THE COMPANIES ACT 2001

Act 15/2001

Proclaimed by [Proclamation No. 21 of 2001] w.e.f. 1st December 2001

SAVINGS

1. **Please refer to schedule 15 as per section 364 of [Act No.15 of 2001] for sections which are still in force in [Act No. 57 of 1984]**

2. **Please refer to [Act No. 22 of 2005], section 157**

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An Act

To amend and consolidate the law relating to companies and to provide for certain ancillary and consequential matters

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Companies Act 2001.

2. Interpretation

(1) In this Act, unless the context otherwise requires -

“accounting period” means, in relation to a company or any other body corporate, the period in respect of which the financial statements of the company or the other body corporate are made up, whether that period is a year or not;

“agency deed” -

(a) means a deed executed by a company or a debenture holders' representative in relation to the issue of debentures and

(b) includes a supplemental document, resolution or scheme of arrangement modifying the terms of the deed and a deed substituted therefor;

“annual meeting" means the annual meeting of the shareholders of a company required to be held under section 115;

“annual report" means the annual report required to be prepared under section 218;

“annual return" means the annual return required to be filed under section 223 and includes any document attached to or intended to be read with the return;

“approved valuer" means -

(a) a qualified auditor;

(b) a land surveyor;

(c) a registered professional engineer;

(d) a qualified architect;

(e) a chartered quantity surveyor;

(f) a chartered surveyor; or

(g) any other person designated as such by the Minister, by public notice;

“arrangement" includes the organisation of the share capital of a company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both these methods;

“articles"

(a) means the articles of association of an existing company; and

(b) includes, so far as they apply to the company, the provisions contained in Table A of the Fourth Schedule to the Companies Act 1913 or in Table A and Table B of the First Schedule to the Companies Act 1984;

“Authorised Company” has the same meaning as in the Financial Services Act;

“authorised mutual fund” means a company set up as a collective investment scheme as defined in the Securities Act 2005;

Amended by [Act No. 22 of 2005]

"balance sheet date" has the meaning set out in section 216;

"banking company" means a bank licensed under the Banking Act 2004;

Amended by [Act No. 14 of 2005]

“beneficial owner” or “ultimate beneficial owner” –

(a) means any natural person who ultimately owns or controls a company or the natural person on whose behalf a transaction or activity is being conducted in relation to a company; and

(b) includes –

(i) the natural person who ultimately owns or controls a company through –

(A) direct or indirect ownership of such shares in such percentage as may be prescribed;

(B) voting rights;

(C) ownership interest; or

(D) control by other means;

(ii) where no natural person under paragraph (i) is identified, or if there is any doubt that the person identified is the beneficial owner, the natural person who controls the company in the manner one company controls another company under section 5;

(iii) where no person under paragraphs (i) and (ii) is identified, the natural person who acts as executive director or has equivalent executive powers;

“Beneficial Ownership Register” means the Beneficial Ownership Register kept by the Registrar under section 11(3);

"benefits", in relation to a director -

(a) includes a fee, percentage or other payment, and the money value of any consideration, allowance or perquisite, given directly or indirectly, to him in relation to the management of the affairs of the company or of a related company, whether as a director or otherwise; and

(b) does not include an amount given in payment or reimbursement of out-of-pocket expenses incurred for the benefit of the company;

"Board" and "directors" have the meanings set out in section 128;

"book" includes any account, deed, writing or document, and any other record of information however compiled, recorded or stored;

"borrowing company" means a company that is or is to be under a liability to repay any money received or to be received by it in response to an invitation to the public to subscribe for or purchase debentures;

"branch register" means -

(a) in relation to a company, a branch register of shareholders required to be kept under section 92;

(b) in relation to a foreign company, a branch register of shareholders required to be kept under Part XXII,

”carrying on business", for the purposes of Part XXII, has the meaning setout in section 274;

“CBRIS” or “Companies and Businesses Registration Integrated System” means, for the purposes of this Act, the Business Registration Act, the Foundations Act , the Limited Partnerships Act, the Limited Liability Partnerships Act and the Value Added Tax Act, the electronic system operated by the Registrar for –

(a) the filing of particulars, financial statements and other documents;

(b) the payment of fees;

(c) registration as a registered person under the Value Added Tax Act;

"certified" means -

(a) in relation to a copy or extract of a document, certified in such manner as may be approved by the Registrar, to be a true copy or extract of the document; and

(b) in relation to a translation of a document, certified in such manner as may be approved by the Registrar to be a correct translation of the document into the English or French language;

"charge"

(a) means -

(i) a mortgage;

(ii) a fixed or floating charge made under Articles 2202 to 2202-55 of the Code Civil Mauricien.

(iii) a deposit of a share or debenture certificate made under Articles 2129-1 to 2129-6 of the Code Civil Mauricien;

(iv) a pledge of shares or debentures;

(v) a lien over a motor vehicle under Articles 2100 to 2111 of the Code Civil Mauricien (Du gage sans déplacement sur les vehicules automobiles);

(vi) a lien over plant and equipment under Articles 2112 to 2129 of the Code Civil Mauricien (Du gage sans déplacement sur l'outillage et materiel d’equipement professionnel, industriel ou agricole);

(vii) a charge on a ship or aircraft;

(viii) an agreement to give a charge; and

(ix) any attachment on the proceeds to be paid by the Sugar Syndicate; but

(b) does not include-

(i) a hire-purchase agreement;

(ii) rents, rent-charges and annuities granted or reserved out of land;

“class" has the meaning set out in section 114;

“collective investment scheme” has the same meaning as in the Securities Act 2005;

Added by [Act No. 22 of 2005]

"Commission" means the Financial Services Commission established under the Financial Services Development Act 2001;

“company” means a company incorporated or registered under this Act and includes an existing company;

"company limited by guarantee" means a company formed on the principle of having the liability of its members limited by its constitution to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;

"company limited by shares" means a company formed on the principle of having the liability of its shareholders limited by its constitution to any amount unpaid on the shares respectively held by the shareholder;

"company limited by shares and by guarantee" means a company formed on the principle of having the liability of its members -

(a) who are shareholders, limited to the amount unpaid, if any, on the shares respectively held by them; and

(b) who have given a guarantee, limited, to the respectively amount they have undertaken to contribute, from time to time, and in the event of it being wound up;

“Companies Special Deposit Account” means the account referred to in section 315(3A);

“competent authorities” has the same meaning as in the Financial Intelligence and Anti-Money Laundering Act;

"Conservator of Mortgages" means the Conservator of Mortgages appointed under the Registrar-General Act;

"constitution" means the constitution of a company referred to in section 42;

"continued in Mauritius" or "continued", in relation to a company. means a company incorporated outside Mauritius which is registered under Part XXV and continued as a company under this Act;

"contributory" -

(a) means a person liable to contribute to the assets of a company in the event of its being wound up, and

(b) includes the holder of fully paid shares in the company;

"corporation" -

(a) means a body corporate, including a foreign company or any other body corporate incorporated outside Mauritius or a partnership formed or incorporated or existing in Mauritius or elsewhere but

(b) does not include -

(i) a statutory corporation;

(ii) a corporation sole;

(iii) a registered cooperative society;

(iv) a trade union; or

(v) a registered association;

"Court" means the Bankruptcy Division of the Supreme Court;

"Curator" means the Curator appointed under the Curatelle Act;

"date of incorporation" means the date of registration of the company;

"debenture" -

(a) means a written acknowledgement of indebtedness issued by a company in respect of a loan made or to he made to it or to any other person or money deposited or to be deposited with the company or any other person or the existing indebtedness of the company or any other person whether constituting a charge on any of the assets of the company or not and

(b) includes -

(i) debenture stock;

(ii) convertible debenture;

(iii) a bond or an obligation;

(iv) loan stock;

(v) an unsecured note; or

(vi) any other instrument executed, authenticated, issued or created in consideration of such a loan or existing indebtedness; but

(c) does not include -

(i) a bill of exchange;

(ii) a promissory note;

(iii) a letter of credit;

(iv) an acknowledgement of indebtedness issued in the ordinary course of business for goods or services supplied;

(v) a policy of insurance; or

(vi) a deposit certificate, pass book or other similar document issued in connection with a deposit or current account at a banking company;

"debenture holders' representative" means a person designated as such in an agency deed;

"debenture stock" -

(a) means a debenture by which a company or a debenture holders' representative acknowledges that the holder of the stock is entitled to participate in the debt owing by the company under the agency deed; and

(b) includes loan stock;

