceedings ought in the public interest to be brought by any body corporate dealt with by the report for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation of that body corporate or the management of its affairs, or for the recovery of any property of the body corporate which has been misapplied or wrongfully retained, it may refer the case to the Attorney-General of the Federation for his opinion as to the bringing of proceedings for that purpose in the name of the body corporate and if proceedings are brought, it shall be the duty of all officers and agents of the company or other body corporate as the case may be (other than the defendants in proceedings), to give him all assistance in connection with the proceedings which they are reasonably able to give.

(4) Costs and expenses incurred by a body corporate in or in connection with any proceedings brought by it under subsection (3) of this section shall, if not otherwise recoverable, be defrayed out of the Consolidated Revenue Fund.

321. Power of the Commission to Present Winding-up Petition
If, in the case of anybody corporate liable to be wound up under this Act, it appears to the Commission from a report made by an inspector under section 318 of this Act that it is expedient in the public interest that the body corporate should be wound up, the Commission may (unless the body corporate is already wound up by the court) present a petition for it to be so wound up if the court thinks it just and equitable to do so.

322. Expenses of Investigation
(1) The expenses of, an incidental to, an investigation by an inspector appointed by the Commission under the foregoing provisions of this Act, shall be defrayed in the first
instance out of the Consolidated Revenue Fund, but the following persons shall, to the extent mentioned, be liable to make repayment, that is to say—

(a) any person who is convicted on a prosecution instituted, as a result of the investigation by the Attorney-General of the Federation, or who is ordered to pay damages or restore any property in proceedings brought by virtue of subsection (3) of section 320 of this Act, may in the same proceedings be ordered to pay the said expenses to such extent as are specified in the order;

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

(c) unless as the result of the investigation a prosecution is instituted by the Attorney-General of the Federation, the applicants for the investigation, where the inspector was appointed under section 312 of this Act, shall be liable to such extent (if any) as the Commission may direct, and any amount for which a body corporate is liable by virtue of paragraph (b) of this subsection, shall be a first charge on the sums or property mentioned in that paragraph.

(2) For the purposes of this section, any costs or expenses incurred by the Commission in or in connection with proceedings brought by virtue of subsection (2) of section 320 of this Act, shall be treated as expenses of the investigation giving rise to the proceedings.

(3) Expenses to be defrayed by the Commission under this section shall, so far as not recovered thereunder, be paid out of the appropriate Consolidated Revenue Fund.

323. Inspectors’ Report to be Used as Evidence in Legal Proceedings

(1) A copy of any report of an inspector appointed under sections 312 and 313 of this Act, certified by the Commission to be a true copy, shall be admissible in any legal proceedings as evidence of the opinion of the inspector in relation to any matter contained in the report.

(2) A document purporting to be such a certificate as is mentioned above shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.

324. Appointment, etc., of Inspectors to Investigate Ownership of a Company

(1) Where it appears to the Commission that there is good reason so to do, it may appoint one or more competent inspectors to investigate and report on the membership of any company, and otherwise with respect to the company, for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence the policy of the company.

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

(3) Where an application for an investigation under this section with respect to particular shares or debentures of a company is made to the Commission by members of the company, and the number of applicants or the amount of the shares held by them is
not less than that required for an application for the appointment of an inspector under paragraphs (a) and (b) of subsection (2) of section 312 of this Act—
(a) the Commission shall appoint an inspector to conduct that investigation, unless it is satisfied that the application is vexatious; and
(b) the inspector’s appointment shall not exclude from the scope of his investigation any matter which the application seeks to include, except in so far as the Commission is satisfied that it is reasonable for the matter to be investigated.

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

325. Provisions Applicable to Investigation
(1) For the purposes of any investigation under section 324 of this Act, the provisions of sections 314 to 318 of this Act shall apply with the necessary modifications to references to the affairs of the company or those of any body corporate, so however, that—
(a) the said sections shall apply in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other body corporate whose membership is investigated with that of the company; or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others, as they apply in relation to officers and agents of the company or of the other body corporate, as the case may be; and
(b) the Commission shall not be bound to furnish the company or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof if he is of opinion that there is good reason for not divulging the contents of the reports or of part thereof, but shall keep a copy of any such report, or, as the case may be, the parts of any report, as regards which he is not of that opinion.

(2) The expenses of any investigation under section 324 of this Act shall be defrayed out of the Consolidated Revenue Fund.

326. Power to Require Information as to Persons Interested in Shares, etc.
(1) Where it is made to appear to the Commission that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint an inspector for the purpose, the Commission may require any person who it has reasonable cause to believe—
(a) to be or to have been interested in those shares or debentures; or
(b) to act or to have acted in relation to those shares or debentures as a legal practitioner or an agent of someone interested therein, to give to the Commission any information which the person has or might reasonably be expected to obtain as to the present and past interest in those shares or debentures and the names and addresses of the persons interested, and of any persons who act or have acted on their behalf in relation to the shares or debentures.

(2) For the purposes of this section, a person shall be deemed to have an interest in a share or debenture if he has any right to acquire or dispose of the share or debenture or
any interest therein or to vote in respect thereof, or if his consent is necessary for the exercise of any of the rights of other persons interested therein, or if other persons interested therein can be required or are accustomed to exercise their rights in accordance with his instructions.

(3) Any person who fails to give any information required of him under this section, or who, in giving any such information, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular shall be guilty of an offence and liable to a fine of ₦50,000 or to imprisonment for a term of six months or to both.

327. Power to Impose Restrictions on Shares, etc.
(1) Where, in connection with an investigation under section 324 or 326 of this Act, it appears to the Commission that there is difficulty in finding out the relevant facts about any share (whether issued or to be issued), and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned, or any of them, to assist the investigation as required by this Act, the Commission may in writing direct that the shares shall until further notice be subject to the restrictions imposed by this section.

(2) So long as any shares are directed to be subject to the restrictions imposed by this section—
(a) any transfer of those shares, or in case of unissued shares, any transfer of the right to be issued therewith and any issue thereof, shall be void;
(b) no voting rights shall be exercisable in respect of those shares;
(c) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof;
(d) except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of capital or otherwise.

(3) Where the Commission directs shares to be subject to restrictions under this section, or refuses to direct that shares shall cease to be subject thereto, any person aggrieved thereby may appeal to the court, and the court may, if it sees fit, direct that the shares shall cease to be subject to the said restrictions.

(4) Any direction or order of the court that shares shall cease to be subject to restrictions under this section, expressed to be made with a view to permitting a transfer of those shares, may continue the restrictions mentioned in paragraphs (c) and (d) of subsection (2) of this section, either in whole or in part, so far as they relate to any right acquired or offer made before the transfer.

(5) Any person who—
(a) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to restrictions under this section; or
(b) votes in respect of any such shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof; or
(c) being the holder of any such shares, fails to notify that they are subject to the said restrictions, shall be guilty of an offence and liable to a fine of ₦50,000 or imprisonment for a term of six months, or to both.
(6) Where shares in any company are issued in contravention of the said restrictions, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine of ₦50,000.

(7) A prosecution shall not be instituted under this section except by or with the consent of the Attorney-General of the Federation.

(8) This section shall apply in relation to debentures as it applies in relation to shares.

328. Savings for Legal Practitioners and Bankers
Nothing in the foregoing provisions of this Part of this Act shall require disclosure to the Commission or to an inspector appointed by it by—
(a) a legal practitioner of any privileged communication made to him in that capacity, except as regards the name and address of his client; or
(b) a company’s bankers as such, of any information as to the affairs of any of their customers other than the company.

PART XI
FINANCIAL STATEMENTS AND AUDIT

CHAPTER 1
FINANCIAL STATEMENTS
ACCOUNTING RECORDS

329. Companies to Keep Accounting Records
(1) Every company shall cause accounting records to be kept in accordance with this section.

(2) The accounting records shall be sufficient to show and explain the transactions of the company and shall be such as to—
(a) disclose with reasonable accuracy, at any time, the financial position of the company; and
(b) enable the directors to ensure that any financial statements prepared under this Part comply with the requirements of this Act as to the form and content of the company’s financial statements.

(3) The accounting records shall, in particular, contain—
(a) entries from day to day of all sums of money received and expended by the company, and the matters in respect of which the receipt and expenditure took place; and
(b) a record of the assets and liabilities of the company.

(4) If the business of the company involves dealing in goods, the accounting records shall contain—
(a) statements of stocks held by the company at the end of each year of the company;
(b) all statements of stocktakeings from which any such statement of stock as is mentioned in paragraph (a) of this subsection has been or is to be prepared; and 
(c) except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient detail to enable all these to be identified.

330. Place and Duration of Records
(1) The accounting records of a company shall be kept at its registered office or such other place in Nigeria as the directors think fit, and shall at all times be open to inspection by the officers of the company.
(2) Subject to any direction with respect to the disposal of records given under winding up rules made under section 553 of this Act, accounting records which a company is required by section 329 of this Act to keep shall be preserved by it for a period of six years from the date on which they were made.

331. Penalties for Non-compliance with Sections 329 and 330
(1) If a company fails to comply with any provision of section 329 or 330 (1) of this Act, every officer of the company who is in default shall be guilty of an offence unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable.
(2) An officer of a company shall be guilty of an offence if he fails to take all reasonable steps for securing compliance by the company with section 330 of this Act, or has intentionally caused any default by the company under it.
(3) A person guilty of an offence under this section, shall be liable to imprisonment for a term not exceeding six months or to a fine of N50,000.

332. Directors’ Duty to Prepare Annual Accounts
(1) In the case of every company, the directors shall in respect of each year of the company, prepare financial statements for the year.
(2) Subject to subsection (3) of this section, the financial statements required under subsection (1) of this section shall include—
(a) statement of the accounting policies;
(b) the balance sheet as at the last day of the year;
(c) a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the year;
(d) notes on the accounts;
(e) the auditors’ reports;
(f) the directors’ report;
(g) a statement of the source and application of fund;
(h) a value-added statement for the year;
(i) a five-year financial summary; and
(j) in the case of a holding company, the group financial statements.
(3) The financial statements of a private company need not include the matters stated in paragraphs (a), (g), (h) and (i) of subsection (2) of this section.
(4) The directors shall at their first meeting after the incorporation of the company, determine to what date in each year financial statements shall be made up, and they shall give notice of the date to the Commission within 14 days of the determination.

(5) In the case of a holding company, the directors shall ensure that, except where in their opinion there are good reasons against it, the year of each of its subsidiaries shall coincide with the year of the company.

FORM AND CONTENT OF COMPANY INDIVIDUAL AND GROUP FINANCIAL STATEMENTS

333. Form and Content of Individual Financial Statements
(1) The financial statements of a company prepared under section 332 of this Act, shall comply with the requirements of the Second Schedule to this Act (so far as applicable) with respect to their form and content, and with the accounting standards laid down in the Statements of Accounting Standards issued from time to time by the Financial Reporting Council of Nigeria:
Provided that such accounting standards do not conflict with the provisions of this Act or the Second Schedule to this Act.

(2) The balance sheet shall give a true and fair view of the state of affairs of the company as at the end of the year; and the profit and loss account shall give a true and fair view of the profit or loss of the company for the year.

(3) The statement of the source and application of funds shall provide information on the generation and utilisation of funds by the company during the year.

(4) The value added statement shall report the wealth created by the company during the year and its distribution among various interest groups such as the employees, the government, creditors, proprietors and the company.

(5) The five-year financial summary shall provide a report for a comparison over a period of five years or more of vital financial information.

(6) Subsection (2) of this section shall override—
(a) the requirements of the Second Schedule to this Act; and
(b) all other requirements of this Act as to the matters to be included in the accounts of a company or in notes to those accounts; and accordingly the provisions of subsections (7) and (8) of this section shall have effect.

(7) If the balance sheet or profit and loss account drawn up in accordance with those requirements would not provide sufficient information to comply with subsection (2) of this section, any necessary additional information shall be provided in that balance sheet or profit and loss account, or in a note to the accounts.

(8) If, owing to special circumstances in the case of any company, compliance with any such requirement in relation to the balance sheet or profit and loss account would prevent compliance with subsection (2) of this section, (even if additional information were provided in accordance with subsection (4) of this section), the directors shall depart from
that requirement in preparing the balance sheet or profit and loss account (so far as necessary) in order to comply with subsection (2) of this section.

(9) If the directors depart from any such requirement, particulars of the departure, the reasons for it and its effects shall be given in a note to the accounts.

(10) Subsections (1) to (9) of this section shall not apply to group accounts prepared under section 334 of this Act and subsections (1) and (2) of this section shall apply to a company’s profit and loss account (or require the notes otherwise required in relation to that account) if—
(a) the company has subsidiaries; and
(b) the profit and loss account is framed as a consolidated account dealing with all or any of the subsidiaries of the company as well as the company—
   (i) complies with the requirements of this Act relating to consolidated profit and loss account; and
   (ii) shows how much of the consolidated profit and loss for the year is dealt with in the individual financial statements of the company.

(11) If group financial statements are prepared and advantage is taken of subsection (7) of this section, that fact shall be disclosed in a note to the group financial statements.

334. Group Financial Statements of Holding Company

(1) If, at the end of a year a company has subsidiaries, the directors shall, as well as preparing individual accounts for that year, also prepare group financial statements being accounts or statements which deal with the state of affairs and profit or loss of the company and the subsidiaries.

(2) The provisions of subsection (1) of this section shall not apply if the company is a wholly owned subsidiary of another body corporate incorporated in Nigeria.

(3) A group financial statement may not deal with a subsidiary, if the directors of the company are of the opinion that—
   (a) it is impracticable, or would be of no real value to the members, in view of the insignificant amounts involved; or
   (b) it would involve expense or delay out of proportion to its value to members of the company; or
   (c) the result would be misleading, or harmful to the business of the company or any of its subsidiaries; or
   (d) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking.

(4) The group financial statements of a company shall consist of a consolidated—
   (a) balance sheet dealing with the state of affairs of the company and all the subsidiaries of the company; and
   (b) profit and loss account of the company and its subsidiaries.

(5) If the directors are of the opinion that it is better for the purpose of presenting the same or equivalent information about the state of affairs and profit or loss of the company and its subsidiaries, and that to so present it may be readily appreciated by the members of the company, the group financial statements may be prepared in a form not consistent
with subsection (1) of this section and in particular the group financial statement may consist of—
(a) more than one set of consolidated financial statements dealing respectively with the company and one group of subsidiaries and with other groups of subsidiaries; or
(b) separate financial statements dealing with each of the subsidiaries; or
(c) statements expanding the information about the subsidiaries in individual financial statements of the company, or in any other form.
(6) The group financial statements may be wholly or partly incorporated in the individual balance sheet and profit and loss account of the holding company.

335. Form and Content of Group Financial Statements
(1) The group financial statements of a holding company shall comply with the requirements of the Second Schedule to this Act, so far as applicable to group financial statements in the form in which those accounts are prepared with respect to the form and content of those statements and any additional information to be provided by way of notes to those accounts.

(2) Group financial statements together with any notes thereon shall give a true and fair view of the state of affairs and profit or loss of the company and the subsidiaries dealt with by those statements as a whole.

(3) Subsection (2) of this section shall override—
(a) the requirements of the Second Schedule to this Act; and
(b) all the requirements of this Act as to the matters to be included in group financial statements or in notes to those statements and accordingly subsections (4) and (5) of this section shall have effect.

(4) If group financial statements are not in accordance with the requirements of this Act by not providing sufficient information in compliance with subsection (2) of this section, any necessary additional information shall be provided in, or in a note to, the group financial statements.

(5) If, owing to special circumstances in the case of any company, compliance with any such requirements in relation to its group financial statements would prevent the statements from complying with subsection (2) of this section, (even if additional information were provided in accordance with subsection (4) of this section, the directors may depart from that requirement in preparing the group financial statements).

336. Meaning of “Holding Company”, “Subsidiary” and “Wholly-owned Subsidiary”
(1) Subject to subsection (4) of this section, a company shall for the purposes of this Act be deemed to be a subsidiary of another company if—
(a) the company—
   (i) is a member of it and controls the composition of its board of directors; or
   (ii) holds more than half in nominal value of its equity share capital; or
(b) the first-mentioned company is subsidiary of any company which is that other’s subsidiary.

(2) For the purposes of subsection (1) of this section, the composition of the board of directors of a company shall be deemed to be controlled by another company if that other
company by the exercise of some power, without the consent or concurrence of any other person, can appoint or remove the holders of all or majority of the directors.

(3) For purposes of subsection (2) of this section, the other company shall be deemed to have power to appoint a director with respect to which any of the following conditions is satisfied that—
(a) a person cannot be appointed to it without the exercise in his favour by the other company of such power as is mentioned in this section; or
(b) the appointment of a person to the directorship follows necessarily from his appointment as director of the other company; or
(c) the directorship is held by the other company itself or by a subsidiary of it.

(4) In determining whether one company is a subsidiary of another—
(a) any shares held or power exercisable by the other in a fiduciary capacity shall be treated as not held or exercisable by it;
(b) subject to paragraphs (c) and (d) of this subsection, any shares held or power exercisable—
   (i) by any person as nominee for the other (except where the other is concerned only in a fiduciary capacity); or
   (ii) by, or by a nominee for, a subsidiary or the other (not being a subsidiary which is concerned only in a fiduciary capacity), shall be treated as held or exercisable by the other;
(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded;
(d) any shares held or power exercisable by, or by a nominee for, the other or its subsidiary (not being held or exercisable as mentioned in paragraph (c) of this subsection), shall be treated as not held or exercisable by the other, if the ordinary business of the other or its subsidiary (as the case may be) includes the lending of money and the shares are held or the power is exercisable as above mentioned by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(5) For the purposes of this Act—
(a) a company shall be deemed to be the holding company of another, if the other is its subsidiary; and
(b) a body corporate shall be deemed to be the wholly-owned subsidiary of another, if it has no member except that other and that other's wholly owned subsidiaries are its or their nominees.

(6) In this section, “company” includes anybody corporate.

337. Additional Disclosure Required in Notes to Financial Statements
(1) The additional matters contained in the Third Schedule to this Act shall be disclosed in the company’s financial statements for the year; and in that Schedule, where a thing is required to be stated or shown or information is required to be given, it shall be construed to mean that the thing shall be stated or shown, or the information is to be given in a note to those statements.

(2) In the Third Schedule to this Act—
(a) Parts I and II deal respectively with the disclosure of particulars of the subsidiaries of the company and its shareholders;
(b) Part III deals with the disclosure of financial information relating to subsidiaries;
(c) Part IV requires a subsidiary company to disclose its ultimate holding company;
(d) Part V deals with the emoluments of directors, including emoluments waived, pensions of directors and compensation for loss of office to directors and past directors; and
(e) Part VI deals with disclosure of the number of the employees of the company who are remunerated at higher rates.

(3) Whenever it is stated in Third Schedule to this Act that this subsection shall apply to certain particulars or information, the particulars or information shall be annexed to the annual return first made by the company after copies of its financial statements have been laid before its shareholders in a general meeting and if a company fails to satisfy an obligation thus imposed, the company and every officer of it shall be liable to a penalty of N10,000.

(4) It shall be the duty of any director of a company to give notice to the company of such matters relating to himself as may be necessary for the purposes of Part V of the Third Schedule to this Act and this applies to persons who are or have at any time in the preceding three years been officers as it applies to directors.

(5) A person who makes default in complying with the provisions of subsection (4) of this section, shall be liable to a penalty of N100 for every day during which the default continues.

338. Disclosure of Loans in Favour of Directors and Connected Persons
(1) The group financial statements of a holding company for a year shall comply with Part I of the Fourth Schedule to this Act (so far as applicable) as regards the disclosure of transactions, arrangements and agreements mentioned therein, including loans, quasiloans and other dealings in favour of directors.
(2) In the case of a company other than a holding company, its individual accounts shall comply with Part I of the Fourth Schedule to this Act (so far as applicable) as regards disclosure matters contained therein.
(3) Particulars which are required to be contained in Part I of the Fourth Schedule to this Act in any financial statements shall be required in respect of shadow directors as well as a director given by way of notes.
(4) Where by virtue of subsection (2) or (3) of section 336 of this Act, a company does not prepare group financial statements for a year, it shall disclose such matters in its individual statements as would have been disclosed in group financial statements.
(5) The requirements of this section shall apply with such modifications as are necessary to bring them in line with Part I of the Fourth Schedule to this Act (including with particulars of exceptions in respect of recognised banks) it shall disclose.

[Fourth Schedule.]
339. Disclosure of Loans, etc., to Officers of the Company and Statements of Amounts Outstanding

(1) The group financial statements of a holding company for a year shall comply with Part II of the Fourth Schedule to this Act (so far as applicable) as regards transactions, arrangements and agreements made by the company or a subsidiary of it for persons who at any time during that year were officers of the company but not directors.

(2) In the case of a company other than a holding company, its individual accounts shall comply with Part II of the Fourth Schedule to this Act (so far as applicable) as regards matters contained therein.

(3) Subsections (1) and (2) of this section shall not apply in relation to any transaction or agreement made by a recognised bank for any of its officers or for any of the officers of its holding company.

(4) Particulars required by Part II of the Fourth Schedule to this Act to be in any accounts shall be given by way of notes to the accounts.

(5) Where by virtue of subsection (2) or (3) of section 336 of this Act, a company does not prepare group financial statements for a year, it shall disclose this fact in its individual financial statements as required by subsection (1) of this section.

DIRECTORS’ REPORTS

340. Directors’ Report

(1) In the case of every company, there shall be prepared in respect of each year, a report by the directors—

(a) containing a fair view of the development of the business of the company and its subsidiaries during the year and of their position at the end of it; and

(b) stating the amount (if any) which they recommend should be paid as dividend and the amount (if any) which they propose to carry to reserves.

(2) The directors’ report shall state the names of the persons who, at any time during the year, were directors of the company, and the financial activities of the company and its subsidiaries in the course of the year and any significant change in those activities in the year.

(3) The report shall also state the matters, and give the particulars, required by Part I of the Fifth Schedule to this Act.

(4) Part II of the Fifth Schedule to this Act shall apply as regards the matters to be stated in the report of the directors in the circumstances specified therein.

(5) Part III of the Fifth Schedule to this Act shall apply as regards the matters to be stated in the directors’ report relative to the employment, training and advancement of disabled persons, the health, safety and welfare at work of the employees of the company and the involvement of employees in the affairs, policy and performance of the company.

(6) In respect of any failure to comply with the requirements of this Act as to the matters to be stated and the particulars to be given in the directors’ report, every person
who was a director of the company immediately before the end of the period prescribed for
laying and delivering financial statements shall be guilty of an offence and liable on
conviction to a term of imprisonment for not more than six months or to a fine of \text{₦50,000}.

(7) In proceedings for an offence under subsection (6) of this section, it shall be a
defence for the person to prove that he took all reasonable steps for securing compliance
with the requirements in question.

**PROCEDURE ON COMPLETION OF FINANCIAL STATEMENTS**

341. Signing of Balance Sheet and Documents to be Annexed Thereto

(1) A company’s balance sheet and every copy of it which is laid before the company in
general meeting or delivered to the Commission shall be signed on behalf of the board by
two of the directors of the company.

(2) If a copy of the balance sheet—
(a) is laid before the company or delivered to the Commission without being signed as
required by this section; or
(b) not being a copy so laid or delivered, is issued, circulated or published in a case
where the balance sheet has not been signed as so required or where (the balance
sheet having been so signed) the copy does not include a copy of the signature as
the case may be,
the company and every officer of it shall be liable to a penalty of \text{₦10,000}.

(3) A company’s profit and loss account and, so far as not incorporated in its individual
balance sheet or profit and loss account, any group accounts of a holding company, shall
be annexed to the balance sheet, and the auditors’ report and the directors’ report shall
also be attached to the balance sheet.

(4) The balance sheet and the profit and loss account annexed to it shall be approved
by the board of directors and signed on their behalf by two directors authorised to do so.

342. Persons Entitled to Receive Financial Statements as of Right

(1) In the case of every company, a copy of the company’s financial statements for the
year shall, not less than 21 days before the date of the meeting at which they are to be laid
in accordance with section 343 of this Act be sent to each of the following persons—
(a) every member of the company (whether or not entitled to receive notice of general
meetings);
(b) every holder of the company’s debentures, (whether or not so entitled); and
(c) all persons other than members and debenture holders, being persons so entitled.

(2) In the case of a company not having a share capital, subsection (1) of this section
shall not require a copy of the financial statements to be sent to a member of the company
who is not entitled to receive notices of general meetings of the company, or to a holder of
the company’s debenture who is not so entitled.

(3) Subsection (1) of this section shall not require copies of the financial statements to
be sent to—
(a) a member of the company or a debenture holder, being in either case a person who is not entitled to receive notices of general meetings, and of whose address the company is unaware; or
(b) more than one of the joint holders of any shares or debentures none of whom are entitled to receive such notices; or
(c) those who are not so entitled in the case of joint holders of shares or debentures, some of whom are not entitled to receive such notices.

(4) If copies of the financial statements are sent less than 21 days before the date of the meeting, it shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting.

(5) If default is made in complying with subsection (1) of this section, the company and every officer of it shall be liable to a penalty of N20,000.

343. Directors’ Duty to Lay and Deliver Financial Statements

(1) In respect of each year, the directors shall at a date not later than 18 months after incorporation of the company and subsequently once at least in every year, lay before the company in general meeting copies of the financial statements of the company made up to a date not exceeding nine months previous to the date of the meeting.

(2) The auditors’ report shall be read before the company in general meeting, and be open to the inspection of any member of the company.

(3) In respect of each year, the directors shall deliver with the annual return to the Commission a copy of the balance sheet, the profit and loss account and the notes on the statements which were laid before the general meeting as required by this section.

(4) In the case of an unlimited company, the directors shall not be required by subsection (3) of this section to deliver a copy of the accounts if—
(a) at no time during the accounting reference period has the company been, to its knowledge, the subsidiary of a company that was then limited and at no such time, to its knowledge, have there been held or been exercisable, by or on behalf of two or more companies that were then limited, shares or powers which, if they had been held or been exercisable by one of them, would have made the company its subsidiary; and
(b) at no such time has the company been the holding company of a company which was then limited.

(5) References in this section to a company that was limited at a particular time are to a body corporate (under whatever law incorporated) the liability of whose members was at that time limited.

344. Penalty for Non-compliance with Section 343

(1) If in a year any of the requirements of section 343 (1) or (3) of this Act is not complied with by any company, every person who immediately before the end of that period was a director of the company shall in respect of each of those subsections which is not so complied with shall be liable to a daily default fine of N100 in the case of a small company, a company limited by guarantee or an unlimited company, and N1,000 in the case of any other company.
(2) If a person is charged with an offence in respect of any of the requirements of subsection (1) or (3) of section 343 of this Act, it shall be a defence for him to prove that he took all reasonable steps for securing that those requirements be complied with before the end of the period allowed for laying and delivering accounts.

(3) In proceedings under this section with respect to a requirement to lay a copy of a document before a company in general meeting, or to deliver a copy of a document to the Commission, it shall not be a defence to prove that the document in question was not in fact prepared as required by this Part of this Act.

345. Default Order in Case of Non-compliance
(1) If—
(a) in respect of a year, any of the requirements of subsections (1) and (3) of section 343 of this Act has not been complied with by a company before the end of the period allowed for laying and delivering financial statements; and
(b) the directors of the company fail to make good the default within 14 days after the service of a notice on them requiring compliance, the court may on application by any member or creditor of the company or by the Commission make an order directing the directors (or any of them) to make good the default within such time as may be specified in the order.

(2) The court’s order may provide that all costs of and incidental to the application shall be borne by the directors.

(3) Nothing in this section shall affect the provisions of section 344 of this Act.

346. Penalty for Laying or Delivering Defective Financial Statements
(1) If any financial statements of a company (other than its group financial statement) of which a copy is laid before the shareholders in general meeting or delivered to the Commission do not comply with the requirement of this Act as to the matters to be included in, or in a note to, those financial statements, every person who at the time when the copy is laid or delivered is a director of the company shall, in respect of each contravention, be liable to a penalty of N2,000.

(2) If any group financial statements of which a copy is laid before a company in a general meeting or delivered to the Commission do not comply with section 343 (4) and (5) or section 344 of this Act and with the other requirements of this Act as to the matters to be included in or in a note to those financial statements, every person who at the time when the copy was so laid or delivered was a director of the company shall be liable to a penalty of N5,000.

(3) In proceedings against a person for an offence under this section, it shall be a defence for him to prove that he took all reasonable steps for securing compliance with the requirements in question.

347. Shareholders’ Right to Obtain Copies of Financial Statements
(1) Any member of a company, whether or not he is entitled to have sent to him copies of the company’s financial statements, and any holder of the company’s debentures
(whether or not so entitled) shall be entitled to be furnished (on demand and without charge) with a copy of the company’s last financial statements.

(2) If, when a person makes a demand for a document with which he is entitled by this section to be furnished, default is made in complying with the demand within seven days after its making, the company and every officer of it shall be liable to a daily default penalty of N200, unless it is proved that the person has already made a demand for, and been furnished with, a copy of the documents.

MODIFIED FINANCIAL STATEMENTS

348. Entitlement to Deliver Financial Statements in Modified Form
(1) In certain cases a company's directors may, in accordance with Part 1 of the Seventh Schedule to this Act, deliver modified financial statements in respect of a year as a small company.

(2) For the purposes of sections 349 to 350 and the Seventh Schedule to this Act, “deliver” means deliver to the Commission.

349. Qualification of a Small Company
(1) A company qualifies as a small company in a year if for that year the following conditions are satisfied—
(a) it is a private company having a share capital;
(b) the amount of its turnover for that year is not more than N10 million or such amount as may be fixed by the Commission;
(c) its net assets value is not more than N5 million or such amount as may be fixed by the Commission;
(d) none of its members is a Government or a Government corporation or agency or its nominee; and
(e) the directors between them hold not less than 51 per cent of its equity share capital.

(2) In applying subsection (1) of this section, to a period which is a company’s year but not in fact a year, the maximum figures for turnover in paragraph (b) of that subsection shall be proportionately adjusted.

350. Modified Individual Financial Statements
(1) The directors of a company may (subject to section 351 of this Act where the company has subsidiaries) deliver individual financial statements modified as for a small company in the cases specified in subsections (2) and (3) of this section; and Part 1 of the Seventh Schedule shall apply with respect to the delivery of financial statements so modified.

(2) In respect of the company's first year the directors may deliver financial statements modified as for a small company, if in that year it qualifies as small.

(3) The directors may in respect of a company’s year subsequent to the first—
(a) deliver financial statements modified as for a small company if the company qualifies as small and it also so qualified in the preceding year;
(b) deliver financial statements modified as for a small company (although not qualifying in that year as small), if in the preceding year it so qualified and the
directors were entitled to deliver financial statements so modified in respect of that year;
(c) deliver financial statements modified as for a small company if, in that year the company qualifies as small and the directors were entitled under paragraph (b) of this subsection to deliver financial statements so modified for the preceding year (although the company did not in that year qualify as small).

351. Modified Financial Statements of Holding Company
(1) This section shall apply to a holding company where in respect of a year section 334 of this Act requires the preparation of group financial statements for the company and its subsidiaries.

(2) The directors of the holding company may not under section 350 of this Act deliver financial statements modified as for a small company, unless the group (that is to say, the holding company and its subsidiaries together) is in that year a small group and the group is small if it would so qualify under section 349 of this Act (applying that section as directed by subsections (3) and (4) of this section, if it were all one company.

(3) The figures to be taken into account in determining whether the group is small shall be the group account figures, that is—
(a) where the group financial statements are prepared as consolidated financial statements, the figures for turnover and balance sheet total; and
(b) where the group financial statements are not prepared as consolidated financial statements, the corresponding figures given in the group financial statements, with such adjustment as would have been made if the statements had been prepared in consolidated form; aggregated in either case with the relevant figures for the subsidiaries (if any) omitted from the group accounts (excepting those for any subsidiary omitted under section 334 (3) (a) of this Act on the ground of impracticability).

(4) In the case of each subsidiary omitted from the group financial statements, the figures relevant as regards turnover, and balance sheet total shall be those which are included in the financial statements of that subsidiary prepared in respect of its relevant year (with such adjustment as would have been made if those figures had been included in group financial statements prepared in consolidated form).

(5) For the purposes of subsection (4) of this section, the relevant year of the subsidiary shall be—
(a) if its year ends with that of the holding company to which the group financial statements relate, that year; and
(b) if not, the subsidiary’s year ending last before the end of the year of the holding company.

(6) If the directors are entitled to deliver modified financial statements, they may also deliver modified group financial statements, and such group financial statements—
(a) if consolidated, may be in accordance with Part II of the Seventh Schedule (while otherwise comprising or corresponding with group financial statements prepared under section 334 of this Act); and
(b) if not consolidated, may be such as (together with any notes) give the same or equivalent information as required by paragraph (a) of this subsection, and Part III
to the Seventh Schedule to this Act shall apply to modified group financial statements whether consolidated or not.

**PUBLICATION OF FINANCIAL STATEMENTS**

352. **Publication by a Company of Full Individual or Group Financial Statements**

(1) This section shall apply to the publication by a company of full individual or group financial statements, that is to say, the statements required by section 343 of this Act to be laid before the company in general meeting and delivered to the Commission, including the directors’ report, unless dispensed with under paragraph 3 of the Sixth Schedule to this Act, but does not apply to interim financial statements.

(2) If a company publishes individual financial statements (modified or other) for a year, it shall publish with them the relevant auditors’ report.

(3) If a company required by section 334 of this Act to prepare group financial statements for a year, publishes individual financial statements for that year, it shall also publish with them its group financial statements (which may be modified financial statements but only if the individual financial statements are modified).

(4) If a company publishes group financial statements (modified or not) otherwise than together with its individual financial statements, it shall publish with them the relevant auditors’ report.

(5) References in this section to the relevant auditor’s report are to the auditors’ report under section 358 of this Act or, in the case of modified financial statements (individual or group), the auditors’ special report under paragraph 10 of the Sixth Schedule to this Act.

(6) If default is made in complying with any provision of this section, the company and every officer of the company shall be liable to a penalty of N200.00 for every day during which the default continues..

353. **Publication of Abridged Financial Statements**

(1) This section shall apply to the publication by a company of abridged financial statements, that is to say, any balance sheet or profit and loss account relating to a year of the company or purporting to deal with any such year, otherwise than as part of full financial statements (individual or group) to which section 352 of this Act applies.

(2) The reference in subsection (1) of this section to a balance sheet or profit and loss account, in relation to financial statements published by a holding company, includes an account in any form purporting to be a balance sheet or profit and loss account for the group consisting of the holding company and its subsidiaries.

(3) If the company publishes abridged financial statements, it shall publish with those statements, a statement indicating—

(a) that the statements are not full financial statements;

(b) whether full individual or full group financial statements according as the abridged statements deal solely with the company’s own affairs or with the affairs of the company and any subsidiaries have been delivered to the Commission or, in the case of an unlimited company exempted under subsection (4) of section 343 of this Act.
Act, from the requirement to deliver financial statements, that the company is so exempted;

(c) whether the company’s auditors have made a report under section 358 of this Act on the company’s financial statements for any year with which the abridged financial statements purport to deal; and

(d) whether any report so made was unqualified (meaning that it was a report, without qualification, to the effect that in the opinion of the person making it, the company’s financial statements had been properly prepared).

(4) Where a company publishes abridged financial statements, it shall not publish with those statements any such report of the auditors as is mentioned in subsection (3) (c) of this section.

(5) If default is made in complying with any provision of this section, the company and every officer of the company shall be liable to a penalty of N200.00 for every day during which the default continues.

Supplementary

354. Power to Alter Accounting Requirements

(1) The Minister may after consultation with the Financial Reporting Council of Nigeria by regulations in a statutory instrument—

(a) add to the classes of documents—

(i) to be comprised in a company’s financial statements for a year to be laid before the company in general meeting as required by section 343, of this Act; or

(ii) to be delivered to the Commission under that section, and make provision as to the matters to be included in any document to be added to either class; or

(b) modify the requirements of this Act as to the matters to be stated in a document of any such class; or

(c) reduce the classes of documents to be delivered to the Commission under section 340 of this Act.

CHAPTER 2

AUDIT

355. Appointment of Auditors

(1) Every company shall at each annual general meeting appoint an auditor or auditors to audit the financial statements of the company, and to hold office from the conclusion of that, until the conclusion of the next, annual general meeting.

(2) At any annual general meeting a retiring auditor, however appointed, shall be re-appointed without any resolution being passed unless—

(a) he is not qualified for re-appointment; or

(b) a resolution has been passed at that meeting appointing some other person instead of him or providing expressly that he shall not be re-appointed; or

(c) he has given the company notice in writing of his unwillingness to be re-appointed:
Provided that where notice is given of an intended resolution to appoint some person or persons in place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with, the retiring auditor shall not be automatically re-appointed by virtue of this subsection.

(3) Where at an annual general meeting, no auditors are appointed or re-appointed, the directors may appoint a person to fill the vacancy.

(4) The company shall, within one week of the power of the directors under subsection (3) of this section becoming exercisable, give notice of that fact to the Commission; and if a company fails to give notice as required by this subsection, the company and every officer of the company shall be liable to a penalty of N100 for every day during which the default continues.

(5) Subject as hereinafter provided, the first auditors of a company may be appointed by the directors at any time before the company is entitled to commence business and auditors so appointed shall hold office until the conclusion of the next annual general meeting:
Provided that—
(a) the company may at a general meeting remove any such auditors and appoint in their place any other person who has 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 14 days before the date of the meeting; and
(b) if the directors fail to exercise their powers under this subsection; the company may, in a general meeting convened for that purpose, appoint the first auditors and thereupon the said powers of the directors shall cease.

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

356. Exemption from Audit Requirement
(1) A company is exempt from the requirements of this Act relating to the audit of accounts in respect of a financial year if:
(a) it has not carried on any business since its incorporation; or
(b) its turnover in that year is not more than N10 million and the balance sheet total is not more than N5 million.

(2) A company shall not be entitled to an exemption under subsection (1) of this section if it was at any time within the financial year in question an insurance company, a bank or any other company as may be prescribed by the Commission.

357. Qualification of Auditors
(1) The provisions of any Act establishing a body of accountants shall have effect in relation to any investigation or audit for the purpose of this Act so however that none of the following persons shall be qualified for appointment as auditor of a company, that is—
(a) an officer or servant of the company;
(b) a person who is a partner of or in the employment of an officer or servant of the company; or
(c) a body corporate, and references in the subsection to an officer or servant shall be construed as not including references to an auditor.

(2) In the application of subsection (1) of this section, the disqualification shall extend and apply to persons who in respect of any period of an audit were in the employment of the company or were otherwise connected therewith in any manner.

(3) A person shall also not qualify for appointment as an auditor of a company if he is,

(a) disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company;

(b) a debtor to the company or to a company that is deemed to be related to the company by virtue of interest in shares, in an amount exceeding N500,000;

(c) a shareholder or spouse of a shareholder of a company whose employee is an officer of the company;

(d) a person who is or whose partner, employee or employer is responsible for the keeping of the register of holders of debentures of the company; or

(e) an employee of or consultant to the company who has been engaged for more than one year in the maintenance of any of the company's financial records or preparation of any of its financial statements; or

(f) under subsection (5) of this section, disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

(4) Notwithstanding subsections (1), (2) and (3), of this section, a firm is qualified for appointment as auditor of a company if, but only if, all the partners are qualified for appointment as auditors of it.

(5) No person shall act as auditor of a company at a time when he knows that he is disqualified for appointment to that office and if an auditor of a company to his knowledge becomes so disqualified during his term of office, he shall thereupon vacate his office and give notice in writing to the company that he has vacated it by reason of that disqualification.

(6) A person who acts as auditor in contravention of subsection (5), of this section or fails without reasonable excuse to give notice of vacating his office as required by that subsection, shall be guilty of an offence and liable to a penalty of N50,000 and, for continued contravention, to a daily default penalty of N100.

358. Auditors’ Report

(1) The auditors of a company shall make a report to its members on the accounts examined by them, and on every balance sheet and profit and loss account, and on all group financial statements, copies of which are to be laid before the company in a general meeting during the auditors’ tenure of office.

(2) The auditors’ report shall state the matters set out in the Sixth Schedule to this Act.
In addition to the report made under subsection (1) of this section, the auditor shall in the case of a public company also make a report to an audit committee which shall be established by the public company.

The audit committee referred to in subsection (3) of this section shall consist of seven shareholders who are not directors of the company.

The audit committee shall examine the auditors' report and make recommendations thereon to the annual general meeting as it may think fit.

Where the audit committee requires the advice of any director on a particular matter, it may co-opt him for such period as it thinks fit to assist in the discharge of any of its functions under this Act.

The members of the audit committee shall be persons with knowledge of accounting, law and internal processes and control; and any member may nominate a shareholder as a member of the audit committee by giving notice in writing of such nomination to the secretary of the company at least 21 days before the annual general meeting.

Subject to such other additional functions and powers that the company’s articles of association may stipulate, the objectives and functions of the audit committee shall be to—

(a) ascertain whether the accounting and reporting policies of the company are in accordance with legal requirements and agreed ethical practices;

(b) review the scope and planning of audit requirements;

(c) review the findings on management matters in conjunction with the external auditor and departmental responses thereon;

(d) keep under review the effectiveness of the company’s system of accounting and internal control;

(e) make recommendations to the Board in regard to the appointment, removal and remuneration of the external auditors of the company; and

(f) authorise the internal auditor to carry out investigations into any activities of the company which may be of interest or concern to the committee.

359. Corporate Responsibility for Financial Reports

The managing director and internal auditor of a company or persons performing similar functions shall certify in each auditors’ report that:

(a) the officer who signed the report has reviewed the report;

(b) based on the officer's knowledge—

(i) the report does not contain any untrue statement of material fact or omit to state a material fact in order to make the statements not misleading, and

(ii) the financial statements and other financial information included in the report fairly present, in all material respects, the financial condition and results of operation of the company as of and for, the periods covered by the report;
(c) the officer who signed the report—

(i) is responsible for establishing and maintaining internal controls;
(ii) has designed such internal controls to ensure that material information relating to the company and its subsidiaries is made known to the officer by other officers of the companies, particularly during the period in which the report is being prepared;
(iii) has evaluated the effectiveness of the company’s internal controls as of a date within 90 days prior to the report, and
(iv) has presented in the report his conclusion about the effectiveness of his internal control based on his evaluation as of that date; and

(d) the officer who signed the report disclosed to the company’s auditors and audit committee:

(i) all significant deficiencies in the design or operation of internal controls which could adversely affect the company’s ability to record, process, summarise and report financial data and has identified for the company’s auditors any material weaknesses in internal controls, and

(ii) whether or not, there is any fraud that involves management or other employees who have a significant role in the company’s internal control;

(e) the officer who signed the report, has indicated in the report, whether or not, there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

(2) Where a managing director, internal auditor of a company or person performing similar functions fails to discharge the duty imposed on him under this section, he shall be guilty of an offence and liable on conviction to a fine of N300,000.00 or imprisonment for a term of twelve months or to both.

360. Improper Influence on Conduct of Audit

(1) It shall be an offence for any officer or director of a company, or any other person acting under the direction of such officer or director, to take any action to influence, coerce, manipulate or mislead any external auditor engaged in the performance of an audit of the financial statements of that company for the purpose of rendering such financial statements misleading.

(2) A person guilty of an offence under subsection (1) of this section shall be liable on conviction to a fine of N200,000.00 or imprisonment for a term not exceeding 2 years or to both fine and imprisonment.

361. Auditors’ Duties and Powers

(1) It shall be the duty of the company’s auditors, in preparing their report to carry out such investigations as may enable them to form an opinion as to the following matters whether—
(a) proper accounting records have been kept by the company and proper returns adequate for their audit have been received from branches not visited by them;

(b) the company’s balance sheet and (if not consolidated) its profit and loss account are in agreement with the accounting records and returns.