"director" has the meaning set out in section 128;

"distribution", in relation to a distribution by a company to a shareholder, means -

(a) the direct or indirect transfer of money or property, other than the company's own shares, to or for the benefit of the shareholder; or

(b) the incurring of a debt to or for the benefit of the shareholder.

in relation to shares held by that shareholder, and whether by means of a purchase of property, the redemption or other acquisition of shares, a distribution of indebtedness, or by some other means;

"dividend" has the meaning set out in section 63;

"document" -

(a) means a document in any form; and

(b) includes -

(i) any writing on any material;

(ii) a book, graph or drawing;

(iii) information recorded or stored by any electronic or other technological means and capable, with or without the aid of equipment, of being reproduced;

"dormant company" is a company recorded by the Registrar under Part XXIV as being a dormant company;

“employee” means a person who has entered into, or works in Mauritius under, an agreement or a contract of service or apprenticeship with a company, whether by way of manual labour, clerical or managerial work, or otherwise, and however remunerated;

“entitled person", in relation to a company, means -

(a) a shareholder,: and

(b) a person upon whom the constitution confers any of the rights and powers of a shareholders;

“executive" means an employee who has been given responsibility for one section of the activities of a company;

“executive director" means a director who is involved in the day to day management of the company;

“existing company" means a body corporate incorporated or registered or deemed to be registered under Part III of this Act or under the Companies Act 1984 or under the Companies Act 1913 or the International Companies Act 1994;

"expert' means an approved valuer of any other person whose profession gives authority to a statement made by him;

“filing" means lodging a document with the Registrar, and having the document accepted for registration by the Registrar;

"financial statements" has the meaning set out in section 217'.

“firm" means the association formed by persons who enter into a partnership or société not registered under this Act or the Companies Act 1984 or the Companies Act 1913;

“FIU” has the same meaning as in the Financial Intelligence and Anti-Money Laundering Act;

"floating charge" has the same meaning as in the Code Civil Mauricien;

"foreign company" means a body corporate that is incorporated outside Mauritius and that is required to be registered under Part XXII;

“Global Business Licence” has the same meaning as in the Financial Services Act;

"group financial statements" has the meaning set out in section 217;

"group of companies" means a parent company and all its subsidiaries;

"heir" includes a legatee, an executor and a personal representative;

"hire-purchase agreement" has the same meaning as in the Hire Purchase and Credit Sale Act;

"holding company" has the meaning set out in section 3;

“independent director” means a director who is a nonexecutive director and who –

(a) is not an employee;

(b) does not have material business relationship with the company either directly or as a partner, shareholder, director or senior employee of an organisation that has such relationship with the company;

(c) does not receive remuneration from the company except remuneration or any other benefit given to him as a director in accordance with section 159;

(d) is not a nominated director representing a substantial shareholder;

(e) does not have close family ties with any of the advisers, directors or senior employees of the company;

(f) does not have cross directorships or significant link with other directors through involvement in other companies or other organisations; or

has not served on the Board for more than 9 continuous years from the date of his first election;

"inspector" means an inspector designated or appointed under Part XV;

"insurance company" means a company registered under the Insurance Act;

"interested", in relation to a director, has the meaning set out in section 147;

"interests register" means the register required to be kept under section 190(2)(c);

“International Accounting Standards”

(a) means the International Accounting Standards issued by the International Accounting Standards Committee, the International Financial Reporting Standards issued by the International Accounting Standards Board, the Accounting Standards issued by the Accounting and Auditing Organization

for Islamic Financial Institutions, and any Standards, by whatever name called, issued by these bodies or their successor bodies; and

(b) includes the Interpretation of the Standing Interpretation Committee of the International Accounting Standards Committee, the International Financial Reporting Interpretations Committee of the International Accounting Standards Board, and any Interpretations, by whatever name called, issued by the Interpretations Committees of the above bodies or their successor bodies;

Amended by [Act No. 20 of 2002]; [Act No. 10 of 2017]

"International Standards on Auditing" means the International Standards on Auditing issued by International Federation of Accountants;

“investment company” means a company whose business consists of investing its funds principally in securities with the aim of spreading investment risks and giving members of the company the benefit of the results of the management of its funds;

Added by [Act No. 22 of 2005]; [Act No. 18 of 2008]

“Islamic banks” means banks licensed as such by the Bank of Mauritius;

“Islamic financial institutions” means financial institutions licensed as such by the Financial Services Commission;

Added by [Act No. 10 of 2017]

“law firm” has the same meaning as in the Law Practitioners Act;

Added [Act No. 14 of 2009]

"law practitioner" has the same meaning as in the Law Practitioners Act 1984;

“legal consultant” has the same meaning as in the Law Practitioners Act;

Added [Act No. 14 of 2009]

"limited company" means a company limited by shares or by guarantee or a company limited both by shares and by guarantee;

“limited liability partnership” has the same meaning as in the Limited Liability Partnerships Act 2016;

"liquidator" includes the Official Receiver acting as the liquidator;

“listed company” means a company the shares or class of shares of which are listed on a securities exchange licensed under the Securities Act 2005;

Amended by [Act No. 22 of 2005];

"major transaction" has the meaning set out in section 130(2);

"management company" has the same meaning as in the Financial Services Development Act 2001;

"manager" means -

(a) in relation to a receivership, a person appointed under Part IX of the Companies Act 1984 to carry on a company's activities and dispose of its undertaking;

(b) in circumstances other than under paragraph (a), the principal executive of a company, whether or not that person is a director;

“member" means -

(a) a shareholder within the meaning of section 99; and

(b) in the case of a company limited by guarantee, a person whose

name is entered in or who is entitled to have his name entered in the register of members;

“memorandum" means the memorandum of association of an existing company;
“microenterprise” has the same meaning as in the Small and Medium Enterprises Development Authority Act;

"Minister" means the Minister to whom responsibility for the subject of corporate affairs is assigned;

"minority interest" is that part of the net results of operations and of net assets of a subsidiary attributable to interests which are not owned directly or indirectly through subsidiaries by the parent;

“nominee” means a person who, in exercising a right in relation to a share, debenture or other property, is entitled to exercise that right only in accordance with instructions given by some other person either directly or indirectly through the agency of one or more persons. and a person is the nominee of another legal or natural person where he is entitled to exercise such a right only in accordance with instructions given by that other person;

"non-executive director" means a director who is not involved in the day today management of the company;

"offer" includes an invitation to make an offer;

"offeree" means a holder of shares which are included in a take-over offer;

"officer", in relation to a corporation means a director, a secretary or an executive;

"Official Receiver" means the Official Receiver referred to in the Bankruptcy Act;

"one person company" -

(a) means a private company in which the only shareholder is also the sole director of the company; and

(c) does not include a company in which the only shareholder is a corporation;

“open-ended fund” means a collective investment scheme under the Securities Act 2005;

Amended by [Act No. 22 of 2005]

“ordinary resolution" has the meaning assigned to it by section 104(2);

“parent", in relation to a corporation, means a corporation that has one or more subsidiaries;

“partnership" means any civil or commercial partnership including a société;

“person concerned", in relation to a corporation, includes -

(a) a person who is or has been employed by a corporation as a director, banker, auditors attorney-at-law, notary or otherwise;

(b) a person who, or in relation to whom there are reasonable grounds for suspecting that he -

(i) has in his possession any property of the corporations;

(ii) is indebted to the corporations; or

(iii) is able to give information concerning the promotion, formation, management, dealing, affairs or property of the corporation;

“pre-emptive rights” means the rights conferred on shareholders under section 55;

“printed" includes typewritten or lithographed or reproduced by any mechanical, electronic, photographic or other process;

“ private company" means a company incorporated or registered in Mauritius as a private company and which has the characteristics referred to in Part XXI;

“property" -

(a) means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal; and

(c) includes rights, interests and claims of every kind in relation to property however they arise;

"qualified auditor" means a person who is qualified to be appointed as an auditor under section 198;

"qualified secretary" means a person who is qualified to be appointed as a secretary under section 165;

"records" means the records and documents required to be kept by a company under sections 190 and 191;

"register" or "register of companies" means the register required to be kept under section 11;

“registered" means registered under this Act, the Companies Act 1984, the International Companies Act 1994 or the Companies Act 1913;

"registered agent" has the same meaning as in the Financial Services Development Act 2001;

“registered association" has the same meaning as in the Registration of Associations Act;

“registered cooperative society" has the same meaning as in the Cooperative Societies Act;

“registered office" has the meaning set out in section 187;

"Registrar" means the Registrar of Companies appointed under section 10;

"Registrar General" -

(a) means the Registrar-General appointed under the Registrar General Act; and

(b) includes the authorized officer under the Registration and Transcription of Deeds and Inscription of Mortgages, Privileges and Charges (Rodrigues) Act 1997;

"related company" has the meaning assigned to it by subsection (2);

"relative", in relation to any person, means -

(a) any parent, spouse, child, brother or sister of that person;

(b) any parent, child, brother or sister of a spouse of that person; or

(c) a nominee or trustee of any person referred to in paragraph (a) or (b);

"relevant interest" has the meaning set out in section 154;

“reporting issuer” has the same meaning as in the Securities Act 2005;
Added by [Act No. 22 of 2005]

"secured creditor", in elation to a company, means a person entitled to a charge on or over property owned by that company;

“securities” has the same meaning as in the Securities Act 2005;

“securities exchange” has the same meaning and in the Securities Act 2005;
Added by [Act No. 22 of 2005]

“SEM” means the securities exchange operated by Stock Exchange of Mauritius Ltd;
Added by [Act No. 22 of 2005]

“service address” –

(a) means the address at which documents may be served in Mauritius; and

(b) includes the address of a registered office in Mauritius;

“share" means a share in the share capital of a company;

“shareholder" has the meaning set out in section 99;

“share register" means the share register required to be kept under section 91;

“signed" -

(a) means subscribed by a person under his hand with his signature; and

(b) includes the signature of the person given electronically where it carries that person's personal encryption;

“small enterprise” has the same meaning as in the Small and Medium Enterprises Development Authority Act;

“small private company" has the meaning assigned to it by subsections (5),(6) and (7);

“solvency test" has the meaning set out in section 6;

"special meeting" means a meeting called in accordance with section 116;

“special resolution" means a resolution approved by a majority of 75 per cent or, if a higher majority is required by the constitution, that higher majority, of the votes of those shareholders entitled to vote and voting on the question;

“spouse", in relation to a person, includes a person with whom that person has a relationship in the nature of marriage;

“stated capital" has the meaning set out in section 7;

“stock exchange" – **Deleted by [Act No. 22 of 2005]**

"Stock Exchange" - **Deleted by [Act No. 22 of 2005]**

“Stock Market” means a securities market operated by a securities exchange; **Amended by [Act No. 22 of 2005]**

“subsidiary" has the meaning assigned to it by section 3;

'substantial shareholder" means a person in Mauritius or elsewhere, who holds by himself or his nominee, a share or an interest in a share which entities him to exercise not less than 5 per cent of the aggregate voting power exercisable at the meeting of shareholders;

"surplus assets" means the assets of a company remaining after the payment of creditors' claims and available for distribution in accordance with Part XI of the Companies Act 1984 prior to its removal from the register of companies;

“suspicious transaction” has the same meaning as in the Financial Intelligence and Anti-Money Laundering Act;

“suspicious transaction report” means a report made under section 14 of the Financial Intelligence and Anti-Money Laundering Act;

"trade union" has the same meaning as in the Industrial Relations Act;

"unanimous resolution" means a resolution which has the assent of every shareholder entitled to vote on the matter which is the subject of the resolution and either -

(a) given by voting at a meeting to which notice to propose the resolution has been duly given and of which the minutes of the meeting duly record that the resolution was carried unanimously; or

(b) where the resolution is signed by every shareholder or his agent duly appointed in writing signed by him, the resolution in this case may consist of one or more documents in similar form (including letters, facsimiles, electronic mail or similar means of communication) each signed by the shareholder
concerned or his agent;

"unanimous shareholder agreement" means a unanimous shareholder agreement entered into pursuant to section 272;

"unlimited company" means a company formed on the principle of having no limit placed on the liability of its shareholders;

'virtually wholly owned subsidiary" has the meaning set out in section 3(6);

"Wholly owned subsidiary" has the meaning set out in section 3(5);

"Winding-up resolution" means a resolution passed for the winding up of a company;

'writing" includes -

(a) the recording of words in a permanent or legible form; and

(b) the display of words by any form of electronic or other means of communication in a manner that enables the words to be readily stored in, a permanent form and with or without the aid of any equipment to be retrieved and read;

"year" means a calendar year.

(2) In this Act, a company is related to another company where -

(a) the other company is its holding company or subsidiary;

(b) more than half of the issued shares of the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital, is held by the other company and companies related to that other company (whether directly or indirectly, but other than in a fiduciary capacity);

(c) more than half of the issued shares, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital, is held by members of the other company (whether directly or indirectly, but other than in a fiduciary capacity);

(d) the businesses of the companies have been so carried on that the separate business of each company or a substantial part of it, is not readily identifiable; or

(e) there is another company to which both companies are related.

(3) For the purposes of subsection (2), a company within the meaning of section 2 of the Companies Act 1984 is related to another company if, were it a company within the meaning of subsection (1), it would be related to that other company.

(4) A reference in this Act to an address means -

(a) in relation to an individual, the full address of the place where that person usually lives; or

(b) in relation to a body corporate, its registered office or, if it does not have a registered office, its principal place of business.

(5) A company shall be a "small private company" where -

(a) it is a private company the turnover of which in respect of its last preceding accounting period is less than 100 million rupees or such other amount as may be prescribed;

Amended by [Act No. 15 of 2006]; [Act No. 14 of 2009];[Act No. 15 of 2022]

(b) it is not a company holding a Global Business Licence;

(c) it is not an entity specified in the First Schedule to the Financial Reporting Act.

(6) (a) In the application of subsection (5) to any period which is an accounting period for a company but not in fact a year, the maximum figure for turnover in subsection 5(a) above shall be proportionately adjusted.

(b) For the purposes of subsection (5) –

"last preceding accounting period" means the period immediately preceding the current period in respect of which the financial statements of the company are required to be made up.

(7) A private company which is incorporated after the commencement of this Act shall qualify as a small private company in respect of its first accounting period.

Amended by [Act No. 20 of 2002] ; [Act No. 22 of 2005]; [Act No. 18 of 2008] [Act No. 27 of 2012]; [Act No. 9 of 2015]; [Act No. 18 of 2016]; [Act No. 24 of 2016]; [Act No. 10 of 2017]; [Act No. 11 of 2018]; [Act No. 13 of 2019]; [Act No. 5 of 2020]; [Act No. 7 of 2020]; [Act No. 15 of 2021]; [Act No. 12 of 2023]; [Act No. 10 of 2024]

3. Meaning of "holding company" and "subsidiary"

(1) In this section, "company" includes a corporation.

(2) For the purposes of this Act, a company shall be a subsidiary of another company where -

(a) that other company or corporation, referred to as the parent -

(i) controls the composition of the Board of the company;

(ii) is in a position to exercise, or control the exercise of, more than one-half the maximum number of votes that can be exercised at a meeting of the company;

(iii) holds more than one-half of the issued shares of the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or

(iv) is entitled to receive more than one-half of every dividend paid on shares issued by the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or

(b) the company is a subsidiary of a company that is the parent's subsidiary.

(3) For the purposes of this Act, a company shall be another company's holding company only where that other company is its subsidiary.

(4) For the purposes of this Act -

(a) a company shall be the "ultimate holding company" of another company provided -

(i) the other company is a subsidiary of the first mentioned company; and

(ii) the first mentioned company is not itself a subsidiary of any company;

(b) "the ultimate holding company in Mauritius" in relation to a company incorporated in Mauritius means a holding company which is not a subsidiary of a company incorporated in Mauritius.

(5) A company shall be deemed to be the wholly owned subsidiary of another corporation, referred to as "the parent" provided the members of the company do not include any person apart from -

(a) that other corporation;

(b) a nominee of that other corporation;

(c) a subsidiary of that other corporation being a subsidiary the members of which do not include any person apart from that other corporation or a nominee of that other corporation; or

(d) a nominee of such a subsidiary.

(6) A company shall be deemed to be the virtually wholly owned subsidiary of another corporation referred to as "the parent" provided the parent owns 90 per cent or more of the voting power in that company.