(2) If the auditors are of opinion that proper accounting records have not been received from branches not visited by them, or if the balance sheet and (if not consolidated) the profit and loss account are not in agreement with the accounting records and returns, the auditors shall state that fact in their report.

(3) Every auditor of a company shall have a right of access at all times to the company’s books, accounts and vouchers, and be entitled to require from the company’s office such information and explanations as he thinks necessary for the performance of the auditor’s duties.

(4) If the requirements of Part V and VI of the Third Schedule and Parts I to III of the Fourth Schedule to this Act are not complied with in the accounts, it shall be the auditors’ duty to include in their report, so far as they are reasonably able to do so, a statement giving the required particulars.

(5) It shall be the auditors’ duty to consider whether the information given in the directors’ report for the year for which the accounts are prepared is consistent with those accounts; and if they are of opinion that it is not, they shall state that fact in their report.

362. Remuneration of Auditors

(1) The remuneration of the auditors of a company—

(a) in the case of an auditor appointed by the directors, may be fixed by the directors; or

(b) shall, subject to the foregoing paragraph, be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

(2) For the purposes of subsection (7) of this section, “remuneration” includes sums paid by the company in respect of the auditors’ expenses.

363. Removal of Auditors

(1) A company may by ordinary resolution remove an auditor before the expiration of his term of office, notwithstanding anything in any agreement between it and him.

(2) Where a resolution removing an auditor is passed at a general meeting of a company, the company shall within 14 days give notice of that fact in the prescribed form to the Commission and if a company fails to give the notice required by this subsection, the company and every officer of the company shall be liable to a penalty of N100 for every day during which the default continues.

(3) Nothing in this section shall be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as auditor or of any appointment terminating with that as auditor.

364. Auditors’ Right to Attend Company’s Meetings
(1) A company’s auditors shall be entitled to attend any general meeting of the company and to receive all notices of and other communications relating to any general meeting which a member of the company is entitled to receive and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditor.

(2) An auditor of a company who has been removed shall be entitled to attend—
(a) the general meeting at which his term of office would otherwise have expired; and
(b) any general meeting at which it is proposed to fill the vacancy caused by his removal, and to receive all notices of, and other communications relating to, any such meeting which any member of the company is entitled to receive, and to be heard at any such meeting which he attends on any part of the business of the meeting which concerns him as former auditor of the company.

365. Supplementary Provisions Relating to Auditors
(1) A special notice shall be required for a resolution at a general meeting of a company—
(a) appointing as auditor a person other than a retiring auditor; or
(b) filling a casual vacancy in the office of auditor; or
(c) re-appointing as auditor a retiring auditor who was appointed by the directors to fill a casual vacancy; or
(d) removing an auditor before the expiration of his term of office.

(2) On receipt of notice of such an intended resolution as is mentioned in subsection (1), the company shall forthwith send a copy of it—
(a) to the person proposed to be appointed or removed, as the case may be;
(b) in a case within subsection (1) (a) of this section, to the retiring auditors; and
(c) where, in a case within subsection (1) (b) or (c) of this section, the casual vacancy was caused by the resignation of an auditor, to the auditor who resigned.

(3) Where notice is given of such a resolution as is mentioned in subsection (1) (a) or (d) of this section and the retiring auditor (or, as the case may be, the auditor proposed to be removed) makes with respect to the intended resolution representations in writing to the company not exceeding a reasonable length, and requests their notification to members of the company, the company shall (unless the representations are received by it too late for it to do so)—
(a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and
(b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.

(4) If a copy of any such representations is not sent out as required by subsection (3) of this section because they were received too late or because of the company’s default, the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.

(5) Copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person claiming to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court
may order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

366. Resignation of Auditors

(1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's registered office; and any such notice shall operate to bring his term of office to an end on the date of which the notice is deposited, or on such later date as may be specified in it.

(2) An auditor's notice of resignation shall not be effective unless it contains either—
(a) a statement to the effect that there are no circumstances connected with his resignation which he considers should be brought to the notice of the members or creditors of the company; or
(b) a statement of any such circumstances as are mentioned above.

(3) Where a notice under this section is deposited at a company's registered office, the company shall within 14 days send a copy of the notice—
(a) to the Commission; and
(b) if the notice contained a statement under subsection (2) (b) of this section, to every person who under section 342 of this Act is entitled to be sent copies of the financial statements.

(4) The company or any person claiming to be aggrieved may, within 14 days of the receipt by the company of a notice containing a statement under subsection (2) (b) of this section, apply to the court for an order under subsection (5) of this section.

(5) If on such an application the court is satisfied that the auditor is using the notice to secure needless publicity for defamatory matter, it may, by order, direct that copies of the notice need not be sent out; and the court may further order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(6) The company shall, within 14 days of the court's decision, send to the persons mentioned in subsection (3) of this section—
(a) if the court makes an order under subsection (5) of this section, a statement setting out the effect of the order;
(b) if not, a copy of the notice containing the statement under subsection (2) (b) of this section.

(7) If default is made in complying with the provisions of subsection (3) or (6) of this section, the company and every officer of the company shall be liable to a penalty for every day during which the default continues.

367. Right of Resigning Auditor to Requisition Company Meeting

(1) Where an auditor's notice of resignation contains a statement under section 366 (2) (b) of this Act, there may be deposited with the notice a requisition signed by the auditor calling on the directors of the company forthwith duly to convene an extraordinary general meeting of the company for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.
(2) Where an auditor's notice of resignation contains such a statement, the auditor may request the company to circulate to its members before—
(a) the general meeting at which his term of office would otherwise have expired; or
(b) any general meeting at which it is proposed to fill the vacancy caused by his resignation or convened on his requisition, a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation.

(3) If a resigning auditor requests the circulation of a statement by virtue of subsection (2) of this section, the company shall (unless the statement is received by it too late for it to comply)—
(a) in any notice of the meeting given to members of the company, state the fact of the statement having been made; and
(b) send a copy of the statement to every member of the company to whom notice of the meeting is or has been sent.

(4) If the directors do not within 21 days from the date of the deposit of a requisition under this section proceed duly to convene a meeting for a day not more than 28 days after the date on which the notice convening the meeting is given, every director shall be liable to a penalty of N5,000.

(5) If a copy of the statement mentioned in subsection (2) of this section is not sent out as required by subsection (3) of this section because it was received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the statement shall be read out at the meeting.

(6) Copies of a statement need not be sent out and the statement need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(7) An auditor who has resigned his office shall be entitled to attend any such meeting as is mentioned in subsection (2) (a) or (b) of this section and to receive all notices of and other communications relating to any such meeting which any member of the company is entitled to receive, and to be heard at any such meeting which concerns him as former auditor of the company.

368. Powers of Auditors in Relation to Subsidiaries
(1) Where a company has a subsidiary, then—
(a) if the subsidiary is a body corporate incorporated in Nigeria it shall be the duty of the subsidiaries and its auditors to give the auditors of the holding company such information and explanation as those auditors may reasonably require for the purposes of their duties as auditors of the holding company;
(b) in any other case, it shall be the duty of the holding company, if required by its auditors to do so, to take all such steps as are reasonably open to it to obtain from the subsidiary such information and explanation as are mentioned above.
(2) If a subsidiary or holding company fails to comply with the provisions of subsection (1) of this section, the subsidiary or holding company, and every officer of shall be liable to a penalty of N5,000; and if an auditor fails without reasonable excuse to comply with paragraph (a) of the subsection, he shall be so liable.

369. Liability of Auditors for Negligence
(1) A company's auditor shall in the performance of his duties, exercise all such care, diligence and skill as is reasonably necessary in each particular circumstance.

(2) Where a company suffers loss or damage as a result of the failure of its auditor to discharge the fiduciary duty imposed on him by subsection (1) of this section, the auditor shall be liable for negligence and the directors may institute an action for negligence against him in the court.

(3) If the directors fail to institute an action against the auditor under subsection (2) of this section, any member may do so after the expiration of 30 days' notice to the company of his intention to institute such action.

370. False Statements to Auditors
(1) An officer of a company commits an offence if he knowingly or recklessly makes to a company's auditors a statement (whether written or oral) which—
(a) conveys or purports to convey any information or explanation which the auditors require, or are entitled to require, as auditors of the company; and
(b) is misleading, false or deceptive in a material particular.

(2) A person guilty of an offence under this section shall be liable to imprisonment for one year or to a fine of N100,000 or both.

PART XII
ANNUAL RETURNS

371. Annual Return by Company Limited by Shares or Guarantee
Every company shall, once at least in every year, make and deliver either in hard copy or through electronic communications to the Commission an annual return in the form, and containing the matters specified in sections 372, 373 or 374 of this Act as may be applicable:
Provided that a company need not make a return under this section either in the year of its incorporation or, if it is not required by section 211 of this Act to hold an annual general meeting during the following year, in that year.

372. Annual Return by Company Having Shares Other Than Small Company
(1) The annual return by a company having shares other than a small company shall contain with respect to the registered office of the company, registers of members and debenture holders, shares and debentures, indebtedness, past and present members and directors and secretary, the matters specified in Part I of the Eighth Schedule to this Act, and the said return shall be in the form set out in Part II of that Schedule or as near to it as circumstances admit.
(2) Where the company has converted any of its shares into stock and given notice of the conversion to the Commission, the list referred to in paragraph 5 of Part I of the Eighth Schedule to this Act shall state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares required by that paragraph.

(3) The return may, in any year, if the return for either of the two immediately preceding years has given, as at the date of that return, the full particulars required by the said paragraph 5 of the Eighth Schedule to this Act, give only such particulars required by that paragraph as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date in the amount of stock held by a member.

373. Annual Return by Small Company
The annual return by a small company shall contain the matters specified in Part I of the Ninth Schedule to this Act and the return shall be in the form set out in Part II of that Schedule or as near to it as circumstances admit.

374. Annual Return by Company Limited by Guarantee
(1) The annual return by a company limited by guarantee shall be in the form prescribed in the Tenth Schedule to this Act or as near to it as circumstances admit.

(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 Commission under this Act.

375. Time for Completion of Annual Return
The annual return shall be completed within 42 days after the annual general meeting for the year, whether or not that meeting is the first or only ordinary general meeting of the company in that year, and the company shall within seven days thereafter forward to the Commission a copy signed both by a director and by the secretary of the company.

376. Documents to be Annexed to Annual Return
(1) Subject to the provisions of section 378 of this Act, there shall be annexed to the annual return—

(a) a written copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet and profit and loss account laid before the company in general meeting held in the year to which the return relates (including every document required by law to be annexed to the balance sheet); and

(b) a copy, certified as aforesaid, of the report of the auditors on, and of the report of the directors accompanying, each such balance sheet.

(2) If any such balance sheet as is mentioned in subsection (1) of the section or document required by law to be annexed does not comply with the requirement of the law as in force at the date of the audit with respect to the form of balance sheets or documents aforesaid, as the case may be, there shall be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to comply with the requirements, and the fact that the copy has been so amended shall be stated on it.
(3) Any document required to be annexed to the annual return may be delivered to the Commission either in hard copy or through electronic communications.

377. Certificates by Private Company and Small Company in Annual Return
(1) A private company shall send with the annual return required by sections 372, 373 or 374 of this Act a certificate signed both by a director and by 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 subsection (3) of section 22 of this Act are not included in reckoning the number of fifty.

(2) A small company shall in addition to the certificate required under subsection (1) of this section, send with the annual return a certificate signed by a director and the secretary that—
(a) it is a private company limited by shares;
(b) the amount of its turn-over for that year is not more than N10 million or such amount as may be fixed by the Commission;
(c) its net assets value is not more than N5 million or such amount as may be fixed by the Commission;
(d) none of its members is an alien;
(e) none of its members is a Government, a Government agent or nominee; and
(f) the directors among them hold not less than 51 per cent of the equity share capital of the company.

378. Exception in Certain Cases of Unlimited Companies and Small Companies from Requirements of Section 376
(1) An unlimited company shall be exempted from the requirements imposed by section 376 of this Act as to documents to be annexed to the annual return if, but only if—
(a) at no time during the period to which the return relates has it been, to its knowledge, the subsidiary of a company that was then limited and at no such time, to its knowledge, have there been held or exercisable by or on behalf of two or more companies that were limited, shares or powers which, had they been held or exercisable by one of them, would have made the company its subsidiary;
(b) at no such time has it been the holding company of a company that was then limited.
(2) A small company shall also be exempted from the requirements imposed by section 376 of this Act provided that it complies with the provision of section 349 of this Act.

379. Penalty for Non-compliance with Sections 371 to 377
(1) If a company required to comply with any of the provisions of sections 371 to 377 of this Act fails to do so, the company and every director or officer of the company shall be liable to a penalty as may be prescribed by the Commission from time to time.

(2) For the purposes of subsection (1) of this section, “officer” includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act.
PART XIII

DIVIDENDS AND PROFITS

380. Declaration of Dividends and Payment of Interim Dividend
(1) A company may, in general meeting, declare dividends in respect of any year or other period only on the recommendation of the directors.

(2) The company 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.

(3) The general meeting shall have power to decrease the amount of dividend recommended by the directors, but shall have no power to increase the recommended amount.

(4) Where the recommendation of the directors of a company with respect to the declaration of a dividend is varied in accordance with subsection (3) of this section by the company in general meeting, a statement to that effect shall be included in the relevant annual return.

(5) Subject to the provisions of this Act, dividends shall be payable to the shareholders only out of the distributable profits of the company.

381. Distributable Profits
Subject to the company being able to pay its debts as they fall due, the company may pay dividends out of the following profits—
(a) profits arising from the use of the company’s property although it is a wasting asset;
(b) revenue reserves;
(c) realised profit on a fixed asset sold, but where more than one asset is sold, the net realised profit on the assets sold.

382. Restriction on Declaration and Payment of Dividends
A company shall not declare or pay dividend if there are reasonable grounds for believing that the company is or would be, after the payment, unable to pay its liabilities as they become due.

383. Unclaimed Dividends
(1) Where dividends are returned to the company unclaimed, the company shall publish a list of the unclaimed dividends and the names of the persons entitled to the dividends in two national newspapers and also attach the list as published to the notice to members for the next annual general meeting of the company.

(2) After the expiration of six months of the publication and notice referred to in subsection (1) of this section, the company may invest the unclaimed dividend for its own benefit in investments outside the company and no interest shall accrue on the dividends against the company.

(3) Where dividends have been sent to members and there is an omission to send to some members due to the fault of the company, the dividends shall earn interest at the
current bank rate from three months after the date on which they ought to have been posted.

(4) For the purpose of liability, the date of posting the dividend warrant shall be deemed to be the date of payment and proof of whether it has been sent is a question of fact.

384. Reserve and Capitalisation

(1) The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit; and the directors may also without placing the same to reserve, carry forward any profits which they may think prudent not to distribute.

(2) The company in general meeting may upon the recommendation of the directors resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company’s reserve accounts or to the credit of the profit and loss account or otherwise available for distribution.

(3) Such sum may be set free for distribution among the members who would have been entitled to dividends in the same proportions on condition that the same be not paid in cash but be applied either on or towards paying up any amounts for the time being unpaid on any shares held by such members respectively or paying up in full unissued shares or debentures of the company to be allotted and distributed to creditors as fully paid up.

(4) The company may decide by a resolution what part is to be distributed in cash or in shares and the directors shall give effect to such resolution.

(5) Share premium account and a capital redemption reserve fund may, for the purposes of this subsection, only be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.

(6) Where a resolution is under subsections (2) to (5) of this section passed, the directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully-paid shares or debentures, if any, and generally do all acts and things required to give effect to it.

(7) The directors shall have power to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit in the case of shares or debentures becoming distributable in fractions.

(8) Any person may be authorised by the directors to enter on behalf of all the members entitled under this section into an agreement with the company to provide for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalisation, or (as the case may require) for the payment up by the company on their behalf, of the amounts or any part of
the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.

385. Employees’ Shares and Profit Sharing
If under his contract of service, an employee is entitled to share in the profits of the company as an incentive, he shall be entitled to share in the profits of the company, whether or not dividends have been declared.

386. Right of the Shareholders to Sue for Dividends
Dividends shall be special debts due to and recoverable by shareholders at any time, and actionable only when declared.

387. Liability for Paying Dividend Out of Capital
(1) All directors who knowingly pay, or are party to the payment of dividend out of capital or otherwise in contravention of this Part of this Act, shall be personally liable jointly and severally to refund to the company any amount so paid.

(2) Such directors shall have the right to recover the dividend from shareholders who receive it with knowledge that the company had no power to pay it.

PART XIV
RECEIVERS AND MANAGERS

APPOINTMENT OF RECEIVERS AND MANAGERS

388. Disqualification for Appointment as a Receiver or Manager
(1) The following persons shall not be appointed or act as receivers or managers of any property or undertaking of any company—
(a) an infant;
(b) any person found by a competent court to be of unsound mind;
(c) a body corporate;
(d) an undischarged bankrupt, unless he shall have been given leave to act as a receiver or manager of the property or undertaking of the company by the court by which he was adjudged bankrupt;
(e) a director or auditor of the company;
(f) any person convicted of any offence involving fraud, dishonesty, official corruption or moral turpitude and who is disqualified under sections 251 and 252 of this Act.

(2) Any appointment made in contravention of the provisions of subsection (1) of this section shall be void and if any of the persons named in paragraphs (c), (d), (e) and (f) of that subsection shall act as a receiver or manager, he shall be guilty of an offence and liable to a fine of N200,000 in the case of a body corporate or, in the case of an individual, to imprisonment for a term not exceeding six months or to a fine of N50,000.

(3) Where any of the persons mentioned in subsection (1) of this section is at the commencement of this Act acting as a receiver or manager, he may be removed by the court on an application by a person interested.
389. Power of the Court to Appoint Official Receiver for Debenture Holders and Others
Where an application is made to the court to appoint a receiver on behalf of the debenture
holder or other creditors of a company which is being wound up by the court, an official
receiver may be appointed.

390. Appointment of Receivers and Managers by the Court
(1) Notwithstanding the provisions of paragraph (d) of subsection (1) of section 206 of
this Act, the court may, on the application of a person interested, appoint a receiver or a
receiver and manager of the property or undertaking of a company if—
(a) the principal money borrowed by the company or the interest is in arrears; or
(b) the security or property of the company is in jeopardy.

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

391. Receivers and Managers Appointed Out of Court
(1) A receiver or manager of any property or undertaking of a company appointed out
of court under a power contained in any instrument shall, subject to section 394 of this Act,
be deemed to be an agent of the person or persons on whose behalf he is appointed and,
if appointed manager of the whole or any part of the undertaking of a company, he shall be
deemed to stand in a fiduciary relationship to the company and observe the utmost good
faith towards it in any transaction with it or on its behalf.

(2) Such a manager—
(a) shall act at all times in what he believes to be the best interests of the company as
a whole so as to preserve its assets, further its business, and promote the purposes
for which it was formed, and in such manner as a faithful, diligent, careful and
ordinarily skilful manager would act in the circumstances;
(b) in considering whether a particular transaction or course of action is in the best
interest of the company as a whole, may have regard to the interests of the
employees, as well as the members of the company, and, when appointed by, or as
a representative of, a special class of members or creditors may give special, but
not exclusive, consideration to the interests of that class.

(3) Nothing contained in the articles of a company, or in any contract, or in any
resolution of a company, shall relieve any manager from the duty to act in accordance with
subsection (2) of this section or relieve him from any liability incurred as a result of any
breach of such duty.

392. Power of a Receiver or Manager Appointed Out of Court to Apply to the Court
for Directions
A receiver or manager of the property of a company appointed in accordance with the
provisions of subsection (1) of section 391 of this Act may apply to the court for direction in
relation to any particular matter arising in connection with the performance of his functions,
and on any such application, the court may give such directions or make such order
declaring the rights of persons before the court or otherwise, as it thinks just.

393. Notification that a Receiver or Manager has been Appointed
Where a receiver or manager of the property of a company has been appointed, notice shall be given to the Commission within 14 days, indicating the terms and remuneration for the appointment, and 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 company’s name appears, shall contain a statement that a receiver or manager has been appointed.

If default is made in complying with this section, the company and any of the following persons, who authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be liable to a penalty no exceeding N100 for every day during which the default continues.

**DUTIES, POWERS AND LIABILITIES OF RECEIVERS AND MANAGERS**

**394. Duties, Powers, etc., of Receivers and Managers**

(1) A person appointed a receiver of any property of a company shall, subject to the rights of prior incumbrancers, take possession of and protect the property, receive the rents and profits and discharge all out-going in respect thereof and realise the security for the benefit of those on whose behalf he is appointed, but unless appointed manager, he shall not have power to carry on any business or undertaking.

(2) A person appointed manager of the whole or any part of the undertaking of a company shall manage the same with a view to the beneficial realisation of the security of those on whose behalf he is appointed.

(3) Without prejudice to subsection (1) or (2) of this section, where a receiver or manager is appointed for the whole or substantially the whole of a company’s property, the powers conferred on him by the debentures by virtue of which he was appointed shall be deemed to include (except in so far as they are inconsistent with any of the provisions of those debentures) the powers specified in the Eleventh Schedule to this Act.

(4) As from the date of appointment of a receiver or manager, the powers of the directors or liquidators in a members’ voluntary winding up to deal with the property or undertaking over which he is appointed shall cease unless and until the receiver or manager is discharged.

(5) If, on the appointment of a receiver or manager, the company is being wound up under the provision relating to creditors’ voluntary winding up, or the property concerned is in the hands of some other officer of the court, the liquidator or officer shall not be bound to relinquish control of such property to the receiver or manager except under the order of the court.

**395. Liabilities of Receivers and Managers on Contracts**

(1) A receiver or manager of any property or undertaking of a company shall be personally liable on any contract entered into by him except in so far as the contract otherwise expressly provides.

(2) As regards contracts entered into by a receiver or manager in the proper performance of his functions, such receiver or manager shall, subject to the rights of any
prior incumbrancers, be entitled to an indemnity in respect of liability thereon out of the
property over which he has been appointed to act as receiver or manager.

(3) A receiver or manager appointed out of court under a power contained in any
instrument shall also be entitled, as regards contracts entered into by him with the express
or implied authority of those appointing him, to an indemnity in respect of liability thereon
from those appointing him to the extent to which he is unable to recover in accordance
with subsection (2) of this section.

396. Power of Court to Fix Remuneration on Application of Liquidator
(1) The court may, on the application of the company or 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.

(2) The powers of the court under subsection (1) of this section shall, where no
previous order has been made with respect thereto under that subsection—
(a) extend to fixing the remuneration for any period before the making of the order or
the application therefor; and
(b) be exercisable notwithstanding that the receiver or manager has died or ceased to
act before the making of the order or the application therefor; and
(c) extend, where the receiver or manager has been paid or has retained for his
remuneration for any period before the making of the order any amount in excess of
that so fixed for that period, to requiring him or his personal representatives to
account for the excess or such part thereof as may be specified in the order:
Provided that the power conferred by paragraph (c) of this subsection shall not be
exercised as respects any period before the making of the application for the order unless
in the opinion of the court there are special circumstances making it proper for the power
to be so exercised.

(3) The court may, from time to time, on an application made either by the company or
the liquidator or by the receiver or manager, vary or amend an order made under
subsection (1) of this section.

(4) This section shall apply whether the receiver or manager has been appointed
before or after the commencement of this Act, and to periods before, as well as to periods
after, the commencement of this Act.

PROCEDURE AFTER APPOINTMENT

397. Provisions as to Information Where Receiver or Manager Appointed
(1) Where a receiver or manager of the whole or substantially the whole of the
property of a company (in this section and in section 398 of this Act referred to as “the
receiver”) has been appointed on behalf of the holders of any debentures of the company
secured by a floating charge, then, subject to the provisions of this section and of section
398 of this Act—
(a) the receiver shall forthwith send notice to the company of his appointment and the
terms; and
(b) there shall, within 14 days after receipt of the notice, or such longer period as may
be allowed by the court or by the receiver, be made out and submitted to the
receiver in accordance with section 398 of this Act, a statement in the prescribed form as to the affairs of the company; and

(c) the receiver shall within two months after receipt of the said statement send—

(i) to the Commission or to the court a copy of the statement and of any comments he sees fit to make thereon and in the case of the Commission also a summary of the statement and of his comments, if any, thereon;

(ii) to the company a copy of any such comments as aforesaid or if he does not see fit to make any comment, a notice to that effect; and

(iii) to any trustees for the debenture holders on whose behalf he has been appointed and, so far as he is aware of their addresses, to all such debenture holders, a copy of the said summary.

(2) The receiver shall within two months, or such longer period as the court may allow after the expiration of the period of 12 months from the date of his appointment and of every subsequent period of 12 months, and within two months, or such longer period as the court may allow after he ceases to act as receiver or manager of the property of the company, send to the Commission, to any trustees for the debenture holders of the company on whose behalf he was appointed, to the company and (so far as he is aware of their addresses) to all such debenture holders, an abstract in the prescribed form showing his receipts and payments during that period of 12 months, or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract relates up to the date of his so ceasing, and the aggregate amounts of his receipts and of his payments during all preceding periods since his appointment.

(3) Where the receiver is appointed under the powers contained in any instrument, this section shall have effect—

(a) with the omission of the references to the court in subsection (1) of this section; and

(b) with the substitution for the references to the court in subsection (2) of this section, of references to the Commission; and in any other case references to the court shall be taken as referring to the court by which the receiver was appointed.

(4) Subsection (1) of this section shall not apply in relation to the appointment of a receiver or manager to act with an existing receiver or manager or in place of a receiver or manager dying or ceasing to act, except that, where that subsection applies to a receiver or manager who dies or ceases to act before it has been fully complied with, the references in paragraphs (b) and (c) thereof to the receiver shall, subject to subsection (5) of this section, include references to his successor and to any continuing receiver or manager and nothing in this subsection shall be taken as limiting the meaning of the expression “the receiver” where used in, or in relation to, subsection (2) of this section.

(5) This section and section 400 of this Act, where the company is being wound up, shall apply notwithstanding that the receiver or manager and the liquidator are the same person.

(6) Nothing in subsection (2) of this section shall be taken to prejudice the duty of the receiver to render proper accounts of his receipts and payments to the persons to whom, and at the times at which, he may be required to do so apart from that subsection.

(7) If the receiver makes default in complying with the requirements of this section, he shall be liable to a penalty of N100 for every day during which the default continues.
398. Special Provisions as to Statement Submitted to Receiver

(1) The statements as to the affairs of a company required by section 397 of this Act, to be submitted to the receiver (or his successor) shall show as at the date of the receiver's appointment, the particulars or the company's assets, debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed.

(2) The statement shall be submitted by, and be verified by, affidavit of one or more of the persons who are at the date of the receiver's appointment the directors, and by the person who is at that date the secretary of the company, or by such of the persons hereafter in this subsection mentioned as the receiver (or his successor), 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 officers of the company;
(b) who have taken part in the formation of the company at any time within one year before the date of the receiver's appointment;
(c) who are in the employment of the company, or have been in the employment of the company within the year, and are in the opinion of the 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) Any person making the statement and affidavit shall be allowed, and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the receiver (or his successor) may consider reasonable, subject to an appeal to the court.

(4) Where the receiver is appointed under the powers contained in any instrument, this section shall have effect with the substitution for references to the court of references to the Commission and references to an affidavit, of references to a statutory declaration; and in any other case references to the court shall be taken as referring to the court by which the receiver was appointed.

(5) If any person without reasonable excuse makes default in complying with the requirements of this section, he shall be liable to a penalty of N200 for every day during which the default continues.

(6) References in this section to the receiver’s successor shall include a continuing receiver or manager.

ACCOUNTS BY RECEIVER OR MANAGER

399. Delivery to Commission of Accounts of Receivers and Managers

(1) Except where section 397 (2) of this Act applies, 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 periods as the Commission 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 Commission 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 relates, up to the date of his 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 penalty of N200 for every day during which the default continues.

DUTY AS TO RETURNS

400. Enforcement of Duty of Receivers and Managers to Make Returns, etc.

(1) If any receiver or manager of the property of a company having—
(a) made default in filing, delivering or making any returns, account or other document, or in giving any notice which a receiver or manager is by law required to file, delivers, makes or gives or fails to make good the default within 14 days after the service on him of a notice requiring him to do so; or
(b) 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 payment and to vouch the same 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) of this section, an application for the purposes of this section may be made by any member or by the Commission, 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, and in either case the order may provide that all costs shall be borne by the receiver or manager, as the case may be.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on receivers in respect of any such default as is mentioned in subsection (1) of this section.

CONSTRUCTION OF REFERENCES

401. Construction of References to Receivers and Managers
It is hereby declared that, except where the context otherwise requires—
(a) any reference in this Act to a receiver or manager of the property of a company, or to a receiver thereof, includes a reference to a receiver or manager, or as the case may be a receiver of part only of that property and to a receiver only of the income arising from that property or from part thereof; and
(b) any reference in this Act to the appointment of a receiver or manager under powers contained in any instrument, includes a reference to an appointment made under powers which, by virtue of any enactment, are implied in and have effect as if contained in an instrument.
BUSINESS RESCUE PROCEEDINGS

402. Business Rescue Proceedings

(1) Without prejudice to sections 389 to 391 of this Act, a company may by resolution commence business rescue proceedings and place the company under temporary supervision.

(2) The resolution referred to in subsection (1) of this section shall have no effect for the purpose of this section unless-

(a) the majority of the directors have made and delivered to the Commission within the two weeks immediately preceding the date of the passing of the resolution a statutory declaration to the effect that they have made a full inquiry into the affairs of the company and that, having so done, they have formed the opinion that the company is financially distressed and that there appears to be a reasonable prospect for rescuing the company;

(b) the statutory declaration embodies a statement of the company’s assets and liabilities as at the date of its making;

(c) no liquidation proceedings have been initiated by or against the company.

(3) Within 14 days after the company has passed and filed the resolution referred to in subsection (1) of this section or such longer period as the Commission, on application by the company may allow, the company shall publish a notice of the resolution in three national newspapers.

(4) An affected person may apply to the court for an order setting aside the resolution, on grounds that-

(a) there is no reasonable basis for believing that the company is financially distressed;

(b) there is no reasonable prospect for rescuing the company; or

(c) the company has failed to satisfy the procedural requirements for business rescue proceedings as prescribed by the Commission.

(5) For the purpose of this section, “business rescue proceedings” means proceedings to facilitate the rehabilitation of a company that is financially distressed by providing for-

(a) the temporary supervision of the company and of the management of its affairs, business or property;

(b) a temporary moratorium on the rights of claimants against the company or in respect of property in its possession; and

(c) the development and implementation of a plan to rescue the company by restructuring its affairs, business, property, debt and other liabilities and equity in a manner that maximizes the possibility of the company continuing in existence on a solvent basis or, if it is not possible for the company to continue in existence, results in a better return for the company’s creditors or shareholders than would result from the immediate liquidation of the company.
The Commission may by regulations prescribe detailed procedure to be adopted by companies undertaking business rescue proceeding under this Act.

PART XV
WINDING UP OF COMPANIES

CHAPTER 1
PRELIMINARY
MODES OF WINDING UP

403. Modes of Winding Up
(1) The winding up of a company may be effected—
   (a) by the court; or
   (b) voluntarily; or
   (c) subject to the supervision of the court.

(2) The provisions of this Act with respect to winding up shall apply, unless the contrary appears, to the winding up of a company in any of those modes.

CONTRIBUTORIES

404. Liability as Contributories of Present and Past Members
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 as provided in section 90 of this Act.

405. 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, the expression shall include any person alleged to be a contributory.

406. Nature of Liability of Contributory
The liability of a contributory shall create a debt of the nature of a speciality accruing and due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

407. Contributories in Case of Death of Member
(1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives and his heirs and devisees, shall be liable in due course of administration to contribute to the assets of the company in discharge of his liability and they shall be contributories accordingly.

(2) Where the personal representatives are placed on the list of contributories, the heirs or devisees need not be added; but they may be added as and when the court thinks fit.
(3) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the whole or any part of the estate of the deceased contributory, and for compelling payment out of it of the money due.

408. Contributories in Case of Bankruptcy of Member

(1) If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories, then—

(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.

(2) The provisions of this section shall extend and apply with all necessary changes to the case of an insolvent person.

CHAPTER 2

WINDING UP BY THE COURT

JURISDICTION

409. Jurisdiction as to Winding Up

(1) The court having jurisdiction to wind up a company shall be the Federal High Court within whose area of jurisdiction the registered office or head office of the company is situate.

(2) For the purpose of this section, “registered office” or “head office” means the place which has longest been the registered office or head office of the company during the six months immediately preceding the presentation of the petition for winding up.

CASES IN WHICH COMPANY MAY BE WOUND UP BY COURT

410. Circumstances in which Companies 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 Commission or in holding the statutory meeting;

(c) the number of members is reduced below two;

(d) the company is unable to pay its debts;

(e) the condition precedent to the operation of the company has ceased to exists;

(f) the court is of opinion that it is just and equitable that the company should be wound up.

411. Definition of Inability to Pay Debts
A company shall be deemed to be unable to pay its debts if—

(a) a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding N200,000, then due, has served on the company, by leaving it at its registered office or head office, 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) execution or other process issued on a judgment, Act or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) the court, after taking into account any contingent or prospective liability of the company, is satisfied that the company is unable to pay its debts.

PETITIONS FOR WINDING UP AND EFFECTS THEREOF

412. Provisions as to Application for Winding Up

(1) 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—

(a) the company or a director;

(b) a creditor, including a contingent or prospective creditor of the company;

(c) the official receiver;

(d) a contributory;

(e) a trustee in bankruptcy to, or a personal representative of, a creditor or contributory;

(f) the Commission under section 321 of this Act;

(g) a receiver, if authorised by the instrument under which he was appointed; or

(h) by all or any of those parties, together or separately.

(2) Notwithstanding anything in subsection (1) of this section—

(a) a contributory shall not be entitled to present a petition for winding up a company unless—

(i) the number of members is reduced below two; or

(ii) the shares in respect of which he is contributory or some of them, were originally allotted to him or have been held by him, and registered in his name, for at least six months during the 18 months before the commencement of the winding up, or have devolved on him through the death of a former holder;

(b) a winding-up petition shall not, if the ground of the petition is default in delivering the statutory report to the Commission or in holding the statutory meeting, be presented by any person except a shareholder, or before the expiration of 14 days after the last day on which the meeting should have been held;

(c) the court shall not hear a winding-up petition presented by a contingent or prospective creditor until sufficient security for costs has been given, and a prima facie case for winding up has been established to its satisfaction;

(3) Where a company is being wound up voluntarily or subject to supervision, a winding-up petition may be presented by the official receiver attached to the court, as well as by any other person authorised in that behalf under the other provisions of this section; but the court shall not make a winding-up order on any such petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.
413. Powers of Court on Hearing Petition
(1) On hearing a winding-up petition the court may dismiss it, or 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) Unless it appears to the court that some other remedy is available and that the petitioners are acting unreasonably in seeking a winding-up order instead of pursuing that remedy, the court, on hearing a petition by contributory members of a company for relief by winding up on the ground that it would be just and equitable so to do, shall make the order as prayed if of opinion that the petitioners are entitled to the relief sought.

(3) Where a petition is presented on the ground of default in delivering the statutory report to the Commission or in holding the statutory meeting, the court, instead of making a winding-up order, may direct the delivery of the statutory report or the holding of a meeting, as the case may require, and order the costs to be paid by the persons who, in the opinion of the court, are responsible for the default.

414. Power to Stay or Restrain Proceedings against Company
Where a winding-up petition has been presented and an action or other proceeding against a company is instituted or pending in any court (in this section referred to as “the court concerned”), the company or any creditor or contributory may, before the making of the winding-up order, apply to the court concerned for an order staying proceedings; and the court concerned may, with or without imposing terms, stay or restrain proceedings, or if it thinks fit, refer the case to the court hearing the winding-up petition.

415. 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 things in action 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.

416. Avoidance of Attachments, etc.
Where a company is being wound up by the court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void.
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

418. Copy of Order to be Forwarded to Commission
On the making of a winding-up order, a copy of the order shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Commission, which shall make a minute thereof in its books relating to the company.

419. Actions Stayed on Winding-up Order
If a winding-up order is made or a provisional liquidator is appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court given on such terms as the court may impose.

420. 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

421. Definition of Official Receiver
(1) For the purpose of this Act and so far as it relates to the winding up of companies by the court, “official receiver” means the Deputy Chief Registrar of the Federal High Court or an officer designated for the purpose by the Chief Judge of the Court.

(2) Any such officer shall, for the purpose of his duties under this Act, be styled “the official receiver”.

422. 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 the securities were respectively given, the list of members and the list of charges 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 the person who is at that date the secretary of the company, or by such of the persons mentioned in this subsection as the official receiver, subject to the direction of the court, may require to submit and verify the statement, that is to say persons who—
(a) are or have been officers of the company;
have taken part in the formation of the company at any time within one year before
the relevant date;
(c) have been or are 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) 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 14 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 guilty of an offence and liable to a fine of N100 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 a payment of the
prescribed fee to inspect the statement submitted in pursuance of this section, and to a
copy of or extract from it.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be
guilty of contempt of court and shall, on the application of the liquidator or of the official
receiver, be punishable accordingly.

(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.

423. Report by Official Receiver
(1) If a winding-up order is made, the official receiver shall as soon as practicable after
receipt of the statement to be submitted under section 422 of this Act or 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.

(2) The official receiver may if he thinks fit, make further reports, stating the manner in
which the company was formed and whether in his opinion fraud has been committed by
any person in its promotion or formation, or by any officer of the company in relation to the
company since its formation and the reports may include any other matters which, in his
opinion, it is desirable to bring to the notice of the court.
(3) If any further report under this section indicates the commission of fraud, the court shall have the further powers provided in section 452 of this Act (which confers authority to order public examination of certain officials).

LIQUIDATORS

424. Appointment, Remuneration and Title of Liquidators

(1) The court may appoint a liquidator or 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 and where there is a vacancy, the official receiver shall by virtue of his office, act as liquidator until such time as the vacancy is filled.

(2) At any time after the presentation of a petition and before the making of a winding-up order, the appointment shall be provisional and the court making the appointment may limit and restrict the powers of the liquidator by the order appointing him.

(3) In the application of the foregoing provisions of this section—

(a) if a provisional liquidator is to be appointed before the making of a winding-up order, the official receiver, or any other fit person, may be so appointed;

(b) on the making of a winding-up order, if no liquidator is appointed, the official receiver shall by virtue of his office become the liquidator;

(c) the official receiver in his capacity as provisional liquidator shall, and in any other case may, summon meetings of creditors and contributories of the company to be held separately for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in place of the official receiver;

(d) if a person other than the official receiver is appointed liquidator, he shall not be capable of acting in that capacity until he has notified his appointment to the Commission and given security in the prescribed manner to the satisfaction of the court.

(4) If more than one liquidator of a company is appointed by the court, the court shall declare whether anything by this Act required or authorised to be done by a liquidator is to be done by all or any one or more of them.

(5) A liquidator appointed by the court may resign, or, on cause shown, be removed by the court; and any vacancy in the office of a liquidator so appointed shall be filled by the court.

(6) Where a person other than the official receiver is appointed a liquidator, he shall receive salary in an amount, 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 proportions as the court directs.

(7) Where a liquidator of a company is appointed, he shall, after his individual name—

(a) if he is the official receiver, be described as "official receiver and liquidator of (add here name of the company)"; and

(b) in any other case be described as "liquidator of (add here name of the company)".
(8) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

(9) If a liquidator is appointed under this section, all the powers of the directors shall cease, except so far as the court may by order sanction the continuance thereof.

425. Custody of Company’s Property
In a winding up by the court the liquidator shall take into his custody, or under his control, all the property and choses in action to which the company is or appears to be entitled.

426. 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, but subject to the requirements of registration under any particular enactment, 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.

427. 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, to—
   (a) bring or defend any action or other legal proceeding in the name and on behalf of the company;
   (b) carry on the business of the company so far as may be necessary for its beneficial winding up;
   (c) appoint a legal practitioner or any other relevant professional to assist him in the performance of his duties;
   (d) pay any classes of creditors in full;
   (e) 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) compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all 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 for the discharge of any such call, debt, liability or claim and give a complete discharge in respect thereof;

(2) The liquidator in winding up by the court shall have power to—
   (a) sell the property of the company of whatever nature 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) 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) prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors;

(d) draw, accept, make and indorse 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 indorsed by or on behalf of the company in the course of its business;

(e) 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;

(f) raise on the security of the assets of the company any money requisite;

(g) appoint an agent to do any business which the liquidator is unable to do himself;

(h) 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.

428. Liquidator to Give Information, etc., to Official Receiver
If during the winding up of a company by the court a person other than the official receiver is appointed liquidator, he shall give the official receiver such information and access to and facilities for inspecting the books and documents of the company, and generally any aid requisite or necessary for enabling that officer to perform his duties under this Act.

429. Exercise and Control of Liquidator’s Powers
(1) Subject to the provisions of this Act, the liquidator of a company being wound up by the court shall, in the administration and distribution of the assets of the company among its creditors, have regard to directions given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection; so however that directions given by the creditors or contributories at any general meeting shall, in case of conflict, override directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories by resolution either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one tenth in value of the creditors or contributories, as the case may be.

(3) The liquidator may apply to the court in the manner prescribed for directions in relation to any particular matter arising under the winding up.
(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the
management of the estate and its distribution among the creditors.

(5) Any persons aggrieved by an act or decision of the liquidator, may apply to the
court for such order in the premises as it thinks just; and the court may confirm, reverse, or
modify the act or decision.

430. Payments by Liquidator into Companies Liquidation Account
(1) Every liquidator of a company being wound up by the court shall, in such manner
and at such times as the Commission directs, pay moneys received by him into the public
fund of the Federation kept by the Commission under and for the purposes of this Act and
known as “the Companies Liquidation Account”, and the Accountant-General of the
Federation shall furnish him with a certificate of receipt for the money so paid: Provided
that, if the committee of inspection satisfies the Commission that for the purpose of
carrying on the business of the company or of obtaining advances, or for any other reason,
it is for the advantage of the creditors or contributories that the liquidator should have an
account with any bank, the Commission shall, on the application of the committee of
inspection, authorise the liquidator to make his payments into and out of such bank in
Nigeria as the committee may select, and thereupon those payments shall be made in the
prescribed manner.

(2) If the liquidator of a company being wound up as aforesaid, at any time retains for
more than ten days an amount in excess of either N50,000 or, in any particular case, such
other amount as the Commission may approve, and fails to satisfy the Commission as to
the need for the retention beyond that time, the liquidator shall pay interest on the amount
so retained in excess, at the rate of twenty per cent per annum, and shall be liable to—
(a) disallowance of the whole or such part of his remuneration as the Commission
thinks fit; and
(b) removal from office, and in addition, he shall be liable to pay any expenses
occasioned by the retention.

(3) A liquidator of a company which is being wound up by the court shall not pay any
sums received by him as liquidator into his private banking account.

431. Audit, etc., of Liquidator's Account
(1) Every liquidator of a company being wound up by the court shall, at such times as
may be prescribed, but not less than twice in each year during his tenure of office, send to
the Commission an account of his receipts and payments as liquidator.

(2) The account shall be in duplicate in the prescribed form, and shall be verified by a
statutory declaration in the prescribed form.

(3) The Commission shall cause the account to be audited, and for the purpose of the
audit the liquidator shall furnish the Commission with such vouchers and information as
the Commission may require, and the Commission may at any time require the production
of, and may inspect, any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy shall be filed and kept by the
Commission, and the other copy shall be with the court and each shall be open to
inspection by any creditor or other person interested, on payment of the prescribed fee.
(5) The Commission shall cause the account when audited, or a summary thereof, to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory.

432. Books to be Kept by Liquidator
Every liquidator of a company which is being wound up by the court shall, in the manner prescribed, keep proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books.

433. Release of Liquidator
(1) Where the liquidator of a company being wound up by the court has realised all the property of the company, or so much of it as may, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Commission shall, on the application of the liquidator, cause a report on the accounts of the liquidator to be prepared.