4. Meaning of "subsidiary" - matters to be disregarded

In determining whether a company is a subsidiary of another company -

(a) shares held or a power exercisable by that other company only as a trustee are not to be treated as held or exercisable by it;

(b) subject to paragraphs (c) and (d), shares held or a power exercisable -

(i) by a person as a nominee for that other company, except where that other company is concerned only as a trustee; or

(ii) by, or by a nominee for, a subsidiary of that other company, not being a subsidiary which is concerned only as a trustee,

are to be treated as held or exercisable by that other company;

(c) shares held or a power exercisable by a person under the provisions of debentures of the company or of an agency deed for securing an issue of debentures shall be disregarded;

(d) shares held or a power exercisable by, or by a nominee for, that other company or its subsidiary, not being held or exercisable in the manner described in paragraph (c), shall not be treated as held or exercisable by that other company where -

(i) the ordinary business of that other company or its subsidiary, as the case may be, includes the lending of money; and

(ii) the shares are held or the power is exercisable by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

5. Meaning of "control"

(1) In this section, company includes a corporation.

(2) For the purposes of section 3, without limiting the circumstances in which the composition of a Board shall be taken to be controlled by another company, the composition of the Board shall be taken to be so controlled-

(a) where the other company, by exercising a power exercisable (whether with or without the consent or concurrence of any other person) by it, can appoint or remove all the directors of the company, or such number of directors as together hold a majority of the voting rights at meetings of the Board of the company; and

(b) where the parent owns one half or less of the voting power of a company when there is -

(i) power over more than one half of the voting rights by virtue of an agreement with other investors;

(ii) power to govern the financial and operating policies of the company under any enactment or agreement;

(iii) power to appoint or remove the majority of the members of the Board of directors or equivalent governing body; and

(iv) power to cast the majority of votes at meetings of the Board of directors or equivalent governing body.

(3) For the purposes of subsection (1), the other company shall be taken as having power to make such an appointment where -

(a) a person cannot be appointed as a director of the company without the exercise by the other company of such a power in the person's favour; or

(b) a person's appointment as a director of the company follows necessarily from the person being a director or other officer of the other company.

6. Meaning of "solvency test"

(1) For the purposes of this Act but subject to subsection (5), a company shall satisfy the solvency test where -

(a) the company is able to pay its debts as they become due in the normal course of business; and

(b) the value of the company's assets is greater than the sum of -

(i) the value of its liabilities; and
(ii) the company's stated capital.

(2) For the purposes of this Act, other than sections 246 and 247, in determining whether the value of a company's assets is greater than the value of its liabilities, the Board may take into account -

(a) in the case of a public company or a private company other than a small private company, the most recent financial statements of the company prepared in accordance with International Accounting Standards;

(b) in the case of a small private company, the most recent financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; and

(c) a valuation of assets or estimates of liabilities that are reasonable in the circumstances.

(3) For the purposes of sections 246 and 247, in determining whether the value of the amalgamated company's assets is greater than the sum of the value of its liabilities and its stated capital, the directors of each amalgamating company -

(a) shall have regard to -

(i) financial statements that are prepared in accordance with International Accounting Standards and that are prepared as if the amalgamation had become effective; and

(ii) all other circumstances that the directors know or ought to know would affect, or may affect, the value of the amalgamated company's assets and the value of its liabilities;

(b) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

(4) Notwithstanding subsection (1)(b)(ii), the provision relating to stated capital in connection with the solvency test shall not apply to an investment company.

Added [Act No. 20 of 2002]

(5) A company incorporated or registered under the Protected Cell Companies Act shall apply the solvency test to each of its cells.

Amended by [Act No. 20 of 2011]

7. Stated capital

(1) Subject to section 62, stated capital, in relation to a class or classes of no par value shares issued by a company, means the total of all amounts received by the company or due and payable to the company in respect of -

(a) the issue of the shares; and

(b) calls on the shares.

(2) Subject to section 62, stated capital, in relation to a class or classes of par value shares issued by a company, means the total of all amounts received by the company or due and payable to the company in respect of -

(a) the nominal paid up value of the shares; and

(b) the share premiums paid to the company in relation to those shares and required to be transferred to the share premium account under section 48.

(3) Where a share is issued for consideration other than cash, the Board shall in accordance with section 57 determine the cash value of that consideration for the purposes of subsection (1) or (2), as the case may be.

(4) Where a share has attached to it an obligation other than an obligation to pay calls, and that obligation is performed by the shareholder -

(a) the Board shall determine the cash value, if any, of that performance; and

(b) the cash value of that performance shall be deemed to be a call which has been paid on the share for the purposes of subsection (1)or (2), as the case may be.

8. Public notice

Where, pursuant to this Act, public notice is required to be given of any matter affecting a company, that notice shall be given by publishing a notice of the matter -

(a) in the Gazette; and

(b) in 2 daily newspapers in wide circulation in Mauritius.

9. Act binds the State

This Act shall bind the State.

PART II - THE REGISTRAR

10. The Registrar

(1) There shall be a Registrar of Companies who shall be a public officer.

(2) The Registrar may delegate any of his duties under this Act to any public officer appointed to assist him in the execution of his functions.

(3) The Registrar and all staff appointed to assist him in carrying out the Registrar's functions shall take the oath specified in the First Schedule.

11. Registers

(1) The Registrar shall keep such registers as he considers necessary in such form and in such manner as he thinks fit.

(2) The registers referred to in subsection (1) may be kept in such manner as the Registrar thinks fit including, either wholly or partly, by means of a device or facility -

(a) that records or stores information electronically or by other means; and

(b) that permits the information so recorded or stored to be readily inspected or reproduced in usable form.

(3) The Registrar shall keep a Beneficial Ownership Register which shall –

(a) contain the information required under section 91(3A)(a)(iii) and such other information as the Registrar may determine; and

(b) be accessible to all competent authorities and such other public sector authority as may be prescribed.

Amended by [Act No. 10 of 2024]

12. Registration of documents

(1) On receipt of a document for registration under this Act, the Registrar shall -

(a) subject to subsection (2), register the document; and

(b) issue to the person, from whom the document was received, a written acknowledgement of receipt of the document.

(2) The Registrar may refuse to register a document submitted to him for registration under this Act where the document -

(a) is not in the form approved by him;

(b) is not in accordance with this Act or any regulations made under this Act;

(c) is not printed or typewritten;

(d) is not in a form that enables particulars to be entered directly by electronic or other means in the device or facility where the register is kept wholly or partly by means of a device or facility referred to in section 11(2);

(d) has not been properly completed;

(e) contains matter contrary to law;

(g) contains any error, alteration or erasure;

(h) contains material that is not clearly legible; or

(i) is not in accordance with any directive or notice issued by the Registrar.

(3) Where the Registrar refuses to register a document under subsection (2), the Registrar shall, within 5 working days of the day on which the document was submitted for registration, in that behalf, in writing or by using such means of communication as may be determined by him, notify the person who submitted the document and may require -

(a) that the document be appropriately amended or completed and submitted for registration again; or

(b) that a fresh document be submitted in its place, on payment of the prescribed fee and within such time limit as may be decided by the Registrar.

Amended by [Act No. 18 of 2008]

(4) A document submitted under subsection (3) within the time limit imposed thereunder shall, in all circumstances, be deemed to have been filed on the day the document was first submitted under subsection (1).

(4A) Where a document is not collected for the purposes of subsection (3)(a) or is not re-submitted within the time limit specified in a notice under subsection (3)(b), the document shall -

(a) be deemed not to have been filed; and

(b) in the case of a document not collected for the purposes of subsection (3)(a), be disposed of by the Registrar in such manner as he may determine.

Added by [Act No. 18 of 2008]

(5) The Registrar may, for the purposes of this section, issue such directions as he considers necessary.

(6) For the purposes of this Act, a document shall be registered when –

(a) the document is filed in a register kept by the Registrar;

(b) particulars of the document are entered in any device or facility referred to in section 11(2).

(7) The registration of a document or the refusal of registration of a document by the Registrar shall not -

(a) affect the validity of the documents;

(b) create a presumption as to the correctness of the information contained therein.

(8) The Registrar may, from time to time, issue Practice Directions or guidelines setting out-

(a) the form of notices required to be given to the Registrar under this Act;

(b) the procedure to be followed in registering documents or performing any act or thing required to be done under this Act;

(c) the time limit for filing any document under this Act; or

(d) the manner in which any meeting under this Act may be held.

Amended by [Act No. 14 of 2009]

(9) Any Practice Directions issued under subsection (8) shall be published in the Gazette and shall remain in force unless amended or revoked by publication in the Gazette.

Amended by [Act No. 27 of 2013]; [Act No. 18 of 2016]; [Act No. 15 of 2021]

12A. Rectification on Registrar's initiative or on request

(1) The Registrar may, on his own initiative or on request, rectify in his registers any typographical or grammatical mistake.

(2) The Registrar shall proceed with a rectification under subsection (1) without any further filing.

Added by [Act No. 9 of 2015]

13. Use of computer system

(1) Notwithstanding anything to the contrary, the Registrar may authorise -

(a) the incorporation or registration of a company or the registration of a commercial partnership (société commercial including commerciale de fait);

(b) the payment of any fee under this Act, the Business Registration Act, the Foundations Act or the Limited Partnerships Act;

(c) the submission of the annual return and the filing of any notice, financial statements or document; or

(d) the performance of any act or thing which is required to be done in relation to paragraphs (a) to (c),

to be made, submitted or done through CBRIS or such other electronic system and in such manner as may be approved by the Registrar.

(2) With effect from such date as may be notified in the Gazette, the Registrar may direct that any matter, act or thing referred to in subsection (1) shall be made, submitted or done electronically or otherwise.

(3) The Minister may make regulations for the purposes of this section -

(a) authorizing the destruction of any documents which have been recorded or stored electronically or by other means;

(b) providing that any document reproduced electronically or by other means by the Registrar shall for all purposes be treated as if it were the original document, notwithstanding any law to the contrary;

(c) otherwise giving full effect to and ensuring the efficient operation of any device or facility of the kind referred to in subsection (1).

Amended by [Act No. 9 of 2015]

14. Inspection and evidence of registers

(1) Subject to the other provisions of this section, a person may, on payment of the prescribed fees and during such time as the Registrar may decide, inspect -

(a) any document, other than the usual residential address in case there is a service address, in a register kept by the Registrar;

(b) the particulars of any registered document that have been entered on any device or facility referred to in section 11(2) of this Act;

(c) any registered document the particulars of which have been entered in any such device or facility.

(2) A person may, subject to the other provisions of this section, apply to the Registrar for -

(a) a certificate of incorporation of a company;

(b) a copy of, or extract from, a document in a register kept by the Registrar;

(c) the particulars of any registered document that have been entered in any device or facility referred to in section 11(2) of this Act; or

(d) a copy of, or extract from, a registered document the particulars of which have been entered in any such device or facility.

(3) On an application under subsection (2), the Registrar shall, on payment by the applicant of the prescribed fee, issue the document, particulars or copy or certified copy applied for.

(4) Unless otherwise ordered by the Court, the Registrar shall not be required by any process of the Court to produce -

(a) a registered document kept by the Registrar; or

(b) evidence of the entry of particulars of a registered document in any device or facility referred to in section 11(2),

and the Court shall not issue such an order where it is not satisfied that the evidence is necessary for the purposes of the proceedings.

(5) A copy of, or extract from, a registered document -

(a) that constitutes part of a register kept by the Registrar; or

(b) particulars of which have been entered in any device or facility referred to in section 11(2),

certified to be a true copy or, extract by the Registrar is admissible in evidence in legal proceedings to the same extent as the original document.

(6) An extract certified by the Registrar as containing particulars of a registered document that have been entered in any device or facility referred to in section 11(2) of this Act is, in the absence of proof to the contrary, conclusive evidence of the entry of those particulars.

(7) This section shall not apply to a private company holding a Global Business Licence or an Authorised Company unless the person is a shareholder, officer, management company or registered agent, of that company.

(8) Notwithstanding subsection (7), a person may, on payment of the prescribed fee, request the Registrar to provide, in relation to a private company holding a Global Business Licence or an Authorised Company -

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

(b) the name and address of any management company or registered agent appointed by the company, as the case may be;

(c) proof of incorporation;

(d) legal form and status;

(e) basic regulating powers; and

(f) list of directors,

recorded on any register kept by the Registrar on or after the commencement of this Act or in respect of any such company removed from the register after the commencement of this Act.

(9) The payment of the prescribed fees under subsections (1), (3) and (8) shall not apply to a Ministry or Government Department.

(10) Subject to this Act, the Registrar may, on written request, provide such data and information from records stored in the CBRIS or any other electronic system, on payment of the prescribed fee.

(11) Unless –

(a) required by the beneficial owner or the ultimate beneficial owner;

(b) required for the purpose of an investigation, enquiry or any other matter; or

(c) ordered by a court or the Judge in Chambers,

the Registrar shall not disclose to any person the information referred to in section 91(3)(a)(ii).

Amended by [Act No. 20 of 2002]; [Act No. 27 of 2012]; [Act No. 18 of 2016]; [Act No. 10 of 2017]; [Act No. 11 of 2018]; [Act No. 5 of 2020]

15. Registrar's powers of inspection

(1) For the purpose of ascertaining whether a company or an officer is complying with this Act or any subsidiary enactment made under this Act, the Registrar may, on giving 72 hours written notice to the company, call for the production of or inspect any book required to be kept by the company.

(2) Any person who -

(a) fails to produce any document under subsection (1); or

(b) obstructs or hinders the Registrar or any person authorized by the Registrar, in the exercise of any powers under subsection (1),

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees.

(3) For the avoidance of any doubt, this section shall also apply to a foreign company.

Amended by [Act No. 20 of 2002]

16. Appeals from Registrar's decisions

(1) A person who is aggrieved by a decision of the Registrar under this Act in any appeal to the Court within 14 days of the date of notification of the decision, or within such further time as the Court may allow.

(2) The Court may confirm, reverse or vary the Registrar's decision or may give such directions as the Court thinks fit.

17. Power to require compliance

(1) Where a person fails to comply with any requirement of this Act or the Companies Act 1984 relating to the filing of a document or the giving of a notice, the Registrar may require the person to make good the default within 14 days of the service on the person of a notice requiring him to do so.

(2) Upon a failure by a person to comply with subsection (1), the Registrar may apply to the Court for an order directing the person, to make good the default within such time as may be specified in the order.

(3) Any order under subsection (2) may provide that all costs of and incidental to the application and the order thereon shall be borne by the company or by any officers of the company responsible for the default.

(4) This section shall be without prejudice to the operation of any enactment imposing penalties on a company or its officers in respect of any such default.

(5) An application under subsection (2) may be made to the District Court in its civil jurisdiction and the District Court may exercise the powers of the Court under that subsection.

18. Extending time for doing any required act

Where a person is required by this Act to do any act within a specified time, the Court may, on good cause being shown, extend the time within which the act is required to be done.

19. Lost documents

(1) Where the constitution or any other document relating to a company required to be filed, has been lost or destroyed, the company may, with the approval of the Registrar, file a copy of the document.

(2) Where the Registrar gives his approval under subsection (1), the Registrar may direct that a notice to that effect be given to such person and in such manner as the Registrar may decide.

(3) The Registrar may, on being satisfied -

(i) that the original document has been lost or destroyed;

(ii) of the date of the filing of the original document; and

(iii) that the copy of, the document produced to him is a correct copy, certify on that copy that the Registrar is so satisfied and direct that the copy be filed in the same manner as the original document.

(4) The copy shall, on being filed, from such date as is mentioned in the certificate as the date of the filing of the original, have the same force and effect as the original.

20. Power of Registrar to reconstitute file

(1) Where the constitution or any other document relating to a company which has been filed with the Registrar has been lost or destroyed. the Registrar may require the company to submit certified copies of the document within such time as the Registrar may decide.

(2) The copy shall, on being registered by the Registrar, have the same force and effect as the original.

20A. Temporary measures during COVID-19 period
Amended by [Act No. 1 of 2020]

Repealed by [Act No. 7 of 2020]

PART III - INCORPORATION

Sub-Part A - Essential requirements

21. Essential requirements and different types of companies

(1) A company shall have –

(a) a name;

(b) in the case of a company limited by shares, one or more shares;

(c) one or more shareholders or members, having limited or unlimited liability for the obligations of the company; and

(e) one or more directors.

(2) Every company shall be -

(a) a company limited by shares;

(b) a company limited by guarantee;

(c) a company limited by both shares and guarantee; or

(d) an unlimited company.

(3) Every reference in this Act to a company limited by shares or to a company limited by guarantee shall, unless the context otherwise requires, include a company limited both by shares and by guarantee.

(4) Every company shall be a public company or a private company.

(5) Every company shall be a public company unless it is stated in its application for incorporation or its constitution that it is a private company.

(6) A company which is licensed to carry on a qualified global business under the Financial Services Development Act 2001 may be a public company or a private company.

(7) A company of any of the types of company referred to in subsection (2) may be registered as a limited life company under Part XXIII.

(8) Every company shall be deemed to be a commercial company.