(2) The Commission shall consider the report referred to in subsection (1) of this section together with any objection that may be raised by any creditor, or contributory, or person interested against the release of the liquidator, and may grant or withhold the release as it deems fit subject nevertheless to an appeal to the court.

(3) If the release of a liquidator is withheld, the court may, on the application of any creditor, or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(4) An order of the Commission releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator; but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(5) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

434. Control over Liquidators
(1) The Commission shall take cognisance of the conduct of liquidators of companies which are being wound up by the court and if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by any enactment, or otherwise with respect to the performance of his duties, or if any complaint is made to the Commission by any creditor or contributory in regard thereto, the Commission shall inquire into the matter, and may take such action thereon as it thinks fit, including the direction of a local investigation of the books and vouchers of the liquidator.
The Commission may at any time require the liquidator of a company being wound up by the court to answer any inquiry in relation to any winding up in which he is engaged and if the Commission thinks fit, it may apply to the court to examine the liquidator or any other person on oath concerning the winding up.

COMMITTEE OF INSPECTION, SPECIAL MANAGER, ETC.

435. Power to Appoint Committee of Inspection after Meeting of Creditors and Others
(1) Where a winding-up order is made by the court, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not to apply to the court for an order appointing a liquidator in place of the official receiver, to determine whether or not application should be made to the court for the appointment of a committee of inspection to act with the liquidator, and who are to be members of the committee, if the appointment is made.

(2) The court may make any appointment and order required to give effect to any determination under this section and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters aforesaid, the court shall decide the difference and make any order it thinks necessary.

436. Powers, etc., of Committee of Inspection
(1) A committee of inspection appointed under this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories or as, in case of difference, may be determined by the court.

(2) A committee of inspection shall meet at the time or times appointed, so however that there shall be a meeting at least once in every month during its existence; but the liquidator or any member of the committee may convene a meeting as and when necessary.

(3) A meeting of a committee of inspection shall be deemed convened if a majority of members are present; but at any such meeting the committee may act by a majority of the members present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt or compounds or arranges with his creditors or is absent from five consecutive meetings of the committee without leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which seven days’ notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee, the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and
the meeting may, by resolution, reappoint the same or appoint another creditor or contributory to fill the vacancy: Provided that if the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy to be filled he may apply to the court and the court may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

437. Powers where no Committee of Inspection is Appointed
Where, in the case of winding up, there is no committee of inspection, the Commission may, on the application of the liquidator, if he thinks fit, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the committee.

438. Power to Appoint Special Manager
(1) Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court for an order appointing a special manager to act during such time as the court may direct, with such powers, including those of a receiver or manager, as may be entrusted to him by the court, and the court may make any order necessary.

(2) A special manager appointed under this section shall receive remuneration as fixed by the court, and shall give security and account in such manner as the Commission directs.

439. Official Receiver as Receiver for Debenture Holders, etc.
It is hereby declared that where application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company being wound up by the court, the official receiver may be so appointed.

GENERAL POWERS OF COURT IN CASE OF WINDING UP BY COURT

440. Power to Stay Winding-up
(1) The court may at any time after an order for winding up, on the application either of a liquidator or the official receiver or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings either altogether or for a limited time, on such terms and conditions as the court thinks fit.

(2) The court may, at any time after an order for winding up, on the application either of the liquidator or a creditor, and after having regard to the wishes of the creditors and contributories, make an order directing that the winding up, ordered by the court, shall be conducted as a creditors’ voluntary winding up, and if the court does so, the winding up shall be so conducted.

(3) On any application under this section, the court may, before making an order, require the official receiver to furnish to the court a report with respect to any facts or
matters which are in his opinion relevant to the application.

(4) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Commission, which shall make a minute of the order in its books relating to the company.

(5) If default is made in lodging a copy of an order made under this section with the Commission as required by subsection (4) of this section, every officer of the company or other person who authorises or permits the default shall be guilty of an offence punishable by a daily default penalty of N100.

441. Settlement of List of Contributories and Application of Assets
(1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, and may rectify the register of members in all cases where rectification is required in pursuance of this Act, and the court shall cause the assets of the company to be collected, and applied in discharge of its liabilities: Provided that where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

442. Delivery of Property to Liquidator
The court may, at any time after making a winding-up order require any contributory for the time being on the list of contributories and any trustee, receiver, banker, agent, or officer of the company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to the liquidator any money, property, or books and papers in his hands, to which the company is prima facie entitled.

443. Payments by Contributory to Company and Set-off Allowance
(1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being on the list of contributories to pay, in the manner directed by the order; any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The court making an order under this section—
(a) in the case of an unlimited company, may allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company of any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit;
(b) in the case of a limited company, may make to any director or manager whose liability is unlimited or to his estate, the like allowance as in paragraph (a) of this subsection.

(3) In the case of any company, limited or unlimited, when all the creditors are paid in full, the money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.
444. Power of Court to Make Calls
(1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call under this section, the court shall take into consideration the probability that some of the contributories may fail, wholly or partially to pay the call.

445. Power to Order Payment into Companies’ Liquidation Account
(1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay it into the company’s liquidation account referred to in section 430 of this Act to the account of the liquidator instead of direct to the liquidator and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) Moneys and securities paid or delivered into the company’s liquidation account in the event of a winding up by the court shall be subject in all respects to any relevant order of the court.

446. Order on Contributory to be Conclusive Evidence
(1) An order made by the court on a contributory shall, subject to any right of appeal, be conclusive evidence that money, if any thereby appearing to be due or ordered to be paid, is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings, except proceedings against the land of a deceased contributory, when the order shall be only prima facie evidence for the purpose of charging his land, unless his heirs or devisees were on the list of contributories at the time the order was made.

447. Power to Exclude Creditors not Proving in Time
The court may fix a time or times within which creditors are to prove their debts or claims, or be excluded from the benefit of any distribution made before those debts are proved.

448. Adjustment of Rights of Contributories
The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

449. Inspection of Books by Creditors and Contributories
(1) The court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.
(2) Nothing in this section shall be taken as excluding or restricting any statutory rights of a government department or person acting under the authority of a government department.

450. Power to Order Costs of Winding-up to be Paid Out of Assets
The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the court thinks just.

451. Power to Summon Persons Suspected of Having Property of Company, etc.
(1) The court may, at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person who the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

(2) The court may examine on oath any person so summoned concerning the matters aforesaid either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require any person summoned under subsection (1) of this section, to produce books and papers in his custody or power relating to the company but, where any such person claims a lien on books or papers produced by him, the production shall be without prejudice to the lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned as aforesaid, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having lawful impediment (made known to the court at the time of its sitting and allowed by it), the court may cause him to be apprehended and brought before the court for examination.

452. Power to Order Public Examination of Promoters, etc.
(1) Where an order is made for winding up a company by the court and the official receiver makes a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that any person who has taken any part in the promotion or formation of the company, or has been a director or officer of the company, shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealing as director or officer thereof.

(2) The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the Commission in that behalf, employ a legal practitioner.

(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory, may also take part in the examination, either personally or by a legal practitioner.
(4) The court may put such questions to the person examined as the court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the court may put or allow to be put to him.

(6) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver’s report, and may at his own cost employ a legal practitioner who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him: Provided that if any such person applies to the court to be exculpated from any charges made or suggested against him, it shall be the duty of the official receiver to appear on the hearing of the application and call the attention of the court to any matters which appear to the official receiver to be relevant, and if the court after hearing any evidence given or witnesses called by the official receiver, grants the application, the court may allow the applicant such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The Court may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the court so directs, and subject to general rules made under section 455 of this Act, be held before any magistrate, and the powers of the court under this section as to the conduct of the examination but not as to costs, may be exercised by the magistrate before whom the examination is held.

453. Power to Arrest Absconding Contributory
The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit Nigeria or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, and his books and papers and movable personal property, to be seized, and him and them to be safely kept until such time as the court may order.

454. Powers of Court Cumulative
Any powers by this Act conferred on the court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

455. Delegation to Liquidator of Certain Powers of Court
(1) Provision may be made by rules for enabling or requiring 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 as an officer of the court, and subject to the control of the court, that is to say, the powers and duties of the court in respect of—
(a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
(b) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets;

(c) requiring delivery of property or documents to the liquidator;

(d) the making of calls;

(e) the fixing of a time within which debts and claims shall be proved.

(2) Nothing in this section shall authorise the liquidator, without the special leave of the court, to rectify the register of members, or, without either the special leave of the court or the sanction of the committee of inspection, to make any call.

456. Dissolution of Company

(1) If the affairs of a company have been fully wound up and the liquidator makes an application in that behalf, the court shall order the dissolution of the company and the company shall be dissolved accordingly from the date of the order.

(2) A copy of the order shall, within 14 days from the date when made, be forwarded by the liquidator to the Commission who shall make in its books a minute of the dissolution of the company.

(3) If the liquidator makes default in complying with the requirements of this section, he shall be liable to a penalty of N100 for every day during which he is in default.

ENFORCEMENT OF AND APPEALS FROM ORDERS

457. Power to Enforce Orders

An order made by a court under this Act may be enforced in the same manner as orders made in any action pending therein.

458. Appeals from Orders

Subject to rules of court, an appeal from any order or decision made or given in the winding up of a company by the court under this Act, shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the court in cases within its ordinary jurisdiction.

CHAPTER 3

VOLUNTARY WINDING UP

RESOLUTIONS FOR AND COMMENCEMENT OF VOLUNTARY WINDING UP

459. Circumstances in which Company May be Wound-up Voluntarily

Any company may be wound up voluntarily—

(a) when the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs, on occurrence of which the articles provided that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;

(b) if the company resolves by special resolution that the company be wound up voluntarily and references in this Act to a "resolution for voluntary winding up" means a resolution passed under any of the paragraphs of this section.
460. Notice of Resolution to Wind-up Voluntarily

(1) If a company passes a resolution for voluntary winding up it shall, within 14 days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette or two daily newspapers and to the Commission.

(2) If default is made in complying with this section, the company and every officer of the company shall be liable to a penalty of N2,000 and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company.

461. Commencement of Voluntary Winding-up

A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

CONSEQUENCES OF VOLUNTARY WINDING UP

462. Effect of Voluntary Winding-up on Business, etc., of Company

In case of voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof: Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

463. Avoidance of Transfer, etc., After Commencement of Voluntary Winding-up

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

DECLARATION OF SOLVENCY

464. Statutory Declaration of Solvency where Proposal to Wind-up Voluntarily

(1) Where on or after the commencement of this Act, it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors, may at a meeting of the directors make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within such period, not exceeding 12 months from the commencement of the winding up, as is specified in the declaration.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Act unless—

(a) it is made within the five weeks immediately preceding the date of the passing of the resolution for winding up the company and is delivered to the Commission for registration before that date; and

(b) it embodies a statement of the company’s assets and liabilities as at the latest practicable date before the making of the declaration.

(3) Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be guilty of an offence and liable on
conviction to a fine of N25,000 or to imprisonment for a term of three months, or to both; and if the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed, until the contrary is shown, that the director did not have reasonable grounds for his opinion.

(4) A winding-up in any case where a declaration has been made and delivered in accordance with this section, shall in this Act be referred to as “a members’ voluntary winding-up” and a winding up in any case where a declaration has not been made and delivered as aforesaid shall in this Act be referred to as “a creditors’ voluntary winding up”.

(5) Subsections (1) to (3) of this section shall not apply to a winding up commenced before the commencement of this Act.

PROVISIONS APPLICABLE TO A MEMBERS’ VOLUNTARY WINDING-UP

465. Provisions Applicable to a Members’ Voluntary Winding-up
The provisions following, that is to say, sections 466 to 474 of this Act, shall, subject to the alternative provision in section 467 of this Act, apply in relation to a members’ voluntary winding up.

466. Power to appoint, etc., Liquidators
(1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(2) If a liquidator is appointed under this section, all the powers of the directors shall cease, except so far as the company in general meeting or the liquidator sanctions the continuance thereof.

467. Power to Fill Vacancy in Office of Liquidators
(1) If a vacancy occurs by death, resignation or otherwise in the office of a liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy; and for that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(2) The general meeting shall be held in the manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

468. Liquidator to Call Creditors’ Meeting on Insolvency
(1) If, in the case of a winding up commenced after the commencement of this Act, the liquidator is at any time of opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section 464 of this Act, he shall forthwith summon a meeting of the creditors, and lay before the meeting a statement of the assets and liabilities of the company.
(2) If the liquidator fails to comply with this section, he shall be liable to a penalty of N50,000.

469. Liquidator to Call General Meeting at End of Each Year
(1) Subject to the provisions of section 471 of this Act, in the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the Commission may allow, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a penalty of N50,000.

471. Final Meeting and Dissolution
(1) Subject to the provisions of section 471 of this Act, as soon as the affairs of the company are fully wound up, the liquidator shall prepare an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of; and when the account is prepared, he shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by notice published in the Gazette and in two newspapers printed in Nigeria and circulating in the locality where the meeting is being called, specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within seven days after the meeting, the liquidator shall send to the Commission a copy of the account, and shall make a return to it of the holding of the meeting and of its date and if the copy is not sent or the return is not made in accordance with this subsection, the liquidator shall be liable to a penalty of N100 for every day during which the default continues: Provided that, if a quorum is not present at the meeting, the liquidator shall in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made, the provisions of this subsection as to the making of the return shall be deemed to have been complied with.

(4) The Commission, on receiving the account and the appropriate return, shall forthwith register them, and on the expiration of three months from the registration of the return, the company shall be deemed to be dissolved: Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the Commission an office copy of the order for registration, and if that person fails so to do he shall be liable to a penalty of N100 for every day during which the default continues.
(6) If the liquidator fails to call a general meeting of the company as required by this section, he shall be liable to a penalty of N50,000.

471. Alternative Provisions as to Annual and Final Meetings in Insolvency Cases
Where section 468 of this Act has effect, sections 479 and 480 thereof shall apply to the winding up to the exclusion of the two last foregoing sections, as if the winding up were a creditors’ voluntary winding up and not a members’ voluntary winding up: Provided that the liquidator shall not be required to summon a meeting of creditors under section 481 of this Act at the end of the first year from the commencement of the winding up, unless the meeting held under section 469 of this Act is held more than three months before the end of that year.

472. Books and Accounts during Members’ Voluntary Winding-up
(1) The liquidator in a members’ voluntary winding up shall keep proper records and books of account with respect to his acts and dealings and of the conduct of the winding up and of all receipts and payments by him and so long as he carries on the business of the company, shall keep a distinct account of the trading.

(2) In the event of the winding up continuing for more than a year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up and of each succeeding year, or at the first convenient date within three months of the end of the year or such longer period as the Commission may allow, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year and of the trading during such time as the business of the company has been carried on, and within 28 days thereafter shall send a copy of such accounts to the Commission for registration.

(3) So soon as the affairs of the company are fully wound up, the liquidator shall prepare and send to every member of the company final accounts of the winding up showing how the winding up has been conducted, the result of the trading during such time as the business of the company has been carried on, and how the property of the company has been disposed of, and thereupon shall convene a general meeting of the company for the purpose of laying before it such accounts and of giving an explanation thereof.

(4) Within 28 days after the meeting referred to in the immediately preceding subsection, the liquidator shall send to the Commission for registration copies of the accounts laid before the meeting and a statement of the holding of the meeting and of its date: Provided that if a quorum was not present at the meeting the liquidator, in lieu of the statement hereinbefore mentioned, shall send a statement that the meeting was duly convened and that no quorum was present thereat.

(5) The records, books and accounts referred to in this section shall be in such form, if any, as the Commission may from time to time prescribe and shall give a true and fair view of the matters therein recorded and of the administration of the company’s affairs and of the winding up.

(6) The accounts referred to in subsections (2) and (3) of this section, shall be audited by the auditor of the company prior to being laid before the company in general meeting in
accordance with such subsections and the auditors shall state in a report annexed thereto whether, in their opinion and to the best of their information—

(a) they have obtained all the information and explanations necessary for the purpose of their audit;

(b) proper books and records have been maintained by the liquidator in accordance with this Act, and such accounts are in accordance with the books and records and give all the information required by this Act in the manner therein required and give a true and fair view of the matters stated in such accounts:

Provided that such audit and auditors’ report shall not be required if—

(i) the liquidator, or one of the liquidators if more than one, is duly qualified under the provisions of this Act for appointment as auditor of a public company; and

(ii) on or after his appointment as liquidator, the company resolved by special resolution that the accounts shall not be audited in accordance with this subsection.

(7) Meetings required to be convened under this section or the immediately foregoing section, shall be convened and held, so far as may be, in accordance with the provisions of this Act and the regulations of the company relating to general meetings.

(8) The liquidator shall preserve the books and papers of the company and of the liquidator for a period of five years from the dissolution of the company but thereafter may destroy such books and papers unless the Commission shall otherwise direct, in which event he shall not destroy the same until the Commission consents in writing.

(9) If a liquidator should fail to comply with any of the provisions of this section, he shall be liable to a penalty of N25,000 for each default.

PROVISIONS APPLICABLE TO A CREDITORS’ VOLUNTARY WINDING UP

473. Provisions Applicable to Creditors’ Winding-up Voluntarily
The provisions following, that is to say sections 474 to 480 of this Act, shall apply in relation to a creditors’ voluntary winding up.

474. Meeting of Creditors
(1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meetings of the company.

(2) The company shall cause notice of the meeting of the creditors to be published once in the Gazette and once at least in two newspapers printed in Nigeria and circulating in the district where the registered office or principal place of business of the company is situate.

(3) The directors of the company shall—

(a) cause a full statement of the position of the company’s affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of the creditors to be held as aforesaid; and
(b) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director so appointed to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed, is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) of this section shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made by—
(a) the company in complying with subsection (1) or (2) of this section;
(b) the directors of the company in complying with subsection (3) of this section;
(c) any director of the company appointed to preside, in complying with subsection (4) of this section,
the company, directors or director, as the case may be, shall be liable to a penalty of N25,000 and in the case of default by the company, every officer of the company shall be liable to the like penalty.

475. Appointment of Liquidator and Cesser of Directors’ Powers

(1) The creditors and the company at their respective meetings mentioned in section 476 of this Act may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person if any, nominated by the company, shall be liquidator: Provided that in the case of different persons being nominated, any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order directing that the persons nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

476. Appointment of Committee of Inspection

(1) The creditors at the meeting to be held in pursuance of section 474 of this Act or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number: Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company shall not be members of the committee of inspection, and if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.
Subject to the provisions of this section and to general rules made under this Act, the provisions of section 436 of this Act (except subsection (1) of this section), shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the court.

477. Fixing of Liquidators’ Remuneration
The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

478. Power to fill Vacancy in the Office of Liquidator
If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of the court, the creditors may fill the vacancy.

479. Liquidator to Call Meetings of Company and Others at the End of Each Year
(1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of year, or such longer period as the Commission may allow, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with the provisions of this section, he shall be liable to a penalty of N25,000.

480. Final Meeting and Dissolution
(1) As soon as the affairs of the company are fully wound up, the liquidator shall prepare an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon he shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

(2) Each such meeting shall be called by notice published in the Gazette and in two newspapers printed in Nigeria and circulating in the locality where the meeting is being called, specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within seven days after the date of the meeting, or if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Commission a copy of the account, and shall make a return to it of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this subsection, the liquidator shall be liable to a penalty of N100 for every day during which the default continues: Provided that, if a quorum is not present at either such meetings the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present; and upon such a return being made the provisions of this subsection as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.
(4) The Commission, on receiving the account, and, in respect of each such meeting, either of the returns mentioned above, shall forthwith register them, and on the expiration of three months from the registration thereof, the company shall be deemed to be dissolved: Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the Commission an office copy of the order for registration, and if that person fails so to do he shall be liable to a penalty of N100 for every day during which the default continues.

(6) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he shall be liable to a penalty of N50,000.

PROVISIONS APPLICABLE TO EVERY VOLUNTARY WINDING UP

481. Provisions Applicable to Every Voluntary Winding-up
The provisions following, that is to say, sections 482 to 487 of this Act, shall apply to every voluntary winding up, whether a members’ or a creditors’ winding up.

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

483. Powers, etc., of Liquidator in Every Voluntary Winding-up
(1) The liquidator may—
(a) in the case of a members’ voluntary winding up, with the sanction of special resolution of the company, and, in the case of a creditors’ voluntary winding up, with the sanction of the court or, the committee of inspection or if there is no such committee, a meeting of the creditors, exercise any of the powers given by paragraphs (d), (e) and (f) of section 427 (1) of this Act to a liquidator in a winding up by the court;
(b) without sanction, exercise any of the other powers given by this Act to the liquidator in a winding up by the court;
(c) exercise the power of the court under this Act of settling a list of contributories, and the list of contributories shall be prima facie evidence of the liability of the persons named therein to be contributories;
(d) exercise the court’s power of making calls;
(e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) Where several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined by any number not less than two.
484. Power of Court to Appoint, etc., Liquidator
If, in any voluntary winding up, there is no liquidator acting, the court may appoint a liquidator and in any case the court may, on cause shown, remove a liquidator and appoint another liquidator.

485. Power to Apply to Court to Determine Questions or Exercise Powers
(1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) If the court is satisfied that the determination of the question or the required exercise of power will be just and beneficial, it may give effect wholly or partially to the application on such terms and conditions as it thinks fit, or make such other order as the case may require.

(3) A copy of an order made under this section staying the proceedings in the winding up, shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Commission, which shall make a minute of the order in its books relating to the company.

486. Costs of Voluntary Winding-up
All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

487. Saving of Rights of Creditors and Contributories
The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court; but where the applicant for winding up is a contributory, an order shall not be made unless the court is satisfied that the rights of contributories shall be prejudiced by the members’ or creditors’ voluntary winding up, as the case may be.

CHAPTER 4

WINDING UP SUBJECT TO SUPERVISION OF COURT

488. Power to Order Winding-up Subject to Supervision
If a company passes a resolution for voluntary winding up, the court may on petition order that the voluntary winding up shall continue but subject to such supervision of the court, and with such liberty for creditors, contributories, or others to apply to the court, and generally on such terms and conditions, as the court thinks just.

489. Effect of Petition for Winding-up Subject to Supervision
A petition for the continuance of a voluntary winding up subject to the supervision of the court shall, for the purpose of giving jurisdiction to the court over actions, be deemed to be a petition for winding up by the court.

490. Application of sections 415 and 416
A winding up subject to the supervision of the court shall, for the purposes of sections 416 and 416 of this Act, be deemed to be a winding up by the court.

491. Power of Court to Appoint, etc., Liquidators
(1) Where an order is made for a winding up subject to supervision, the court may by the same or any subsequent order appoint an additional liquidator.

(2) A liquidator appointed by the court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if he had been duly appointed in accordance with the provisions of this Act with respect to the appointment of liquidators in a voluntary winding up.

(3) The court may remove any liquidator so appointed by the court or any liquidator continued under the supervision order, and may fill any vacancy occasioned by the removal, or by death or resignation.

492. Effect of Supervision Order
(1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all his powers, without the sanction or intervention of the court, in the same manner as if the company were being wound up voluntarily: Provided that the powers specified in paragraphs (d), (e) and (f) of section 427 (1) of this Act shall not be exercised by the liquidator except with the sanction of the court or, in a case where before the order the winding up was a creditors’ voluntary winding up, with the sanction of the court or the committee of inspection, or (if there is no such committee) a meeting of the creditors.

(2) A winding up subject to the supervision of the court shall not amount to a winding-up by the court for the purpose of the provisions of this Act as specified in the Twelfth Schedule to this Act (dealing with provisions which do not apply in the case of winding up subject to the supervision of the court) but, subject to this, an order for a winding up subject to supervision shall for all purposes be an order for winding up by the court: Provided that where the order for winding up subject to supervision of the committee was made in relation to a creditors’ voluntary winding up in which a committee of inspection had been appointed, the order shall be deemed to be an order for winding up by the court for the purposes of section 436 of this Act, (except subsection (1) thereof) save insofar as the operation of that section is excluded in a voluntary winding up by general rules made under this Act.

CHAPTER 5

PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

493. Liquidator to Give Notice of Appointment
(1) The liquidator shall, within 14 days after his appointment, publish in the Gazette and in two daily newspapers and deliver to the Commission for registration a notice of his appointment in such form as the Commission may from time to time approve.

(2) Upon the receipt of the notice of appointment of the liquidator, the Commission shall appoint a valuer to value the assets of the Company jointly with the liquidator.
(3) A joint report of the liquidator and the valuer shall be submitted to the Commission within 30 days of the appointment or such longer period as the Commission may allow.

(4) If the Commission is satisfied with the valuation report, it shall direct the liquidator to commence the liquidation process.

(5) If the liquidator fails to comply with the requirements of subsection (1) of this section he shall be liable to a penalty of N100.00 for every day during which the default continues and if default is made in complying with subsection (3) of this section, the liquidator and valuer shall each be liable to a penalty of N250.00 for every day during which the default continues.

(6) If the liquidator fails to comply with the direction of the Commission under subsection (3) of this section, he shall be liable to a penalty of N10,000.00.

PROOF AND RANKING OF CLAIMS

494. Debts of All Descriptions May be Proved
In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act of the law of bankruptcy), all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reasons do not bear a certain value.

495. Application of Bankruptcy Rules in Certain Cases
In the winding up of an insolvent company registered in Nigeria the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy in Nigeria with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up and make such claims against the company as they respectively are entitled to by virtue of this section.

496. Preferential Payments
(1) In a winding up there shall be paid in priority to all other debts—
(a) all local rates and charges due from the company at the relevant date, and having become due and payable within 12 months next before that date, and all pay-as-you-earn tax deductions, assessed taxes, land tax, property or income tax assessed on or due from the company up to the annual day of assessment next before the relevant date, and in the case of pay-as-you-earn tax deductions not exceeding deductions made in respect of one year of assessment and, in any other case, not exceeding in the whole one year's assessment;
(b) deductions under the Nigeria Social Insurance Trust Fund Act;
(c) all wages or salary of any clerk or servant in respect of services rendered to the company;
(d) all wages of any workman or labourer, whether payable for time or for piece work, in respect of services rendered to the company;
(e) all accrued holiday remuneration becoming payable to any clerk, servant, workman or labourer (or in the case of his death to any other person in his rights) on the termination of his employment before or by the effect of the winding up order or resolution;
(f) unless the company is being wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company or unless the company has at the commencement of the winding up under such a contract with insurers as is mentioned in section 26 of the Workmen’s Compensation Act, rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the Act aforesaid, accrued before the relevant date.

(2) Where any compensation under the Workmen’s Compensation Act is a weekly payment, the amount due in respect thereof shall, for the purpose of paragraph (e) of subsection (1) of this section, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the aforesaid Act.

(3) 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 the money advanced by some persons 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.

(4) 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.

(5) 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.

(6) Notwithstanding any other provisions of this Act and in so far as it relates to settlement of claims in the winding up of a company, the equity holders shall rank last.

(7) In this section “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

497. Fraudulent Preference
(1) Any conveyance, 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 or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

(2) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

(3) For the purposes of this section, the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the court, and a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond with the act of bankruptcy in the case of an individual.

498. Liabilities and rights of certain fraudulently Preferred Persons
(1) Where anything made or done after the commencement of this Act is void under section 497 of this Act as a fraudulent preference of a person interested in property mortgaged or charged to secure the company’s debt, the person preferred shall, without prejudice to any liabilities or rights arising apart from this provision, be subject to the same liabilities, and have the same rights, as if he had undertaken to be personally liable as surety for the debt, to the extent of the charge on the property or have value of his interest, whichever is the less, and the value of the said person’s interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all incumbrances other than those to which the charge for the company’s debt was the subject.

(2) Where for the purposes of this section, application is made to the court with respect to any payment on the ground that the payment was fraudulent preference of a surety or guarantor, the court shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor, and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid.

(3) Subsection (2) of this section shall apply, with the necessary modifications, in relation to transactions other than the payment of money, as it applies in relation to payments.

499. Avoidance of Attachments, etc., on Winding-up Subject to Supervision of the Court
Where a company is being wound up subject to the supervision of the court, any attachment, sequestration or execution put in force against the estate or effects of the company after the commencement of the winding up, shall be void.

500. Effect of Floating Charge
Where a company is being wound up, a floating charge on the undertaking or property of the company created within three 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 current bank rate.

501. 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 12 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 to 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 12 months after he has become aware thereof or such extended period as may be allowed by the court.

(2) A disclaimer under this section shall operate to determine, as from the date of the disclaimer, the rights, interest and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the court 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 or not he will disclaim, and the liquidator has not, within a period of 28 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, does not within that 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 on such terms as to payment by or to either party, of damages for the non-performance of the contract, or otherwise as the court thinks just and any damages payable under the order to 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 claims any interest in any property disclaimed under this section, 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 persons 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.

(7) 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 an under-lessee or as a mortgagee by demise, a mortgage by way of legal charge or mortgage, as the case may be, except upon the terms of making that person—
(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or
(b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date, and in either event if the case so requires, as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there is no person claiming under the company who is willing to accept an order upon such terms, the court 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 interests created therein by the company.

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

502. Restriction of Rights of Creditor as to Execution, etc., on Winding-up of Company

(1) Where a creditor issues execution against any goods or land of a company, or attaches any debt due to the company, and the company is subsequently wound up, the creditor 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;
(b) if a person purchases in good faith under a sale by the sheriff any goods of a company on which an execution has been levied, he shall acquire a good title to them against the liquidator;
(c) the rights conferred by this subsection on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.
(2) For the purposes of this section, 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.

503. Duty of Sheriff as to Goods Taken in Execution
(1) Subject to the provisions of subsection (3) of this section, 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, notice is served on the sheriff that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding up has been passed, the sheriff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Subject to the provisions of subsection (3) of this section, where under an execution in respect of a judgment for a sum exceeding £100,000, the goods of a company are sold or money is paid in order to avoid the sale, the sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid, and retain the balance for 14 days and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up 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 sheriff shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(3) The rights conferred by this section on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.

(4) In this section and section 504 of this Act—
(a) “goods” includes chattels personal; and
(b) “sheriff” includes any officer charged with the execution of a writ or other process.

OFFENCES ANTECEDENT TO OR IN COURSE OF WINDING UP

504. Offences by Officers of Company in Liquidation
(1) If any person, being a past or present 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 or deliver to the liquidator all the property, landed and personal, of the company, and how and to whom, 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 12 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 N100 or upwards, or conceals any debt due to or from the company; or

(e) within 12 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 N100,000 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 one 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 12 months next before the commencement of the winding up or at any time thereafter—
   (i) conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of the book or paper affecting or relating to the property or affairs of the company; or
   (ii) 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
   (iii) fraudulently parts with, alters or makes any omission in, or is privy to the fraudulently parting with, altering or making any omission in any document affecting or relating to the property or affairs of the company; or
   (iv) at any meeting of the creditors of the company, attempts to account for any part of the property of the company by fictitious losses or expenses; or
   (v) made 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
   (vi) 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
   (vii) 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

(j) 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 shall, in the case of the offences mentioned respectively in sub-paragraphs (iv), (v) and (vi) of this sub-section, be liable on conviction to imprisonment for a term of 12 months, and in the case of any other offence under this subsection, shall be liable on conviction to imprisonment for a term of two years: Provided that it shall be a good defence to a charge under any of paragraphs (a), (b), (c), (d), (f), (v) and (vi) of this sub-section, if the accused proves that he had no intent to defraud, and to a charge under any of paragraphs (h), (i) and (j), if he proves he had no intention 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 sub-paragraph (vii) of paragraph (i) 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 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.

(3) For the purposes of this section, “officer” includes any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

505. Falsification of Books
If any 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 guilty of an offence and liable on conviction to imprisonment for a term of two years or a fine of N200,000.

506. Frauds by Officers of Companies in Liquidation
If any person, being at the time of the commission of the alleged offence an 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, or has caused or connived at the levying of any execution against, the property of the company; or
(c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company, he shall be guilty of an offence and liable on conviction to imprisonment for a term of two years.

507. Liability where Proper Accounts not Kept
(1) If, where a company is wound up, it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up or the period between the incorporation of this company and the commencement of the winding up, whichever is the shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on the default was excusable, be guilty of an offence and be liable on conviction in the court to a fine of N50,000.

(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 of 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 dealing in goods, statements of the annual stock takings and (except in case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient details to enable those goods and those buyers and sellers to be identified.
508. Responsibility 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 in a reckless manner or with intent to defraud creditors of the company or creditors of any other person for any fraudulent purpose, the court, on the application of the official receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any persons 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 a declaration as to responsibility for debts or liabilities under subsection (1) of this section, it may give any direction it thinks proper for the purpose of giving effect to that declaration, and in particular the court may make provision for making the liability of any such person 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 or 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 person liable or any company or person acting on his behalf, and may from time to time make any further order necessary for enforcing any charge imposed under this subsection.

(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 (other than recklessly), every person who was knowingly a party to the carrying on of the business in manner aforesaid, shall be guilty of an offence, and liable on conviction to a fine of N200,000 or to imprisonment for a term of two years, or to both.

(4) In its operation, this section shall have effect, so however that—
(a) a declaration may be made notwithstanding that the person concerned may be criminally liable in respect of matters which are grounds for the declaration and a declaration, if made, shall be deemed to be a final judgment of the court;
(b) the official receiver or the liquidator, as the case may be, on the hearing of an application to the court, may himself give evidence or call witnesses;
(c) there shall be included in the expression “assignee” any person to whom or in whose favour by the direction of the person liable the debt, obligation, mortgage, or charge was created, issued or transferred, or the interest created, other than any person being an assignee for valuable consideration given in good faith and without notice of any of the matters on the ground of which the declaration is made;
(d) “valuable consideration” shall not include consideration by way of marriage.

509. Power 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 duty in relation to the company which would involve civil liability at the suit of 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, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rates 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 extend to any receiver of the property of a company, and shall in any case have effect notwithstanding that the offence is one for which the offender may be criminally liable.

(3) Where an order for payment of money is made under this section, the order shall be deemed to be a final judgment of the court.

510. Prosecution of Delinquent Officers and Members of a Company

(1) If it appears to the court, in the course of winding up by, or subject to the supervision of the court, that any past or present officer, or any member of the company has been guilty of any offence in relation to the company for which he is criminally liable, the court may, either on the application of any person interested in the winding up or of its own motion direct the liquidator to refer the matter to the Attorney-General of the Federation.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer, or any member of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Attorney-General of the Federation and shall furnish him such information and give to him such access to and 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) of this section to the Attorney-General of the Federation he may, if he thinks fit, apply to the court for an order conferring on him or any person designated by him for the purpose with respect to the company concerned, all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the court.

(4) If it appears to the court in the course of a voluntary winding up that any past or present officer, or any member of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Attorney-General of the Federation 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.

(5) If, where any matter is reported or referred to the Attorney-General of the Federation under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every other 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 and it is hereby declared for the purposes of this subsection, that the expression “agent” in relation to a company includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.
(6) If any person fails or neglects to give assistance in the manner required by subsection (3) of this section, the court may, on the application of the Attorney-General of the Federation, 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.

SUPPLEMENTARY PROVISIONS AS TO WINDING UP

511. Disqualifications for Appointment as Liquidator
(1) The following persons shall not be competent to be appointed or to act as liquidator of a company, whether in a winding up by, or under the supervision of the court, or in a voluntary winding up—
(a) an infant;
(b) any one found by the court to be of unsound mind;
(c) a body corporate;
(d) an undischarged bankrupt;
(e) any director of the company under liquidation;
(f) any person convicted of any offence involving fraud, dishonesty, official corruption or moral turpitude and in respect of whom there is a subsisting order under section 251 and 252 of this Act.

(2) Any appointment made in contravention of the provisions of subsection (1) of this section shall be void and if any of the persons named in paragraphs (c), (d), (e), and (f) of that subsection shall act as a liquidator of the company, he shall be guilty of an offence and liable to a fine not exceeding ₦250,000 in the case of a body corporate or, in the case of an individual, to imprisonment for a term not exceeding six months or to a fine not exceeding ₦50,000 or to both such imprisonment and fine.

512. Corrupt Inducement Affecting Appointment as Liquidator
Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself as the company’s liquidator, shall on conviction be guilty of an offence and liable to a fine of ₦200,000.

513. Enforcement of Duty of Liquidator to Make Returns, etc.
(1) If a liquidator makes 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, and fails to make good the default within 14 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 Commission, make an order directing the liquidator to make good the default within such time as is specified in the order.

(2) Any order under this section may provide that the costs of any expenses incidental to the application shall be borne by the liquidator and 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.
514. 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 the provisions of this section, the company and any of the following persons, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be liable to a penalty of N25,000.

515. Exemption from Stamp Duty
(1) In the case of a winding up by the court, or a creditors’ voluntary winding up—
(a) every assurance relating to any property of the company, or to any mortgage, charge or other encumbrance thereon or any right or interest in any property, in any event forming 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 exempted from duties chargeable under any law, enactment relating to stamp duties.

(2) In this section, “assurance” includes any deed, conveyance, instrument, discharge, assignment or surrender.

516. 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.

517. Disposal of Books, etc., of Company
(1) Where a company is being 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 members’ voluntary winding up, in such way as the company by special resolution directs and, in the case of a creditors’ 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 five 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) Provisions may be made by general rules for enabling the Commission to prevent, for such period (not exceeding five years from the dissolution of the company) as it may think proper, 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 make representations to it and to appeal to the court from any direction which may be given by it in the matter.

(4) If any person acts in contravention of any general rules made for the purposes of this section or of any direction of the Commission thereunder, he shall be liable to a penalty of N50,000.

518. Information as to Pending Liquidations and Disposal of Unclaimed Assets

(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 Commission a statement in the prescribed form and containing the 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; but any person untruthfully so stating himself to be creditor or contributory shall be guilty of contempt of court, and shall be punishable accordingly on the application of the liquidator or of the official receiver.

(3) If a liquidator fails to comply with the requirements of this section, he shall be liable to a penalty of N100 for each day during which the default continues.

(4) If it appears from any such statement or otherwise that a liquidator has in his custody or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the same to the companies liquidation account mentioned in section 430 of this Act and shall be entitled to a certificate of receipt in the prescribed form for the money so paid, which shall be an effectual discharge to him.

(5) For the purposes of ascertaining and getting in any money payable into the companies liquidation account in pursuance of this section, the following powers may be exercised by the authorities named, that is to say—

(a) the Commission may at any time order any such liquidator to submit to it an account verified by affidavit of the sums received and paid by him under or in pursuance of the liquidation, and may direct and enforce an audit of the account and if the liquidator fails to submit the account within such reasonable time as the Commission directs, he shall be guilty of contempt of court and may, on the application of the Commission to the court made for the purpose, be punished accordingly; and

(b) the court may, if default is made in submitting the account referred to in paragraph (a) of this section—

(i) by warrant addressed to any police officer, cause the liquidator to be arrested, and all books, papers and money or goods, relating to the liquidation in his possession to be seized and him and them to be safely kept until such time as the court may order;
at any time by order addressed to the Postmaster-General of the Nigerian Postal Service require that, for a period of not more than three months, letters addressed to the liquidator and sent through the post, be in course of post, redirected, sent or delivered to or at any place or places mentioned in the order;

(ii) summon the liquidator or his wife, or any person known or suspected to have in his possession any books, or papers relating to the liquidation, and any money or goods belonging to the liquidator or representing any unclaimed or undistributed assets of the company as aforesaid, or summon any person whom the court deems capable of giving information respecting any such books, papers, money, goods or other assets, and require any person summoned under this paragraph to produce documents in his custody or under his control relating to the liquidator's dealings with the property of the company;

(iv) where any person on examination before it admits that he is indebted to the company, by order made on the application of the official receiver or liquidator, direct payment to the official receiver or liquidator, as the case may be, of the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not at such time and in such manner as the court thinks fit, with or without costs of the examination;

(v) examine on oath, either by word of mouth or written interrogatories, any person so brought before it concerning the liquidator and his dealings with the property of the company;

(vi) if any person on examination before the court admits that he has in his possession any money properly payable into the company's liquidation account in pursuance of this section, order him to pay any such money forthwith into that account.

(6) Any person claiming to be entitled to money paid into the company's liquidation account in pursuance of this section may apply to the Commission for payment, and the Commission, if the liquidator certifies the claim, may make an order for payment accordingly.

(7) An appeal shall lie to the court by any person claiming to be dissatisfied with the decision of the Commission in respect of any claim made under this section.

519. Resolutions Passed at Adjourned Meetings of Creditors, etc.
Where 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.

520. Power to Make Over Assets to Employees
(1) On the winding up of a company (whether by the court or voluntarily), the liquidator may, subject to the following provisions of this section, make any payment which the company has, before the commencement of the winding up, decided to make under section 568 of this Act.

(2) The power which a company may exercise by virtue only of section 568 of this Act may be exercised by the liquidator after the winding up has commenced if, after the
company’s liabilities have been fully satisfied and provision has been made for the costs of the winding up, the exercise of that power has been sanctioned by such resolution of the company as would be required of the company itself by subsection (3) of section 568 of this Act before that commencement, as if paragraph (b) of that subsection were omitted and any other requirement applicable to its exercise by the company had been met.

(3) Any payment which may be made by a company under this section may be made out of the company’s assets which are available to the members on the winding up.

(4) On a winding up by the court, the exercise by the liquidator of his powers under this section shall be subject to the court’s control and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of the power.

(5) Subsections (1) and (2) of this section shall have effect notwithstanding any rule or law or section 482 of this Act.

SUPPLEMENTARY POWERS OF COURT

521. Meetings to Ascertain Wishes of Creditors and Others
(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 purposes 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.

522. Judicial Notice of Signatures of Officers of Court, etc.
In all proceedings under this Part of this Act, all courts, Judges, and persons judicially acting, and all officers, judicial or ministerial, of any court or employed in enforcing the process of any court, shall take judicial notice of the signature of any officer of court and also of the official seal or stamp of a court appended to or impressed on any document made, issued or signed under the provisions of this Part of this Act, or on any official copy of any such document.

523. Judicial Notice of Signatures of Certain Government Officials
(1) Documents purporting to be orders or certificates made or issued by the Attorney-General of the Federation or the Commission for the purposes of this Act and to be signed by the Attorney-General of the Federation or the Accountant-General of the Federation, or under the seal of the Commission or signed by any person authorised in that behalf by them or, it, and in proper case to be sealed where necessary, shall be received in evidence and deemed to be such orders, or certificates without further proof, unless the contrary is shown.

(2) A certificate signed by the Attorney-General of the Federation or the Accountant-General of the Federation or under the seal of the Commission that any order made,
certificate issued, or act done, is the order, certificate or act of the Attorney-General of the Federation, Accountant-General of the Federation or the Commission, as the case may be, shall be conclusive of the fact so certified.

524. Special Commissioners for Receiving Evidence
(1) Where a company is in course of being wound up, all magistrates shall be commissioners for the purpose of taking evidence under this Act and the court may refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed commissioner.

(2) Every commissioner shall, in addition to any powers which he might lawfully exercise as a magistrate, have in the matter so referred to him all the same powers as the court of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaults by witnesses and of allowing costs and expenses to witnesses.

(3) The examination so taken shall be returned or reported to the court in such manner as that court directs.

525. Affidavits in Nigeria and Elsewhere
An affidavit required to be sworn under the provisions or for the purposes of this Part of this Act may be sworn in Nigeria or elsewhere in accordance with the provisions of the Oaths Act or under any other enactment or law providing for the administration of oaths and all courts, Judges, commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signatures (as the case may be) of any court, Judge, person, consul, or vice-consul, 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

526. Power of Court to Avoid Dissolution of Company
(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 may think 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 Commission for registration an office copy of the order, and if that person fails so to do he shall be liable to a penalty of N200 for every day during which the default continues.

527. Power of Commission to Strike off Defunct Company
(1) The Commission may strike off the name of a company from the register of companies if:
   (a) a special resolution has been passed by the company that the name of the company be struck off the register;
(b) an application has been made to the Commission that the name of the company be struck off the register; and

(c) advertisement has been made in three national daily newspapers within 28 days of passing the resolution, calling for objections, if any, to the application; and

(d) the Commission is satisfied that –

(i) the reasons given for the application are sufficient to justify the striking off, and

(ii) the company has not commenced business and has no undischarged obligations, and

(iii) no reasonable objection has been received within 28 days of the publication of the advertisement mentioned in subsection (1) (c) of this section.