Sub-Part B - Method of incorporation

22. Right to apply for incorporation

Any person may, subject to the other provisions of this Act, apply for incorporation of a company under this Act.

23. Application for incorporation

(1) An application for incorporation of a company under this Act shall be sent or delivered to the Registrar, and shall be -

(a) in a form approved by the Registrar;

(b) signed by each applicants;

(c) accompanied by -

(i) a document in a form approved by the Registrar, signed by every person named as a director or secretary, containing his consent to be a director or secretary;

(ii) a certificate that the person is not disqualified from being appointed or holding office as a director or secretary of a company;

(iii) in the case of a company having a share capital, a document in a form approved by the Registrar, signed by every person named as a shareholder; or by an agent of that person authorized in writing, containing that person's consent to being a shareholder and to taking the class and number of shares specified in the document and stating the consideration to he provided by that shareholder for the issue of those shares;

(iv) in case of a company limited by guarantee –

(A) a document signed by each person named as a member, or by an agent of that person authorised in writing, containing the matters specified in subsection (3); and

(B) a copy of its constitution.

(v) where the document has been signed by an agent, the instrument authorising the agent to sign it;

(vi) a notice reserving a name for the proposed company, if any,

Amended by [Act No. 21 of 2006]

(vii) where the proposed company is to have a constitution, a document certified by at least one applicant that the document is the company's constitution; and

(viii) a declaration regarding beneficial ownership which shall be disclosed in accordance with section 91(3A)(c).

(2) Without prejudice to subsection (1), the application shall state –

(a) the full name and address of each applicant;

(b) the present full name, any former name the usual residential address and the service address of every director and of any secretary of the proposed company;

(c) particulars of any business occupation and directorships of any public company or subsidiary of a public company held by each director;

(d) the full name the usual residential address and the service address of every shareholder of the proposed company, and the number of shares to be issued to every shareholder and the amount to be paid or other

consideration to be provided by that shareholder for the issue of those same shares;

(da) the information required under section 91(3A)(a)(iii);

(e) whether the company is a limited company or an unlimited company;

(f) in the case of a private company, that the company is a private company;

(g) the registered office of the proposed company;

(ga) such other information as may be required;

Added by [Act No. 21 of 2006]

(h) in the case of a one person company, the full name, the usual residential address, the service address and occupation of the person nominated by the proposed director to be the secretary of the company pursuant to section 140 in the event of the death or mental incapacity of the sole shareholder and director; and

(i) a declaration made by the applicant that the information provided in the application is true and correct.

(3) A document submitted under subsection (1)(c)(iv) shall contain the consent of the person referred to thereunder to be a member and shall state a specified amount up to which the member undertakes to contribute to the assets of the company, in the event of its being wound up while that person is a member, or within one year after ceasing to be a member, for payment of the debts and liabilities of the company contracted before that person ceases to be a member, and of the costs, charges and expenses of the winding up, and for the adjustments of the tights among themselves of the other members who are similarly required to contribute.

(4) Where a person is a director of one or more subsidiaries of the same holding company, and of the holding company it shall be sufficient for the purposes of subsection

(2)(c) to state that the person is the holder of one or more directorships in that group of companies and the group may he described by the name of the holding company with addition of the word "Group".

Amended by [Act No. 27 of 2012]; [Act No. 5 of 2020]; [Act No. 10 of 2024]; [Act No. 11 of 2024]

24. Incorporation

Where the Registrar is satisfied that the application for incorporation of a company complies with this Act, the Registrar shall upon payment of the prescribed fee -

(a) enter the particulars of the company on the registers;

(b) assign a unique number to the company as its company number; and

(c) issue –

(i) a certificate of incorporation electronically; or

(ii) upon request and on payment of the appropriate fee, a signed copy of the certificate of incorporation.

Amended by [Act No. 9 of 2015]; [Act No. 18 of 2016]; [Act No. 4 of 2017]

25. Certificate of incorporation

A certificate of incorporation of a company issued under section 24 is conclusive evidence that -

(a) all the requirements of this Act as to incorporation have been complied with; and

(b) on and from the date of incorporation stated in the certificate, the company is incorporated under this Act.

26. Separate legal personality

A company incorporated under this Act shall be a body corporate with the name by which it is registered and continues in existence until it is removed from the register of companies.

PART IV - CAPACITY, POWERS AND VALIDITY OF ACTS

27. Capacity and powers

(1) Subject to this Act and to any other enactment, a company shall have, both within and outside Mauritius -

(a) full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and

(b) for the purposes of paragraph (a), full rights, powers, and privileges.

(2) Without in any way derogating from the generality of subsection (1), and notwithstanding the provisions of any other enactment, a company, although not formed under authentic deed, shall be capable of giving and entering into and being bound by and claiming all rights under a deed or mortgage or other instrument.

(3) The constitution of a company may contain a provision relating to the capacity, rights, powers, or privileges of the company only if the provision restricts the capacity of the company or those rights, powers, and privileges.

28. Validity of actions

(1) Where the constitution of a company sets out the objects of the company, there is deemed to be a restriction in the constitution on carrying on any business or activity that is not within those objects, unless the constitution expressly provides otherwise.

(2) Where the constitution of a company provides for any restriction on the business or activities in which the company may engage -

(a) the capacity and powers of the company shall not be affected by that restriction; and

(b) no act of the company and no contract or other obligation entered into by the company and no transfer of property to or by the company is invalid by reason only that it was done in contravention of that restriction.

(3) Subsection (2) shall be without prejudice to sections 169, 170, 174 and 176.

(4) The capacity of the company to do an act shall not be affected by the fact that the act is not, or would not be, in the best interests of a company.

29. Dealings between company and other persons

(1) A company or a guarantor of an obligation of a company shall not assert against a person dealing with the company or with a person who has acquired property, rights, or interests from the company that -

(a) this Act, in so far as it provides for matters of company meetings and internal procedure, or the constitution of the company, has not been complied with;

(b) a person named as a director or secretary of the company in the most recent notice received by the Registrar under section 23 or 142 -

(i) is not a director or secretary of a company;

(ii) has not been duly appointed; or

(iii) does not have authority to exercise a power which a director of or secretary of a company carrying on business of the kind carried on by the company customarily has authority to exercise;

(c) a person held out by the company as a director, secretary, employee, or agent of the company -

(i) has not been duly appointed; or

(ii) does not have authority to exercise a power which a director, secretary, employee, or agent of a company carrying on business of the kind carried on by the company customarily has authority to exercise;

(d) a person held out by the company as a director, secretary, employee, or agent of the company with authority to exercise a power which a director, secretary, employee, or agent of a company carrying on business of the kind carried on by the company does not customarily have authority to exercise, does not have authority to exercise that power;

(e) a document issued on behalf of a company by a director, secretary, employee, or agent of the company with actual or usual authority to issue the document is not valid or not genuine, unless the person has, or ought to have, by virtue of his position with or relationship to the company, knowledge of the matters referred to in paragraph (a), (b), (c), (d), or (c), as the case may be.

(2) Subsection (1) shall apply even though a person of the kind referred to in paragraphs (b) to (e) of that subsection acts fraudulently or forges a document that appears to have been signed on behalf of the company, unless the person dealing with the company or with a person who has acquired property, rights, or interests from the company has actual knowledge of the fraud or forgery.

30. No constructive notice

A person is not affected by, or deemed to have notice or knowledge of the contents of, the constitution of, or any other document relating to, a company merely because -

(a) the constitution or document is registered in a register kept by the Registrar; or

(b) it is available for inspection at an office of the company.

PART V - COMPANY NAMES

31. Availability of Name

The Registrar shall not register a company under a name or register a change of the name of a company, unless the name is available.
Amended by [Act No. 21 of 2006]

32. Name or company where liability of shareholders limited

Where the liability of the shareholders of a company is limited, the registered word "Limited" or the word “Limitée” or the name of the company shall end with the abbreviation "Ltd" or "Ltée".

33. Power to dispense with "Limited" or “Limitée”

(1) Where it is proved to the satisfaction of the Registrar that an entity about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity or any other useful object, and intends to apply its profits or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Registrar may, in accordance with Practice Directions issued under section 12(8), may direct that the entity be registered as a company with limited liability without the addition of the word "Limited" or "Limitée" or the abbreviation "Ltd" or "Ltée" to its name, and the entity may be registered accordingly.

(2) The Registrar may issue a direction under subsection (1) in relation to a company which has already been registered if the Registrar is satisfied that the company compares with the conditions prescribed under subsection (11).

(3) A direction under this section may be granted on such conditions (including the maximum area of land the company may hold) as the Registrar thinks fit, and those Conditions shall be binding on the entity, and shall, if the Registrar so directs, be inserted in the memorandum and articles, or in one of those documents or in the constitution of the entity.

(4) The entity shall, on incorporation, enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" or "Limitée" or the abbreviation "Ltd" or "Ltée" as any part of its name, and of publishing its name, and of sending lists of members and directors and managers to the
Registrar.

(5) A direction under this section may at any time be revoked by the Registrar and upon revocation the Registrar shall enter the word "Limited" at the end of the name of the company in the register, and the company shall cease to enjoy the exemptions and privileges granted by this section.

(6) No direction under this section may be revoked unless the Registrar has given to the company notice in writing of his intention and has afforded the company an opportunity of being heard in opposition to the revocation.

(7) Where, as a result of a direction given under subsection (1) the memorandum, article or constitution includes a provision that the memorandum, article or constitution shall not be altered except with the consent of the Registrar, the company shall not by special resolution alter any provision of the memorandum, or article or
constitution.

(8) Where an authorisation under this section is revoked, the memorandum, article or constitution may be altered by special resolution so as to remove any provision in or to the effect that the memorandum, article or constitution may be altered only with the consent of the Registrar.

Amended by [Act No. 4 of 2017]

34. Application for reservation of name

(1) An application for reservation of the name of a company may be sent or delivered to the Registrar, and shall be in a form approved by the Registrar.
Amended by [Act No. 21 of 2006]

(2) The Registrar shall not reserve a name -

(a) which, or the use of which, would contravene an enactments;

(b) which, by virtue of section 35, cannot be registered.

(c) that is identical to a name that the Registrar has already reserved under this Act or the Companies Act 1984 and that is still available for incorporation; or

(d) that, in the opinion of the Registrar, is offensive.

(3) The Registrar shall inform the applicant by notice in writing -

(a) whether or not the Registrar has reserved the name; and

(b) if the name has been reserved, that unless the reservation is sooner revoked by the Registrar, the name is available for incorporation of a company with that name or registration of a change of name, whichever be the case, for 2 months after the date stated in the notice.

(4) The reservation of a name under subsection (3) shall not by itself entitle the proposed company, company or foreign company to be registered under that name, either originally or on a change of name.

Amended by [Act No. 27 of 2013]

35. Name of company

(1) No company including a foreign company shall be registered under a name which is identical with that of an existing company, or statutory corporation, except where the existing company or statutory corporation is in the course of being dissolved and signifies its consent in such manner as the Registrar requires.

(2) Except with the Registrar's written consent and in accordance with Practice Directions which may be issued under section 12(8), no company including a foreign company shall be registered under a name which includes -

(a) the word "Authority", "Corporation", "Government", "Mauritius", "National", "President", "Presidential", "Regional", "Republic", "State", or any other word which in the Registrar's opinion suggests, or is likely to suggest, that it enjoys the patronage of the Government or of a statutory corporation, or of the Government of any other State;

(b) the word "Municipal" or "Chartered" or any other word which in the Registrar's opinion suggests, or is likely to suggest, connection with a local authority in Mauritius or elsewhere;

(c) the word "co-operative";

(d) the words "Chamber of Commerce".

(3) Except with the consent of the Court no company including a foreign company shall be registered by a name, which in the opinion of the Registrar is undesirable or misleading.

Amended by [Act No. 9 of 2015]; [Act No. 18 of 2016]

36. Change of name

(1) An application to change the name of a company shall –

(a) be in a form approved by the Registrar;

(b) be accompanied by a notice reserving the name, if any; and

Amended by [Act No. 21 of 2006]

(c) subject to the constitution of the company, be made by passing a special resolution to that effect and filing a copy of the resolution.

(2) Where the Registrar is satisfied that a company has complied with subsection (1), the Registrar shall -

(a) record the new name of the company;

(b) record the change of name of the company on its certificate of incorporation;

(c) require the company to cause a notice to that effect to be published in such manner as the Registrar may direct.

(3) A change of name of a company shall -

(a) take effect from the date of the certificate issued under subsection (2); and

(b) not affect the rights or obligations of the company, or legal proceedings by or against the company, and legal proceedings that might have been

continued or commenced against the company under its former name may be continued or commenced against it under its new name.

Amended by [Act No. 27 of 2012]

37. Direction to change name

(1) Where the Registrar is satisfied that a company should not have been registered under a name, the Registrar may serve written notice on the company to change its name by a date specified in the notice, being a date not less than 28 days after the date on which the notice is served.

(2) Where the company does not change its name within the period specified in the notice, the Registrar may register the company under a new name chosen by the Registrar, being a name under which the company may be registered under this Part.

(3) Where the Registrar registers a new name under subsection (2), he shall record the new name on the certificate of incorporation of the company and section 36(3) shall apply in relation to the registration of the new name as if the name of the company had been changed under that section.

38. Use of company name

(1) A company shall ensure that its name is clearly stated -

(a) in every written communication sent by, or on behalf of, the company; and

(b) on every document issued or signed by, or on behalf of, the company and which evidences or creates a legal obligation of the company.

(2) Where the name of a company is incorrectly stated in a document which evidences or creates a legal obligation of the company and the document is issued or signed by or on behalf of the company, every person who issued or signed the document is liable to the same extent as the company unless -

(a) the person who issued or signed the document proves that the person in whose favour the obligation was incurred was aware at the time the document was issued or signed that the obligation was incurred by the company; or

(b) the court before which the document is produced is satisfied that it would not be just and equitable for the person who issued or signed the document to be so liable.

(3) For the purposes of subsections (1) and (2) and section 181, a company may use a generally recognized abbreviation of a word or words in its name if it is not misleading to do so.

(4) Where, within the period of 12 months immediately preceding the giving by a company of any public notice, the name of the company was changed, the company shall ensure that the notice states -

(a) that the name of the company was changed in that period; and

(b) the former name or names of the company.

PART VI - COMPANY CONSTITUTION

39. No requirement for company to have constitution

Any company may, but does not need to, have a constitution.

40. Effect of Act on company having constitution

(1) Where a company has a constitution, the rights, powers, duties, and obligations of the company, the Board, each director, and each shareholder of the company shall

be those set out in this Act except to the extent that they are restricted, limited or modified by the constitution of the company in accordance with this Act.

(2) Subject to subsection (3), the form of constitution of a private company shall be in the form set out in the Second Schedule.

(3) A private company may exclude or modify the provisions of its constitution to the extent permitted by the Second Schedule.

41. Effect of Act on company not having constitution

Where a company does not have a constitution, the rights, powers, duties, and obligations of the company, the Board, each director, and each shareholder of the company shall be those set out in this Act.

42. Form and content of constitution

(1) For the purposes of this Act, the constitution of a company shall -

(a) in the case of a company incorporated under Part III, be, a document certified by the applicant for registration of the company as the company's constitution;

(b) in the case of a private company incorporated under Part III, be, subject to section 40, the constitution set out in the Second Schedule;

(c) in the case of an existing company, be the memorandum and articles of association as originally registered or as altered in accordance with the Companies Act 1984 or the Companies Act 1913 provided that any statement of objects in the memorandum shall, from the commencement of this Act, have the effect stated in section 28;

(d) be a document that is adopted by the company as its constitution under section 44;

(e) be a document referred to in section 45; or

(f) be a document referred to in any of the preceding paragraphs as altered by the company under section 44 or varied by the Court under section 178.

(2) Subject to section 27(3), the constitution of a company may contain -

(a) matters contemplated by this Act for inclusion in the constitution of a company; and

(b) such other matters as the company wishes to include in its constitution.

(3) Notwithstanding any other enactment, the constitution of a company and any amendment to the constitution shall be certified by a law practitioner, a legal consultant or a law firm and need not be embodied in a notarial deed.

Amended by [Act No. 14 of 2009]

43. Effect of constitution

(1) The constitution of a company shall be void to the extent that it contravenes, or is inconsistent with, this Act.

(2) Subject to this Act, the constitution of a company shall have the effect of a contract -

(a) as between the company and each member or shareholder; and

(b) as between the members or shareholders themselves.

(3) All money payable by any member to the company under the constitution shall be a debt due from him to the company.

44. Adoption, alteration and revocation of constitution

(1) The shareholders or members of a company may, where the company does not have a constitution, by special resolution, adopt a constitution for the company.

(2) Subject to subsection (3) and sections 67, 80 and 114, the shareholders of a company may, by special resolution, alter or revoke the constitution of the company.

(3) An existing company which has, under section 42(l)(c) retained its memorandum of association and articles of association as its constitution, shall not alter any of the provisions in its existing memorandum of association or articles of association unless it replaces its memorandum of association and its articles of association by a single document into which it consolidates its constitution.

(4) The company may apply to the Registrar for dispensation from the requirement of subsection (3) and where the Registrar is satisfied that undue hardship would be caused to the company by requiring compliance with subsection (3) and that it is necessary that the alteration be made promptly, the Registrar may grant the dispensation on such terms and conditions as the Registrar thinks fit.

(5) Within 14 days of the adoption of a constitution by a company, or the alteration or revocation of the constitution of a company, as the case may be, the Board shall cause a notice in a form approved by the Registrar to be delivered to the Registrar for registration.

45. New form of constitution

(1) A company may deliver to the Registrar a single document that incorporates the provisions of a document referred to in section 42(1)(f) together with any amendments.

(2) The Registrar may, where he considers that by reason of the number

of amendments to a company's constitution it would be desirable for the constitution to be contained in a single document, by notice in writing, require a company to deliver to the Registrar a single document that incorporates the provisions of a document referred to in section 42(1)(f), together with any amendments.

(3) Where a notice has been served under subsection (2), the Board shall, within 28 days of receipt by the company of the notice, cause to be delivered to the Registrar -

(a) the document for registrations; and

(b) a certificate signed by a person authorized by the Board to the effect that the document referred to in paragraph (a) complies with subsection (1) or (2), as the case may be.

(4) On receipt of the document referred to in subsection (3), the Registrar shall register the document.

PART VII - SHARES

Sub-Part A - Legal nature and types of shares

46. Legal nature and types of shares

(1) A share in a company shall be a movable property.

(2) Subject to subsection (3), a share in a company shall confer on the holder -

(a) the right to one vote on a poll at a meeting of the company on any resolution;

(b) the right to an equal share in dividends authorized by the Board;

(c) the right to an equal share in the distribution of the surplus assets of the company.

(3) Subject to section 59, the rights specified in subsection (2) may be restricted, limited, altered, or added to by the constitution of the company or in accordance with the terms on which the share is issued under section 51 or 52, as the case may be.

(4) Subject to the constitution of the company, different classes of shares maybe issued in a company.

(5) Without limiting subsection (4), shares in a company may –

(a) be redeemable in accordance with section 76;

(b) confer preferential rights to distributions of capital or income;

(c) confer special, limited, or conditional voting rights; or

(d) not confer voting rights.

47. No par value shares

(1) Any shares created or issued after the commencement of this Act shall be shares of no par value.

(2) Subject to subsection (3), the par value shares of an existing company on the register of companies under the Companies Act 1984 or the International Companies Act 1994 at the date of the commencement of this Act shall continue to be shares having a par value with the par value attached to those shares being the par value carried by those shares immediately before the commencement of this Act.

(3) Any existing company under sub-section (2) may at any time, convert any class of shares of the company into shares of no par value provided that -

(a) all the shares of any one class of shares of the company consist of either par value shares or no par value shares; and

(b) where all the shares of the company -

(i) are of the one class, the conversion of the shares is approved by special resolution or by consent in writing of 75 per cent of the shareholders; or

(ii) comprise more than one class, the conversion of the shares is approved by the holders of each class to be converted by special resolution or by consent in writing of 75 per cent of the holders of that class; and

(c) notice of the terms of the conversion is given to the Registrar for registration within 14 days of the approval of the conversion under paragraph (b).

(4) Notwithstanding subsection (1), an existing company under subsection (2) may, after the commencement of this section, issue shares or a class or classes of shares having a par value.

(5) Upon registration of the notice under subsection (3)(c), the shares in question shall, subject to subsection (6), be deemed to have been converted into shares of no par value.

(6) The shares converted under subsection (3) shall not affect the rights and liabilities attached to such shares and in particular, without prejudice to the generality of this section, such conversion shall not affect -

(a) any unpaid liability on such shares; or

(b) the rights of the holders thereof in respect of dividends, voting or repayment on winding up or a reduction of capital.

(7) Notwithstanding subsection (1), the Registrar may, where he is satisfied that -

(a) a company registered or proposed to be registered under this Act is a wholly owned subsidiary of a company registered outside Mauritius and that for the purposes of the company's reporting obligations outside Mauritius it is necessary for the company to be formed with shares carrying a par value; or

(b) there are good grounds for the shares to be issued at par value, the Registrar may, subject to subsection (8), grant a dispensation from subsection (1) and permit the issue of a class or classes of par value shares.

(8) A dispensation under subsection (7) shall be granted on such terms and conditions as the Registrar may consider fit provided that all the shares of any class shall be at par value and any premiums received on any issue of shares shall be transferred into the share premium account in accordance with section 48(5).

48. Stated capital and share premium account

(1) A company shall maintain a stated capital account for each class of shares it issues in which it shall enter the stated capital in relation to that class of shares.

(2) A company shall not reduce its stated capital except as provided under section 62.

(3) The provisions of this Act relating to stated capital shall not apply to a company which is an investment company including an authorised mutual fund.

Amended by [Act No. 20 of 2002]

(4) Except in the case of a company holding a Global Business Licence or an Authorised Company, the stated capital of the company shall be expressed in

Mauritius currency unless written approval to express the stated capital in another currency is obtained from the Registrar in the same manner as under section 213.

(5) Where shares having a par value are issued at a premium, whether for cash or otherwise; a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account to be called "the share premium account" and the provisions of this Act relating to the stated capital of the company and relating to the reduction of share capital of the company shall apply.

(6) Where shares having a par value are issued for a consideration other than cash and the value of that consideration is more than the par value of such shares, the difference between the par value of the shares and the value of the shares so acquired shall be transferred to the share premium account.

(7) In the case of shares having a par value, the share premium account may, notwithstanding anything contained in subsection (5) be applied by the company to paying up shares of the company to be issued to shareholders of the company as fully paid shares.

(8) The stated capital account, including in the case of shares having a par value, the share premium account, notwithstanding anything contained in subsection (5) may, provided the directors are satisfied that the company will immediately after the application satisfy the solvency test, be applied by the company in writing off –

(a) the preliminary expenses of the company; or

(b) the expenses of, or the commission paid on, the creation or issue of any such shares.

Amended by [Act No. 11 of 2018]

49. Transferability of shares

(1) Subject to any limitation or restriction on the transfer of shares in the constitution, a share in a company shall be transferable.

(2) A share shall be transferred by entry in the share register in accordance with section 88.

(3) Subject to section 87, the heir of a deceased member or the Curator may transfer a share even though the heir or Curator is not a shareholder at the time of transfer.

50. Denomination of share capital

(1) Subject to subsection (2), any share having a par value issued under section 47(7) shall be denominated in Mauritius currency.

(2) Any share of par value issued under section 47(7) may, with the approval of the Registrar, be designated in any foreign currency but shall otherwise be designated in Mauritius currency.

(3) Where a company has denominated its share capital in accordance with subsection (2), it shall, within 14 days of the date of such denomination, file with the Registrar a notice to that effect.

(4) Where the hare capital of a company is denominated in a foreign currency, it shall not, without the prior approval of the Registrar, change the denomination into another currency.

51. Issue of shares on incorporation and amalgamation

(1) Upon incorporation of the company under section 24 any person named in the application for incorporation as a shareholder shall be deemed to have been issued with the number of shares specified in the application.

(2) Following the issue of a certificate, of amalgamation under section 249, the amalgamated company shall forthwith issue to any person entitled to a share or

shares under the amalgamated proposal, the share or shares to which that person is entitled.

52. Issue of other shares

(1) Subject to this Act, and the Securities Act 2005, and in particular to subsection (2), and to the constitution of the company, the Board may issue shares at any time, to any person, and in any number it thinks fit.

Amended by [Act No. 22 of 2005]

(2) Where the shares confer rights other than those set out in section 46(2), or impose any obligation on the holder, the Board shall, subject to -

(a) the prior approval of an ordinary resolution of shareholders, unless the constitution provides otherwise; and

(b) the requirements of section 114,

approve the terms of issue which set out the rights and obligations attached to the shares.

(3) The terms of issue approved by the Board under subsection (2) -

(a) shall be consistent with the constitution of the company, and to the extent that they are not so consistent, shall be invalid and of no effect;

(b) shall be deemed to form part of its