(2) Any person aggrieved by the striking off of the name of the company under this subsection may apply to the court, at any time before the expiration of 2 years from the date of the striking off, and if the court is satisfied that it is just to restore it to the register, the court may order the name of the company to be so restored.

(3) Where the Commission observes or has reasonable cause to believe that a company is not carrying on business or has not been in operation for a period of 5 years or has not complied with sections 371 to 377 of this Act for a consecutive period of 5 years the Commission may cause to be published in at least 3 national daily newspapers a notice of its intention to strike off the company from the register.

(4) Where the Commission does not within 90 days of the last publication receive any response from the company that it is carrying on business or in operation, it may strike off the name of the company.

(5) Where a company has been struck off in accordance with the provisions of this section, the Commission shall cause to be published in at least 3 national daily newspapers, the name and date of the striking off of the company provided that –

(i) the liability, if any, of every director, managing officer and member of the company shall continue and may be enforced as if the company has not been struck off, and

(ii) 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) Any company, member or creditor aggrieved by the striking off from the register under subsection (4) of this section may apply to the court, at any time before the expiration of 10 years from the publication of the notice under subsection (5) of this section, for an order restoring the company to the register, and if the court is satisfied that, at the time of the striking off, the company was carrying on business or in operation, or that otherwise it is just to restore it to the register, the court may order the name of the company to be restored to the register; and an order under this subsection may include any directions the court thinks fit, and provision may be made therein 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 the register, and upon delivery of an office copy to the Commission for registration, the order shall have effect according to its tenor, and may be registered accordingly.
(7) Any notice to a liquidator to be sent under this section may be addressed to the liquidator at his last known place of business, and any letter or notice to be sent under this section to a company may be addressed to the company at its registered or head office.

528. Property of Dissolved Company to be Declared as 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 section 526 or 527 of this Act, be deemed to be vested in the State without further assurance, as bona vacantia.

CENTRAL ACCOUNTS

529. Companies Liquidation Account Defined
(1) There shall continue to be an account called the companies liquidation account, kept on behalf of the Commission by the Accountant-General of the Federation, into which shall be paid all moneys received by the Commission in respect of proceedings under this Act in connection with the winding up of companies.

(2) All payments out of money standing to the credit of the Commission in the companies liquidation account shall be made by the Accountant-General in the prescribed manner.

530. Investment of Surplus Funds in Government Securities, etc.
(1) If the cash balance standing to the credit of the companies liquidation account is in excess of the amount which in the opinion of the Commission is required for the time being to answer demands in respect of companies’ estates, the Commission shall notify the excess to the Accountant-General of the Federation and the Accountant-General of the Federation may invest the excess or any part thereof, in Government securities, to be placed to the credit of such account as he may deem fit in the circumstances.

(2) If any part of the money so invested is, in the opinion of the Commission, required to answer any demands in respect of companies’ estates, the Commission shall notify to the Accountant-General of the Federation the amount so required, and the Accountant-General of the Federation shall thereupon repay to the Commission such sum as may be required to the credit of the companies liquidation account, and for that purpose may direct the sale of such part of the securities as may be necessary.

(3) The dividends on investments under this section shall be paid to such account as the Accountant-General of the Federation may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of proceedings in the winding up of companies.

531. Separate Accounts of Particular Estates
(1) An account shall be kept by the Commission of the receipts and payments in the winding up of each company, and, when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company’s estate, the Commission shall, on the request of the committee, invest the
amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the company.

(2) If any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company, the commissioner shall, on the request of that committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid to the credit of the company.

(4) Where the balance at the credit of any company’s account in the hands of the Commission exceeds ₦1,000,000 and the liquidator gives notice to the Commission that the excess is not required for the purposes of the liquidation, the company shall be entitled to interest on the excess at the current bank rate.

RETURNS BY OFFICERS OF COURTS

532. Returns by Officers in Winding-up
The officers of the courts acting in the winding up of companies shall make to the Commission such returns of the business of their respective courts and offices, at such times, and in such manner and form as may be prescribed, and from those returns the Commission shall cause books to be prepared which shall be opened for public information and searches.

ACCOUNTS TO BE PREPARED ANNUALLY

533. Annual Accounts of Company Winding-up and Disposal
(1) The Commission and every officer by whom fees are taken under this Act in relation to the winding up of companies, shall make returns and give information to the Accountant-General of the Federation in such form as he may require; and the accounts of the Commission relating to the winding up of companies shall be audited as soon as may be after the end of each year in the manner prescribed by the Constitution of the Federal Republic of Nigeria, 1999.

(2) The Accountant-General of the Federation shall, before the end of each year in which the audit is made, prepare for submission to the President an account of the winding up of companies, as audited by the Accountant-General for the Federation, showing in respect of such winding up, the receipts and expenditure during the previous year, and any other matters which the President or the Minister, as the case may be, may require.

CHAPTER 6

WINDING UP OF UNREGISTERED COMPANIES

534. Winding-up of Unregistered Company
Subject to the provisions of this Part of this Act, an 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—
(a) the principal place of business of an unregistered company shall for all the purposes of the winding up be deemed to be the registered office of the company;

(b) an unregistered company shall not be wound up under this Act voluntarily or subject to supervision;

(c) an unregistered company may be wound up if—
   (i) 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) the company is unable to pay its debts;
   (iii) the court is of opinion that it is just and equitable that the company should be wound up;

(d) an unregistered company shall, for purposes of this Act, be deemed to be unable to pay its debts if—
   (i) a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding £100,000 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 21 days 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) any action or other proceedings has been instituted against any member for any debt or demand due from the company, or from him in his capacity as a member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving it 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 notice in such manner as the court may approve or direct, the company has not within 28 days after service of the notice secured, or compounded for the debt or demand or procured the action or proceeding to be stayed, or within that period has not indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;
   (iii) execution or other process issued on a judgment, act 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) it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.

535. Contributories in Winding-up 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 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 personal representatives, heirs, and devisees of
deceased contributories, and the trustees of bankrupt or insolvent contributories, as the case may be, shall apply.

536. 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.

537. Action, etc., 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.

538. Provisions of this Part to be 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 to do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act; but 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 XVI
ARRANGEMENTS AND COMPROMISE

539. Definition of “Arrangement”
In this Part of this Act, the expression “arrangement” means any change in the rights or liabilities of members, debenture holders or creditors of a company or any class of them or in the regulation of a company, other than a change effected under any other provision of this Act or by the unanimous agreement of all parties affected thereby.

540. Arrangement on Sale of Company’s Property during Members’ Voluntary Winding-up
(1) With a view to effecting any arrangement, a company may by special resolution resolve that the company be put into members’ voluntary winding up and that the liquidator be authorised to sell the whole or part of its undertaking or assets to another body corporate, whether a company within the meaning of this Act or not (in this section called “the transferee company”) in consideration or part consideration of fully paid shares, and to distribute the same in specie among the members of the company in accordance with their rights in the liquidation.

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

(a) within one year from the date of the passing of any special resolution as is referred
to in subsection (1) of this section, an order is made under sections 308 to 310 of
this Act dealing with relief on the grounds of unfairly prejudicial and oppressive
conduct or for the winding up of the company under a creditors' voluntary winding
up, the arrangement for the sale and distribution shall not be valid unless
sanctioned by the court;

(b) any member of the company, by writing addressed to the liquidator and left at the
registered office or head office of the company, within 30 days after the passing of
the resolution, dissents therefrom in respect of any of the shares held by him, the
liquidator shall either abstain from carrying the resolution into effect or shall
purchase such shares at a price to be determined in the manner provided by
subsection (4) of this section.

(3) Any member who fails to signify his dissent in accordance with subsection (2) of this
section shall be deemed to have accepted the resolution.

(4) If the liquidator elects to purchase the shares of any member who has expressed
his dissent in accordance with subsection (2) of this section, the price payable therefor
shall be determined by agreement in the case of a private company in which aliens do not
participate, and in the case of a public company or a private company in which aliens
participate, by the Securities and Exchange Commission: Provided that in the case of a
private company in which no aliens participate—

(a) such price shall be determined by estimating what the member concerned would
have received had the whole of the undertaking of the company been sold as a
going concern for cash to a willing buyer and the proceeds, less the cost of winding
up, been divided amongst the members in accordance with their rights;

(b) the purchase money shall be paid by the company before the company is dissolved
and be raised by the liquidator or, in default of any direction in the special
resolution, in such manner as he may think fit as part of the expenses of the
winding up.

(5) Nothing contained in this section shall authorise any variation or abrogation of the
rights of any creditor of the company.

(6) If any company, otherwise than under the foregoing provisions of this section, sells
or resolves to sell the whole or part of its undertaking or assets to another body corporate
in consideration or part consideration of any shares, debentures, policies or other like
interest in that body corporate, and resolves to distribute the same in specie among
members of the company (whether in liquidation or by way of dividend), any member of
the company may by notice in writing addressed to the company and left at the registered
office or head office of the company within 30 days after the passing of the resolution
authorising such distribution, require the company either to abstain from carrying the
resolution into effect or to purchase any of his shares at a price to be determined in the
manner provided by subsection (4) of this section.

(7) Nothing contained in subsection (6) of this section shall authorise any company to
purchase its own shares or make any distributions to its shareholders except in
accordance with the provisions of this Act.
540. 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, the court may, on the application, in a summary way, of the company or any of its creditors or members 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 a manner as the court directs.

(2) If a majority representing not less than three quarters in value of the shares of members or class of members, or of the interest of creditors or class of creditors, as the case may be, being present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement may be referred by the court to the Securities and Exchange Commission which shall appoint one or more inspectors to investigate the fairness of the said compromise or arrangement and to make a written report thereon to the court within a time specified by the court.

(3) If the court is satisfied as to the fairness of the compromise or arrangement, it shall sanction the same and the compromise or arrangement shall be binding on all the creditors or the class of creditors or on the members or the class of members as the case may be, and also the company or in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(4) An order made under subsection (3) of this section shall have no effect until a certified true copy of the order has been delivered by the company to the Commission 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.

(5) If a company makes default in complying with subsection (4) of this section, the company and every officer of the company shall be liable to a penalty of N1,000 for each copy in respect of which default is made.

(6) In this section and section 542 of this Act, “company” means any company liable to be wound up under this Act.

542. Information as to Compromise with Creditors and Members
(1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under section 543 of this Act, there shall—
(a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement in so far as it is different from the effect on the like interest of other persons; and
(b) in every notice summoning the meeting which is given by advertisement, be included such a statement as aforesaid, or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.
Where the compromise or arrangement affects the rights of debenture holders of the company, the statement shall give the like explanation as respects the trustees of any deed for securing the issue of the debenture as it is required to give as respects the company's directors.

Where a notice given by advertisement includes a notification that copies of a statement explaining the effects of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

Where a company makes default in complying with any requirement of this section, the company and every officer of the company shall be liable to a penalty of N50,000 and for the purpose of this subsection any liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company: Provided that a person shall not be liable under this subsection, if that person shows that the default was due to refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to his interests.

It shall be the duty of any director of the company and of any trustee for debenture holders of the company to give notice to the company of such matters relating to himself as may be necessary for the purpose of this section, and any person who makes default in complying with this subsection shall be liable to a penalty of N100,000.

PART XVII
MISCELLANEOUS AND SUPPLEMENTAL

APPLICATION OF THIS PART OF THIS ACT

543. Application of this Part of this Act

(1) Except as otherwise provided, this Part, that is, Part A of this Act, shall apply to—
(a) all companies formed and registered under this Act;
(b) all existing companies;
(c) all companies incorporated, formed or registered under other enactments; and
(d) unregistered companies.

(2) This Act shall not apply to unions of workers or of employers.

544. Act to Over-ride Memorandum, Articles, etc.

(1) Except as otherwise expressly provided in this Act—
(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed, by it, or in any resolution passed by the company in general meeting or by its board of directors whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and
(b) any provision contained in the memorandum or articles, agreement or resolution as in paragraph (a) of this subsection shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.
Any provision of this Act overriding or interpreting a company’s articles as if a re-enacted provision of the **Companies and Allied Matters Act, 1990** shall, except as provided by this Act, apply in relation to articles in force at the commencement of this Act, as well as to articles coming into force thereafter, and shall apply also in relation to a company’s memorandum as it applies in relation to its articles.

545. Application of Act to Companies under Former Enactments

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 has 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 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 Companies Act, 1912 as the first Nigerian enactment in respect of companies, or as the case may be, any enactment relating to companies thereafter in force in Nigeria before the commencement of this Act.

546. Application of Act to Companies Registered but not Formed

This Act shall apply to every company registered but not formed under the Companies Act, 1912 referred to in section 545 of this Act or, as the case may be, any enactment relating to companies thereafter in force in Nigeria before the commencement of 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 enactment in force in Nigeria at the date when it was registered.

547. Application of Act to Unlimited Companies Registered under Former Enactments

This Act shall apply to every unlimited company registered as a limited company in pursuance of section 52 of the Companies Act, 1968 or of any enactment replaced by that section, as the case may be, in the same manner as it applies to an unlimited company registered in pursuance of this Act as a limited company:

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 as a limited company under the said section 52 or any enactment replaced by that section, as the case may be.

548. Restricted Application of Act to Unregistered Companies

(1) The provisions of this Act specified in column 2 of the Thirteenth Schedule to this Act (which respectively related to all bodies corporate, incorporated in and having a principal place of business in Nigeria, other than those mentioned in subsection (2) of this section as if they were companies registered under this Act, but subject to any limitations mentioned in relation to those provisions respectively in the third column of that Schedule and to such adaptation and modifications (if any) as may be specified by order made by the Minister and published in the Gazette.

(2) The provisions of subsection (1) of this section shall not apply by virtue of this section to any of the following, that is to say—
(a) any body incorporated under any enactment other than this Act;
(b) any body not formed for the purpose of carrying on a business which has for its objects the acquisition of gain by the body or by the individual members thereof; and
(c) any body for the time being exempted by the direction of the President.

(3) This section shall not repeal or revoke in whole or in part any enactment or other instrument constituting or regulating any body in relation to which the said provisions are applied by virtue of this section; but in relation to any such body, the operation of any such enactment or instrument shall be suspended in so far as it is inconsistent with any of the said provisions as they apply for the time being to that body.

ADMINISTRATION

549. Registered and Head Office of Company
(1) The address of the registered or head office of a company given to the Commission in accordance with paragraph (e) of subsection (2) of section 34 of this Act or any change in the address made in accordance with the provisions of this section, shall be the office to which all communications and notices to the company may be addressed.

(2) Notice of any change in the address of the registered or head office of the company shall be given within 14 days of the change to the Commission which shall record the same: Provided that a postal box address or a private mailbag address shall not be accepted by the Commission as the registered or head office.

(3) If a company carries on business without complying with subsection (2) of this section, the company and every officer of the company shall be liable to a penalty of N100 for every day during which the company so carries on business.

(4) The fact that a change in the address of a company is included in its annual return shall not be taken to satisfy the obligation imposed by this section.

(5) Where a company incorporated before the commencement of this Act has provided an address not in accordance with this section or section 34 of this Act, as the case may be, it shall within 14 days after such commencement comply with the requirements of this section and the failure shall be an offence punishable as prescribed by this section.

550. Publication of Name by Company
(1) Every company, after incorporation, shall—
(a) paint or affix, and keep painted or affixed, its name and registration number on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible;
(b) have its name engraved in legible characters on its seals; and
(c) have its name and registration number mentioned in legible characters in all business letters of the company and 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 or parcels, invoices, receipts, and letters of credit of the company.
(2) If a company makes default in complying with subsection (1) of this section, it shall be liable to a penalty of N100 for every day during which the default continues and every director and manager of the company shall be liable to the like penalty.

(3) If any 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 where on its name is not so engraved as aforesaid; or
(b) issues or authorises the issue of any business letter of the company or any notice, 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 the manner aforesaid; or
(c) issues or authorises to be issued any bill or parcel, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in the manner aforesaid, he shall be liable to a penalty of N50,000.00 and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless it is duly paid by the company.

551. Fees
(1) Any fees paid to the Registrar of Companies before the commencement of this Act shall be deemed to have been validly paid under this Act.

(2) All fees paid to the Commission and not otherwise directed by this Act for payment into a particular account, shall be paid into the Consolidated Revenue Fund of the Federation.

552. Form of Register, etc.
(1) Any register, record, index, minute book or book of account required by this Act to be made and kept by a company may be made by making entries in bound books or in loose leaves, whether pasted or not, or in a photographic film form, or may be entered or recorded by any information storage device that is capable of reproducing the required information in intelligible written form within a reasonable time, or by recording the matters in question in any other manner in accordance with accepted commercial usage.

(2) Where any such register, record, index, minute book or book of account is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and for facilitating its discovery and where default is made in complying with the provisions of this subsection, the company and every officer of the company shall be liable to a penalty of N50,000 and where the offence is a continuing one, shall in addition be liable to a fine of N50 for every day during which the default continues.

(3) Where any such register, index, minute book or accounting record is not kept by making entries in a bound book, but by some other means including electronic means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery.
(4) If default is made in complying with the provisions of subsection (3) of this section, the company and every officer of the company shall be liable to a penalty of N50,000 and for continuing contravention, to a daily default penalty of N50.

(5) The power conferred on a company by subsection (1) of this section to keep a register, or other record by recording the matters in question otherwise than by making entries in bound books, includes power to keep the register or other record by recording those matters otherwise than in legible form, so long as the recording is capable of being reproduced in a legible form.

(6) Any provisions of an instrument made by a company before 1 October, 1968 which requires a register of holders of the company debentures to be kept in a legible form, shall be read as requiring the register to be kept in a legible or non-legible form.

(7) If any such register or other record of a company as is mentioned in subsection (2) of this section or a register of holders of a company’s debentures, is kept by the company by recording the matters in question otherwise than in a legible form, the duty imposed on the company by this Act to allow inspection of or to furnish a copy of the register or other record or any part of it, shall be treated as a duty to allow inspection of, or to furnish a reproduction of the recording or of the relevant part of it in a legible form.

553. Rules of Court for Winding-up of Companies, etc.
(1) The Chief Judge of the Federal High Court may make rules of court for carrying into effect the objects of this Act so far as they relate to the winding up of companies or generally in respect of other applications to a court under this Act.

(2) For the purpose of this section, it is declared that rules made for the purpose of any enactment passed or made on or before, or to have effect on or after, the commencement of this Act shall, on its commencement, ensure and have effect where they are not inconsistent with rules of court made or deemed to have been made, under this section.

554. Certain Companies to Publish Statement in Prescribed Form
(1) Every banking company or 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, submit to the Commission a statement in the form in the Fourteenth Schedule to this Act or as near thereto as circumstances may 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 N100.

(4) If default is made in complying with this section, the company and every director and manager of the company shall be liable to a penalty of N100.00 for everyday during which the default continues.
(5) For the purposes of this Act, a company that carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

LEGAL PROCEEDINGS, ETC.

555. Prosecution of Offences
(1) All offences under this Act may be tried by a court of competent jurisdiction in the place where the offence is alleged to have been committed.

(2) Where provision is made in this Act for a criminal sanction to be imposed in case of an act, omission or default without reference therein to the default being an offence, or without reference to conviction thereof in a court, as the case may be, the reference to the act, omission or default shall be construed as referable to an offence, and the expression “offences” as used in this section shall have effect in relation to any such act, omission or default.

556. Production, etc., of Books where Offences Suspected
(1) If, on application made to a Judge of the Federal High Court in chambers by the Attorney-General of the Federation, there is shown to be reasonable cause to believe that a person has, while an officer of a company, committed an offence in connection with the management of the company’s affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made—
(a) authorising any person named therein to inspect the said books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or
(b) requiring the secretary of the company or any other officer thereof as may be named in the order to produce the said books or papers, to a person and at a place named in the order.

(2) The provisions of subsection (1) of this section shall apply also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company’s affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in paragraph (b) of that subsection shall be made by virtue of this subsection.

(3) No appeal shall lie from the decision of a Judge of the Federal High Court on any application under this section.

557. Costs in Actions by Certain Limited Companies
Where a limited company is the plaintiff in any action or other legal proceedings, any Judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company may 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.

558. Saving for Privileged Communications
Where proceedings are instituted under this Act against any person by the Attorney-General of the Federation, nothing in this Act shall be taken to require any person who has
acted as legal practitioner for the defendant to disclose any privileged communication made to him in that capacity.

559. Power of Court to Grant Relief in Certain Cases
(1) If in any proceeding for negligence, default or breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor, it appears to the court hearing the case that the officer or person is or may be liable in respect of the negligence, default, or 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 or breach of duty or breach of trust, that court may relieve him, either wholly or partly, from this liability on such terms as the court may deem fit.

(2) When any such officer or person aforesaid has reason to apprehend that any claim may 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.

560. Penalty for Improper Use of Certain Words
If any person trades or carries on business under any name or title of which the last word or words are “Unlimited”, “Limited”, “Public Limited Company” or “Limited by Guarantee” or their abbreviations, he shall, unless duly incorporated as an unlimited company, a private company limited by shares, a public company limited by shares, or a company limited by guarantee, respectively, be liable to a penalty of N50 for every day during which the name or title is used.

561. Extended Effect of Penalty for Offence of Fraudulent Trading
The provisions of section 508 (3) of this Act (which imposes a penalty for certain offences connected with fraudulent trading discovered on winding up a company) shall extend and apply to cases where fraudulent trading is discovered in circumstances other than on winding up a company.

562. Application of Fines
Any court imposing a fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards rewarding the person on whose information or at whose suit the fine is recovered and subject to any such direction, all fines under this Act shall, notwithstanding anything in any other enactment, be paid into the appropriate Consolidated Revenue Fund.

563. Application by the Commission to the Court for Directions
The Commission may apply to court for directions in respect of any matter concerning its duties, powers and functions under this Act and on any such application, the court may give such directions and make such further order as it thinks fit in the circumstances.

MISCELLANEOUS

564. Schedules, Tables and Forms; Alteration and Application
(1) The Commission may, with the approval of the President, by regulation or order, published in the Gazette, add to, delete from or otherwise alter the whole or any part of any of the Schedules, Tables or Forms prescribed or in force under this Act.

(2) It is hereby declared that until regulations, rules or orders are made under and for the purposes of this Act prescribing forms for use, the forms in force at the commencement of this Act shall be deemed to have been made under it and shall have effect accordingly.

565. Enforcement of Duty of Company to Make Returns to Commission
(1) If a company, having made default in complying with any provision of this Act requiring it to file with, deliver or send to the Commission any return, account or other document, or to give notice to it of any matter, fails to make good the default within 14 days after the service of a notice on the company requiring it to do so, the court may, on the application of any member or creditor of the company or of the Commission, order the company and any officer to make good the default within such time as may be specified in the order.

(2) Any order under this section may provide that all costs of or incidental to the application shall be borne by the company or by any officer 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.

566. Power of Company to Provide for Employees on Cessation or Transfer of Business
(1) The powers of a company include (if they would not otherwise do so apart from this section) power to make the following provisions for the benefit of persons employed or formerly employed by the company or any of its subsidiaries, that is to say, provision in connection with the cessation or the transfer, to any person of the whole or part of the undertaking of the company or subsidiary.

(2) The power conferred by subsection (1) of this section shall be exercisable notwithstanding that its exercise is not in the best interest of the company.

(3) The power which a company may exercise by virtue only of subsection (1) of this section shall only be exercised by the company if sanctioned—
   (a) in a case not falling within paragraph (b) or (c) of this subsection, by a resolution of the company; or
   (b) if so authorised by the memorandum or articles, a resolution of the directors; or
   (c) if the memorandum or articles require the exercise of the power to be sanctioned by a resolution other than a simple resolution of the company, with the sanction of that other resolution.

(4) Any payment which may be made by a company under this section may, if made before the commencement of any winding up of the company, be made out of profits of the company which are available for dividend.
PART B

BUSINESS NAMES

567. Establishment of Business Names’ Registry in Each State
There shall be established in each State of the Federation, a register office of business names where there shall be kept a register in the prescribed form in which shall be entered such matters as are required by this Act or any regulation made thereunder to be entered in it.

568. Appointment of Registrar and other Officers
(1) The Registrar-General of Companies appointed under section 8 of this Act shall be the Registrar of Business Names.

(2) There may be appointed from time to time fit persons to be Legal Officers of Business Names or other officers as may be necessary for the administration of this part of this Act.

569. Functions of Registrar and Legal Officers
(1) The Registrar shall cause business names to be registered in accordance with the provisions of this part of this Act.

(2) For the purpose of the registration under this Part of this Act, of the business names of a firm, individual or corporation at any of the register offices of business names, any Legal Officer may, subject to any direction that the Commission may give, perform any act or discharge any duty which the Registrar may lawfully perform or discharge or is required by this Act to perform or discharge, and, subject to that, any reference in this Part of this Act to the Registrar, unless the context otherwise admits, shall accordingly be deemed to include a reference to a Legal Officer.

(3) Without prejudice to the generality of the foregoing provisions of subsection (1) of this section, a Legal Officer may be assigned to the registry of business names in a State for the purpose of registering business names and keeping a register of business names.

570. Registration of Business Names
(1) Every individual, firm or corporation having a place of business in Nigeria and carrying on business under a business name shall be registered in the manner provided in this Part of this Act if—

(a) in the case of an individual, the name does not consist of his true surname without any addition other than his true forenames or the initials thereof;

(b) in the case of a firm, the name does not consist of the true surname of all partners without any addition other than the true forenames of the individual partners or the initials of such forenames;

(c) in the case of a corporation, whether or not registered under this Act, the name does not consist of its corporate name without any addition.

(2) Notwithstanding subsection (1) of this section where—
(a) the addition merely indicates that the business is carried on in succession to a former owner of the business, that addition shall not of itself render registration necessary;  
(b) two or more individual partners have the same surname, the addition of an —s‖ at the end of that surname shall not of itself render registration necessary; and  
(c) the business is carried on by a receiver or manager appointed by any court, registration shall not be necessary.

571. Procedure for Registration  
(1) Every individual, firm or corporation required under this Act to be registered shall, within 28 days after the individual, firm or corporation commences the business in respect of which registration is required or within three months of the coming into operation of this Act, furnish to the Registrar at the registry in the State in which the principal place of business of the individual, firm or company is situated, a statement in writing in the prescribed form, signed as required by this section and containing the following particulars—  
(a) the business name or, if the business is carried on under two or more business names, each of those business names;  
(b) the general nature of the business;  
(c) the full postal address of the principal place of business;  
(d) the full postal address of every other place of business;  
(e) where the registration to be effected is that of a firm—  
(i) the present forenames and surname, any former forenames or surname, the nationality and, if that nationality is not the nationality of origin, the nationality of origin, the age, the sex, the usual residence and any other business occupation of each of the individuals who are partners; and  
(ii) the corporate name and registered office of such corporation which is a partner;  
(f) where the registration to be effected is that of an individual, the present forenames and surname, any former forenames or surnames, the nationality and, if that nationality is not the nationality of origin, the nationality of origin, the age, the sex, the usual residence and any other business occupation of the individual;  
(g) where the registration to be effected is that of a company, the name and registered office of the company;  
(h) the date of commencement of the business, whether before or after the coming into operation of this Act.  

(2) Where the registration to be effected is that of an individual or a firm consisting only of individuals, there shall be submitted to the Registrar copies of the passport photographs of the individual certified in a manner required by the Registrar.  

(3) Where the registration to be effected is that of a firm or individual carrying on business on behalf of another individual, firm or corporation whether as nominee or trustee, the statement required by subsection (1) of this section to be furnished shall contain the following particulars in addition to the particulars required by that subsection—  
(a) the present forenames and surname, any former forenames or surname, the nationality and, if that nationality is not the nationality of origin, the nationality of origin and the usual residence of each individual on whose behalf the business is carried on;  
(b) the name of each firm or corporation in whose behalf the business is carried on.
Where the registration to be effected is that of a firm or individual carrying on business as general agent for any concern carrying on business outside Nigeria and not having a place of business in Nigeria, the statement required by subsection (1) of this section to be furnished shall, in addition to the particulars required by that subsection, state the name and full postal address of each such concern, provided that in the case of a firm or individual carrying on business as general agent for three or more such concerns, it shall be sufficient to state the fact that the business is so carried on and the countries in which the concerns carry on business.

A statement furnished in accordance with subsections (1) to (4) of this section shall—
(a) in the case of a statement furnished by an individual, be signed by him;
(b) in the case of a statement furnished by a firm, be signed by each individual who is a partner and by a director or the secretary of each corporation which is partner;
(c) in the case of a company, be signed by a director or the secretary: Provided that, if the statement is accompanied by a statutory declaration made by any person to the effect that he is a partner of the firm or is a director or the secretary of a corporation which is a partner of the firm, the statement may be signed by that person alone.

A statement furnished in accordance with subsections (1) to (4) of this section by an individual who is a minor or by a firm of which one of the partners is a minor shall, in addition to the requirements of subsection (1) of this section, be signed by a magistrate, legal practitioner or police officer of or above the rank of Assistant Superintendent of Police.

If an individual, firm or corporation makes default in complying with the provisions of this section, the individual, corporation or every partner in the firm shall be guilty of an offence and liable on conviction to a fine of N200.00 for every day during which the default continues, and the court shall order a statement of the required particulars to be furnished to the Registrar within such time as may be specified in the order.

572. Entry of Business Name in the Register
(1) On receipt by the Registrar of the statement of particulars required to be furnished under section 571 of this Act, he shall, subject to subsection (2) of this section and to the provisions of any regulations made under this Act, cause to be entered in the register the business name of the individual, company or firm and file the statement.

(2) The Registrar shall add to the business name in the register the identification letters of the State which shall be in brackets at the end of the business name, and these shall form part of the business name.

573. Certificate of Registration
(1) On the registration of any individual, firm or corporation under this Act, the Registrar shall issue a certificate in the prescribed form containing the business name of the individual, firm or corporation.

(2) On the registration of any change in the particulars registered in respect of any firm, company or individual, the Registrar may in his discretion either amend the certificate previously issued or issue a fresh certificate.
(3) A certificate issued under this section shall be sent by registered post or delivered to the firm, company or individual registering, who shall thereupon exhibit and thereafter maintain the same in a conspicuous position at the principal place of the business so registered:
Provided that—
(a) where a fresh certificate has been issued under subsection (2) of this section, the provisions of this subsection shall apply to such fresh certificate; and
(b) where any certificate has been lost or destroyed or rendered illegible, a copy of such certificate certified by the Registrar may be exhibited in place of the original.
(4) Where a firm, company or individual registered under this Act has more than one place of business, the original certificate shall be exhibited and maintained as required by subsection (3) of this section at the principal place of business and a copy of the certificate certified by the Registrar shall be exhibited and thereafter maintained in a conspicuous position in each of the other places of business.

(5) If an individual, firm or corporation makes default in complying with the provisions of subsection (3) or subsection (4) of this section, the individual, corporation or every partner in the firm shall be liable to a penalty of N200.00 for every day during which the default continues.

574. Registration of Changes
(1) Whenever a change is made or occurs in the particulars required by section 573 of this Act to be furnished in respect of any individual, firm or corporation registered under that section, other than particulars as to the age of an individual, the individual, firm or corporation shall within 28 days after such change notify the change to the Registrar.

(2) The notice required under subsection (1) of this section shall be in writing signed as provided in section 571 of this Act.

(3) If an individual, firm or corporation makes default in complying with the provisions of this section, the individual, corporation or every partner in the firm shall be liable to a penalty of N200.00 for every day during which the default continues.

575. Removal of Name from Register
(1) If any firm, company or individual registered under this Act ceases to carry on business, it shall be the duty of the partner in the firm at the time when it ceased to carry on business or of the individual or if he is dead his personal representative, within three months after the business has ceased to be carried on, to send by post or deliver to the Registrar a notice, stating that the firm or individual has ceased to carry on business.

(2) On receipt of such a notice as mentioned in subsection (1) of this section, the Registrar may remove the firm, company or individual from the register.

(3) Where the Registrar has reasonable cause to believe that any firm, company or individual registered under this Act is not carrying on business, he may send to the firm, company or individual by registered post a notice that, unless an answer is received to such notice within two months from the date thereof, the firm, company or individual may be removed from the register.
(4) If the Registrar either receives an answer from the firm, company or individual to the effect that the firm, company or individual is not carrying on business or does not within two months from the date of the notice receive an answer, he may remove the firm, company or individual from the register.

(5) If any person whose duty it is under subsection (1) of this section to give notice that any firm or individual has ceased to carry on business fails to comply with the provisions of that subsection, he shall be guilty of an offence and liable on conviction to a fine of N50,000.00.

576. Publication of True Name

(1) Every individual or firm required by this Act to be registered shall in all trade catalogues, trade circulars, show cards, complimentary cards, notices, bills of exchange, promissory notes, endorsements, cheques, orders for money or goods, invoices, receipts, letters of credits, advertisements, business letters and other official documents issued or sent by the individual or firm to any person, have mentioned in legible characters—

(a) in the case of an individual, his present forenames or the initials thereof and present surname and any former forenames or surname and his nationality; and

(b) in the case of a firm, the present forenames or the initials thereof and present surname, and any former forenames or surnames and the nationality of all the partners in the firm or in the case of a corporation being a partner, the corporate name; and

(c) the registration number of the business name.

(2) Where the individual referred to in subsection (1) of this section is a minor, the words “a minor” shall be added, in brackets, after his name.

(3) If an individual or firm makes default in complying with the provisions of this section, the individual or every partner in the firm shall be liable to a penalty of N50,000.00.

577. Liability of Person in Default

Where any firm or individual required under this Act to furnish a statement of particulars or of any change in particulars, makes default in so doing, the rights of such defaulter under or arising out of any contract made or entered into by or on behalf of such defaulter in relation to the business in respect of which particulars were required at any time while he is in default, shall not be enforceable by action or other legal proceedings either in the business name or otherwise:

Provided that—

(a) the defaulter may apply to a High Court in which any such contract would otherwise be enforceable for relief against the disability imposed by this section and a High Court in which any such contract would otherwise be enforceable, on being satisfied that the default was accidental, or due to inadvertence, or some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may grant such relief either generally as regards all contracts enforceable by the court or as respect any particular contract and on such conditions as the court may impose;

(b) nothing herein contained shall prejudice the rights of any other parties as against the defaulter in respect of such contract as aforesaid;

(c) if any action or proceeding shall be commenced by any other party against the defaulter to enforce the rights of such party in respect of such contract, nothing herein contained shall preclude the defaulter from enforcing in that action or
proceeding by way of counterclaim, set-off or otherwise such rights as he may have against that party in respect of such contract.

578. Annual Returns
(1) Every individual, firm or corporation carrying on business under a registered business name shall, not later than the 30th day of June in each year, except the calendar year in which the business name is registered, deliver to the Commission a return in a prescribed form showing the particulars of the individual, firm or corporation and the nature of the business carried on.

(2) The returns shall be accompanied by the financial statement of the individual, firm or corporation in the business during the preceding period of January 1 to December 31.

(3) The returns and the accompanying financial statement shall be signed, in the case of an individual or firm consisting only of individuals, by the individuals and in the case of a company or a partner who is a company, by a director and the secretary.

(4) Every individual, firm or corporation that fails to comply with any of the provisions of this section shall be liable to a penalty of N5,000.00, and a daily default penalty of N50.00.

PART C

INCORPORATED TRUSTEES

579. Incorporation of Trustees of Certain Communities, Bodies and Associations
(1) Where one or more trustees are appointed by any community of persons bound together by custom, religion, kinship or nationality or by any body or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, he or they may, if so authorised by the community, body or association (in this Act referred to as “the association”) apply to the Commission in the manner hereafter provided for registration under this Act as a corporate body.

(2) Upon being so registered by the Commission, the trustee or trustees shall become a corporate body in accordance with the provisions of section 586 of this Part of this Act.

580. Classification of Associations
The Commission shall determine the classification of associations to be registered under this Part in accordance with the aims and objects of the associations.

581. Method of Application
(1) Application under section 581 of this Act shall be in the form prescribed by the Commission and shall state—
(a) the name of the proposed corporate body which must contain the words “Incorporated Trustees of”;
(b) the aims and objects of the association which must be for the advancement of any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, and must be lawful;
(c) the names, addresses and occupations of the secretary of the association, if any.

(2) There shall be attached to the application—
(a) two printed copies of the constitution of the association;
(b) duly signed copies of the minutes of the meeting appointing the trustees and authorising the application, showing the people present and the votes scored;
(c) the impression or drawing of the proposed common seal.

(3) The application shall be signed by the person making it.

(4) The Commission may require such declaration or other evidence in verification of the statements and particulars in the application, and such other particulars, information, and evidence, if any, as it may think fit.

(5) If any person knowingly makes any false statement or gives any false information for the purpose of incorporating trustees under this Part of this Act, he shall be guilty of an offence and liable on conviction to imprisonment for one year or to a fine of N100,000.

582. Qualification of Trustees
(1) A person shall not be qualified to be appointed or act as a trustee if—
(a) he is an infant; or
(b) he is a person of unsound mind having been so found by a court;
(c) he is an undischarged bankrupt; or
(d) he has been convicted of an offence involving fraud or dishonesty within five years of his proposed appointment.

(2) If a person disqualified under paragraph (c) or (d) of subsection (1) of this section acts as a trustee, he shall be liable to a penalty of N100 for every day during which he so acts.

583. Constitution
The constitution of the association shall in addition to any other matter—
(a) state the name or title of the association;
(b) the aims and objects of the association; and
(c) make provisions, in respect of the following—
(i) appointment, powers, duties, tenure of office and replacement of the trustees;
(ii) the use and custody of the common seal;
(iii) the meetings of the association;
(iv) the number of members of the governing body, if any, the procedure for their appointment and removal, and their powers; and
(v) where subscriptions and other contributions are to be collected, the procedure for disbursement of the funds of the association, the keeping of accounts and the auditing of such accounts.

584. Advertisement and Objections
(1) If the Commission is satisfied that the application has complied with the provisions of sections 581, 582 and 583 of this Act, it shall cause the application to be published in a
prescribed form in two daily newspapers circulating in the area where the corporation is to be situated and at least one of the newspaper shall be a national newspaper.

(2) The advertisement shall invite objections, if any, to the registration of the body.

(3) The objection shall state the grounds on which it is made and shall be forwarded to reach the Commission within 28 days of the date of the last of the publications in the newspapers.

(4) If any objections are made, the Commission shall consider them and may require the objections and applicants to furnish further information or explanation, and may uphold or reject the objections as it considers fit and inform the applicant accordingly.

585. Registration and Certificate

(1) If, after the advertisement, no objection is received within the period specified in section 584 of this Act or, where any objection is received, and the same is rejected, the Commission, having regard to all the circumstances, may assent to the application or withhold its assent.

(2) If the Commission assents to the application, it shall register the trustees and issue a certificate in the prescribed form.

586. Effect of Registration and Certificate

(1) From the date of registration, the trustee or trustees shall become a body corporate by the name described in the certificate, and shall have perpetual succession and a common seal, and power to sue and be sued in its corporate name as such trustee or trustees and subject to section 593 of this Part of this Act to hold and acquire, and transfer, assign or otherwise dispose of any property, or interests therein belonging to, or held for the benefit of such association, in such manner and subject to such restrictions and provisions as the trustees might without incorporation, hold or acquire, transfer, assign or otherwise dispose of the same for the purposes of such community, body or association of persons.

(2) The certificate of incorporation shall vest in the body corporate all property and interests of whatever nature or tenure belonging to or held by any person in trust for such community, body or association of persons.

(3) A certificate of incorporation when granted shall be prima facie evidence that all the preliminary requisitions herein contained and required in respect of such incorporation have been complied with, and the date of incorporation mentioned in such certificate shall be deemed to be the date on which incorporation has taken place.

587. Related Associations

Without prejudice to the provisions of section 586 of this Act, the Commission may direct that for all or any of the purposes of this Act-

(a) an association be treated as forming part of an already registered association; and
(b) any two or more association having the same trustees be treated as a single association.

588. Changes of Names or Objects
(1) Where the association is desirous of changing or altering its name or objects or any of them, the trustees shall apply to the Commission in the prescribed form setting out the alterations desired and attaching a copy of the resolution approving the change and duly certified by the trustees.

(2) The Commission on receipt of the application shall consider it and, if satisfied that the change or alteration is prima facie lawful shall—
(a) cause the application to be published in two daily newspapers in the manner specified in subsection (1) of section 584 of this Act; and
(b) direct the corporation to display for at least 28 days a notice of the proposed change or alteration conspicuously mounted at the corporation headquarters, or at any branch offices, or any such places where a majority of the members are likely to see it, as the Commission may require.

(3) The publication and notices shall call for objections which, if any, shall state the grounds of objection and be forwarded to reach the Commission not later than 28 days after the last of the publications in the newspapers.

(4) The provisions of section 584 and of subsection (1) of section 585 of this Part of this Act shall apply to this section as they apply to an application for registration.

(5) If the Commission assents to the application, the alterations shall be made and in the case of a change of name, the Commission shall issue a new certificate in the new name in place of the former certificate.

589. Alteration of Provisions of the Constitution
Subject to sections 584 and 585 of this Part of this Act, an association whose trustees are incorporated under this Part of this Act may alter its constitution by a resolution passed by a simple majority of its members and approved by the Commission.

590. Replacement and Appointment of Additional Trustees
(1) Where a body or association intends to replace some or all its trustees or to appoint additional trustees, it may by resolution at a general meeting so do and apply in the prescribed form for the approval of the Commission.

(2) Upon such application the provision of subsections (2) to (4) of section 588 of this Act shall apply to this section as they apply to the change of name or object.

(3) If the Commission assents to the application, it shall signify its assent in writing to the corporation and the appointment shall become valid as from the date of the resolution appointing the trustees.

591. Changes in Contravention of Certain Provisions of this Part of this Act
Any change or alterations purported to be made in contravention of section 588, 589 or 590 of this Part of this Act shall be void.

592. Council or Governing Body
The association may appoint a council, or governing body, which shall include the trustees and may, subject to the provisions of this Part of this Act, assign to it such administrative and management functions as it deems expedient.
593. Exercise of Powers of Trustee
The powers vested in the trustees by or under this Act shall be exercised subject to the directions of the association, or of the council or governing body appointed under section 592 of this Part of this Act, as the case may be.

594. Application of Income and Property
(1) The income and property of a body or association whose trustee or trustees are incorporated under this Part of this Act shall be applied solely towards the promotion of the objects of the body as set forth in its constitution and no portion thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus, or otherwise by way of profit to any of the members of the association.

(2) Nothing in subsection (1) of this section shall prevent the payment, in good faith, of reasonable and proper remuneration to an officer or servant of the body in return for any service actually rendered to the body or association:
Provided that—
(a) with the exception of ex-officio members of the governing council, no member of a council of management or governing body shall be appointed to any salaried office of the body, or any office of the body paid by fees; and
(b) no remuneration or other benefit in money or money’s worth shall be given by the body to any member of such council or governing body, except repayment of out-of-pocket expenses or reasonable and proper rent for premises demised, or let to the body or reasonable fee for services rendered.

(3) If any person knowingly acts or joins in acting in contravention of this section, he shall be liable to refund such income or property so misapplied to the association.

595. Suspension of Trustees, etc., Appointment of Interim Manager, etc.
(1) The Commission may by order suspend the trustees of an association and appoint an interim manager or managers to manage the affairs of an association if it reasonably believes that—
(a) there is or has been any misconduct or mismanagement in the administration of the association;
(b) it is necessary or desirable for the purpose of—
(i) protecting the property of the association;
(ii) securing a proper application for the purposes of the association of that property or of property coming to the association;
(iii) public interest; or
(c) the affairs of the association are being run fraudulently.

(2) An order made by the Commission under this section may—
(a) make provision with respect to the functions to be discharged by the interim manager or managers appointed by the order; and
(b) provide for—
(i) the powers and duties of the interim manager or managers which may include the powers and duties of the trustees of the association concerned;
(ii) any powers or duties specified by virtue of paragraph (a) to be exercisable or performed by the interim manager or managers to the
exclusion of the trustees.

(3) The functions shall be discharged by the interim manager or managers under the supervision of the Commission.

(4) The reference in subsection (2) to misconduct or mismanagement extends to the employment—

(a) for the remuneration or reward of persons acting in the affairs of the association, or

(b) for other administrative purposes, of sums which are excessive in relation to the property which is or is likely to be applied or applicable for the purposes of the association.

(5) The Commission may also do one or more of the following—

(a) by order suspend any person, officer, agent or employee of the association from office or employment;

(b) by order appoint such number of additional trustees as it considers necessary for the proper administration of the association;

(c) by order—

(i) vest any property held by or in trust for the association in the official custodian,

(ii) require the persons in whom any such property is vested to transfer it to the official custodian who be an individual as the Commission may, from time to time designate, or

(iii) appoint any person to transfer any such property to the official custodian;

(d) order any person who holds any property on behalf of the association, or of any trustee for it, not to part with the property without the approval of the Commission;

(e) order any debtor of the association not to make any payment in or towards the discharge of the debtor’s liability to the association without the approval of the Commission;

(f) by order restrict (regardless of anything in the trusts of the association) the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the association without the approval of the Commission;

(g) by order appoint an interim manager to act as receiver and manager in respect of the property and affairs of the association.

(6) The Commission shall not make an order under subsection (5) (a) of this section as to suspend a person from office or employment for a period of more than 12 months.

(7) Where, at any time after the Commission has made an enquiry into the affairs of the association, it is satisfied as to the matters mentioned in subsection (1) of this section it may do either or both of the following—

(a) by order remove any trustee, officer, agent or employee of the association—

(i) who has been responsible for or privy to the misconduct or mismanagement, or

(ii) whose conduct contributed to or facilitated it;

(b) by order establish a scheme for the administration of the association;

(8) The Commission may by order replace a trustee removed under subsection (7) of this section.
A person who contravenes an order under subsection (5) (e), (f) and (g) of this section shall be guilty of an offence and liable on conviction to fine of N50,000.00 or imprisonment for a term of 6 months or to both.

The Commission may make regulations in respect of-
(a) the functions, powers and remuneration of the interim manager;
(b) making reports to the Commission; and
(c) such other things as may be necessary for the effective administration of the association during the period of its interim administration.

596. Common Seal
The common seal of the body corporate shall have such device as may be approved by the Commission; and any instrument to which the common seal of the corporate body has been affixed in apparent compliance with the regulations for the use of the common seal shall be binding on the corporate body, notwithstanding any defect or circumstance affecting the execution of such instrument.

597. Contract of Corporate Body
Subject to the provisions of this Part of this Act and of the constitution of the association, the corporate body may contract in the same form and manner as an individual.

598. Power to Direct Transfer of Credits in Dormant Bank Accounts of Dissolved Incorporated Trustees
(1) Where a bank holds one or more accounts in the name of or on behalf of the incorporated trustees of a particular association, and the account, or, if it so holds two or more accounts, each of the accounts is dormant, the bank shall without delay notify the Commission of these facts.

(2) The Commission receives a notice under subsection (1) of this section, it may give a direction to the bank concerned to transfer—
(a) the amount, or, as the case maybe, the aggregate amount, standing to the credit of the relevant association in the account or accounts in question to such other association as is specified in the direction in accordance with subsection (3) of this section; or
(b) to each of two or more other associations so specified in the direction, such part of that amount or aggregate amount as is there specified in relation to that association.

(3) The Commission may also give a direction under subsection (2) of this section where it is unable, after making reasonable inquiries, to locate an association registered under this Act or any of its trustees.

(4) The Commission—
(a) may specify in a direction under subsection (2) of this section such other association or charities as it considers appropriate, having regard, in a case where the purposes of the relevant association are known to the Commission, to those purposes and to the purposes of the other association or charities; and
(b) shall not so specify any association unless it has received from the association trustees written confirmation that those trustees are willing to accept the amount proposed to be transferred to the association.
(5) Any amount received by an association by virtue of this section is to be received by the association on terms that—
(a) it is to be held and applied by the association for the purposes of the association; and
(b) as property of the association, it is nevertheless subject to any restrictions on expenditure to which it was subject as property of the relevant association.
(c) The receipt of a trustee for an association in respect of any amount received from a relevant bank by virtue of this section is a complete discharge of the bank in respect of that amount.

599. Accounts which Cease to be Dormant before Transfer

(1) Where—
(a) the Commission has been informed as mentioned in section 598 (1) (a) of this Act by any relevant bank; and
(b) before any transfer is made by the bank in pursuance of a direction under section 598 (2) of this Act, the bank has, by reason of any circumstances, cause to believe that the account, or, as the case may be, any of the accounts, held by it in the name of or on behalf of the relevant association is no longer dormant, the bank shall without delay notify the Commission of the circumstances referred to in subsection (1) (b) of this section.

(2) If it appears to the Commission that the account or accounts in question is or are no longer dormant, it shall revoke any direction under section 598 (2) of this Act which has previously been given by it to the bank with respect to the relevant association.

600. Dormant Bank Accounts: Supplementary

(1) No obligation as to secrecy or other restriction on disclosure, however imposed, shall preclude a relevant bank from disclosing any information to the Commission for the purpose of enabling the Commission to discharge its functions under sections 598 and 599 of this Act.

(2) For the purposes of sections 598 and 599 of this Act and this section, an account is dormant if no transaction, other than—
(a) a transaction consisting in a payment into the account, or
(b) a transaction which the bank holding the account has itself caused to be effected, has been effected in relation to the account within the period of 5 years immediately preceding the date when the Commission is informed as mentioned in section 601 (1) (a) of this Act.

(3) For the purposes of sections 598 and 599 of this Act and this section, a “relevant bank” means—
(a) any Central Bank of Nigeria designated money deposit institution; or
(b) such other person who may lawfully accept deposits as may be prescribed by the Minister.

(4) For the purposes of sections 598 and 599 of this Act, references to the transfer of any amount to an association are references to its transfer to—
(a) the association trustees, or
(b) any trustee for the association, as the association trustees may determine, and any reference to any amount received by an association is to be read accordingly.
601. Bi-annual Statement of Affairs
(1) The trustees of an association shall submit to the Commission a bi-annual statement of affairs of the association.

(2) If the trustees fail to comply with subsection (1) of this section, every trustee shall be liable to a penalty of N50.00 for every day during which the default continues.

602. Accounting Records and Statement of Accounts
(1) The trustees of an association shall ensure that accounting records are kept in respect of the association which are sufficient to show and explain all the association’s transactions, and which are such as to—
(a) disclose at any time, with reasonable accuracy, the financial position of the association at that time; and
(b) enable the trustees to ensure that statements of accounts prepared by them comply with subsection (3) of this section.

(2) The accounting records shall, in particular contain—
(a) entries showing from day to day all sums of money received and expended by the association, and the matters in respect of which the receipt and expenditure takes place; and
(b) a record of the assets and liabilities of the association.

(3) The trustees of an association shall also in respect of each financial year of the association, prepare a statement of accounts complying with such requirements as to its form and contents as may be prescribed by regulations made by the Commission.

(4) Regulations under subsection (3) of this section may in particular make provision—
(a) for any such statement to be prepared in accordance with such methods and principles as are specified or referred to in the regulations; and
(b) as to any information to be provided by way of notes to the accounts.

(5) Regulations under subsection (1) may also make provision for determining the financial years of an association for the purposes of this Act and any regulations made under it.

603. Preservation of Accounting Records
The accounting records of an association shall be preserved by it for a period of six years from the date on which they were made.

604. Annual Returns
(1) The trustees of the corporation shall not earlier than 30 June or later than 31 December each year (other than the year in which it is incorporated), submit to the Commission a return showing, among other things, the name of the corporation, the names, addresses and occupations of the trustees, and members of the council or governing body, particulars of any land held by the corporate body during the year, and of any changes which have taken place in the constitution of the association during the preceding year.

(2) The return referred to in subsection (1) of this section shall be accompanied by the audited financial statements of the corporate body for the year of return.
(3) If default is made in complying with this section, each of the trustees shall be liable to a penalty of N50.00 for each day during which the default continues.

605. Merger of Associations
Two or more associations with similar aims and objects may merge under such terms and conditions as may be prescribed by the Commission from time to time.

606. Dissolution of a Corporate Body Formed under this Act
(1) A body corporate formed under this Part of this Act may be dissolved by the court on a petition brought for that purpose by—
(a) the governing body or council; or
(b) one or more trustees; or
(c) members of the association constituting not less than 50 per cent of the total membership; or
(d) the Commission.

(2) The grounds on which the body corporate may be dissolved are—
(a) that the aims and objects for which it was established have been fully realised and no useful purpose would be served by keeping the corporation alive;
(b) that the body corporate is formed to exist for a specified period and that period has expired and it is not necessary for it to continue to exist;
(c) that all the aims and objects of the association have become illegal or otherwise contrary to public policy;
(d) that it is just and equitable in all the circumstances that the body corporate be dissolved; and
(e) that the certificate of registration of the body corporate has been withdrawn, cancelled or revoked.

(3) At the hearing of the petition, all persons whose interest or rights may, in the opinion of the court, be affected by the dissolution shall be put on notice.

(4) If in the event of a winding up or dissolution of the corporate body there remains after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the association, but shall be given or transferred to some other institutions having objects similar to the objects of the body, such institutions to be determined by the members of the association at or before the time of dissolution.

(5) If effect cannot be given to the provisions of subsection (4) of this section, the remaining property shall be transferred to some charitable object.

PART D

GENERAL

607. Establishment, etc. of Administrative Proceedings Committee
(1) The Commission shall establish an Administrative Proceedings Committee (in this Act referred to as “the Administrative Committee”) comprising—
(a) the Registrar-General who shall be the chairman of the Administrative Committee;
(b) 5 representatives from the operational Departments of the Commission, not below the grade level of a director, one of whom shall be from the Compliance Department of the Commission; and

(c) a representative of the Federal Ministry of Industry, Trade and Investment not below the grade level of a director.

(2) The Administrative Committee shall have power to co-opt, at any of its meetings as observers, representatives of relevant associations, including associations of shareholders, registrars or trustees, as are considered necessary, and members so co-opted shall not count towards a quorum or have the right to vote in respect of any decisions taken by the Administrative Committee.

(3) The Commission shall designate an officer of the Commission with not less than ten years post-call experience in the legal profession who shall be the secretary of the Administrative Committee.

(4) The functions of the Administrative Committee shall be to:

(a) provide the opportunity of being heard for persons alleged to have contravened the provisions of this Act or its regulations;

(b) resolve disputes or grievances arising from the operations of this Act or its regulations; and

(c) impose administrative penalties for contravention of the provisions of this Act or its regulations in the settlement of matters before it.

(5) The chairman shall preside at every meeting of the Administrative Committee and in his absence the members present at the meeting shall select one of their numbers to preside over the meeting.

(6) The quorum at a sitting of the Administrative Committee shall be four members present while determination of issues shall be by simple majority of members present and where there is equality of votes, the chairman or the member presiding shall be entitled to a second or casting vote.

(7) Parties shall attend the sitting of the Administrative Committee in person or be represented by a legal practitioner.

(8) Proceedings of the Administrative Committee shall be recorded on audio or visual tape.

(9) Decisions reached on any matter before the Administrative Committee shall be forwarded to the parties not later than 7 days after confirmation by the Board.

(10) The sanctions that may be imposed by the Administrative Committee, include:

(a) imposition of administrative penalties.
(b) suspension or revocation of registration; or
(c) recommendation for criminal prosecution if matters brought before it reveals any
criminal act or conduct.

(11) Decisions of the Administrative Committee are subject to confirmation by the Board.

(12) Parties dissatisfied with decisions of the Administrative Committee may appeal to
the Federal High Court.

(13) Subject to the provisions of this section, the Administrative Committee shall have
the power to regulate its proceedings.

608. Prohibited and Restricted Names
(1) No company, business name or incorporated trustee shall be registered under this Act by a name or trade mark which-
(a) is identical with that by which a company in existence is already registered, or so
nearly resembles that name as to be calculated to deceive, except where the
company in existence is in the course of being dissolved and signifies its consent in
such manner as the Commission requires;
(b) contains the words "Chamber of Commerce" unless it is a company limited by
guarantee;
(c) in the opinion of the Commission is capable of misleading as to the nature or extent
of its activities or is undesirable, offensive or otherwise contrary to public policy;
(d) in the opinion of the Commission would violate or conflict with any existing
trademark or business name registered in Nigeria or body corporate formed under
this Act unless the consent of the owner of the trade mark or business name or
trustees of the body corporate has been obtained;
(e) contains any word which, in the opinion of the Registrar, is likely to mislead the
public as to the nationality, race or religion of the persons by whom the business is
wholly or mainly owned or controlled;
(f) is, in the opinion of the Registrar, deceptive or objectionable in that it contains a
reference or suggests association with to any practice, institution, personage,
foreign state or government, international organisation or international brand or is
otherwise unsuitable; or
(g) is capable of undermining public peace and national security.

(2) Except with the consent of the Commission, no company, business name or
incorporated trustees shall be registered by a name which-
(a) includes the word "Federal", "National", "Regional", "State", "Government", or
any other word which in the opinion of the Commission suggests or is calculated
to suggest that it enjoys the patronage of the Government of the Federation or the
Government of a State in Nigeria, as the case may be, or any Ministry or
Department of Government; or
(b) contains the word "Municipal" or "Chartered" or in the opinion of the Commission
suggests, or is calculated to suggest, connection with any municipality or other
local authority; or
(c) contains the word "Co-operative" or its equivalent in any other language or any abbreviation thereof; or the words "Building Society"; or
(d) contains the word "Group" or "Holding";

(3) No individual or firm shall be registered under PART B of this Act if the age of the individual or any individual who is a partner is stated in the statement furnished under section 571 of this Act to be less than 18 years.

(4) No company, business name or incorporated trustee shall be registered where there is irrefutable evidence to the effect that the company, business name or incorporated trustee has previously been involved in fraudulent trade malpractices, either in local or international trade.

609. Preservation of Documents and Inspection
(1) The Commission shall preserve all documents delivered to it under this Act.

(2) Any person may on application to the Commission be permitted to inspect the documents kept under subsection(1) of this section on payment of a prescribed fee and may require a copy or extract of any such document to be certified by the Commission on payment of a prescribed fee.

(3) Where a copy or extract from any document registered under this Act is certified by the Commission to be a true copy or extract, it shall in all proceedings be admissible in evidence as of equal validity with the original document, and it shall be unnecessary to prove the official position of the person certifying the copy or extract.

(4) No process for compelling the production of any document kept by the Commission shall issue from any court, except with the leave of that court, and such process, if issued, shall bear thereon a statement that it is issued with the leave of the court.

610. Penalty for False Statements or Information
(1) Subject to the provisions of subsection (4) of this section, if any person in any return, report, certificate, balance sheet, or other document required by or for the purpose of any of the provisions of this Act, wilfully makes a statement which is false in any material particular knowing it to be false, he shall be guilty of an offence and liable:
(a) on conviction in the High Court to imprisonment for a term of two years;
(b) on conviction in a lower court, to a fine of N40,000 or to imprisonment for a term of four months, or to both such fine and imprisonment; or
(c) in the case of company, to fine of N100.00 for every day the default continues.

(3) A company which makes a statement in its annual returns which is false in any material particular shall in respect of each year of any such returns be liable to a penalty of N20,000.00 if it is a small company and N100,000.00 in any other case.

(4) Nothing in this section shall affect the provisions of any enactment imposing penalties in respect of perjury in force in Nigeria.

611. Penalty for Carrying on Business without Registration
(1) It shall be unlawful for any person or association of persons to carry on business in Nigeria as a company or under a business name without being registered under this Act.

(2) If an individual, corporation or association of persons required under this Act to be registered carries on business without registration or under a name registration of which has been refused or cancelled under this Act, the individual, corporation or every partner in the firm shall be guilty of an offence and liable on conviction to a fine of N200.00 for every day during which the default continues, and the court shall order a statement of the required particulars for the registration of the business to be furnished to the Commission for registration within such time as may be specified in the order.

612. Retention of Records Archived in Soft Copies
Companies, firms and corporate bodies registered under this Act shall retain documents stored in pursuance of the provisions of this Act in soft copies for six years from the date of storage.

613. Access to Premises, etc.
(1) An authorized officer of the Commission shall at all reasonable times have access to premises, buildings, offices, places, books or documents in the custody or under the control of any officer of the company, firm, corporation or any other individual for the purpose of inspecting books or documents or where there is reason to believe that the provisions of this Act are being contravened.

(2) The powers of an authorized officer under this section shall also extend to the inspection of books or documents, including those stored or maintained in computers or on digital, magnetic optical or electronic media and any other property, process or matter found on the premises, building, offices or place which the officer considers necessary or relevant for the purpose of any inspection and may without the payment of any fee, make extract from, or copies from such books or documents.

(3) The occupier of the premises, building or place that is entered upon or proposed to be entered upon shall –
(a) provide the authorized officer with all reasonable facilities and assistance for the exercise of the powers under this section;
(b) answer questions relating to the effective exercise of the powers under this section, orally or if required by the authorized officer, in writing or by statutory declaration.

(4) The Commission may engage the services of any of the law enforcement agencies in the discharge of its functions under this section.

(5) Any person who –
(a) obstructs, hinders, prevents or assaults an authorized officer in the performance of any function or the exercise of any power under this section;
(b) does anything which impedes or is intended to impede the sealing up of premises or removal of books or documents or any other article for the purpose of investigation of any contravention of the provisions of this Act or its regulations;
(c) does anything intended to prevent the procuring or giving of evidence in connection with the prosecution for any breach of the provisions of this Act; or
(d) prevents the arrest of any person by a person duly engaged for that purpose or rescues any person so arrested, shall be guilty of an offence and be liable on conviction to a fine of N200,000.00 or imprisonment for a term not exceeding 12 months or to both.

614. Power to Compound Offences
The Commission shall have power to compound any administrative offence under this Act by accepting such sums of money as it deems fit in the circumstance but not exceeding the maximum fine to which the offender would have been liable if he had been convicted of the offence.

615. Regulations
The Commission may, with the approval of the Minister, make regulations generally for the purpose of this Act and in particular, without prejudice to the generality of the foregoing provisions, make regulations:
(a) prescribing the forms, returns and other information required under this Act;
(b) prescribing the procedure for obtaining any information required under this Act;
(c) requiring returns to be made within the period specified therein by any company, business name proprietors or incorporated trustee to which this Act applies;
(d) prescribing any fees payable under this Act; and
(e) generally for the conduct and regulation of registration under this Act and any matters incidental thereto.

616. Interpretation
(1) In this Act, unless the context otherwise requires-

"agent" does not include a legal practitioner acting as counsel for any person;

"alien" means a person or association, whether corporate or unincorporated, other than a Nigerian citizen or association;

“annual return” means the return required to be made, in the case of a company limited by shares under sections 374 and 375 and, in the case of a company limited by guarantee, under section 376 of this Act;

“the appointed day” means a period of one year from the commencement of this Act;

“arrangement” has the meaning assigned to it under section 541 of this 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 regulations contained in Table A in the First Schedules of the Companies Act, 1922 or in that Table as altered by any subsequent enactment or reprint of the laws, or in Table A in the First Schedule to this Act;

“authorised minimum share capital” means N100,000 in the case of a private
company and N2,000,000 in the case of a public company.

“authorised share capital” means the share capital of a company at any given time.

"book and paper" and" book or paper" include accounts, deeds, writings, and documents.

“business” includes any trade, industry and profession and any occupation carried on for profit.

"business name" means the name or style under which any business is carried on whether in partnership or otherwise.

“circulating capital” means a portion of the subscribed capital of the company intended to be used by being temporarily parted with and circulated in business, in the form of money, goods and other assets, and which, or the proceeds of which, are intended to return to the company with an increment, and are intended to be used again and again, and to always return with some accretion.

“Commission” means the Corporate Affairs Commission established under this Act;

“company” or “existing company” means a company formed and registered under this Act or, as the case may be, formed and registered in Nigeria before and in existence on the commencement of this Act;

“company limited by guarantee” and “company limited by shares” have the meanings assigned to them respectively by section 21 of this Act;

“companies liquidation account” means the account kept on behalf of the Commission pursuant to section 432 of this Act;

“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, the expression includes any person alleged to be contributory;

“court” or “the court” used in relation to a company, means the Federal High Court, and to the extent to which application may be made to it as; court includes the Court of Appeal and the Supreme Court of Nigeria;

“creditors voluntary winding up” has the meaning assigned to it by section 466 (4) of this Act;

“debenture” means a written acknowledgement of indebtedness by the company, setting out the terms and conditions of the indebtedness, and includes debenture stock,
bonds and any other securities of a company whether constituting a charge on the assets of the company or not;

“director” includes any person occupying the position of director by whatever name called; and includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

“dividend” means a proportion of the distributed profits of the company which may be a fixed annual percentage, as in the case of preference shares, or it may be variable according to the prosperity or other circumstances of the company, as in the case of equity shares;

“document” includes summons, notice, order and other legal process, and register;

“equity share” means a share other than a preference share; and

“equity capital” shall be construed accordingly;

“firm” means an unincorporated body of two or more individuals or one or more individual and one or more corporations, or two or more corporations, who or which have entered into partnership with one another with a view to carrying on business for profit;

“fixed capital” means that capital which a company retains in the form of assets upon which the subscribed capital or other sum has been expended, and which assets either themselves produced income, independent of any further action by the company, or being retained by the company are made use of to produce income or gain profits;

“foreign company” means a company incorporated elsewhere than in Nigeria;

“forename” includes a Christian name and a personal name and when used with a surname includes any first name, and “surname” includes a patronymic;

"Gazette" or “Federal Gazette” means the official Gazette of the Federation;

"group financial statements" has the meaning assigned to it by section 336 (1) of this Act;

“holding company” means a holding company as defined by section 338 of this Act;

“inability to pay debts” in relation to a company has the meaning assigned by section 413 of this Act;

“initials” includes any recognised abbreviation of a forename;
“insolvent person” where used in this Act means any person in Nigeria who, in respect of any judgment, Act or court order against him, is unable to satisfy execution or other process issued thereon in favour of a creditor, and the execution or other process remains unsatisfied for not less than six weeks;

“issued generally” means, in relation to a prospectus, issued to persons who are not existing members or debenture holders of the company;

“issued share capital” in relation to any reduction has the meaning assigned by section 103 (2) of this Act;

“legal practitioner” has the meaning assigned to it by the Legal Practitioners Act;

“member” includes the heir, executor, administrator or other personal representative, as the case may be, of the member;

“members’ voluntary winding up” has the meaning assigned to it by section 4626(4) of this Act;

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

“Minister” means the Minister charged with responsibility for trade; and “Ministry” shall be constituted accordingly;

“minor” means a person who has not attained the age of 18 years;

“non-cash asset” means any property or interest in property other than cash and for this purpose, cash includes foreign currency;

“officer” in relation to a body corporate, includes a director, manager or secretary;

“official receiver” means the officer by whatever name called or known charged with control of affairs in bankruptcy and if the appointment is vacant for any reason whatsoever, means the sheriff;

“person” includes a firm, individual or corporation;

“personal representative” where customary law is applicable, includes successors appointed in respect of deceased contributories;

“preference share” means a share, by whatever name designated, which does not entitle the holder of it to any right to participate beyond a specified amount in any distribution whether by way of dividend or on redemption, in a winding up, or otherwise;
“prescribed” means, as respects the provisions of this Act (other than as to the winding up of companies), prescribed by court or, as the case may be, by other proper authority by regulations or order, and as to winding up, means as prescribed by rules of court, or deemed so to be:

“private company” has the meaning assigned to it by section 22 (1) of this Act:

“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 and includes any document which, save to the extent that it offers securities for a consideration other than cash, is a prospectus:

“receiver” includes a manager:

“recognised stock exchange” means any body of persons for the time being recognised by the Securities and Exchange Commission as a stock exchange dealing in shares, debentures and other securities:

“registered company” means a company incorporated or deemed to be incorporated under this Act:

“Registrar-General” means the Registrar-General appointed under this Act:

“resolution for reducing share capital” has the meaning assigned to it by section 104 of this Act:

“resolution for voluntary winding up” has the meaning assigned to it by section 461 of this Act:

“rules” includes rules made by the Chief Judge of the Federal High Court for the purpose of section 457 or 520 of this Act and all incidental forms together with rules made by the Corporate Affairs Commission:

“securities” includes shares, debentures, debenture stock, bonds, notes (other than promissory notes) and units under a unit trust scheme:

“share” means the interests in a company’s share capital of a member who is entitled to share in the capital or income of such company; and except where a distinction between stock and shares is expressed or implied, includes stock:

“show cards” means a card containing or exhibiting articles dealt with, or samples or representations thereof.
“small company” has the meaning assigned to it under section 351 of this Act;

“statutory declaration” means a declaration voluntarily made under the Oaths Act and in Nigeria includes one so made under any other enactment or law providing for the taking of a voluntary declaration;

“statutory meeting” means the meeting required to be held by section 209 (1) of this Act;

“statutory report” has the meaning assigned to it by section 209 (2) of this Act;

“subsidiary” means, in relation to a body corporate, a subsidiary as defined by section 338 of this Act;

“Table A” means Table A in the First Schedule to this Act;

“unlimited company” has the meaning assigned to it by section 21 (1) of this Act;

“unregistered company” where used in Part XV of this Act, includes any partnership, association or company with the following exceptions—
(a) a company and any existing company registered under this Act; and
(b) a partnership, association or company which consists of less than eight members
and is not a foreign partnership, association or company.

(2) The Registration of a business name under this Act shall not be construed as authorizing the use of that name if, apart from such registration, the use thereof could be prohibited.

(3) References in this Act to bodies corporate or to corporations exclude corporations sole; but unless the context otherwise requires, they shall include references to companies incorporated outside Nigeria.

617. Repeal and savings
(1) Subject to the provisions of this section, the Companies and Allied Matters Act 1990, the Companies and Allied Matters (Amendment) Act 1990, the Companies and Allied Matters (Amendment) Act 1991, the Companies and Allied Matters (Amendment) Act 1992 and the Companies and Allied Matters (Amendment) Act, 1998 shall, on the commencement of this Act, be repealed.

(2) Nothing in this Act shall affect any order, rule, regulation, appointment, conveyance, mortgage, deed or agreement, made, resolution passed, direction given, proceeding taken, instrument issued or thing done under the enactment hereby repealed; but any such order, rule, regulation, appointment, conveyance, mortgage, deed, agreement, resolution, direction, proceeding, instrument or thing if in force immediately before the commencement of this Act shall, on the commencement of this Act, continue in force, and
so far as it could have been made, passed, given, taken, issued or done under this Act shall have effect as if so made, passed, given, taken, issued or done.

(3) Nothing in this Act shall be construed so as to prohibit the continuation of an inspection by inspectors appointed under any enactment hereby repealed, begun before the commencement of this Act, and section 326 of this Act shall apply to a report of inspectors appointed under any enactment hereby repealed as it applies to a report of inspectors appointed under section 314 of this Act.

(4) Any register kept under the enactment hereby repealed shall be deemed to be kept under the corresponding provisions of this Act.

(5) Funds and accounts constituted under this Act shall be deemed to be in continuation of the corresponding funds and accounts constituted under the enactment hereby repealed.

(6) Nothing in this Act shall affect the incorporation of any company registered under any enactment hereby repealed.

(7) Any individual, firm or company who immediately before the coming into operation of this Act was registered as a business name under the enactment hereby repealed, shall be deemed to be registered under and in accordance with this Act and the provisions of this Act shall apply in respect of such individual, firm or company accordingly, and any statement furnished under the said Act hereby repealed shall be deemed to have been furnished under and in accordance with this Act.

(8) Any trustee or trustees who immediately before the coming into operation of this Act was registered under the enactment hereby repealed, shall be deemed to be registered under and in accordance with this Act and the provisions of this Act shall apply in respect of such trustee or trustees accordingly, and any statement furnished under the said Act hereby repealed shall be deemed to have been furnished under and in accordance with this Act.

(9) Where any offence, being an offence for the continuance of which a penalty was provided, has been committed under any enactment hereby repealed, proceedings may be taken under this Act in respect of the continuance of the offence after the commencement of this Act, in the same manner as if the offence had been committed under the corresponding provisions of this Act.

(10) Where by any enactment repealed by this Act a time is fixed for the doing of an act or the performance of a duty and in any particular case that time has expired or but for this Act would have expired between the date of the commencement of this Act and the date of its signing, the time so fixed shall, for the avoidance of doubt, be deemed to have been extended so as to expire not later than 7 days after the date of commencement of this Act, so however that nothing herein shall be construed to authorise any extension of time for the doing or performance, as the case may be, of an act or duty otherwise to be done or performed within a period of time limited by any such repealed enactment.

(11) The provisions of this Act with respect to winding up (other than section 515 which imposes a penalty for corrupt inducement affecting appointment of a liquidator), shall not
apply to any company of which the winding up commenced before the coming into operation of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act (apart from section 515) had not been made and, for the purposes of the winding up, the enactment under which the winding up commenced shall be deemed to remain in force.

(12) A copy of every order staying the proceedings in a winding up commenced as aforesaid shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Commission, which shall make a minute of the order in its books relating to the company.

(13) In this section “enactment hereby repealed” includes any enactment repealed or replaced by the Companies and Allied Matters Act 1990, which itself is repealed by this Act.

PART E

Short title

618. Short Title
This Act may be cited as the Companies and Allied Matters Act.
SCHEDULES

FIRST SCHEDULE
[Sections 28 and 34]

TABLE A
FORM OF ARTICLES OF ASSOCIATION

PART I
REGULATIONS FOR THE MANAGEMENT OF A PUBLIC COMPANY LIMITED BY SHARES

Interpretation

1. (1) In these Regulations “the Act” means the Companies and Allied Matters Act.
   (2) Unless the context otherwise requires, words or expressions contained in these Regulations bear the same meaning as in the Act.

Classes of Shares

2. The company may from time to time issue classes of shares. It shall be the responsibility of the directors to determine the classes of shares to be issued. All the rights or restrictions attached to each particular class of shares shall be specified in the terms of issue but such rights may at any time be varied in accordance with the provisions of section 139 of the Act.

Commissions and Brokerage

3. The company may exercise the powers of paying commissions conferred by section 129 of the Act, provided that the rate per cent or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the said section. Such commissions may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other.

4. The company may also on any issue of shares pay such brokerage as may be lawful. Alteration of capital

5. The company may from time to time by ordinary resolution effect an alteration of its share capital in any of the ways set out in section 98 of the Act.

6. Subject to the provisions of the Act on reduction of capital, the company may, whenever it considers it expedient to do so, by special resolution reduce its share capital, any capital redemption fund or any share premium account.

Meetings
7. The annual general meeting shall be held at such time and place as the directors shall appoint.

8. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he is not present within thirty minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.

9. If at any meeting no director is willing to act as chairman or if no director is present within thirty minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

Voting

10. No member shall be entitled to vote at any general meeting unless all calls or other sums payable by him in respect of shares in the company have been paid.

The Seal

11. The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of the directors authorised by the directors in that behalf and every instrument to which the seal is affixed shall be signed by a director, and countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

Notices

12. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within Nigeria) to the address, if any, within Nigeria supplied by him to the company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected at the expiration of seven days after the letter containing the same is posted.

Names, Addresses and Descriptions of Subscribers

1. John Alabi of Businessman
2. Issa Kano of Businessman
3. Caleb Okocha of Businessman
4. Thomas Ogbobine of Businessman

Dated the day of 20

Witness to the above signatures
A.B., No. 13 Araba Street, Lagos

PART II
REGULATIONS FOR THE MANAGEMENT OF A PRIVATE COMPANY LIMITED BY SHARES

Interpretation

1.  (1) In these Regulations “the Act” means the Companies and Allied Matters Act.
    (2) Unless the context otherwise requires, words or expressions contained in these Regulations bear the same meaning as in the Act.

Classes of Shares

2. The company may from time to time issue classes of shares. It shall be the responsibility of the directors to determine the classes of shares to be issued. All the rights or restrictions attached to each particular class of shares shall be specified in the terms of issue but such rights may at any time be varied in accordance with the provisions of section 139 of the Act.

Restriction on Transfer of Shares

3. The directors may, in their absolute discretion and without giving any reason, refuse to register any transfer of any share, whether or not it is a fully paid share.

Pre-emptive Rights of Shareholders of the Company

4. The company shall not allot any new or unissued shares unless the same are offered in the first instance to all the shareholders or to all the shareholders of the class or classes being issued in proportion as nearly as may be to their existing holdings.

5. The offer to existing shareholders shall be by notice specifying the number of shares to which the shareholder is entitled to subscribe and limiting a time, not being less than 28 days after the service of the notice, after the expiration of which the offer, if not accepted, will be deemed to be declined. On the receipt of an intimation from the shareholder that he declines to accept the shares offered or after the expiration of the stipulated time, as the case may be, the board of directors may, subject to the terms of any resolution of the company, dispose of the shares at a price not less than that specified in the offer, in such manner as they think most beneficial to the company.

6. Regulations 4 and 5 above are not alterable except with the unanimous consent of all the members of the company.

Commissions and Brokerage

7. The company may exercise the powers of paying commissions conferred by section 129 of the Act, provided that the rate per cent or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the said section. Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other.
8. The company may also on any issue of shares pay such brokerage as may be lawful.

**Alteration of Capital**

9. The company may from time to time by ordinary resolution effect an alteration of its share capital in any of the ways set out in section 98 of the Act.

10. Subject to the provisions of the Act on reduction of capital, the company may, whenever it considers it expedient to do so, by special resolution reduce its share capital, any capital redemption fund or any share premium account.

**Meetings**

11. The annual general meeting shall be held at such time and place as the directors shall appoint.

12. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he is not present within thirty minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.

13. If at any meeting no director is willing to act as chairman or if no director is present within thirty minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

**Voting**

14. No member shall be entitled to vote at any general meeting unless all calls or other sums payable by him in respect of shares in the company have been paid.

**The Seal**

15. The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of the directors authorised by the directors in that behalf and every instrument to which the seal is affixed shall be signed by a director, and countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

**Notices**

16. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within Nigeria) to the address, if any, within Nigeria supplied by him to the company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected at the expiration of seven days after the letter containing the same is posted.
Names, Addresses and Descriptions of Subscribers

1. John Alabi of Businessman
2. Issa Kano of Businessman

Dated the day of 20

Witness to the above signatures
A.B., No. 13 Araba Street, Lagos

PART III

REGULATIONS FOR THE MANAGEMENT OF A COMPANY LIMITED BY GUARANTEE

Interpretation

1. Unless the context otherwise requires, words or expressions contained in these Regulations bear the same meaning as in the Companies and Allied Matters Act.

Membership of the Company

2. The number of members with which the company proposes to be registered is ten, but the directors may from time to time register an increase of members.

Meetings

3. The annual general meeting shall be held at such time and place as the directors shall appoint.

4. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he is not present within thirty minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.

5. If at any meeting no director is willing to act as chairman or if no director is present within thirty minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

The Seal

6. The directors shall provide for the safe custody of the seal which shall only be used by the authority of the directors or of a committee of the directors authorised by the directors in that behalf and every instrument to which the seal is affixed shall be signed by a director, and countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.
Notices

7. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within Nigeria) to the address, if any, within Nigeria supplied by him to the company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected at the expiration of seven days after the letter containing the same is posted.

Names, Addresses and Descriptions of Subscribers

1. Okon Bassey Okon of Schoolmaster
2. John Itam of Schoolmaster
3. Ekanem James of Schoolmistress
4. Ojo Ibidoapo of Schoolmaster
5. Chike Okorocha of Schoolmaster
6. Anna Momoh of Schoolmistress

Dated the day of 20

Witness to the above signatures
A. B.K, No. 13 Duke Street, Ikot Ekpene

PART IV

REGULATIONS FOR THE MANAGEMENT OF AN UNLIMITED COMPANY

Interpretation

1. (1) In these Regulations “The Act” means the Companies and Allied Matters Act.
(2) Unless the context otherwise requires, words or expressions contained in these Regulations bear the same meaning as in the Act.

Membership of the Company

2. The number of members with which the company proposes to be registered is twenty, but the directors may from time to time register an increase of members.

Classes of Shares

3. The company may from time to time issue classes of shares. It shall be the responsibility of the directors to determine the classes of shares to be issued. All the rights or restrictions attached to each particular class of shares shall be specified in the terms of issue but such rights may at any time be varied in accordance with the provisions of section 139 of the Act.

Commissions and Brokerage
4. The company may exercise the powers of paying commissions conferred by section 129 of the Act, provided that the rate per cent or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the said section. Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other.

5. The company may also on any issue of shares pay such brokerage as may be lawful.

Alteration of Capital

6. The company may by special resolution—
   (a) increase the share capital by any 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) sub-divide 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; or
   (e) reduce its share capital in any way.

Meetings

7. The annual general meeting shall be held at such time and place as the directors shall appoint.

8. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he is not present within thirty minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.

9. If at any meeting no director is willing to act as chairman or if no director is present within thirty minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

Voting

10. No member shall be entitled to vote at any general meeting unless all calls or other sums payable by him in respect of shares in the company have been paid.

The Seal

11. The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of the directors authorised by the directors in that behalf and every instrument to which the seal is affixed shall be signed by a director, and countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.
Notices

12. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within Nigeria) to the address, if any, within Nigeria supplied by him to the company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected at the expiration of seven days after the letter containing the same is posted.

Names, Addresses and Descriptions of Subscribers

1. Joan Alabi of Businesswoman
2. Issa Kano of Businessman
3. Caleb Okocha of Businessman
4. Thomas Ogbobine of Businessman
5. Ojo Ibidapo of Businessman
6. Chika Okorocha of Businesswoman
7. Audu Momoh of Businessman

Dated the day of 20

Witness to the above signatures
A. B., No. 20 Sapara Street, Abuja

TABLE B

FORM OF MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES

1. The name of the company is “The Victoria Beach Water Transport Limited”.
2. The registered office of the company will be situated in Lagos State, Nigeria.
3. The business 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.
4. The company is a private company.
5. The liability of the members is limited by shares.
6. The share capital of the company is N10,000 divided into 10,000 shares of N1.00 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 in the capital of the company set against our respective names.
Names and addresses | Description of Subscriber | Number of Shares taken by Each Subscriber
--|---|---
1. John Alabi of | Businessman | 5,000
2. Issa Kano of | Businessman | 1,000
3. Caleb Okocha of | Businessman | 1,500
Total shares taken | | **8,500**

Dated the day of 20

Witness to the above signatures
A. B., No. 13 Araba Street, Lagos

TABLE C

FORM OF MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE

1. The name of the company is “The Oke-Ita School Association (Limited by Guarantee)”.

2. The registered office of the company will be situated in Akwa Ibom State, Nigeria.

3. The objects for which the company is established are the carrying on of schools for boys in Ikot Ekpene and in such other places within the State as the company hereafter decide upon.

4. The company is a private company.

5. The liability of the members is limited by guarantee.

6. The income and property of the company shall be applied solely towards the promotion of its objects, and no portion of the income or property shall be paid or transferred directly to the members of the company except as permitted by or under the Companies and Allied Matters Act.

7. 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 N2,000, so however that the total amount to be so contributed by all the members shall not be less than N10,000.

Names, addresses and descriptions of subscribers

1. John Bassey Okon of Schoolmaster
2. John Itam of Schoolmaster
3. Ekanem James of Schoolmistress
4. Ojo Ibidapo of Schoolmaster
TABLE D
FORM OF MEMORANDUM OF ASSOCIATION OF AN UNLIMITED COMPANY

1. The name of the company is “The Patent Stereotype Unlimited”.

2. The registered office of the company will be situated in the Federal Capital Territory, Abuja, Nigeria.

3. The business for which the company is established is the working of a patent method of founding and casting stereotype plates, of which method John Smith is the sole patentee.

4. The company is a public company.

5. The liability of the company is unlimited.

6. The share capital of the company is one million naira divided into 10,000 shares of N100 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 in the capital of the company set against our respective names.

Names and addresses  Description of Subscriber  Number of Shares taken by by Each Subscriber

1. Joan Alabi of  Businesswoman 1,000
2. Issa Kano of  Businessman 500
3. Caleb Okocha of  Businessman 1,000
4. Thomas Ogbobine of  Businessman 500
5. Ojo Ibidapo of  Businessman 500
6. Chika Okorocha of  Businessman 500
7. Audu Momoh of  Businesswoman 1,000
Total shares taken  5,000

Dated the day of 20

Witness to the above signatures
A. B., No. 20 Sapara Street, Abuja
SECOND SCHEDULE
[Sections 118, 333, 335]

FORM AND CONTENT OF COMPANY’S FINANCIAL STATEMENTS

PART I

GENERAL INFORMATION TO BE DISCLOSED

GENERAL RULES AND FORMATS

SECTION A

GENERAL INFORMATION TO BE DISCLOSED

1. All accounting information that will assist users to assess the financial liquidity, profitability and viability of a company should be disclosed and presented in a logical, clear and understandable manner.

2. The financial statements of a company shall state—
   (a) the name of the company;
   (b) the period of time covered;
   (c) a brief description of its activities;
   (d) its legal form;
   (e) its relationship with its significant local and overseas suppliers (if any) including the immediate and ultimate parent, associated or affiliated company.

3. Financial statements shall include the following
   (a) statement of accounting policies;
   (b) balance sheet;
   (c) profit and loss account or income statement;
   (d) notes on the accounts;
   (e) statement of source and application of funds;
   (f) value added statement;
   (g) five-year financial summary.

4. Financial implication of inter-company transfer and technical management agreements between the company and its significant local and overseas suppliers (if any) including its immediate and ultimate, associated, affiliated company should be disclosed.

5. Financial statements should show corresponding figures for the preceding period.
SECTION B

GENERAL RULES

6. (1) Subject to the following provisions of this Schedule—

(a) every balance sheet of a company shall show the items listed in either of the balance sheet formats set out below in section C of this Part; and

(b) every profit and loss account of a company shall show the items listed in any one of the profit and loss account formats so set out; in either case in the order and under the headings and sub-headings given in the format adopted.

(2) Sub-paragraph (1) above is not to be read as requiring the heading or sub-heading for any items to be distinguished by any letter or number assigned to that item in the format adopted.

7. (1) Where, in accordance with paragraph 1, a company’s balance sheet or profit and loss account for any year has been prepared by reference to one of the formats set out in section C of this Schedule, the directors of the company shall adopt the same format in preparing the accounts for subsequent years of the company unless in their opinion there are special reasons for a change.

(2) Particulars of any change in the format adopted in preparing a company’s balance sheet or profit and loss account in accordance with paragraph 1 shall be disclosed, and the reasons for the change shall be explained in a note to the accounts in which the new format is first adopted.

8. (1) Any item required in accordance with paragraph 1 to be shown in a company’s balance sheet or profit and loss account, may be shown in greater detail than required by the format adopted.

(2) A company’s balance sheet or profit and loss account may include an item representing or covering the amount of any asset or liability, income or expenditure not otherwise covered by any of the items listed in the format adopted, but the following shall not be treated as assets in any company’s balance sheet—

(a) preliminary expenses;

(b) expenses or commission on any issue of shares or debentures; and

(c) research and development costs.

(3) In preparing a company’s balance sheet or profit and loss account, the directors of the company shall adapt the arrangement and headings and sub-headings otherwise required by paragraph 1 in respect of the items to which an Arabic number is assigned in the format adopted, in any case where the special nature of the company’s business requires such adaptation.
(4) Items to which Arabic numbers are assigned in any of the formats set out in section B below may be combined in a company's accounts for any year if either—

(a) their individual amounts are not material to assessing the state of affairs or profit or loss of the company for that year; or

(b) the combination facilitates that assessment, but in a case within paragraph (a) the individual amounts of any item so combined shall be disclosed in a note to the accounts.

(5) Subject to paragraph 9 (3) below, a heading or sub-heading corresponding to an item listed in the format adopted in preparing a company's balance sheet or profit and loss account shall not be included if there is no amount to be shown for that item in respect of the year to which the balance sheet or profit and loss account relates.

(6) Every profit and loss account of a company shall show the amount of the company's profit or loss on ordinary activities before taxation.

(7) Every profit and loss account of a company shall show separately as additional items—

(a) any amount set aside or proposed to be set aside to, or withdrawn or proposed to be withdrawn from, reserves; and

(b) the aggregate amount of any dividends paid and proposed.

9. (1) In respect of every item shown in a company's balance sheet or profit and loss account, the corresponding amount for the year immediately preceding that to which the balance sheet or profit and loss account relates shall also be shown.

(2) Where that corresponding amount is not comparable with the amount to be shown for the item in question in respect of the year to which the balance sheet or profit and loss account relates, the former amount shall be adjusted and particulars of the adjustment and the reasons for it shall be disclosed in a note to the accounts.

(3) Paragraph 8 (5) does not apply in any case where an amount can be shown for the item in question in respect of the year immediately preceding that to which the balance sheet or profit and loss account relates, and that amount shall be shown under the heading or sub-heading required by paragraph 1 for that item.

10. Amounts in respect of items representing assets or income may not be set off against amounts in respect of items representing liabilities or expenditure (as the case may be), or vice versa.
SECTION C
THE REQUIRED FORMATS FOR ACCOUNTS

Preliminary

11. References in this Part of this Schedule to the items listed in any of the formats set out below are to those items read together with any of the notes following the formats which apply to any of those items, and the requirement imposed by paragraph 1 to show the items, listed in any such format in the order adopted in the format, is subject to any provision in those notes for alternative positions for any particular items.

12. A number in brackets following any item in any of the formats set out below is a reference to the note of that number in the notes following the formats.

13. In the notes following the formats—

(a) the heading of each note gives the required heading or sub-heading for the item to which it applies and a reference to any letters and numbers assigned to that item in the formats set out below (taking a reference in the case of Format 2 of the balance sheet formats to the item listed under “assets” or under “liabilities” as the case may require); and

(b) references to a numbered format are to the balance sheet format or as the case may require to the profit and loss account format of that number set out below.

Balance Sheet Formats

FORMAT I

A. Called up Share Capital Not Paid (1)

B. Fixed Assets

1. Land and buildings.
2. Plant and machinery.
3. Fixtures, fittings, tools and equipment.
5. Pre-payment for stocks in-transit.

C. Long-term Investments

1. Shares in group companies.
2. Loans to group companies.
3. Shares in related companies.
4. Loans to related companies.
5. Other investments other than loans.
6. Other loans.
7. Own shares (Treasury shares) (4).

D. Deferred Charges

1. Development costs.
2. Concessions, patents, licences, franchise, trade marks and similar rights and assets (2).
3. Goodwill (3).
4. Pre-payment for services to be received.

E. Current Assets

I. Stocks.

1. Raw materials and consumables.
3. Finished goods and goods awaiting sale.
4. Pre-payment for stocks in transit.

II Debtors (5)

1. Trade debtors.
2. Amount owed by group companies.
3. Amount owed by related companies.
4. Other debtors.
5. Called up share capital not paid (1).
6. Pre-payments and accrued income.

III Short-term investment

1. Shares in group companies.
2. Own shares (Treasury shares) (4).
3. Other investments.

IV Cash at bank and in hand

F. Prepayments and accrued income (6)

G. Creditors: amounts falling due within one year

1. Debenture loans (7).
2. Bank loans and overdrafts.
3. Payments received on account (8).
4. Trade creditors.
5. Bills of exchange payable.
6. Amounts owed to group companies.
7. Amounts owed to related companies.
8. Other creditors including taxation (P.A.Y.E.) and National Provident Fund (social security) (9).
9. Accruals and deferred income (10).

H. Net current assets (liabilities) (11)

I. Total assets less current liabilities

J. Creditors: amount falling due after more than one year
   1. Debenture loans (7).
   2. Bank loans and overdrafts.
   3. Payments received on account (8).
   4. Trade creditors.
   5. Bills of exchange payable.
   6. Amounts owed to group companies.
   7. Amounts owed to related companies.
   8. Other creditors including taxation and social security (9).
   9. Accruals and deferred income (10).

K. Provisions for liabilities and charges
   1. Pensions and similar obligations.
   2. Taxation, including deferred taxation.
   3. Other provisions.

L. Accruals and deferred income (10)

M. Capital and reserves
   I Called up share capital (12)
   II Share premium account
   III Revaluation reserves
   IV Other reserves
      1. Capital redemption reserve.
      2. Reserve for own shares.
      3. Reserves provided for by the articles of association.
      4. Other reserves.
   V Profit and loss transferred from Profit and Loss Account or Income Statement

Balance Sheet Formats

FORMAT 2

ASSETS
A. Called up share capital not paid (1)
B. Tangible assets
   1. Land and buildings.
2. Plant and machinery.
3. Fixtures, fittings, tools and equipment.
4. Payments on account and assets in course of construction.

C. Long-term investment
1. Shares in group companies.
2. Loans to group companies.
3. Shares in related companies.
4. Loans to related companies.
5. Other investments other than loans.
6. Other loans.
7. Own shares (Treasury Shares) (4).

D. Deferred charges
1. Development costs.
2. Concessions, patents, licences, trademarks and similar rights and assets (2).
3. Goodwill (3).
4. Payments on account.

E. Current assets

I. Stocks
1. Raw materials and consumables.
3. Finished goods and goods awaiting sale.
4. Payments for stocks in transit.

II. Debtors (5)
1. Trade debtors.
2. Amounts owed by group companies.
3. Amounts owed by related companies.
4. Other debtors.
5. Called up share capital not paid (1).
6. Pre-payments and accrued income (6).

III. Short-term investments
1. Shares in group companies.
2. Own shares (Treasury Shares) (4).
3. Other investments.

IV. Cash at bank and in hand

F. Pre-payments and accrued income (6)

CAPITAL AND LIABILITIES
A. Capital and reserves
   I  Called up share capital (12)
   II Share premium account
   III Revaluation reserve
   IV Other reserves

1. Capital redemption reserves.
2. Reserve for own shares (12A).
3. Reserves provided for by the articles of association.
4. Other reserves.

V Profit and loss account (Retained earnings) (12B)

B. Current liabilities

1. Debenture loans (7).
2. Trade creditors.
3. Bank loans and overdrafts.
4. Payments received in advance (8).
5. Bills of exchange payable.

C. Non-trade current liabilities

1. Provision for pension and other similar obligations.
2. Provisions for taxation including deferred taxes, National Provident Fund (social security) (9).
3. Other provisions.
4. Accruals and deferred income (10).
5. Transactions between and within group:
   (a) Amount owed to group companies.
   (b) Amount owed to related companies.
   (c) Others.

Portions of long-term liabilities due in the current period.

D. Long-term liabilities

1. Debenture loans (portions not due next year).
2. Bonds (portion not due next year).
3. Other long-term debts (portion not due next year).

Notes on the balance sheet formats

(1) Called up share capital not paid (Formats 1 and 2, items A and E II 5). This item may be shown in either of the two positions given in Formats 1 and 2.
(2) Concessions, patents, licences, trade marks and similar rights and assets (Formats 1 and 2, item D 2).
Amounts in respect of assets shall only be included in a company’s balance sheet under this item if either—

(a) the assets were acquired for valuable consideration and are not required to be shown under goodwill; or

(b) the assets in question were created by the company itself.

(3) Goodwill – (Formats 1 and 2, items D 3) – Amounts representing goodwill shall only be included to the extent that the goodwill was acquired for valuable consideration.

(4) Own shares – (Formats 1 and 2, items C 7 and E III 2) – The nominal value of the shares held shall be shown separately.

(5) Debtors – (Formats 1 and 2, items E II 1 to 6) – The amount falling due after more than one year shall be shown separately for each item included under debtors.

(6) Pre-payments and accrued income - (Formats 1 and 2, items E II 6 and F) – This item may be shown in either of the two positions given in Formats 1 and 2.

(7) Debenture loans (7) – (Format 1, items G 1 and B 1 and Format 2, item C 1) – The amount of any convertible loans shall be shown separately.

(8) Payments received on account – (Format 1, items G 3 and J 3 and Format 2, item C 3) – Payments received on account of orders shall be shown for each of these items in so far as they are not shown as deductions from stocks.

(9) Other creditors including taxation – (Format 1, items G 8 and J 8 and Format 2, item C 2) – The amount for creditors in respect of taxation shall be shown separately from the amount for other creditors.

(10) Accruals and deferred income – (Format 1, items G 9, J 9 and L 1 and Format 2, item C 4) – The two positions given for this item in Format I at E 9 and H 9 are an alternative to the position at J, but if the item is not shown in a position corresponding to that at J, it may be shown in either or both of the other two positions (as the case may require). The two positions given for this item in Format 2 are alternatives.

(11) Net current assets (liabilities) – (Format 1, item H) – In determining the amount to be shown for this item any amounts shown under pre-payments and accrued income shall be taken into account wherever shown.

(12) Called up share capital – (Format 1, item K 1 and Format 2, item A) – The amount of allotted share capital and the amount of called up share capital which has been paid up shall be shown separately.
(13) Creditors – Amounts falling due within one year and after one year shall be shown separately for each of these items and their aggregate shall be shown separately for all of these items.

Profit and loss account formats

FORMAT 1
(See note (17) below)

1. Turnover.
2. Cost of sales (14).
3. Gross profit or loss.
4. Distribution expenses (14).
5. Administration expenses (14).
6. Other operating income (14).
7. Income from shares in group companies.
8. Income from shares in related companies.
9. Income from other fixed asset investments (15).
10. Other interest receivable and similar income (15).
11. Amounts written off investments.
12. Accrued interest expense and similar charges.
13. Tax on profit or loss on ordinary activities.
14. Profit or loss on ordinary activities after taxation.
15. Extraordinary income.
17. Extraordinary profit or loss.
18. Tax on extraordinary profit or loss.
19. Other taxes under the above items.
20. Profit or loss for the financial year.
21. Earnings per share.
22. Dividend per share.

Profit and loss account formats

FORMAT 2

1. Sales or revenue.
2. Change in stocks of finished goods and in work-in-progress.
3. Own work capitalised.
4. Other operating income.
5. (a) Raw materials and consumables.
   (b) Other external charges.
6. Staff costs:
   (a) wages and salaries;
   (b) other pension costs.
7. (a) Depreciation of fixed assets, depletion and amortisation of wasting and intangible assets;
   (b) Exceptional amounts written off current assets.
8. Other operating charges.
9. Income from shares in group companies.
10. Income from shares in related companies.
11. Income from other fixed asset investments (15).
12. Other interest receivable and similar income (15).
13. Amounts written off investments.
14. Interest payable and similar charges (16).
15. Tax on profit or loss on ordinary activities.
16. Profit or loss on ordinary activities after taxation.
17. Extraordinary income.
18. Extraordinary charges.
19. Extraordinary profit or loss.
20. Tax on extraordinary profit or loss.
21. Other taxes not shown under the above item.
22. Profit or loss for the current year transferred to Retained Earnings or Reserve.

Profit and loss account formats

FORMAT 3
(See note (17) below)

A. Charges
1. Cost of sales (14).
2. Distribution costs (14).
3. Administrative expenses (14).
4. Amounts written off investments.
5. Interest payable and similar charges (16).
6. Tax on profit or loss on ordinary activities.
7. Profit or loss on ordinary activities after taxation.
8. Extraordinary charges.
9. Tax on extraordinary profit or loss.
10. Other taxes not shown under the above items.
11. Profit or loss for the financial year.

B. Income
1. Turnover.
2. Other operating income.
3. Income from shares in group companies.
4. Income from shares in related companies.
5. Income from other fixed asset investments (15).
6. Other interest receivable and similar income (15).
7. Profit or loss on ordinary activities after taxation.
8. Extraordinary income.
9. Profit or loss for the financial year.

Profit and loss account formats

FORMAT 4

A. Charges
1. Reduction in stocks of finished goods and in work-in-progress.
2. (a) Raw materials and consumables;
   (b) Other external charges.
3. Staff costs:
   (a) wages and salaries;
   (b) other pension costs.
4. (a) Depreciation and other amounts written off tangible and intangible fixed assets;
   (b) Exceptional amounts written off current assets.
5. Other operating charges.
6. Amounts written off investments.
7. Interest payable and similar charges (16).
8. Tax on profit or loss on ordinary activities.
9. Profit or loss on ordinary activities after taxation.
10. Extraordinary charges.
11. Tax on extraordinary profit or loss.
12. Other taxes not shown under the above items.
13. Profit or loss for the financial year.

B. Income

1. Turnover.
2. Increase in stocks of finished goods and in work-in-progress.
3. Own work capitalised.
4. Other operating income.
5. Income from shares in group companies.
6. Income from shares in related companies.
7. Income from other fixed asset investments (15).
8. Other interest receivable and similar income (15).
9. Profit or loss on ordinary activities after taxation.
10. Extraordinary income.
11. Profit or loss for the financial year.

**Notes on the profit and loss account format**

(14) Cost of sales: distribution costs: administrative expenses – (Format 1, items 2, 4 and 5 and Format 3, items A 1, 2 and 3) – These items shall be stated after taking into account any necessary provisions for depreciation or diminution in value of assets.

(15) Income from other fixed asset investments: other interest receivable and similar income – (Format 1, items 9 and 10: Format 2, items 11 and 12: Format 3, items B 5 and 6: Format 4, items B 7 and 8) – Income and interest derived from group companies shall be shown separately from income and interest derived from other sources.

(16) Interest payable and similar charges – (Format 1, item 12: Format 2, item 14: Format 3, item A 5: Format 1, item A 7) – The amount payable to group companies shall be shown separately.
 Formats 1 and 3 – The amount of any provisions for depreciation and diminution in value of tangible and intangible fixed assets falling to be shown under items 7 (a) and A 4 (a) respectively in Formats 2 and 4, shall be disclosed in a note to the accounts in any case where the profit and loss account is prepared by reference to Format 1 or Format 3.

PART II

ACCOUNTING PRINCIPLES AND RULES

SECTION A

ACCOUNTING PRINCIPLES

Preliminary

14. Subject to paragraph 15, the amounts to be included in respect of all items shown in a company's financial statements shall be determined in accordance with generally accepted accounting principles, and with the accounting standards laid down from time to time by the Nigerian Accounting Standards Board. Departure from the accounting principles

15. If it appears to the directors of a company that there are special reasons for departing from any of the principles stated above in preparing the company's financial statements in respect of any financial year they may do so, but particulars of the departure, the reasons for it and its effect shall be given in a note to the accounts.

SECTION B

HISTORICAL COST ACCOUNTING RULES

Preliminary

16. Subject to section C of this Part of this Schedule, the amounts to be included in respect of all items shown in a company’s financial statements shall be determined in accordance with the rules set out in paragraphs 17-28.

Fixed Assets

17. Subject to any provision for depreciation or diminution in value made in accordance with paragraph 18 or 19, the amount to be included in respect of any fixed asset shall be its purchase price or production cost.

18. In the case of any fixed asset which has a limited useful economic life, the amount of—

(a) its purchase price or production cost; or
(b) where it is estimated that any such assets will have a residual value at the end of the period of its useful economic life, its purchase price or production cost less that estimated residual value, shall be reduced by provisions for depreciation calculated to write off that amount systematically over the period of the asset's useful economic life.

19. (1) Where a fixed asset investment of a description falling to be included under item B III of either the balance sheet formats set out in Part I of this Schedule had diminished in value, provisions for diminution in value may be made in respect of it and the amount to be included in respect of it may be reduced accordingly; and any such provisions which are not shown in the profit and loss account shall be disclosed (either separately or in aggregate) in a note to the accounts.

(2) Provisions for diminution in value shall be made in respect of any fixed asset which had diminished in value if the reduction in its value is expected to be permanent (whether its useful economic life is limited or not), and the amount to be included in respect of it shall be reduced accordingly; and any such provisions which are not shown in the profit and loss account, shall be disclosed (either separately or in aggregate) in a note to the accounts.

(3) Where the reasons for which any provision was made in accordance with sub-paragraph (1) or (2) have ceased to apply to any extent, that provision shall be written back to the extent that it is no longer necessary; and any amounts written back in accordance with this sub-paragraph which are not shown in the profit and loss account, shall be disclosed (either separately or in aggregate) in a note to the accounts.

Rules for determining particular fixed asset items

20. (1) Notwithstanding that an item in respect of “development costs” is included under fixed assets in the balance sheet formats set out in Part I of this Schedule, an amount may only be included in a company's balance sheet in respect of development costs in special circumstances.

(2) If any amount is included in a company's balance sheet in respect of development costs the following information shall be given in a note to the accounts—

(a) the period over which the amount of those costs originally capitalised is being or is to be written off; and

(b) the reason for capitalising the development costs in question.

21. (1) The application of paragraphs 17 to 19 in relation to goodwill (in any case where goodwill is treated as an asset) is subject to the following provisions of this paragraph.

(2) The amount of the consideration for goodwill acquired by a company shall be
reduced by provision for amortisation calculated to write off that amount systematically over a period of five years or less as may be determined by the directors of the company.

(3) In any case where any goodwill acquired by a company is shown or included as an asset in the company’s balance sheet, the period chosen for writing off the consideration for that goodwill and the reasons for choosing that period shall be disclosed in a note to the accounts.

**Current assets**

22. Subject to paragraph 23, the amount to be included in respect of any current asset shall be its purchase price or production cost.

23. (1) If the net realisable value of any current asset is lower than its purchase price or production cost, the amount to be included in respect of that asset shall be the net realisable value.

(2) Where the reasons for which any provision for diminution in value was made in accordance with sub-paragraph (1) have ceased to apply to any extent, that provision shall be written back to the extent that it is no longer necessary.

**Miscellaneous and supplementary provision**

**Excess of money owed over value received as an asset item**

24. (1) Where the amount repayable on any debt owed by a company is greater than the value of the consideration received in the transaction giving rise to the debt, the amount of the difference may be treated as an asset.

(2) Where any such amount is so treated—

(a) it shall be written off reasonable amounts each year and must be completely written off before repayment of the debt; and

(b) if the current amount is not shown as a separate item in the company’s balance sheet it must be disclosed in a note to the accounts.

**Assets included at a fixed amount**

25. (1) Subject to the following sub-paragraph assets which fall to be included—

(a) amongst the fixed assets of a company under the item “tangible assets”; or

(b) amongst the current assets of a company under the item “raw material and consumables”, may be included at a fixed quantity and value.

(2) Sub-paragraph (1) applies to assets of a kind which are constantly being replaced, where—
their overall value is not material to assessing the company’s state of affairs; and

(b) their quantity, value and composition are not subject to material variation.

**Determination of purchase price or production cost**

26. (1) The purchase price of an asset shall be determined by adding to the actual price paid any expenses incidental to its acquisition.

(2) The production cost of an asset shall be determined by adding to the purchase price of the raw materials and consumables used the amount of the costs incurred by the company which are directly attributable to the production of that asset.

(3) In addition, there may be included in the production cost of an asset—

(a) a reasonable proportion of the costs incurred by the company which are only indirectly attributable to the production of that asset, but only to the extent that they relate to the period of production; and

(b) interest on capital borrowed to finance the production of that asset, to the extent that it accrues in respect of the period of production: Provided, however, in a case within paragraph (b) above, that the inclusion of the interest in determining the cost of that asset and the amount of the interest so included is disclosed in a note to the accounts.

(4) In the case of current assets distribution costs may not be included in production costs.

27. (1) Subject to the qualification mentioned below, the purchase price or production cost of—

(a) any assets which fall to be included under any item shown in a company’s balance sheet under the general item “stocks”; and

(b) any assets which are tangible assets (including investments), may be determined by the application of any of the methods mentioned in sub-paragraph (2) below in relation to any such assets of the same class.

The method chosen must be one which appears to the directors to be appropriate in the circumstances of the company.

(2) Those methods are—

(a) the method known as “first in, first out” (FIFO);

(b) the method known as “last in, first out” (LIFO);

(c) a weighted average price; and
(d) any other method similar to any of the methods mentioned above.

(3) Where in the case of any company—

(a) the purchase price or production cost of assets falling to be included under any item shown in the company’s balance sheet has been determined by the application of any method permitted by this paragraph; and

(b) the amount shown in respect of that item differs materially from the relevant alternative amount given below in this paragraph, the amount of the difference shall be disclosed in a note to the accounts.

(4) Subject to sub-paragraph (5) below, for the purposes of sub-paragraph (3) (b) above, the relevant alternative amount, in relation to any item shown in a company’s balance sheet, is the amount which would have been shown in respect of that item if assets of any class included under that item at an amount determined by any method permitted by this paragraph had instead been included at their replacement cost as at the balance sheet date.

(5) The relevant alternative amount may be determined by reference to the most recent actual purchase price or production cost before the balance sheet date of the assets of any class included under the item in question instead of by reference to their replacement cost as at that date, but only if the former appears to the directors of the company to constitute the more appropriate standard of comparison in the case of assets of that class.

(6) For the purposes of this paragraph, assets of any description shall be regarded as tangible if assets of that description are substantially indistinguishable one from another.

Substitution of original stated amount where price or cost unknown

28. Where there is no record of the purchase price or production cost of any assets of a company or of any price, expenses or costs relevant for determining its purchase price or production cost in accordance with paragraph 26, or any such record cannot be obtained without unreasonable expense or delay, its purchase price or production cost shall be taken for the purposes of paragraph 17 to 23 to be the value record of its value made on or after its acquisition or production by the company.

SECTION C

ALTERNATIVE ACCOUNTING RULES

Preliminary

29. (1) The rules set out in section B are referred to below in this Schedule as the historical cost accounting rules.
(2) Those rules, with the omission of paragraph 16, 21 and 25 to 28, are referred to below in this Part of this Schedule as the depreciation rules; and references below in this Schedule to the historical cost accounting rules do not include the depreciation rules as they apply by virtue of paragraph 32.

30. Subject to paragraph 32 to 34, the amount to be included in respect of assets of any description mentioned in paragraph 26 may be determined on any basis so mentioned.

**Alternative accounting rules**

31. (1) Intangible fixed assets, other than goodwill, may be included at their current cost.

(2) Tangible fixed assets may be included at a market value determined as at the date of their valuation or at their current cost.

(3) Investments of any description falling to be included under item B III of either of the balance sheet formats set out in Part I of this Schedule may be included either—

   (a) at a market value determined as at the date of their last valuation; or
   (b) at a value determined on any basis which appears to the directors to be appropriate in the circumstances of the company, but in the latter case particulars of the method of valuation adopted and of the reasons for adopting it shall be disclosed in a note to the accounts.

(4) Investments of any description falling to be included under item C III of either of the balance sheet formats set out in Part I of this Schedule may be included at their current cost.

(5) Stocks may be included at their current cost.

**Application of the depreciation rules**

32. (1) Where the value of any assets of a company is determined on any basis mentioned in paragraph 31, that value shall be, or (as the case may require) be the starting point for determining, the amount to be included in respect of that asset in the company’s accounts, instead of its purchase price or production cost or any value previously so determined for that asset; and the depreciation rules shall apply accordingly in relation to any such asset with the substitution for any reference to its purchase price or production cost of a reference to the value most recently determined for that asset on any basis mentioned in paragraph 31.

(2) The amount of any provision for depreciation required in the case of any fixed asset by paragraph 18 or 19 as it applies by virtue of sub-paragraph (1) is referred to below in this paragraph as the adjusted amount, and the amount of any provision which would be required by that paragraph in the
case of that asset according to the historical cost accounting rules, is referred to as the historical cost amount.

3. Where sub-paragraph (1) applies in the case of any fixed asset, the amount of any provision for depreciation in respect of that asset—

(a) included in any item shown in the profit and loss account in respect of amounts written off assets of the description in question; or

(b) taken into account in stating any item so shown which is required by note (14) of the notes on the profit and loss account formats set out in Part I of this Schedule to be stated after taking into account any necessary provisions for depreciation or diminution in value of assets included under it, may be the historical cost amount instead of the adjusted amount provided that the amount of any difference between the two is shown separately in the profit and loss account or in a note to the accounts.

Additional information to be provided in case of departure from historical costs accounting rules

33. (1) This paragraph applies where the amounts to be included in respect of assets covered by any items shown in a company’s accounts have been determined on any basis mentioned in paragraph 31.

(2) The items affected and the basis of valuation adopted in determining the amounts of the assets in question in the case of such item shall be disclosed in a note to the accounts.

(3) In the case of each balance sheet item affected (except stocks) either—

(a) the comparable amounts determined according to the historical cost accounting rules; or

(b) the differences between those amounts and the corresponding amounts actually shown in the balance sheet in respect of that item, shall be shown separately in the balance sheet or in a note to the accounts.

(4) In sub-paragraph (3) above references in relation to any item to the comparable amounts determined as there mentioned are references to—

(a) the aggregate amount which would be required to be shown in respect of that item if the amounts to be included in respect of all the assets covered by that item were determined according to the historical cost accounting rules; and

(b) the aggregate amount of the cumulative provisions for depreciation or diminution in value which would be permitted or required in determining those amounts according to those rules.

Revaluation reserve
34. (1) With respect to any determination of the value of an asset of a company on any basis mentioned in paragraph 31, the amount of any profit or loss arising from that determination (after allowing, where appropriate, for any provisions for depreciation or diminution in value made otherwise than by reference to the value to be determined and any adjustments of any such provisions made in the light of that determination) shall be credited or (as the case may be) debited to a separate reserve (“the revaluation reserve”).

(2) The amount of the revaluation reserve shall be shown in the company’s balance sheet under a separate sub-heading in the position given for the item “revaluation reserve” in Format 1 or 2 of the balance sheet formats set out in Part 1 of this Schedule, but need not be shown under that name.

(3) The revaluation reserve shall be reduced to the extent that the amounts standing to the credit of the reserve are in the opinion of the directors of the company no longer necessary for the purpose of the accounting policies adopted by the company; but an amount may only be transferred from the reserve to the profit and loss account if either—

(a) the amount in question was previously charged to that account; or

(b) it represents realised profit.

(4) The treatment for taxation purposes of amounts credited or debited to the revaluation reserve shall be disclosed in a note to the accounts.

PART III

NOTES TO THE ACCOUNTS

Preliminary

35. Any information required in the case of any company by the following provisions of this Part of this Schedule shall (if not given in the company’s accounts) be given by way of a note to those accounts. Disclosure of accounting policies

36. The accounting policies adopted by the company in determining the amounts to be included in respect of items shown in the balance sheet and in determining the profit or loss of the company shall be stated (including such policies with respect to the depreciation and diminution in value of assets).

Information supplementing the balance sheet

37. Paragraphs 38 to 50 require information which either supplement the information given with respect to any particular items shown in the balance sheet or is otherwise relevant to assessing the company’s state of affairs in the light of the information so given.

Share capital and debentures
38. (1) The following information shall be given with respect to the company’s share capital—

(a) the authorised share capital; and

(b) where shares of more than one class have been allotted, the number and aggregate nominal value or shares of each class allotted.

(2) In the case of any part of the allotted share capital that consists of redeemable shares, the following information shall be given—

(a) the earliest and latest dates on which the company has power to redeem those shares;

(b) whether those shares must be redeemed in any event or are liable to be redeemed at the option of the company or of the shareholder; and

(c) whether any (and, if so, what) premium is payable on redemption.

39. (1) If the company has allotted any shares during the financial year, the following information shall be given—

(a) the reason for making the allotment;

(b) the classes of shares allotted; and

(c) as respects each class of shares, the number allotted, their aggregate nominal value, and the consideration received by the company for the allotment.

(2) With respect to any contingent right to the allotment of shares in the company, the following particulars shall be given—

(a) the number, description and amount of the shares in relation to which the right is exercisable;

(b) the period during which it is exercisable;

(c) the price to be paid for the shares allotted.

(3) In sub-paragraph (2) above “contingent right to the allotment of shares” means any option to subscribe for shares and any other right to require the allotment of shares and to any person whether arising on the conversion into shares of securities of any other description or otherwise.

40. (1) If the company has issued any debentures during the financial year to which the accounts relate, the following information shall be given—

(a) the reason for making the issue;
(b) the classes of debentures issued; and

(c) as respects each class of debentures, the amount issued and the consideration received by the company for the issue.

(2) Particulars of any redeemed debentures which the company has power to re-issue shall also be given.

(3) Where any of the company’s debentures are held by a nominee of or trustee for the company, the nominal amount of the debentures and the amount at which they are stated in the accounting records kept by the company in accordance with section 329 of this Act shall be stated.

Fixed Assets

41. (1) In respect of each item which is or would but for paragraph 8 (4) (b) be shown under the general item “fixed assets” in the company’s balance sheet, the following information shall be given—

(a) the appropriate amounts in respect of that item as at the date of the beginning of the financial year and as at the balance sheet date respectively;

(b) the effect on any amount shown in the balance sheet in respect of that item of—

(i) any revision of the amount in respect of any asset included under that item made during that year on any basis mentioned in paragraph 31;

(ii) acquisitions during that year of any assets;

(iii) disposals during that year of any assets; and

(iv) any transfer of assets of the company to and from that item during that year.

(2) The reference in sub-paragraph (1) (a) to the appropriate amounts in respect of any item as at any date there mentioned, is a reference to amounts representing the aggregate amounts determined, as at that date, in respect of assets falling to be included under that item on either of the following bases, that is to say—

(a) on the basis of purchase price or production cost (determined in accordance with paragraphs 21 and 27); or (b) on any basis mentioned in paragraph 31, (leaving out of account in either case any provision for depreciation or diminution in value).

(3) In respect of each item within sub-paragraph (1)—

(a) the cumulative amount of provisions for depreciation or diminution in value of assets included under that item as at each date mentioned in sub-paragraph (1) (a);
(b) the amount of any such provisions made in respect of the financial year;

(c) the amount of any adjustment made in respect of any such provisions during that year in consequence of the disposal of any assets; and

(d) the amount of any other adjustments made in respect of any such provisions during that year, shall also be stated.

42. Where any fixed assets of the company, other than listed investments, are included under any item shown in the company’s balance sheet at an amount determined on any basis mentioned in paragraph 31, the following information shall be given—

(a) the years (so far as they are known to the directors) in which the assets were severally valued and the several values; and

(b) in the case of assets that have been valued during the financial year, the name of the persons who valued them or particulars of their qualification for doing so and (whichever is stated) the bases of valuation used by them.

43. In relation to any amount which is or would but for paragraph 8 (4) (b) be shown in respect of the item “land and buildings” in the company’s balance sheet, there shall be stated—

(a) how much of the amount is ascribable to land held under statutory right of occupancy and how much to land held under a sublease; and

(b) how much of the amount ascribable to land held under a sublease is ascribable to land held on long lease and how much to land held on short lease.

Investments

44. (1) In respect of the amount of each item which is or would for paragraph 8 (4) (b) be shown in the company’s balance sheet under the general item “investments” (whether as fixed assets or as current assets) there shall be stated—

(a) how much of that amount is ascribable to listed investments; and

(b) how much of any amount so ascribable is ascribable to investments as respects which there has been granted a listing on a recognised stock exchange and how much to other listed investments.

(2) Where the amount of any listed investments is stated for any item in accordance with sub-paragraph (1) (a), the following amounts shall also be stated—

(a) the aggregate market value of those investments where it differs from the amount so stated; and
(b) both the market value and the stock exchange value of any investments of which the former value is, for the purposes of the accounts, taken as being higher than the latter.

Reserves and provisions

45. (1) Where any amount is transferred—

(a) to or from any reserves; or

(b) to any provisions for liabilities and charges; or

(c) from any provisions for liabilities and charges otherwise than for the purpose for which the provision was established, and the reserves or provisions are or would but for paragraph 8 (4) (b) be shown as separate items in the company's balance sheet, the information mentioned in the following subparagraph shall be given in respect of the aggregate of reserves or provisions included in the same item.

(2) That information is—

(a) the amount of the reserves or provisions as at the date of the beginning of the year and as at the balance sheet date respectively;

(b) any amount transferred to or from the reserves or provisions during that year; and

(c) the source and application respectively of any amount so transferred.

(3) Particulars shall be given of each provision included in the item “other provisions” in the company’s balance sheet in any case where the amount of that provision is material. Provision for taxation

46. The amount of any provisions for taxation other than deferred taxation shall be stated.

Details of indebtedness

47. (1) In respect of each item shown under “creditors” in the company’s balance sheet there shall be stated—

(a) the aggregate amount of any debts included under that item which are payable or repayable otherwise than by instalments and fall due for payment or repayment after the end of the period of five years beginning with the day next following the end of the financial year; and

(b) the aggregate amount of any debts so included which are payable or repayable by instalments and any of which fall due for payment after the end of that period, and in the case of debts within paragraph (a) above, the
aggregate amount of instalments falling due after the end of that period shall also be disclosed for each such item.

(2) Subject to sub-paragraph (3), in relation to each debt falling to be taken into account under sub-paragraph (1), the terms of payments or repayment and the rate of any interest payable on debt shall be stated.

(3) If the number of debts is such that, in the opinion of the directors, compliance with sub-paragraph (2) would result in a statement of excessive length, it shall be sufficient to give a general indication of the terms of payment or repayment and the rates of any interest payable on the debts.

(4) In respect of each item shown under “creditors” in the company’s balance sheet there shall be stated—

(a) the aggregate amount of any debts included under that item in respect of which any security has been given by the company; and

(b) an indication of the nature of the securities so given.

(5) References above in this paragraph to an item shown under “creditors” in the company’s balance sheet include references where amounts falling due to creditors within one year and after more than one year are distinguished in the balance sheet—

(a) in a case within sub-paragraph (1), to an item shown under the latter of those categories; and

(b) in a case within sub-paragraph (4), to an item shown under either of those categories, and references to items shown under “creditors” include references to items which would, but for paragraph 8 (4) (b), be shown under that heading.

48. If any fixed cumulative dividends on the company’s shares are in arrear, there shall be stated—

(a) the amount of the arrears; and

(b) the period for which the dividends or, if there is more than one class, each class of them is in arrears.

**Guarantee and other financial commitments**

49. (1) Particulars shall be given of any charge on the assets of the company to secure the liabilities of any other person, including where practicable, the amount secured.

(2) The following information shall be given with respect to any other contingent liability not provided for—
(a) the amount or estimated amount of that liability;

(b) its legal nature; and

(c) whether any valuable security has been provided by the company in connection with that liability and if so, what.

(3) There shall be stated, where practicable—

(a) the aggregate amount or estimated amount of contracts for capital expenditure, so far as not provided for; and

(b) the aggregate amount or estimated amount of capital expenditure authorised by the directors which has not been contracted for.

(4) Particulars shall be given of—

(a) any pension commitments included under any provision shown in the company's balance sheet; and

(b) any such commitments for which no provision has been made, and where any such commitment relates wholly or partly to pensions payable to past directors of the company, separate particulars shall be given of that commitment so far as it relates to such pensions.

(5) Particulars shall also be given of any other financial commitments which—

(a) have not been provided for; and

(b) are relevant to assessing the company's state of affairs.

(6) Commitments within any of the preceding sub-paragraphs undertaken on behalf of or for the benefit of—

(a) any holding company or fellow subsidiary of the company; or

(b) any subsidiary of the company, shall be stated separately from the other commitments within that sub-paragraph and commitments within paragraph (a) shall be stated separately from those within paragraph (b).

**Miscellaneous matters**

50. (1) Particulars shall be given of any case where the purchase price or production cost of any asset is for the first time determined under paragraph 28.

(2) Where any outstanding loans made under the authority of section 157 (3) (b) or (c) of this Act (various cases of financial assistance by a company for purchase of its own shares) are included under any item shown in the company's balance sheet, the aggregate amount of those loans shall be disclosed for each item in question.
(3) The aggregate amount which is recommended for distribution by way of dividend shall be stated.

**Information supplementing the profit and loss account**

51. Paragraphs 52 to 56 require information which either supplements the information given with respect to any particular items shown in the profit and loss account or otherwise provides particulars of income or expenditure of the company or of circumstances affecting the items shown in the profit and loss account.

**Separate statement of certain items of income and expenditure**

52. (1) Subject to the following provisions of this paragraph, each of the amounts mentioned below shall be stated.

(2) The amount of the interest on or any similar charges in respect of—

(a) bank loans and overdrafts, and loans made to the company (other than bank loans and overdrafts) which—

(i) are repayable otherwise than by instalments and fall due for repayment before the end of the period of five years beginning with the day next following the end of the financial year; or

(ii) are repayable by instalments the last of which falls due for payment before the end of that period; and

(b) loans of any other kind made to the company, but this sub-paragraph shall not apply to interest or charges on loans to the company from group companies, but with that exception, it applies to interest or charges on all loans, whether made on the security of debentures or not.

(3) The amounts respectively set aside for redemption of share capital and for redemption of loans.

(4) The amount of income from lists investments.

(5) The amount of rents from land (after deduction of ground rents, rates and other outgoings). This amount need only be stated if a substantial part of the company’s revenue for the financial year consists of rents from land.

(6) The amount charged to revenue in respect of sums payable in respect of the hire of plant and machinery.

(7) The amount of the remuneration of the auditors (taking “remuneration” for the purposes of this sub-paragraph, as including any sums paid by the company in respect of the auditors’ expenses).

**Particulars of Taxes**
53. (1) The basis on which the charge for Nigerian corporation tax and Nigerian income tax is computed shall be stated.

(2) Particulars shall be given of any special circumstances affecting liability in respect of taxation of profits, income or capital gains for the financial year or liability in respect of taxation of profits, income or capital gains for succeeding financial years.

(3) The following amount shall be stated—

(a) the amount of the charge for Nigerian corporation tax;

(b) if that amount would have been greater but for relief from double taxation, the amount which it would have been but for such relief;

(c) the amount of the charge for Nigerian income tax; and

(d) the amount of the charge for taxation imposed outside Nigeria profits, income and (so far as charged to revenue) capital gains, and these amounts shall be stated separately in respect of the amount which is or would but for paragraph 8 (4) (b) be shown under the following items in the profit and loss account, that is to say “tax on profit or loss on ordinary activities” and “tax on extraordinary profit or loss”.

Particulars of turnover

54. (1) If in the course of the financial year the company has carried on business of two or more lines that, in the opinion of the directors, differ substantially from each other, there shall be stated in respect of each line (describing it)—

(a) the amount of the turnover attributable to that line; and

(b) the amount of the profit or loss of the company before taxation which is in the opinion of the directors attributable to that line.

(2) If in the course of the financial year the company has supplied markets that, in the opinion of the directors, differ substantially from each other, the amount of the turnover attributable to each such market shall also be stated. In this paragraph “market” means a market delimited by geographical bounds.

(3) In analysing for the purposes of this paragraph, the source, in terms of business or in terms of market, of turnover or, (as the case may be) of profit or loss, the directors of the company shall have regard to the manner in which the company’s activities are organised.

(4) For the purposes of this paragraph—
(a) classes of business which, in the opinion of the directors, do not differ substantially from each other shall be treated as one class; and

(b) markets which, in the opinion of the directors, do not differ substantially from each other shall be treated as one market, and any amounts properly attributable to one line of business or (as the case may be) to one market which are not material, may be included in the amount stated in respect of another.

Particulars of staff

55. (1) The following information shall be given with respect to the employees of the company—

(a) the average number of persons employed by the company in the financial year; and

(b) the average number of persons so employed within each category of persons employed by the company.

(2) The average number required by sub-paragraph (1) (a) or (b) shall be determined by dividing the relevant annual number by the number of weeks in the financial year.

(3) The relevant annual number shall be determined by ascertaining for each week in the financial year—

(a) for the purposes of sub-paragraph (1) (a), the number of persons employed under contracts of service by the company in that week (whether throughout the week or not);

(b) for the purposes of sub-paragraph (1) (b), the number of persons in the category in question of persons so employed, and in either case, adding together all the weekly numbers.

(4) In respect of all persons employed by the company during the financial year who are taken into account in determining the relevant annual number for the purposes of sub-paragraph (1) (a), there shall be stated the aggregate amounts respectively of—

(a) wages and salaries paid or payable in respect of that behalf; and

(b) other pension costs so incurred, save in so far as those amounts or any of them are stated in the profit and loss account.

(5) The categories of persons employed by the company by reference to which the number required to be disclosed by sub-paragraph (1) (b) is to be determined, shall be such as the directors may select, having regard to the manner in which the company’s activities are organised.
Miscellaneous matters

56. (1) Where any amount relating to any preceding year is included in any item in the profit and loss account, the effect shall be stated.

(2) Particulars shall be given of any extraordinary income or charges arising in the year.

(3) The effect shall be stated of any transactions that are exceptional by virtue of size or incidence though they fall within the ordinary activities of the company.

General

57. (1) Where sums originally denominated in foreign currencies have been brought into account under any item shown in the balance sheet or profit and loss account, the basis on which those sums have been translated into Nigerian currency shall be stated.

(2) Subject to the following sub-paragraph, in respect of every item stated in a note to the accounts, the corresponding amount for the financial year immediately preceding that to which the accounts relate shall also be stated and where the corresponding amount is not comparable, it shall be adjusted and particulars of the adjustment and the reasons for it shall be given.

(3) Sub-paragraph (2) shall not apply in relation to any amount stated by virtue of any of the following provisions of this Act—

(a) section 337 as applying Parts I and II of the Third Schedule (proportion of share capital of subsidiaries and other bodies corporate held by the company, etc.);

(b) sections 338 and 339 and the Fourth Schedule to this Act (particulars of loans to directors; etc.); and (c) paragraphs 41 and 45 above.

PART IV

SPECIAL PROVISIONS WHERE THE COMPANY IS A HOLDING OR SUBSIDIARY COMPANY

Company’s own financial statements

58. Where a company is a holding company or a subsidiary of another body corporate and any item required by Part I of this Schedule to be shown in the company’s balance sheet in relation to group companies includes—

(a) amounts attributable to dealings with or interests in any holding company or fellow subsidiary of the company; or
(b) amounts attributable to dealings with or interests in any subsidiary of the company, the aggregate amounts within paragraphs (a) and (b) respectively shall be shown as separate items, either by way of sub-division of the relevant item in the balance sheet or in a note to the company’s accounts.

59. (1) Subject to the following sub-paragraph, where the company is a holding company, the number, description and amount of the shares in and debentures of the company held by its subsidiaries or their nominees shall be disclosed in a note to the company’s accounts.

(2) Sub-paragraph (1) shall not apply in relation to any shares or debentures—

(a) in the case of which the subsidiary is concerned as personal representative; or

(b) in the case of which it is concerned as trustee, provided that in the latter case neither the company nor any subsidiary of the company is beneficially interested under the trust, otherwise than by way of security only for the purposes of a transaction entered into by the ordinary course of a business which includes the lending of money.

The Second Schedule to this Act has effect for the interpretation of the reference in this sub-paragraph to a beneficial interest under a trust.

Consolidated accounts of holding company and subsidiaries

60. Subject to paragraphs 62 and 65, the consolidated balance sheet and profit and loss account shall combine the information contained in the separate balance sheets and profit and loss accounts of the holding company and of the subsidiaries dealt with by the consolidated accounts, but with such adjustments (if any) as the directors of the holding company think necessary.

61. Subject to paragraphs 62 to 65, and to Part V of this Schedule, the consolidated accounts shall, in giving the information required by paragraph 60, comply so far as practicable with the requirements of this Schedule and with the other requirements of this Act as if they were the accounts of an actual company.

62. The following provisions of this Act, namely—

(a) section 337 as applying the Sixth Schedule, but only Parts II, III, V and VI of that Schedule; and

(b) sections 413 and 414 and the Sixth Schedule, so far as relating to accounts other than group accounts, shall not, by virtue of paragraphs 60 and 61, apply for the purposes of the consolidated accounts.

63. Paragraph 61 is without prejudice to any requirement of this Act which applies (otherwise than by virtue of paragraph 61 or 62) to group accounts.

64. (1) Notwithstanding paragraph 61, the consolidated accounts prepared by a
holding company may deal with an investment of any member of the group in the shares of any body corporate by way of the equity method of accounting in any case where it appears to the directors of the holding company that that body corporate is so closely associated with any member of the group as to justify the use of that method in dealing with investments by that or any other member of the group in the shares of that body corporate.

(2) In this paragraph, references to the group, in relation to consolidated accounts prepared by a holding company, are references to the holding company and the subsidiaries dealt with by the accounts.

65. Notwithstanding paragraphs 60 and 61, paragraphs 17 to 19 and 21 shall not apply to any amount shown in the consolidated balance sheet in respect of goodwill arising on consolidation.

66. In relation to any subsidiaries of the holding company not dealt with by the consolidated accounts, paragraphs 58 and 59 shall apply for the purpose of those accounts as if those accounts were the accounts of an actual company of which they were subsidiaries.

**Group financial statements not prepared as consolidated financial statements**

67. Group financial statements which are not prepared as consolidated statements, together with any notes to those statements, shall give the same equivalent information as that required to be given by consolidated financial statements by virtue of paragraphs 60 to 66.

**Provisions of general application**

68. (1) This paragraph applies where the company is a holding company and either—

(a) does not prepare group accounts; or

(b) prepares group accounts which do not deal with one or more of its subsidiaries, and references below in this paragraph to the company’s subsidiaries shall be read in a case within paragraph (b) as references to such of the company’s subsidiaries as are excluded from the group accounts.

(2) Subject to the following provisions of this paragraph—

(a) the reasons why the subsidiaries are not dealt with in group accounts; and

(b) a statement showing any qualification contained in the reports of the auditors of the subsidiaries on their accounts for their respective years ending with or during the year of the company, and any note or saving contained in those accounts to call attention to a matter which, apart from the note or saving, would properly have been referred to in such a qualification, in so far as the matter which is the subject of the qualification or note is not covered by the
company’s own accounts and is material from the point of view of its members, shall be given in a note to the company’s accounts.

(3) Subject to the following provisions of this paragraph, the aggregate amount of the total investment of the holding company in the shares of the subsidiaries under the equity method of valuation shall be stated in a note to the company’s financial statements.

(4) Sub-paragraph (3) shall not apply where the company is a wholly-owned subsidiary of another body corporate incorporated in Nigeria if there is indeed in a note to the company’s accounts a statement that in the opinion of the directors of the company the aggregate value of the assets of the company consisting of shares in or amounts owing (whether on account of a loan or otherwise) from, the company’s subsidiaries is not less than the aggregate of the amounts at which those assets are stated or included in the company’s balance sheet.

(5) In so far as information required by any of the preceding provisions of this paragraph to be stated in a note to the company’s accounts is not obtainable, a statement to that effect shall be given instead in a note to those accounts.

(6) The Commission may, on the application or with the consent of a company’s directors, direct that in relation to any subsidiary, sub-paragraphs (2) and (3) shall not apply or shall apply only to such extent as may be provided by the direction.

(7) Where in any case within sub-paragraph (1) (b) the group accounts are consolidated accounts, references above in this paragraph to the company’s accounts and the company’s balance sheet respectively, shall be read as references to the consolidated accounts and the consolidated balance sheet.

69. Where a company has subsidiaries whose years did not end with that of the company, the following information shall be given in relation to each such subsidiary (whether or not dealt with in any group accounts prepared by the company) by way of a note to the company’s accounts or (where group accounts are prepared) to the group accounts, that is to say—

(a) the reasons why the company’s directors consider that the subsidiaries’ years should not end with that of the company;

(b) the dates of which the subsidiaries’ year ending last before that of the company respectively ended or the earliest and latest of those dates; and

(c) the date immediately following the last statements when the accounts will be consolidated or be re-classified where appropriate as investment properties (long time investments).

PART V

INTERPRETATION OF SCHEDULE
70. The following paragraphs apply for the purposes of this Schedule and its interpretation.

**Assets: fixed or current**

71. Assets of a company are taken to be fixed assets if they are intended for use on a continuing basis in the company’s activities and any assets not intended for such use shall be taken to be current assets.

**Balance sheet date**

72. “Balance sheet date” in relation to a balance sheet, means the date as at which the balance sheet was prepared.

**Capitalisation**

73. References to capitalising any work or costs are to treating that work or those costs as a fixed asset.

**Fellow subsidiary**

74. A body corporate is treated as a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is the other’s.

**Group companies**

75. “Group company” in relation to any company, means any body corporate which is that company’s subsidiary or holding company, or a subsidiary of that company’s holding company.

**Historical cost accounting rules**

76. References to the historical cost accounting rules shall be read in accordance with paragraph 29.

**Leases**

77. (1) “Long lease” means a lease with respect to which the portion of the term for which it was granted remaining unexpired at the end of the year is—

   (a) in case of a right of occupancy to land, not less than fifty years;

   (b) in any other case, not less than twelve months.

   (2) “Short lease” means a lease which is not a long lease.

   (3) “Lease” includes an agreement for a lease.

**Listed investments**
78. “Listed investment” means an investment as respects which there has been granted a listing on a recognised stock exchange, or on any stock exchange of repute (other than a recognised stock exchange) outside Nigeria.

**Loans**

79. A loan is treated as falling due for repayment, and an instalment of a loan is treated as falling due for payment, on the earliest date on which the lender could require repayment or (as the case may be) payment, if he exercised all options and rights available to him.

**Materiality**

80. Amounts which in the particular context of any provision of this Schedule, the disclosure of which will influence the opinion of the reader or user of financial statements, and which are not material may be disregarded for the purposes of that provision. Notes to the accounts

81. Notes to a company’s accounts may be contained in the accounts or in a separate document annexed to the accounts.

**Provisions**

82. (1) References to provisions for depreciation or diminution in value of assets are to any amount written off by way of providing for depreciation or diminution in value of assets.

(2) Any reference in the profit and loss account formats set out in Part I of this Schedule to the depreciation of, or amounts written off, assets of any description is to any provision for depreciation or diminution in value of assets of that description.

83. References to provisions for liabilities or charges are to any amount retained as reasonably necessary for the purpose of providing for any liability or loss which is either likely to be incurred, or certain to be incurred, but uncertain as to amount or as to the date on which it will arise.

**Purchase price**

84. References (however expressed) to the purchase price of any asset of a company or of any raw materials or consumables used in the production of any such asset, include any consideration (whether in cash or otherwise) given by the company in respect of that asset or in respect of those materials or consumables (as the case may require). This includes the costs of putting it into condition ready for its intended use.

**Realised profits**

85. Without prejudice to—
(a) the construction of any other expression (where appropriate) by reference to accepted accounting principles or practice; or

(b) any specific provision for the treatment of profits of any description as realised,

it is hereby declared for the avoidance of doubt that references in this Schedule to realised profits, in relation to a company’s accounts, are to such profits of the company’s, fall to be treated as realised profits for the purposes of those accounts in accordance with principles generally accepted with respect to the determination, for accounting purposes, of realised profits at the time when accounts are prepared.

Related companies

86. (1) “Related company”, in relation to any company, means any body corporate (other than one which is a group company in relation to that company) in which that company holds on a long-term basis a qualifying capital interest for the purpose of securing a contribution to that company’s own activities by the exercise of any control or influence arising from that interest.

(2) In this paragraph “qualifying capital interest” means, in relation to any body corporate, an interest in shares comprised in the equity share capital of that body corporate of a class carrying rights to vote in all circumstances at general meetings of that body corporate.

(3) Where—

(a) a company holds a qualifying capital interest in a body corporate;

(b) a company exercises material influence in matters relating to dividends, commercial and financial policies; and

(c) the nominal value of any relevant shares in that body corporate held by that company is equal to twenty per cent or more of the nominal value of all relevant shares in that body corporate, it shall be presumed to hold that interest on the basis and for the purpose mentioned in sub-paragraph (1), unless the contrary is shown.

(4) In sub-paragraph (3) “relevant shares” means, in relation to any body corporate, any such shares in that body corporate as are mentioned in sub-paragraph (c).

Staff costs

87. (1) “Pension costs” includes any (past or present) costs, other contributions by the company for the purposes of any pension scheme established for the purpose of providing pensions for persons employed by the company, any sums set aside for that purpose and any amounts paid by the company in respect of pensions without first being so set aside.
(2) Any amount stated in respect of either of the above items or in respect of the item “wages and salaries” in the company’s profit and loss account shall be determined by reference to payments made or costs incurred in respect of all persons employed by the company during the year who are taken into account in determining the relevant annual number for the purposes of paragraph 55 (1) (a).

Turnover

88. “Turnover”, in relation to a company, means the amounts derived from the provision of goods and services falling within the company’s ordinary activities, after deduction of—

(a) trade discounts;
(b) value added tax; and
(c) any other taxes based on the amounts so derived.

Third Schedule
[Section 337]

MISCELLANEOUS MATTERS TO BE DISCLOSED IN NOTES TO COMPANY FINANCIAL STATEMENTS

PART I

PARTICULARS OF SUBSIDIARIES

1. If, at the end of the year, the company has subsidiaries there shall, in the case of each subsidiary, be stated—

(a) the name of the subsidiary; and
(i) if it is incorporated in Nigeria, the address of its registered office; and
(ii) if it is incorporated outside Nigeria, the country in which it is incorporated and the address of its registered office; and

(b) in relation to shares of each class of the subsidiary held by the company, the identity of the class and the proportion of the nominal value of the allotted shares of that class represented by the shares held.

2. The particulars required by paragraph 1 include, with reference to the proportion of the nominal value of the allotted shares of a class represented by shares held by the company, a statement of the extent (if any) to which it consists in shares held by, or by a nominee for, a subsidiary of the company and the extent (if any) to which it consists in shares held by, or by a nominee for, the company itself.
3. Paragraph 1 does not require the disclosure of information with respect to a body corporate which is the subsidiary of another and is incorporated outside Nigeria or, being incorporated in Nigeria, carries on business outside it if the disclosure would, in the opinion of the Minister, be harmful or jeopardises national interest.

4. If, at the end of its financial year, the company has subsidiaries and the directors are of the opinion that the number of them is such that compliance with paragraph 1 would result in particulars of excessive length being given, compliance with that paragraph shall be required only in the case of the subsidiaries carrying on the business, the results of the carrying on of which (in the opinion of the directors), principally affected the amount of the profit or loss of the company and its subsidiaries or the amount of the assets of the company and its subsidiaries.

5. If advantage is taken of paragraph 4, there must be included in the statement required by this Part the information that it deals only with the subsidiaries carrying on such businesses as are referred to in that paragraph; and in that case section 337 (3) of this Act (subsequent disclosure with annual return) applies to the particulars given in compliance with paragraph 1, together with those which (but for the fact that advantage is so taken) would have to be so given.

6. For purposes of this Part, shares of a body corporate are treated as held, or not held, by another such body if they would by virtue of section 336 (4) of this Act be treated as being held or (as the case may be) not held by that other body for the purpose of determining whether the first-mentioned body is its subsidiary.

**PART II**

**SHAREHOLDING IN COMPANIES, ETC., OTHER THAN SUBSIDIARIES**

7. If, at the end of a year, the company holds shares of any class comprised in the equity share capital of another body corporate (not being its subsidiary) exceeding in nominal value twenty per cent of the nominal value of the allotted shares of that class, there shall be stated—

(a) the name of that other body corporate; and—

(i) if it is incorporated in Nigeria and if it is registered in Nigeria, the part of Nigeria in which it is registered; and

(ii) if it is incorporated outside Nigeria, the country in which it is incorporated;

(b) the identity of the class and the proportion of the nominal value of the allotted shares of that class represented by the shares held;

(c) if the company also holds shares in that other body corporate or another class (whether or not comprised in its equity share capital), or of other classes (whether or not so comprised), the like particulars as respects that other class or (as the case may be) those other classes; and
(d) the accounting treatment, that is to say, the equity or costs.

8. If, at the end of its year, the company holds shares comprised in the share capital of another body corporate (not being its subsidiary) exceeding in nominal value one tenth of the allotted share capital of that other body, there shall be stated—

(a) with respect to that other body corporate, the same information as is required by paragraph 7 (a); and

(b) the identity of each class of such shares held and the proportion of the nominal value of the allotted shares of that class represented by the shares of that class held by the company.

9. If, at the end of its year, the company holds shares in another body corporate (not being its subsidiary) and the amount of all shares in it which the company holds (as stated or included in the company accounts) exceeds one tenth of the amount of the company’s assets (as so stated), there shall be stated—

(a) with respect to the other body corporate, the same information as is required by paragraph 7 (a); and

(b) in relation to shares in that other body corporate of each class held, the identity of the class and the proportion of the nominal value of the allotted shares of that class represented by the shares held.

10. None of the foregoing provisions of this Part requires the disclosure by a company of information with respect to another body corporate if that other is incorporated outside Nigeria or, being incorporated in Nigeria, carries on business outside it if the disclosure would, in the opinion of the company’s directors, be harmful to the business of the company or of that other body and the Minister agrees that the information need not be disclosed.

11. If, at the end of its year, the company falls within paragraph 7 or 8 in relation to more bodies corporate than one, and the number of them is such that, in the directors’ opinion, compliance with either or both of those paragraphs would result in particulars of excessive length being given, compliance with paragraph 7 or (as the case may be) paragraph 8, is not required except in the case of bodies carrying on the business the results of the carrying on of which (in the directors’ opinion) principally affected the amount of the profit or loss of the company or the amount of its assets.

12. If advantage is taken of paragraph 11, there shall be included in the statement dealing with the bodies last mentioned in that paragraph, the information that it deals with them; and section 337 (3) of this Act (subsequent disclosure in annual return) applies to the particulars given in compliance with paragraph 7 or 8 (as the case may be), together with those which, but, for the fact that advantage is so taken, would have to be so given.

13. For the purposes of this Part, shares of a body corporate are treated as held, or not
held, by another such body if they would, by virtue of section 336 (4) of this Act (but on the assumption that paragraph (b) (ii) were omitted from that subsection) be treated as being held or (as the case may be), not held, by that other body for the purpose of determining whether the first-mentioned body is its subsidiary.

PART III

FINANCIAL INFORMATION ABOUT SUBSIDIARIES

14. If—
   (a) at the end of its year the company has subsidiaries; and
   (b) it is required by paragraph 1 in Part I above to disclose particulars with respect to any of those subsidiaries, the additional information specified below shall be given with respect to each subsidiary to which the requirement under paragraph 1 applies.

15. If—
   (a) at the end of the year the company holds shares in another body corporate; and
   (b) it is required by paragraph 8 in Part II above to disclose particulars with respect to that body corporate; and
   (c) the shares held by the company in that body corporate exceed in nominal value fifty-one per cent of the allotted share capital of that body, the additional information specified below shall be given with respect to that body corporate.

16. The information required by paragraph 10, shall, in relation to any body corporate (whether a subsidiary of the company or not), contain the aggregate amount of the capital and reserves of that body corporate as at the end of its relevant year, and its profit or loss for that year; and for this purpose the relevant year is—
   (a) if the year of the body corporate ends with that of the company giving the information in a note to its accounts, that financial year; and
   (b) if not, the body corporate’s financial year ending last before the end of the year of the company giving that information. This is subject to the exceptions and other provisions in the next paragraph.

17. (1) The information otherwise required by paragraph 16 need not be given in respect of a subsidiary of a company if, either—
   (a) the company is exempt under this Act from the requirement to prepare group accounts, as being at the end of its year the wholly-owned subsidiary of another body corporate incorporated in Nigeria; or
(b) the company prepares group accounts and—
   (i) the accounts of the subsidiary are included in the group accounts; or
   (ii) the investment of the company in the shares of the subsidiary is included in, or in a note to, the company’s accounts by way of the equity method of valuation.

(2) That information need not be given in respect of another body corporate in which the company holds shares if the company’s investment in those shares is included in, or in a note to, the accounts by way of the equity method of valuation.

(3) That information need not be given in respect of any body corporate if—
   (a) that body is not required by any provision of this Act to deliver a copy of its balance sheet for its relevant year mentioned in paragraph 16, and does not otherwise publish that balance sheet in Nigeria or elsewhere; and
   (b) the shares held by the company in that body do not amount to at least fifty-one per cent in nominal value of the body’s allotted share capital.

(4) Information otherwise required by paragraph 16 need not be given if it is not material.

18. Where, with respect to any subsidiary of the company or any other body corporate, particulars which would otherwise be required by paragraph 1 in Part I or paragraph 8 in Part II of this Schedule to be stated in a note to the company’s accounts are omitted by virtue of paragraph 4 or (as the case may be) paragraph 11, section 337 (3) of this Act (subsequent disclosure in next annual return) shall apply—
   (a) to any information with respect to any other subsidiary or body corporate which is given in a note to the company’s accounts in accordance with this Part; and
   (b) to any information which would have been required by this Part to be given in relation to a subsidiary or other body corporate but for the exemption under paragraph 4 or 11.

19. For the purposes of this Part, shares of a body corporate shall be treated as held, or not held, by the company if they would, by virtue of section 336 (4) of this Act (but on the assumption that paragraph (b) (ii) were omitted from that subsection), be treated as being held or (as the case may be), not held by the company for the purpose of determining whether that body corporate is the company’s subsidiary.

PART IV

IDENTIFICATION OF ULTIMATE HOLDING COMPANY
20. If, at the end of its year, the company is the subsidiary of another body corporate, there shall be stated the name of the body corporate regarded by the directors as being the company’s ultimate holding company and, if known to them, the country in which it is incorporated.

21. Paragraph 20 shall not require the disclosure by a company which carries on business outside Nigeria of information with respect to the body corporate regarded by the Minister as being its ultimate holding company if the disclosure would, in his opinion, be harmful to or jeopardise national interest.

PART V

CHAIRMAN’S AND DIRECTORS’ EMOLUMENTS, PENSIONS AND COMPENSATION FOR LOSS OF OFFICE

Emoluments

22. (1) There shall be shown the aggregate amount of the directors’ emoluments.

(2) This amount—

(a) includes any emoluments paid to or receivable by a person in respect of his services as director of the company or in respect of his services, while director of the company, as director of any subsidiary of it or otherwise in connection with the management of the affairs of the company or any subsidiary of it; and

(b) shall distinguish between emoluments in respect of services of a director, whether of the company or its subsidiary, and other emoluments.

(3) For the purposes of this paragraph, “emolument” in relation to a director, includes fees and percentages, any sums paid by way of expenses, allowances, (in so far as those sums are charged to Nigerian income tax), any contributions paid in respect of him under any pensions scheme and estimated money value of any other benefits received by him otherwise than in cash.

23. A company which is neither a holding company nor a subsidiary of another body corporate need not comply with paragraphs 24 to 27 below as respects a year in the case of which the amount shown in compliance with paragraph 22 above does not exceed N120,000.

24. (1) The following applies as respects the emoluments of the company’s chairman, and for this purpose “chairman” means the person elected by the directors to be chairman of their meetings and includes a person, who, though not so elected, holds any office (however designated) which, in accordance with the company’s constitution, carries with it functions substantially similar to those discharged by a person so elected.
(2) If one person has been chairman throughout the year, there shall be shown with respect to that person during the year, his emoluments so far as attributable to the period during which he was chairman, unless his duties as chairman were wholly or mainly discharged outside Nigeria.

(3) Otherwise, there shall be shown with respect to each person who has been chairman during the year, his emoluments so far as attributable to the period during which he was chairman, unless his duties as chairman were wholly or mainly discharged outside Nigeria.

25. (1) The following applies as respects the emoluments of directors.

(2) With respect to all directors (other than any who discharged their duties as such wholly or mainly outside Nigeria), there shall be shown—

(a) the number (if any) who had no emoluments or whose several emoluments amounted to not more than N10,000; and

(b) by reference to each pair of adjacent points on a scale whereon the lowest point is N10,000 and the succeeding ones are successive integral multiples of N10,000, the number (if any) whose several emoluments exceeded the lowest point but did not exceed the higher.

(3) If, of the directors (other than any who discharged their duties as such wholly or mainly outside Nigeria), the emoluments of each of two or more exceed the relevant amount, the emoluments of him (or them, in the case of equality) who had the greater or, as the case may be, the greatest, shall also be shown.

(4) If, of the directors (other than any who discharged their duties as such wholly or mainly outside Nigeria), the emoluments of each of two or more exceed the relevant amount, the emoluments of him (or them, in the case of equality) who had the greater or, as the case may be, the least, shall also be shown.

(5) The “relevant amount”—

(a) if one person has been chairman throughout the year, means the amount of his emoluments; and

(b) otherwise, means an amount equal to the aggregate of the emoluments, so far as attributable to the period during which he was chairman, of each person who has been chairman during the year.

26. There shall under paragraphs 24 and 25 be brought into account as emoluments of a person all such amounts (other than contributions paid in respect of him under a pension scheme) as in his case are to be included in the amount shown under paragraph 22.

Emoluments waived
27. (1) There shall be shown—
   (a) the number of directors who have waived rights to receive emoluments which, but for the waiver, would have fallen to be included in the amount shown under paragraph 22; and

   (b) the aggregate amount of those emoluments.

(2) For these purposes—

   (a) it is assumed that a sum not receivable in respect of a period would have been paid at the time at which it was due to be paid;

   (b) a sum not so receivable that was payable only on demand, being a sum the right to receive which has been waived, is deemed to have been due to be paid at the time of the waiver. Pensions of directors and past directors

28. (1) There shall be shown the aggregate amount of directors’ or past directors’ pensions.

(2) This amount shall not include any pension paid or receivable under a pension scheme if the scheme is such that the contributions under it are substantially adequate for the maintenance of the scheme; but, subject to this, it includes any pension paid or receivable in respect of any such services of a director or past director as are mentioned in paragraph 22 (2) whether to or by him or, on his nomination or by virtue of dependence on or other connection with him, to or by any other person.

(3) The amount shown shall distinguish between pensions in respect of services as director, whether of the company or its subsidiary, and other pensions.

Compensation to directors for loss of office

29. (1) There shall be shown the aggregate amount of any compensation to directors or past directors in respect of loss of office.

(2) This amount—

   (a) includes any sums paid to or receivable by a director or past director by way of compensation for the loss of office as director of the company or for the loss, while director of the company or on or in connection with his ceasing to be a director of it, or of any other office in connection with the management of the company’s affairs or of any office as director or otherwise in connection with the management of the affairs of any subsidiary of the company; and

   (b) shall distinguish between compensation in respect of the office of director, whether of the company or its subsidiary, and compensation in respect of other offices.

(3) References to compensation for loss of office includes sums paid as consideration for or in connection with a person’s retirement from office.
Supplementary

30. (1) The following applies with respect to the amounts to be shown under paragraphs 22, 28 and 29.

(2) The amount in each case includes all relevant sums paid by or receivable from—

(a) the company; and

(b) the company’s subsidiaries; and

(c) any other person, except sums to be accounted for to the company or any of its subsidiaries, to past or present members of the company or any of its subsidiaries or any class of those members.

(3) The amount to be shown under paragraph 29 shall distinguish between the sums respectively paid by or receivable from the company, the company’s subsidiaries and persons other than the company and its subsidiaries.

31. (1) The amounts to be shown for any year under paragraphs 22, 28 and 29 are the sums receivable in respect of that year (whenever paid) or, in the case of sums not receivable in respect of a period, the sums paid during that year.

(2) But where—

(a) any sums are not shown in a note to the accounts for the relevant year on the ground that the person receiving them is liable to account for them as mentioned in paragraph 30 (2), but the liability is thereafter wholly or partly released or is not enforced within a period of two years; or

(b) any sums paid by way of expenses allowance are charged to income tax after the end of the relevant year, those sums shall, to the extent to which the liability is released or not enforced or they are charged as mentioned above (as the case may be), be shown in a note to the first accounts in which it is practicable to show them, and shall be distinguished from the amounts to be shown apart from this provision.

32. Where it is necessary to do so for the purpose of making any distinction required by the preceding paragraphs in an amount to be shown in compliance with this Part, the directors may apportion any payments between the matters in respect of which these have been paid or are receivable in such manner as they think appropriate.

Interpretation

33. (1) The following shall apply for the interpretation of paragraphs 22 to 32.

(2) A reference to the company’s subsidiary—
(a) in relation to a person who is or was, while a director of the company, a
director also, by virtue of the company’s nomination (direct or indirect) or any
other body corporate includes, (subject to the following sub-paragraph) that
body corporate, whether or not it is or was in fact the company’s subsidiary; and

(b) for purposes of paragraphs 22 to 28 (including any provision of this Part
referring to paragraph 22) is to a subsidiary at the time the services were
rendered, and for purposes of paragraph 29, to a subsidiary immediately
before the loss of office as director.

(3) The following definitions apply—

(a) “pension” includes any superannuation allowance, superannuation gratuity or
similar payment;

(b) “pension scheme” means a scheme for the provision of pension in respect of
services as director or otherwise which is maintained in whole or in part by
means of contributions; and

(c) “contribution”, in relation to a pension scheme, means any payment
(including an insurance premium) paid for the purposes of the scheme by or
in respect of persons rendering services in respect of which pensions will or
may become payable under the scheme, except that it does not include any
payment in respect of two or more persons if the amount paid in respect of
each of them is not ascertainable.

Supplementary

34. This Part of this Schedule requires information to be given only so far as it is
contained in the company’s books and papers or the company has the right to
obtain it from the persons concerned.

PART VI

PARTICULARS RELATING TO NUMBER OF EMPLOYEES REMUNERATED AT
HIGHER RATES

35. (1) There shall be shown by reference to each pair of adjacent points on a scale
whereon the lowest point is N60,000 and the succeeding ones are
successive integral multiples of N10,000 beginning with that in the case of
which the multiplier is seven, the number (if any) of persons in the company’s
employment whose several emoluments exceeded the lower point but did
not exceed the higher.

(2) The persons whose emoluments are to be taken into account for this
purpose shall not include—

(a) directors of the company; or
(b) persons (other than directors of the company) who—

(i) if employed by the company throughout the financial year, worked wholly or mainly during that year outside Nigeria; or

(ii) if employed by the company for part only of that year, worked wholly or mainly during that part outside Nigeria.

36. (1) For these purposes, a person’s emoluments include any paid to or receivable by him from the company, the company’s subsidiaries and any other person in respect of his services as a person in the employment of the company or a subsidiary of it or as a director of a subsidiary of the company (except sums to be accounted for to the company or any of its subsidiaries).

(2) “Emoluments” here includes fees and percentages, any sums paid by way of expenses allowances in so far as those sums are charged to Nigerian income tax, and the estimated money value of any other benefits received by a person otherwise than in cash.

(3) The amounts to be brought into account for the purpose of complying with paragraph 35, are the sums receivable in respect of the year (whenever paid) or, in the case of sums not receivable sums in respect of a period, the sums paid during that year.

(4) But where—
   (a) any sums are not brought into account for that year on the ground that the person receiving them is liable to account for them as mentioned in sub-paragraph (1), but the liability is wholly or partly released or is not enforced within a period of two years; or

   (b) any sums paid to a person by way of expenses allowance, are charged to Nigerian income tax after the end of the year, those sums shall, to the extent to which the liability is released or not enforced or they are charged as above mentioned (as the case may be), be brought into account for the purpose of complying with paragraph 25 on the first occasion on which it is practicable to do so.

37. References in paragraph 36 to a company’s subsidiary—

(a) in relation to a person who is or was, while employed by the company, a director, by virtue of the company’s nomination (direct or indirect), of any other body corporate, include that body corporate (but subject to the following sub-paragraph), whether or not it is or was in fact the company’s subsidiary; and

(b) are to be taken as referring to a subsidiary at the time the services were rendered.

FOURTH SCHEDULE
[Sections 338 and 339]
PARTICULARS IN COMPANY FINANCIAL STATEMENTS OF LOAN AND OTHER TRANSACTIONS FAVOURING DIRECTORS AND OFFICERS

PART I

MATTERS TO BE DISCLOSED UNDER SECTION 338

1. Group financial statements shall contain the particulars required by this Schedule of—

(a) any transaction or arrangement of a kind described in section 268 of this Act entered into by the company or by a subsidiary of the company for a person who at any time during the year was a director of the company or its holding company, or was connected with such a director;

(b) an agreement by the company or by a subsidiary of the company to enter into any such transaction or arrangement for a person who was at any time during the year a director of the company or its holding company, or was connected with such a director; and

(c) any other transaction or arrangement with the company or subsidiary of it in which a person who at any time during the year was a director of the company or its holding company had, directly or indirectly, a material interest.

2. The accounts prepared by a company other than a holding company shall contain the particulars required by this Schedule of—

(a) any transaction or arrangement of a kind described in section 268 of this Act entered into by the company for a person who at any time during the year was a director of it or of its holding company or was connected with such a director;

(b) an agreement by the company to enter into any such transaction or arrangement for a person who at any time during the year was a director of the company or its holding company or was connected with such a director; and

(c) any other transaction or arrangement with the company in which a person who, at any time during the year, was a director of the company or of its holding company had, directly or indirectly, a material interest.

3. (1) For purposes of paragraphs 1 (c) and 2 (c), a transaction or arrangement between a company and a director of it or of its holding company, or a person connected with such a director, is to be treated (if it would not otherwise be so), as a transaction, arrangement or agreement in which that director is interested.

(2) An interest in such a transaction or arrangement is not "material" for
purposes of those sub-paragraphs if in the board’s opinion it is not so; but this shall be without prejudice to the question whether or not such an interest is material in a case where the board have not considered the matter.

“The board” here means the directors of the company preparing the accounts, or a majority of those directors, but excluding in either case the director whose interest it is.

4. Paragraphs 1 and 2 shall not apply, for the purposes of accounts prepared by a company which is, or is the holding company of a recognised bank, in relation to a transaction or arrangement of a kind described in section 268 of this Act or an agreement to enter into such a transaction or arrangement, to which that recognised bank is a party.

5. Paragraphs 1 and 2 shall not apply in relation to the following transactions, arrangements and agreements—

(a) a transaction, arrangement or agreement between one company and another in which a director of the former or of its subsidiary or holding company is interested only by virtue of his being a director of the latter;

(b) a contract of service between a company and one of its directors or a director of its holding company, or between a director of a company and any of that company’s subsidiaries; or

(c) a transaction, arrangement or agreement which was not entered into during the year and which did not subsist at any time during that year.

6. Paragraphs 1 and 2 shall apply whether or not—

(a) the transaction or arrangement was prohibited by section 268 of this Act;

(b) the person for whom it was made was a director of the company or was connected with a director of it at the time it was made;

(c) in the case of a transaction or arrangement made by a company which at any time during a financial year is a subsidiary of another company, it was a subsidiary of that other company at the time the transaction or arrangement was made.

7. Neither paragraph 1 (c) nor paragraph 2 (c) applies in relation to any transaction or arrangement if—

(a) each party to the transaction or arrangement which is a member of the same group of companies (meaning a holding company and its subsidiaries) as the company entered into the transaction or arrangement in the ordinary course of business; or

(b) the terms of the transaction or arrangement are not less favourable to any such party than it would be reasonable to expect if the interest mentioned in
8. Neither paragraph 1 (c) nor paragraph 2 (c) applies in relation to any transaction or arrangement if—

(a) the company is a member of a group of companies (meaning a holding company and its subsidiaries); and

(b) either the company is a wholly-owned subsidiary or no body corporate (other than the company or a subsidiary of the company) which is a member of the group of companies, which includes the company’s ultimate holding company, was a party to the transaction or arrangement; and

(c) the director in question was at some time during the relevant period associated with the company; and

(d) the material interest of the director in question in the transaction or arrangement would not have risen if he had not been associated with the company at any time during the relevant period.

The particulars required by this Part

9. (1) Subject to the next paragraph, the particulars required by this Part are those of the principal terms of the transaction, arrangement or agreement.

(2) Without prejudice to the generality of sub-paragraph (1), the following particulars are required—

(a) a statement of the fact either that the transaction, arrangement or agreement was made or subsisted (as the case may be) during the year;

(b) the name of the person for whom it was made and, where that person is or was connected with a director of the company or of its holding company, the name of that director;

(c) in a case where paragraph 1 (c) or 2 (c) applies, the name of the director with the material interest and the nature of that interest;

(d) in the case of a loan or an agreement for a loan or an arrangement within section 268 of this Act relating to a loan—

(i) the amount of the liability of the person to whom the loan was or was agreed to be made, in respect of principal and interest, at the beginning and at the end of the year;

(ii) the maximum amount of that liability during that year;

(iii) the amount of any interest which, having fallen due, has not been paid; and
(iv) the amount of any provision (within the meaning of the Second Schedule to this Act) made in respect of any failure or anticipated failure by the borrower to repay the whole or part of the loan or to pay the whole or part of any interest on it;

(e) in the case of a guarantee or security or an arrangement within section 268 of this Act relating to a guarantee or security—

(i) the amount for which the company (or its subsidiary) was liable under the guarantee or in respect of the security both at the beginning and at the end of the year;

(ii) the maximum amount for which the company (or its subsidiary) may become so liable; and

(iii) any amount paid and any liability incurred by the company (or its subsidiary) for the purpose of fulfilling the guarantee or discharging the security (including any loss incurred by reason of the enforcement of the guarantee or security); and

(f) in the case of any transaction, arrangement or agreement other than those mentioned in sub-paragraphs (d) and (e), the value of the transaction or arrangement or (as the case may be), the value to which the agreement relates.

10. In paragraph 9 (2) above, sub-paragraphs (c) to (f) shall not apply in the case of a loan or quasi-loan made or agreed to be made by a company to or for a body corporate which is either—

(a) a body corporate of which that company is a wholly-owned subsidiary; or

(b) a wholly-owned subsidiary of a body corporate of which that company is a wholly-owned subsidiary; or

(c) a wholly-owned subsidiary of that company, if particulars of that loan, quasi-loan or agreement for it would not have been required to be included in that company’s annual accounts if the first-mentioned body corporate had not been associated with a director of that company at any time during the relevant period.

Transactions excluded from section 338

11. (1) In relation to a company’s accounts for a year, compliance with this Part shall not be required in the case of transactions of a kind mentioned in the following sub-paragraph which are made by the company or a subsidiary of it for a person who at any time during that financial year was a director of the company or of its holding company, or was connected with such a director, if the aggregate of the values of each transaction, arrangement or agreement
so made for that director or any person connected with him, less the amount (if any) by which the liabilities of the person for whom the transaction or arrangement was made has been reduced, did not at any time during the year exceed N10,000.

(2) The transactions in question are—

(a) credit transactions;

(b) guarantees provided or securities entered into in connection with credit transactions;

(c) arrangements within section 268 of this Act relating to credit transactions;

(d) agreements to enter into credit transactions.

12. In relation to a company’s accounts for a financial year, compliance with this Part shall not be required by virtue of paragraph 1 (c) or 2 (c) in the case of any transaction or arrangement with a company or any of its subsidiaries in which a director of the company or its holding company had, directly or indirectly, a material interest if—

(a) the value of each transaction or arrangement within paragraph 1 (c) or 2 (c) (as the case may be) in which that director had (directly or indirectly) a material interest and which was made after the commencement of the year with the company or any of its subsidiaries; and

(b) the value of each such transaction or arrangement which was made before the commencement of the year less the amount (if any) by which the liabilities of the person for whom the transaction or arrangement was made have been reduced, did not at any time during the year exceed in the aggregate N3,000 or, if more, did not exceed N19,000 or one per cent of the value of the net assets of the company preparing the accounts in question as at the end of the year, whichever is the less.

For this purpose, a company’s net assets are the aggregate of its assets less the aggregate of its liabilities (“liabilities” to include any provision for liabilities or charges within paragraph 83 of the Second Schedule to this Act).

PART II

MATTERS TO BE DISCLOSED UNDER SECTION 339

13. This Part of this Schedule shall apply in relation to the following classes of transactions, arrangements and agreements—

(a) loans, guarantees and securities relating to loans, arrangements of a kind described under section 268 of this Act relating to loans and agreements to enter into any of the foregoing transactions and agreements;
(b) quasi-loans, guarantees and securities relating to quasi-loans, arrangements of a kind described in either of those subsections relating to quasi-loans and agreements to enter into any of the foregoing transactions and arrangements;

(c) credit transactions, guarantees and securities relating to credit transactions and arrangements of a kind described in either of those subsections relating to credit transactions and agreements to enter into any of the foregoing transactions and arrangements.

14. (1) To comply with this Part of this Schedule, the accounts must contain a statement, in relation to transactions, arrangements and agreements, made as mentioned in section 268 (1) of this Act—

(a) the aggregate amounts outstanding at the end of the financial year under transactions, arrangements and agreements within sub-paragraphs (a), (b) and (c) respectively of paragraph 13 above; and

(b) the number of officers for whom the transactions, arrangements and agreements falling within each of those sub-paragraphs, were made.

(2) This paragraph does not apply to transactions, arrangements and agreements made by the company or any of its subsidiaries for an officer of the company if the aggregate amount outstanding at the end of the year under such transactions, arrangements, and agreement do not exceed N5,000.

FIFTH SCHEDULE
[Section 340]

MATTERS TO BE DEALT WITH IN DIRECTORS’ REPORT

PART I

MATTERS OF A GENERAL NATURE

Asset values

1. (1) If significant changes in the fixed assets of the company or of any of its subsidiaries have occurred in the financial year, the report shall contain particulars of the changes.

(2) If, in the case of such of those assets as consist in interests in land, their market value (as at the end of the year) differs substantially, from the amount at which they are included in the balance sheet, and the difference is in the directors’ opinion, of such significance as to require that the attention of members of the company or of holders of its debentures should be drawn to it, the report shall indicate the difference with such degree of precision as is practicable.
Directors’ interests

2. (1) The report shall state the following with respect to each person who, at the end of the year, was a director of the company—

(a) whether or not, according to the register kept by the company for the purposes of sections 274 and 275 of this Act (director’s obligation to notify his interests in the company and companies in the same group), he was at the end of that year interested in shares in, or debentures of, the company or any other body corporate, being the company’s subsidiary or holding company or a subsidiary of the company’s holding company;

(b) if he was so interested—

(i) the number and amount of shares in, and debentures of, each body (specifying it) in which, according to that register, he was then interested;

(ii) whether or not (according to that register) he was, at the beginning of that year or, if he was not then a director, when he became one, interested in shares in, or debentures of, the company or any other such body corporate; and

(iii) if he was, the number and amount of shares in and debentures of, each body (specifying it) in which, according to that register, he was interested at the beginning of the year or (as the case may be) when he became a director.

(2) An interest in shares or debentures which, under sections 274 and 275 of this Act, falls to be treated as being the interest of a director is so treated for the purposes of this paragraph; and the references above to the time when a person became a director, in the case of a person who became director on more than one occasion, is the time when he first became a director.

(3) The particulars required by this paragraph may be given by way of notes to the company’s accounts in respect of the year, instead of being stated in the directors’ report. Charitable gifts

3. (1) Money given for charitable purposes to a person who, when it was given, was ordinarily resident outside Nigeria is to be left out of the account.

(2) “Charitable purposes” means purposes which are exclusively charitable.

Miscellaneous

4. The directors’ report shall contain—

(a) particulars of any important events affecting the company or any of its subsidiaries which have occurred since the end of the year;

(b) an indication of likely future developments in the business of the company and of its subsidiaries;
(c) an indication of the activities (if any) of the company and its subsidiaries in the field of research and development;

(d) names of distributors of the company’s products; and

(e) particulars of donations and gifts made for any purpose.

PART II

DISCLOSURE REQUIRED BY COMPANY ACQUIRING ITS OWN SHARES, ETC.

5. This Part of this Schedule shall apply where shares in a company—

(a) are purchased by the company or are acquired by it by forfeiture or surrender in lieu of forfeiture, or in pursuance of section 158 of this Act (acquisition of own shares by company limited by shares); or

(b) are required by another person in circumstances where paragraph (b) or (c) of section 157 (3) of this Act applies (acquisition by company’s nominee, or by another with company financial assistance, the company having a beneficial interest); or

(c) are made subject to a lien or other charges taken (whether expressly or otherwise) by the company and permitted by section 123 (1) or (4) of this Act.

6. The directors’ report with respect to a year shall state—

(a) the number and nominal value of the shares so purchased, the aggregate amount of the consideration paid by the company for such shares and the reasons for their purchase;

(b) the number and nominal value of the shares so acquired by the company, acquired by another person in such circumstances and so charged respectively during the year;

(c) the maximum number and nominal value of shares which, having been so acquired by the company, acquired by another person in such circumstances or so charged (whether or not during that year) are held at any time by the company or that other person during the year;

(d) where the number and nominal value of the shares of any particular description are stated in pursuance of any of the preceding sub-paragraphs, the percentage of the called up share which shares of that description represent;

(e) where any of the shares have been so charged, the amount of the charge in each case;
(f) where any of the shares have been disposed of by the company or the person who acquired them in such circumstances for money or money’s worth, the amount or value of the consideration in each case; and

(g) the excess of the selling price over the purchase price of each share resold or the excess of the cost over the selling price which was taken to capital reserve.

PART III

EMPLOYMENT AND EMPLOYEES

Employment of disabled persons

7. The directors’ report shall contain a statement showing how many disabled persons were employed during the year and describing the policy which the company has applied during the year—

(a) for giving full and fair consideration to applications for employment by the company made by disabled persons, having regard to their particular aptitudes and abilities;

(b) for continuing the employment of, and for arranging appropriate training for, employees of the company who have become disabled persons during the period when they were employed by the company; and

(c) otherwise for the training, career development and promotion of disabled persons employed by the company.

Health, safety and welfare at work of company’s employees

8. The directors’ report shall contain a statement as to the arrangement in force in the year for securing the health, safety and welfare at work of employees of the company and its subsidiaries, and for protecting other persons against risks to health or safety arising out of or in connection with the activities at work of those employees.

Employee involvement and training

9. The directors’ report shall contain a statement describing the action that has been taken during the year to introduce, maintain or develop arrangements aimed at—

(a) providing employees systematically with information on matters of concern to them as employees;

(b) consulting employees or their representatives on a regular basis so that the views of employees can be taken into account in making decisions which are likely to affect their interests;
(c) encouraging the involvement of employees in the company’s performance through an employees’ share scheme or by some other means; and

(d) achieving a common awareness on the part of all employees of the financial and economic factors affecting the performance of the company.

10. The directors’ report shall contain a statement showing the arrangements made or facilities provided by the company for the training of employees during the year.

**SIXTH SCHEDULE**

*Sections 348, 350, 352, 357*

**MATTERS TO BE EXPRESSLY STATED IN AUDITOR’S REPORT**

1. Whether they have obtained all the information and explanations which to the best of their knowledge and belief were necessary for the purpose of their audit.

2. Whether, in their opinion, proper books of account have been kept by the company, so far as appears from their examination of those books, and proper returns adequate for the purposes of their audit have been received from branches not visited by them.

3. (1) Whether the company’s balance sheet and (unless it is framed as a consolidated profit and loss account) profit and loss account dealt with by the report are in agreement with the books of account and returns.

   (2) Whether, in their opinion and to the best of their information and according to the explanations given them, the said statements give the information required by this Act in the manner so required and give a true and fair view—

   (a) in the case of the balance sheet, of the state of the company’s affairs as at the end of its year; and

   (b) in the case of the profit and loss account, of the profit and loss for its year; or as the case may be, give a true and fair view thereof subject to the non-disclosure of any matters (to be indicated in the report) which, by virtue of Part I of the Second Schedule of this Act, are not required to be disclosed.

4. In the case of a holding company, submitting group financial statements whether, in their opinion, the group financial statements have been properly prepared in accordance with the provisions of this Act so as to give a true and fair view of the state of affairs and profit or loss of the company and its subsidiaries and associates dealt with hereby, so far as concerns members of the company, or the case may be so as to give a true and fair view thereof subject to the non-disclosure of any matters to be indicated in the report which by virtue of Part I of the Second Schedule to this Act are not required to be disclosed.

**SEVENTH SCHEDULE**

*Sections 350, 351*
MODIFIED FINANCIAL STATEMENTS OF COMPANIES QUALIFYING AS SMALL COMPANIES

PART I

MODIFIED FINANCIAL STATEMENTS

INTRODUCTORY

Accounts modified as for a small company

1. (1) In respect of the relevant financial year, there may be delivered a copy of a modified balance sheet, instead of the full balance sheet.

(2) The modified balance sheet shall be an abbreviated version of the full balance sheet, showing only those items to which a letter or Roman number is assigned in the balance sheet format adopted under the Second Schedule Part I, to this Act but in other respects corresponding to the full balance sheet.

(3) The copy of the modified balance sheet shall be signed as required by section 341 of this Act.

2. A copy of the company's profit and loss account need not be delivered nor a copy of the directors' report otherwise required by section 343 of this Act.

3. The information required by Parts V and VI of the Third Schedule of this Act need not be given.

4. The information required by the Third Schedule to this Act to be given in notes to the accounts need not be given, with the exception of any information required by the following provisions of that Schedule—

   paragraph 36 (accounting policies)
   paragraph 38 (share capital)
   paragraph 39 (particulars of allotments)
   paragraph 47 (1) and (4) (particulars of debts)
   paragraph 57 (1) (basis of translation of foreign currency amounts into naira), and

paragraph 57 (2) (corresponding amounts for preceding year); and the reference here to paragraph 57 (2) includes that sub-paragraph as applied to any item stated in a note to the company's accounts, whether by virtue of a requirement of the Third Schedule or under any other provision of this Act.

5. If a modified balance sheet is delivered, there shall be disclosed in it(or in a note to the company’s accounts delivered)—
(a) the aggregate of the amounts required by note (5) of the notes on the balance sheet formats set out in the Second Schedule Part I to be shown separately for each item included under debtors (amounts falling due after one year); and

(b) the aggregate of the amounts required by note (13) of those notes to be shown separately for each item included under creditors in format 2 (amounts falling due within one year or after more than one year).

6. The company’s balance sheet shall contain a statement by the directors that—

(a) they rely on sections 348 to 351 of this Act as entitling them to deliver modified accounts; and

(b) they do so on the ground that the company is entitled to the benefit of those sections as a small company, and the statement shall appear in the balance sheet immediately above the signatures of the directors.

7. (1) The accounts delivered shall be accompanied by a special report of the auditors stating that in their opinion—

(a) the directors are entitled to deliver modified accounts in respect of the financial year as claimed in the directors’ statement; and

(b) any accounts comprised in the documents delivered as modified accounts are properly prepared as such in accordance with this Schedule.

(2) A copy of the auditors’ report under section 357 of this Act need not be delivered; but the full text of it shall be reproduced in the special report under this paragraph.

(3) If the directors propose to rely on sections 348 to 351 of this Act as entitling them to deliver modified accounts, it shall be the auditors’ duty to provide them with a report stating whether, in their opinion, the directors are so entitled, and whether the documents to be delivered as modified accounts are properly prepared in accordance with this Act.

8. Subject as above, where the directors rely on sections 348 to 351 of this Act in delivering any documents, and—

(a) the company is entitled to the benefit of those sections on the ground claimed by the directors in their statement under paragraph 6; and

(b) the accounts comprised in the documents are properly prepared in accordance with this Schedule, then section 343 (3) of this Act shall have effect as if any document which by virtue of this Part of this Schedule is included in or omitted from the documents delivered as modified accounts were (or, as the case may be), not required by this Act to be comprised in the company’s accounts in respect of the year.
PART II

MODIFIED GROUP FINANCIAL STATEMENTS (IN CONSOLIDATED FORM) FOR
SMALL COMPANIES

Introductory

9. In this Part of this Schedule paragraphs 10-16 relate to modified financial statements for a small group.

Small groups

10. (1) In respect of the relevant year, there may be delivered a copy of a modified balance sheet, instead of the full consolidated balance sheet.

(2) The modified balance sheet shall be an abbreviated version of the full consolidated balance sheet, showing only those items to which a letter or Roman numeral is assigned in the balance sheet format adopted under the Second Schedule Part I, but in other respects corresponding to the full consolidated balance sheet.

11. A copy of the profit and loss account need not be delivered nor a copy of the directors' report otherwise required by section 341 of this Act.

12. The information required by the Second Schedule to this Act to be given in notes to group financial statements need not be given, with the exception of any information required by provisions of that Schedule listed in paragraph 4 above.

13. There shall be disclosed in the modified balance sheet, or in a note to the group accounts delivered, aggregate amounts corresponding to those specified in paragraph 5 above.

14. The information required by Part V and VI of the Third Schedule need not be given.

PART III

MODIFIED GROUP ACCOUNTS CONSOLIDATED OR OTHERS

15. If modified group accounts are delivered, the following paragraphs apply.

16. The directors' statement required by paragraph 6 to be contained in the balance sheet include a statement that the documents delivered include modified group accounts, in reliance on section 351 of this Act.

17. (1) The auditors' special report under paragraph 7 shall include a statement that in their opinion—

(a) the directors are entitled to deliver modified group accounts, as claimed in their statement in the balance sheet; and
(b) any accounts comprised in the documents delivered as modified group financial statements are properly prepared as such in accordance with this Schedule.

(2) A copy of the auditors’ report under section 357 need not be delivered; but the full text of it shall be reproduced in the special report under paragraph 7.

(3) If the directors propose to rely on section 351 as entitling them to deliver modified group financial statements, it is the auditors’ duty to provide them with a report stating whether, in their opinion, the directors are so entitled, and whether the documents to be delivered as modified group financial statements are properly prepared in accordance with this Schedule.

18. Subject as above, where the directors rely on section 351 in delivering any documents, and—

(a) the company is entitled to the benefit of that section on the ground claimed by the directors in their statement in the balance sheet; and

(b) the accounts comprised in the documents delivered as modified financial statements are properly prepared in accordance with this Schedule, then section 343 (3) has effect as if any document which by virtue of this Schedule is included in or omitted from the documents delivered as modified group financial statements were (or, as the case may be, were not) required by this Act to be comprised in the company’s financial statements in respect of the year.

EIGHTH SCHEDULE

[Section 372]

CONTENTS AND FORM OF ANNUAL RETURNS OF A COMPANY HAVING SHARES OTHER THAN A SMALL COMPANY

PART I

CONTENTS

1. The address of the registered office of the company.

2. (1) If the register of members is, under the provisions of this Act, kept elsewhere than at the registered office of the company, the address of the place where it is kept.

(2) If any register of holders of debentures of the company or any duplicate of any such register or part of any such register is, under the provisions of this Act kept elsewhere than at the registered office of the company, the address of the place where it is kept.
3. A summary, distinguishing between shares issued for cash and shares issued as fully or partly paid or otherwise than in cash, specifying the following particulars—

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

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

(c) the amount called up 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) the discount allowed on the issue of any shares issued at a discount or 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; and

(i) the total number of shares forfeited.

4. 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 Commission under this Act.

5. A list—

(a) containing the names and addresses of all persons who, on the fourteenth day after the company's annual general meeting for the year, are members of the company, and of persons who have ceased to be members since the date of the last return or, in the case of the first return, since the incorporation of the company;

(b) stating the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return (or, in the case of the first return, since the incorporation of the company) by persons who are still members and have ceased to be members respectively, and the dates of registration of the transfers;

(c) if the names aforesaid are not arranged in alphabetical order, having annexed thereto an index sufficient to enable the name of any person therein to be easily found.
6. All such particulars with respect to the persons who at the date of the return are the
directors of the company and any person who at that date is the secretary of the
company as are by this Act required to be contained with respect to directors and
the secretary respectively in the register of the directors and secretaries of a
company.

PART II

Form

ANNUAL RETURN OF……………………………………………………………………………….. Limited
made up to the day of 20……………………………..(being the fourteenth day after the date
of the annual general meeting for the year ………………………… 20…………………. )

1. Address ……………………………………………………………………………………………….. (Address of the registered office of the company)

2. Situation of registers of members and debenture holders.

(a) (Address of place at which the register of members is kept, if other than the
registered office of the company).

(b) (Address of any place in Nigeria other than the registered office of the company at
which is kept any register of holders of debentures of the company or any duplicate
of any such register or part of any such register).

3. Summary of share capital and debentures.

(a) Nominal share capital

Nominal share capital N
(Insert number and class) divided into:

................................................. shares of........................................... each

................................................. shares of........................................... each

................................................. shares of........................................... each

(b) Issued share capital and debentures

<table>
<thead>
<tr>
<th>Number</th>
<th>Class</th>
<th>Shares</th>
</tr>
</thead>
</table>

Number of shares of each class taken up to the date of
this return (which number must agree with the total
shown in the list as held by existing members).
Number of shares of each class issued subject to payment wholly in cash.

Number of shares of each class issued as partly paid up for a consideration other than cash and extent to which each such share is so paid up.

Number of shares (if any) of each class issued at a discount.

Amount of discount on the issue of shares which has not been written off at the date of this return.

Amount called per share on up on number of shares of each class per share on per share on...

Total amount of calls received, including payments on application and allotment and any sums received on shares forfeited.

Total amount (if any) agreed to be considered as paid on the number of shares each class issued as fully paid up for a consideration paid other than cash...

Total amount (if any) agreed as to be considered paid on number of shares of each class issued as partly paid up for a consideration other than cash...

Total amount of calls unpaid

Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures.

Total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the last return...

Total number of shares of each class forfeited

4. Particulars of indebtedness.
Total amount of indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Commission under the Companies and Allied Matters Act.

5. List of past and present members.

List of persons holding shares or stock in the company on the fourteenth day after the annual general meeting for 20 and of persons who have held shares or stock 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.

<table>
<thead>
<tr>
<th>Folio in register containing particulars</th>
<th>Name and addresses</th>
<th>Number of shares held by existing members at date of return*</th>
<th>Account of shares</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Particulars of shares transferred since the date of the last return, of the incorporation of the company by (a) persons who are still members and (b) persons who have ceased to be members*</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Number (a) (b)</td>
<td>Date of registration of transfer</td>
<td></td>
</tr>
</tbody>
</table>

*The aggregate number of shares held by each member must be stated, and the aggregate must be added up so as to agree with the number of shares stated in the Summary of Share Capital and Debentures to have been taken up.

When the shares are of different classes these columns should 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 placed together with that of the transferee, but the name of the transferee may be inserted in the remarks column immediately opposite the particulars of each transfer.

(i) If the return for either of the two immediately preceding years has given as at the date of that return the full particulars required as to past and present
members and the shares and stock held and transferred by them, only such of the particulars need be given as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date or to changes as compared with the date in the amount of stock held by a member.

(ii) If the names in the list are not arranged in alphabetical order, an index sufficient to enable the name of any person to be readily found must be annexed.

6. Particulars of directors and secretaries.

**Particulars of the persons who are directors of the company at the date of this return**

<table>
<thead>
<tr>
<th>Present forename or names and surname</th>
<th>Any former forenames or names and surnames</th>
<th>Nationality</th>
<th>Usual residential address</th>
<th>Business occupation and particulars of other directorships</th>
<th>Date of birth</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Particulars of the person who is secretary of the company at the date of this return**

<table>
<thead>
<tr>
<th>Name (In the case of an individual, present forename or names and surname, in the case of a corporation, the corporate name)</th>
<th>Any former forenames or surnames</th>
<th>Usual residential address (in the case of a corporation, the registered or principal office)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Signed...........................................................................................................Director

**Notes**

“Directors” includes any person who occupies the position of a director by whatsoever name called and any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

“Former forename” and “former surname” do not include in the case of a married woman the name or surname by which she was known previous to the marriage.

The names of all bodies corporate of which the company making the return is the wholly- owned subsidiary or bodies corporate which are the wholly-owned subsidiaries either of the company or of another company of which the company is
a subsidiary of another if it has no members except that other and that other’s wholly-owned subsidiaries and its or their nominees. If the space provided in the form is insufficient, particulars of both directorships should be listed on a separate statement attached to the return.

Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated.

*Delivered for filing by………………………………………………………………………………………………………………………………………………

*This should be printed at the bottom of the first page of the return.

CERTIFICATES AND OTHER DOCUMENTS ACCOMPANYING ANNUAL RETURNS

Certificate to be given by a director and the secretary of every private company

We certify that the company has not since the date of the incorporation of the company/the last annual return, issued any invitation to the public to subscribe for any shares or debentures in the company.

Signed………………………… Director
Signed………………………… Secretary

Further certificate to be given as aforesaid if the number of members of the company exceeds fifty.

We certify that the excess of the number of members of the company over fifty consists wholly of persons who, under subsection (3) of section 22 of the Companies and Allied Matters Act, are not to be included in reckoning the number fifty.

Signed………………………… Director
Signed………………………… Secretary

Certified copies of accounts

There shall be annexed to this return a written copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which this return relates (including every document required by law to be annexed to the balance sheet) and a copy (certified as aforesaid) of the report of the directors accompanying each such balance sheet. If any such balance sheet or document required by law to be annexed thereto is in a foreign language, there must also be annexed to that balance sheet a translation in English of the balance sheet or document certified in a prescribed manner to be a correct translation. If any such balance sheet as aforesaid or document required by law to be annexed thereto did not comply with the requirements of the law as in force at the date of audit with respect to the form
of balance sheet or documents aforesaid, as the case may be, there shall be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with the said requirements, and the fact that the copy has been amended must be stated thereon.

NINTH SCHEDULE

[Section 373]

ANNUAL RETURN OF A SMALL COMPANY

PART I

Contents

1. The name and address of the registered office of the company.
2. If the register of members is, under the provisions of this Act, kept elsewhere than at the registered office of the company, the address of the place where it is kept.
3. If any register of holders of debentures of the company or any such register or part of any such register is, under the provisions of this Act, kept elsewhere than at the registered office of the company, the address of the place where it is kept.
4. The authorised share capital of the company.
5. The issued capital.
6. The total paid-up capital.
7. 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 the Act.
8. Particulars of the directors and secretary.

PART II

ANNUAL RETURN OF………………………………………………………………………………… Limited
made up to the day of…………………… 20……………….. (being the fourteenth day after the date of the annual general meeting for the year 20 ......................... )

1. Name…………………………………………………………………………………………………….
2. Address…………………………………………………………………………………………………...
3. Situation of registers of members and debenture holders.

(a) (Address of place at which the register of members is kept, if other than the registered office of the company).

(b) (Address of any place in Nigeria other than the registered office of the company at which is kept any register of holders of debentures of the company or any duplicate of any such register or part of any such register).

4. Particulars of indebtedness.

Total amount of indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Commission under the Companies and Allied Matters Act, the particulars of which are set in the annexed statement. ¶ .........................

5. Particulars of directors and secretaries.

<table>
<thead>
<tr>
<th>Name present forename or names and surname</th>
<th>Any former forenames or names and surnames</th>
<th>Nationality</th>
<th>Usual residential address</th>
<th>Business occupation and particulars of other directorships</th>
<th>Date of birth</th>
</tr>
</thead>
</table>

Particulars of the person who is secretary of the company at the date of this return

<table>
<thead>
<tr>
<th>Name (In the case of an individual, present forename or names and surname, in the case of a corporation, the corporate name)</th>
<th>Any former forenames or surnames</th>
<th>Usual residential address (in the case of a corporation, the registered or principal office)</th>
</tr>
</thead>
</table>

Signed........................................................................................................... Director

“Directors” includes any person who is appointed a director by the company, or is described as a director by the company, and any person in accordance with whose directions or instructions the directors of the company are accustomed to act.
“Former forename” and “former surname” do not include in the case of a married woman the name or surname by which she was known previous to the marriage.

The names of all bodies corporate incorporated in Nigeria of which the director is also a director should be given, except bodies corporate of which the company making the return is the wholly-owned subsidiary or bodies corporate which are the wholly-owned subsidiaries either of the company or of another company of which the company is the wholly-owned subsidiary. A body corporate is deemed to be the wholly-owned subsidiary of another if it has no members except that other and that other’s wholly-owned subsidiaries and its or their nominees. If the space provided in the form is insufficient, particulars of other directorships should be listed on a separate statement attached to this return.

Where all the partners in a firm are joint secretaries, the name and principal office of the firm should be stated.

*Delivered for filing by………………………………………………………………………………………………………

*This should be printed at the bottom of the first page of the return.

CERTIFICATES AND OTHER DOCUMENTS ACCOMPANYING ANNUAL RETURN

Certificate to be given by a director and the secretary of every private company

We certify that the company has not since the date of the incorporation of the company/the last annual return, issued any invitation to the public to subscribe for any shares or debentures of the company.

Signed…………………………… Director

Signed…………………………… Secretary

Further certificate to be given as aforesaid if the number of members of the company exceeds fifty.

We certify that the excess of the number of members of the company over fifty consists wholly of persons, who under section 22 (3) of the Companies and Allied Matters Act, are not to be included in reckoning the number of fifty, and we also certify that the company still retains its smallness.

Signed…………………………… Director

Signed…………………………… Secretary

Certified copies of Accounts

There shall be annexed to this return a written copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which this return relates
(including every document required by law to be annexed to the balance sheet) and a copy (certified as aforesaid) of the report of the directors accompanying each such balance sheet. If any such balance sheet or document required by law to be annexed thereto is in a foreign language, there must also be annexed to that balance sheet a translation in English of the balance sheet or document certified in prescribed manner to be a correct translation. If any such balance sheet as aforesaid or document required by law to be annexed thereto did not comply with the requirements of the law as in force at the date of audit with respect to the form of balance sheets or documents aforesaid, as the case may be, there shall be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with the said requirements, and the fact that the copy has been amended must be stated thereon.

TENTH SCHEDULE
[Section 374]

Annual return of a company limited by guarantee

ANNUAL RETURN OF.......................................................................................................................... Limited
made up to the day of 20.............. (being the fourteenth day after the date
of the annual general meeting for the year ..........................20.......................)

1. Address.........................................................................................................................................
   (Address of the registered office of the company)

2. Situation of registers of members and debenture holders.
   (a) (Address of place at which the register of members is kept, if other than the
       registered office of the company).
   (b) (Address of any place in Nigeria other than the registered office of the company at
       which is kept any register of holders of debentures of the company or any duplicate
       of any such register or part of any such register).

3. Particulars of indebtedness.

   Total amount of indebtedness of the company in respect of all mortgages and
   charges which are required to be registered with the Commission under this Act, the
   particulars of which are set in the annexed statement. N ..........................*

4. Particulars of directors and secretaries.

   Particulars of the persons who are directors of the company at the date of this return
Name
present forename or
names and surname
Any former
forenames or
names and
surnames
Nationality
Usual
residential
address
Business
occupation
and
particulars
of other
directorships
Date of birth

Particulars of the person who is secretary of the company at the date of this return

Name
(In the case of an individual,
present forename or names
and surname, in the case of
a corporation, the corporate
name)
Any former forenames or
surnames
Usual residential address (in
the case of a corporation,
the registered or principal
office)

Signed …………………………………………………………..Director

Notes

“Directors” includes any person who occupies the position of a director by
whatsoever name called and any person in accordance with whose directions or
instructions the directors of the company are accustomed to act.

“Former forename” and “former surname” do not include in the case of a
married woman the name or surname by which she was known previous to the
marriage.

The names of all bodies corporate incorporated in Nigeria of which the director is
also a director, should be given, except bodies corporate of which the company
making the return is the wholly-owned subsidiary of bodies corporate which are the
wholly-owned subsidiaries either of the company or of another company of which
the company is the wholly-owned subsidiary of another if it has no members except
that other and that other’s wholly-owned subsidiaries and its or their nominees. If
the space provided in the form is insufficient, particulars of both directorships should
be listed on a separate statement attached to the return.

Where all partners in a firm are joint secretaries, the name and principal office of the
firm should be stated.

*Delivered for filing by………………………………………………………………………

*This should be printed at the bottom of the first page of the return.

CERTIFICATES AND OTHER DOCUMENTS ACCOMPANYING ANNUAL RETURN
Certificate to be given by a director and the secretary of every private company

We certify that the company has not since the date of the incorporation of the company/the last annual return, issued any invitation to the public to subscribe for any shares or debentures of the company.

Signed………………………………… Director
Signed………………………………… Secretary

Further certificate to be given as aforesaid if the number of members of the company exceeds fifty.

We certify that the excess of the number of members of the company over fifty consists wholly of persons who, under subsection (3) of section 22 of the Companies and Allied Matters Act, are not to be included in reckoning the number of fifty.

Signed………………………………… Director
Signed………………………………… Secretary

Certified copies of Accounts

There shall be annexed to this return a written copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which this return relates (including every document required by law to be annexed to the balance sheet) and a copy (certified as aforesaid) of the report of the directors accompanying each such balance sheet. If any such balance sheet or document required by law to be annexed thereto is in a foreign language, there must also be annexed to that balance sheet a translation in English of the balance sheet or document certified in prescribed manner to be a correct translation. If any such balance sheet as aforesaid or document required by law to be annexed thereto did not comply with the requirements of the law as in force at the date of audit with respect to the form of balance sheets or documents aforesaid, as the case may be, there must be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with the said requirements, and the fact that the copy has been amended must be stated thereon.

ELEVENTH SCHEDULE
[Section 394 (3)]

POWERS OF RECEIVERS AND MANAGERS OF THE WHOLE OR SUBSTANTIALLY THE WHOLE OF THE COMPANY’S PROPERTY

1. Power to take possession of, collect and get in the property of the company and, for that purpose, to take such proceedings as may seem to him expedient.
2. Power to sell or otherwise dispose of the property of the company by public auction or private contract.

3. Power to raise or borrow money and grant security therefor over the property of the company.

4. Power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions.

5. Power to bring or defend any action or other legal proceedings in the name and on behalf of the company.

6. Power to refer to arbitration any question affecting the company.

7. Power to effect and maintain insurances in respect of the business and property of the company.

8. Power to use the company’s seal.

9. Power to do all acts and to execute in the name and on behalf of the company any deed, receipt or other document.

10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.

11. Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.

12. Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the company.

13. Power to make any payment which is necessary or incidental to the performance of his functions.

14. Power to carry on the business of the company.

15. Power to establish subsidiaries of the company.

16. Power to transfer to subsidiaries of the company the whole or any part of the business and property of the company.

17. Power to grant or accept a surrender of a lease or tenancy of any of the property of the company, and to take a lease or tenancy of any property required or convenient for the business of the company.

18. Power to make any arrangement or compromises on behalf of the company.

19. Power to call up any uncalled capital of the company.
20. Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company and to receive dividends, and to accede to trust deeds for the creditors of any such person.

21. Power to present or defend a petition for the winding up of the company.

22. Power to change the situation of the company’s registered office.

23. Power to do all other things incidental to the exercise of the foregoing powers.

TWELTH SCHEDULE

Section 488 (2)

PROVISIONS NOT APPLICABLE ON WINDING UP UNDER SUPERVISION OF THE COURT

<table>
<thead>
<tr>
<th>Section</th>
<th>Subject matter</th>
</tr>
</thead>
<tbody>
<tr>
<td>388</td>
<td>Power to appoint official receiver for debenture holders and others.</td>
</tr>
<tr>
<td>420</td>
<td>Statement of company’s affairs to be submitted to official receiver.</td>
</tr>
<tr>
<td>421</td>
<td>Report by official receiver.</td>
</tr>
<tr>
<td>422</td>
<td>Appointment, remuneration and title of liquidators (except subsection 8).</td>
</tr>
<tr>
<td>427</td>
<td>Exercise and control of liquidator’s powers.</td>
</tr>
<tr>
<td>428</td>
<td>Payments by liquidator into companies liquidation account.</td>
</tr>
<tr>
<td>429</td>
<td>Audit, etc., of liquidator’s account.</td>
</tr>
<tr>
<td>430</td>
<td>Books to be kept by liquidator.</td>
</tr>
<tr>
<td>431</td>
<td>Release of liquidator.</td>
</tr>
<tr>
<td>432</td>
<td>Control over liquidators.</td>
</tr>
<tr>
<td>433</td>
<td>Power to appoint committee of inspection, etc.</td>
</tr>
<tr>
<td>434</td>
<td>Powers, etc., of committee of inspection.</td>
</tr>
<tr>
<td>435</td>
<td>Powers where no committee of inspection is appointed.</td>
</tr>
<tr>
<td>436</td>
<td>Power to appoint special manager.</td>
</tr>
<tr>
<td>450</td>
<td>Power to order public examination of promoters, etc.</td>
</tr>
<tr>
<td>453</td>
<td>Delegation to liquidator of certain powers of the court.</td>
</tr>
</tbody>
</table>
THIRTEENTH SCHEDULE

[Section 548]

PROVISION OF THIS ACT APPLYING TO UNREGISTERED COMPANIES

<table>
<thead>
<tr>
<th>Provisions of this Act applied</th>
<th>Subject matter</th>
<th>Limitation on application</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sections 371 to 379 and Eight, Ninth and Tenth Schedules</td>
<td>Annual return</td>
<td>Not to apply so as to require particulars in respect of any period before the commencement of this Act, and as respects any period thereafter to apply so far only as may be specified as aforesaid and to such bodies corporate as may be so specified.</td>
</tr>
<tr>
<td>Section 329 to 370 and Fifth to Ninth Schedules</td>
<td>Accounts and audit</td>
<td>To apply so far as may be specified as aforesaid and to such bodies corporate as may be so specified</td>
</tr>
<tr>
<td>Sections 312 to 328</td>
<td>Investigations</td>
<td>To apply so far only as they have effect in relation to provisions applying by virtue of the foregoing entries in this schedules</td>
</tr>
<tr>
<td>Sections 273, 274, 275, 551, 552, 556, 558, 562, 564(1) and 566, and Seventeenth Schedule</td>
<td>Registration of Documents, enforcement and supplemental matters</td>
<td>To apply so far only as they have effect in relation to provisions applying by virtue of the foregoing entries in this schedules</td>
</tr>
</tbody>
</table>

FOURTEENTH SCHEDULE

[Section 554]

FORMS OF STATEMENT TO BE PUBLISHED BY BANKING AND INSURANCE COMPANIES AND DEPOSIT, PROVIDENT OR BENEFIT SOCIETIES

The share capital is…………………….. divided into………………………..shares of ………… ………. each.

The number of shares issued is………………………………………………………………..
Calls to the amount of…………………………. naira per share have been made, under which the sum of…………………………. naira 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, N
   On specialty N
   On notes or bills, N
   On simple contracts, N
   On estimated liabilities, N

The assets of the company on that day were—

   Government securities (stating them), N
   Bills of exchange and promissory notes, N
   Cash at the bankers, N
   Other securities, N

*If the company has no share capital, the portion of the statement relating to capital and shares must be omitted.

SUBSIDIARY LEGISLATION

COMPANIES PROCEEDINGS RULES

ARRANGEMENT OF RULES

1. Entitlement of proceedings
2. Particular application to be made by originating summons
3. Application to be made by originating motion
4. Application to be made by petitions
5. Summons for direction
6. Inquiry as to debts: company to make list of creditors
7. Inspection of list of creditors

8. Notice to creditors

9. Advertisement of petition and list of creditors

10. Affidavit as to claims made by creditors

11. Adjudication of disputed claim

12. Certifying lists of creditors entitled to object to reduction

13. Evidence of consent of creditors

14. Time, etc., of hearing of petition for confirmation of reduction

15. Restriction on taking effect of order under section 121 (2)

16. Affidavit to be filed in court Registry

17. Where motions, etc., can be filed

18. Non-compliance with the Rules, etc

19. Application of Court's Civil Procedure Rules

20. Interpretation

21. Application and Forms

22. Citation and commencement

under section 635 (1)

[1st November, 1992]

[Commencement]

1. Entitlement of proceedings

(1) Every originating summons, notice of originating motion and petition by which any such proceedings are begun and all affidavits, notices and other documents in those proceedings shall be entitled in the matter of the company in question and in the matter of the Companies and Allied Matters Act.

(2) The originating summons by which an application for leave under section 254 (1) of the Act is made shall be entitled in the matter of the company in relation to which the
plaintiff was convicted or was guilty of such an offence or of such conduct as is mentioned in the said section and in the matter of the Act.

2. Particular application to be made by originating summons

(1) Except in the case of the application mentioned in rules 5 and 6 of these Rules and applications made in proceedings relating to the winding up of companies, every application under the Act shall be made by originating summons.

(2) An originating summons under these Rules shall be in Form 1 specified in the Schedule to these Rules.

(3) An application under section 317 or 638 of the Act may be made by ex-parte originating summons.

3. Application to be made by originating motion The following applications under the Act shall be made by originating motion, namely, applications—

(a) under section 23 (2) for an order that a company be relieved from the consequences of default in complying with conditions constituting the company a private company;

(b) under section 46 (8), 129 (2) or 312 (5) for an order extending the time for delivery to the Corporate Affairs Commission of any document required by that section to be delivered;

(c) under section 90 (1) for the rectification of the register of members of a company;

(d) under section 315 for an order declaring that the affairs of a company ought to be investigated by an inspector appointed by the Commission;

(e) under section 319 (3) and (4) for an inquiry into any such case as is therein mentioned;

(f) under section 329 for an order directing that any shares in or debentures of a company shall cease to be subject to restrictions imposed by that section; and

(g) under section 524 (1) for an order declaring a dissolution of a company which has not been wound up to have been void.

4. Application to be made by petitions The following applications under the Act shall be made by petition, namely, applications—

(a) under section 46 (1) and (2) to cancel the alteration of a company’s objects;

(b) under section 47 (1) to cancel the alteration of a condition contained in a company’s memorandum;

(c) under section 53 (3) to cancel a special resolution to which that section applies;

(d) under section 120 to confirm a reduction of the share premium account of a company;
(e) under section 121 (2) to sanction the issue by a company of shares at a discount;

(f) under section 158 to confirm a reduction of the capital redemption reserve fund of a company;

(g) under section 107 (1) to confirm a reduction of the share capital of a company;

(h) under section 142 (1) to cancel any variation or abrogation of the rights attached to any class of shares in a company;

(i) under section 311 (1) for relief on the ground that the affairs of a company are being conducted in an illegal or oppressive manner;

(j) under section 525 (6) for an order restoring the name of a company to the register, where the application is made in conjunction with an application for the winding up of the company;

(k) under section 591 (3) to sanction a scheme for a merger between two or more companies;

(l) under section 641 for relief from liability of an officer of a company or a person employed by a company as auditor.

5. Summons for direction

(1) After presentation of a petition by which any such application as is mentioned in rule 6 of these Rules is made, the petitioner, except where his application is one of those mentioned in paragraph (2) of this rule, shall take out a summons for direction under this rule.

(2) The applications referred to in paragraph (1) of this rule are—

(a) an application under section 121 (2) of the Act to sanction the issue by a company of shares at a discount;

(b) an application under section 591 (3) of the Act to sanction a compromise or arrangement, unless there is included in the petition for such sanction an application for an order under paragraphs (a) to (f) of that subsection;

(c) an application under section 525 (6) of the Act for an order restoring the name of a company to the register.

(3) On the hearing of the summons, the court may, by order, give such directions as to the proceedings to be taken before the hearing of the petition as it thinks fit, including, in particular, directions for the publication of notices and the making of any inquiry.

(4) Where the application made by the petition is to confirm a reduction of the share capital, the share premium account or the capital redemption reserve fund of a company, then without prejudice to the generality of paragraph (3) of this rule, the court may give directions—
(a) for an inquiry to be made as to the debts of, and claims against, the company or as to any class or classes of such debts or claims;

(b) as to the proceedings to be taken for settling the list of creditors entitled to subject to the reduction and fixing the date by reference to which the list is to be made, and the power of the court under section 107 (2) of the Act to direct that section 107 (2) thereof shall not apply as regards any class or classes of creditors, may be exercised on any hearing of the summons.

(5) Rules 8 to 13 of these rules shall have effect subject to any direction given by the court under this rule.

6. Inquiry as to debts: company to make list of creditors

(1) Where the court orders such an inquiry as is mentioned in paragraph (4) of rule 5 of these rules, the company in question shall, within 14 days after the making of the order, file in the office of the Companies Court Registrar an affidavit made by an officer of the company competent to make it verifying a list containing—

(a) the name and address of every creditor entitled to any debt or claim to which the inquiry extends;

(b) the amount due to each creditor in respect of such debt or claim or in the case of a debt or claim which is subject to any contingency or sounds only in damages or for some other reason does not bear a certain value, a just estimate of the value thereof; and (c) the total of those amounts and values.

(2) The deponent shall state in the affidavit his belief that at the date fixed by the court as the date by reference to which the list is to be made there is no 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 other than the debts or claims to which the inquiry does not extend, and shall also state his means of knowledge of the matters deposed to.

(3) The list shall be left at the office mentioned in paragraph (1) of this rule not later than one day after the affidavit is filed.

7. Inspection of list of creditors

(1) Copies of the list made under rule 6 of these Rules with the omission, unless the court otherwise directs, of the amount due to each creditor and the estimated value of any debt or claim to which any creditor is entitled, shall be kept at the registered or head office of the company and at the office of the company’s solicitor.

(2) Any person shall be entitled during ordinary business hours, on payment of a fee of N10, to inspect the said list at any such office and to take extracts therefrom.

8. Notice to creditors within 14 days after filing the affidavit required by rule 6 of these Rules, the company shall send by registered post to each creditor named in the list exhibited to the affidavit, at his last known address, a notice stating—
(a) the amount of the reduction sought to be confirmed;

(b) the effect of the order, directing an inquiry as to debts and claims;

(c) the amount or value specified in the list as due or estimated to be due to that creditor; and

(d) the time fixed by the court within which, if he claims to be entitled to a large amount, he shall send particulars of his debt or claim and the name and address of his solicitor, if any, to the company’s solicitor.

9. Advertisement of petition and list of creditors. After filing the affidavit required by paragraph (b) of this rule, the company shall insert, in such newspapers and at such times as the court may direct, a notice stating—

(a) the date of presentation of the petition and the amount of the reduction thereby sought to be confirmed;

(b) the inquiry ordered by the court under rule 6 of these Rules;

(c) the places where the list of creditors may be inspected in accordance with rule 7 of these Rules;

(d) the time within which any creditor not named in the list who claims to be entitled to any debt or claim to which the inquiry extends shall send his name and address, the name and address of his solicitor, if any, and particulars of his debt or claim to the company’s solicitor.

10. Affidavit as to claims made by creditors. Within such time as the court may, from time to time, direct, the company shall file in the office of the Companies Court Registrar, an affidavit made by the company’s solicitor and an officer of the company competent to make it—

(a) proving service of the notices mentioned in rule 8 of these rules and the advertisement of the notice mentioned in rule 9 of these Rules;

(b) verifying a list containing the names and addresses of the persons (if any) who in pursuance of such notices sent in particulars of debts or claims, specifying the amount of each debt or claim;

(c) distinguishing in such list those debts or claims which are—

(i) wholly, or as to any and what part thereof, admitted by the company;

(ii) disputed by the company or alleged by the company to be outside the scope of inquiry; and

(iii) stating which of the persons named in the list made under this rule, have been paid or consent to the reduction sought to be confirmed.
11. Adjudication of disputed claim  If the company contends that a person is not entitled to be entered in the list of creditors in respect of any debt or claim or in respect of the full amount claimed by him in respect of any debt or claim, then, unless the company is willing to secure payment of that debt or claim by appropriating the full amount of the debt or claim, the company shall, if the court so directs, send to that person by post at his last known address a notice requiring him—

(a) within such time as may be specified in the notice, being not less than four clear days after service thereof, to file an affidavit proving his debt or claim or, as the case may be, so much thereof as is not admitted by the company; and

(b) to attend the adjudication of his debt or claim at the place and time specified in the notice, being the time appointed by the court for the adjudication of debts and claims.

12. Certifying lists of creditors entitled to object to reduction  The list of creditors entitled to object to such reduction as is mentioned in rule 5 (4) of these Rules as settled by the court under section 107 (2) of the Act, shall be certified and filed by the Court Registrar and the certificate shall—

(a) specify the debts or claims (if any) disallowed by the Court;

(b) distinguish the debts or claims (if any)—

(i) the full amount of which is admitted by the company;

(ii) the debts or claims (if any) the full amount of which though not admitted by the company, the company is willing to appropriate;

(iii) the debts or claims (if any) the amount of which has been fixed by adjudication of the Court under section 107 (2) of the Act; and

(iv) other debts or claims;

(c) specify the total amount of the debts or claims payment of which has been secured by appropriating under section 107 (2) of the Act;

(d) show which creditors consent to the reduction and the total amount of their debts or claims;

(e) specify the creditors who sought to prove their debts or claims under rule 11 of these Rules and state which of such debts or claims were allowed.

13. Evidence of consent of creditors  The consent of a creditor to such reduction as is mentioned in rule 5 (4) of these Rules, may be proved in such manner as the court may think sufficient.

14. Time, etc., of hearing of petition for confirmation of reduction
(1) A petition for the confirmation of any such reduction as in mentioned in rule 5 (4) of these Rules shall not, where the court had directed an inquiry pursuant to that rule, be heard before the expiration of at least eight clear days after the filing of the certificate mentioned in rule 12 of these Rules.

(2) Before the hearing of such a petition, a notice specifying the day appointed for the hearing shall be published at such times and in such newspapers as the court may direct.

15. Restriction on taking effect of order under section 121 (2) Unless the court otherwise directs, an order under section 121 (2) of the Act sanctioning the issue of shares at a discount, shall direct that an office copy of the order be delivered to the Registrar-General of Companies within 10 days after the making of the order or such extended time as the court directed.

16. Affidavit to be filed in court Registry Where an application to which these Rules relate is proceeding in a judicial division in which the company has its registered office, all affidavits made in connection with the application shall be filed in that Registry.

17. Where motions, etc., can be filed. Wherever any notice of motion or notice of originating summons or any petition is to be issued or filed, such petition may be issued out or filed in the Registry of the court in the judicial division in which the registered office of the company is situated or in which the company is carrying on a substantial part of its business.

18. Non-compliance with the Rules, etc. No proceedings under the Act shall be invalidated by reason only that these Rules are not fully complied with or in respect of any other irregularity, unless the court before which an objection is made to the proceeding, is of the view that he injustice cannot be remedied by any order of that court.

19. Application of Court’s Civil Procedure Rules. In all proceedings in or before the court concerning the operations of the Act where no provision is made by these Rules, the Federal High Court (Civil Procedure) Rules shall apply.

20. Interpretation. In these rules, unless the content otherwise requires—

“Act” means the Companies and Allied Matters Act;

“the companies court registrar” means any officer of the Court who is a registrar within the meaning of any rules for the time being in force relating to the winding up of companies;

“the court” means the Federal High Court.

21. Application and Forms

(1) These Rules shall apply to all proceedings taken out or arising from any provision of any section of Part A of the Companies and Allied Matters Act.
(2) The forms set out in the Schedule to these Rules and any other form in use in ordinary
civil proceedings of the court, where applicable, or any other forms which may, from time
to time, be made on order of the Chief Judge, may be used.

22. Citation and commencement. These Rules may be cited as the Companies
Proceedings Rules and shall come into effect on the 1st day of November 1992.

SCHEDULE FORMS

Form 1

In the Federal High Court Division holden at………. Suit no. of 20… In the matter of X
Limited (registered name of the company as it appears in its certificate).

Form 2

ORIGINATING SUMMONS (Heading as in Form 1)
Let I of (address) or, if the Respondent is a Company X Limited, whose registered office is
situate (address) within days on or after service of this Summons on (him or it) inclusive of
the day of such service, cause an appearance to be entered for (him or it) to this
Summons, which is of (address and description) for an order of (specify the relief sought).
Dated the day of 20… This Summons was taken out by A.B. & Co. of (address) Solicitors
for the Applicant.

Form 3

PETITION (Heading as in Form 1)
The humble Petition of the above-named X Limited (for a company that is the same as one
referred to in the heading) or Y Limited whose registered office is situate at (address) for
the Company that is not the same as one referred to in the heading; or where the
petitioner is not a company, just A.B. of (address) states as follows—

Form 4

PETITION TO CANCEL ALTERATION OF OBJECTS (Heading as in Form 1, preamble
as in Form 3)
1. The above-mentioned company (hereinafter referred to as —the company!) was
incorporated on 20 under the Companies and Allied Matters Act as a company (limited by
shares).

2. The registered office of the company is situate at (address).

3. The objects for which the company was established are set forth in clause of its
memorandum of association as follows: (set out the objects as set out in such clause in
extenso).

4. The capital of the company is N divided into shares of each of the said shares of each of
and the remainder are unissued and are not fully paid up.
5. After its incorporation namely on ................................. 20....... the company obtained a certificate that it was entitled to commence business, (and it has continued to carry on business ever since or as the case may be). The principal business of the company as always (since at least the year 20........... ) been that of In the year 20.......... it acquired the business of and of which it has carried on ever since, but on a much smaller scale than its principal business. (It has never had any interests whatsoever in any business connected with or as the case may be).

6. At an extraordinary general meeting of the company duly convened and held on........................................ 20........, the following resolution was duly passed as a special resolution in accordance with section 46 of the Companies and Allied Matters Act namely;

7. Your Petitioner (are or have been appointed in writing by) A.B.C.D. and P.Q., being (not less than 15 per cent of the said company’s members or the holders of not less in the aggregate than 15 per cent in nominal value of the said company’s issued share capital or not less than 15 per cent in nominal value of the said company’s issued share capital or not less than 15 per cent of the said company’s debentures entitling the holders to object to alteration of its objects).

8. Your Petitioner (and the said A.B., C.D. and P.Q) were present at the said extraordinary general meeting (in person or by proxy) and voted against the said alteration (q) or as the case may be.

9. The said alteration would prejudice your Petitioners (and the other persons entitled to object thereto) in that (state the reasons why the objectors would be prejudiced). Your Petitioners therefore humbly pray as follows—

(1) The alteration of the company’s objects effected by the special resolution set out in paragraph 6 of this Petition may be cancelled by the court pursuant to section of the Companies and Allied Matters Act.

(2) That the company may be ordered to pay the costs of this petition.

(3) Or that such other order may be made in the premises as the court may deem necessary.

Dated the .................. day of ......................... 20...

Signed A.B. & Co.
Solicitors to the Petitioners Address

(4) Petition to cancel alteration of conditions contained in the memorandum, and petition to cancel substitution of memorandum and articles of association for deed of settlements are in the like manner and contents with modifications to suit the issue involved.

Form 5

SUMMONS FOR DIRECTORS ON APPLICATION TO CANCEL ALTERATION (Heading as in Form 1)
Let the above-named X Ltd whose registered office is situate at (address attend at the Federal High Court sitting at on ........... day of ...................... 20........... on the hearing of an application by (A.B. of address and C.D. of (address) or as the case may be) the petitions named in the petition preferred unto this court in the above matters, for an order:

(1) that a day may be fixed for the hearing of the said petition;

(2) that directions may be given as to advertising the said Petition; and

(3) that such other order may be made in the premises as to the court may deem necessary.

Dated the .............. day of ...................... 20...........

This summons was taken out by F.H. & Co. Solicitors for the Petitioners.

Form 6

ADVERTISEMENT OF DAY FIXED FOR HEARING PETITION (Heading as in Form 1) Notice is hereby given that a Petition was on the ........... day of ...................... 20........... presented to Federal High Court sitting by (A.B.C. & P.S.) for the cancellation of the alteration of the (Provisions of the Memorandum of Association of the above-named company with respect to its objects or conditions of the memorandum of association of the above-named company) affected by a special resolution passed at an extraordinary general meeting of the said company held on the ........... day of ...................... 20........... which resolution was in the words following that is to say (set out the resolution). And notice is further given that the said petition is directed to be heard before the Hon. Mr Justice at the Federal High Court sitting at......................... on the ........... day of ...................... 20........... Any (shareholder or debenture stockholder) of the said company does ring to support or oppose the making of an order on the said petition should appear at the time of hearing in person or by counsel for that purpose. A copy of the said petition will be furnished to any such person requiring the same by the Registrar of the court on payment of appropriate fees.

Dated the ........... day of ...................... 20...........

Signature Solicitor for the Petitioners Address: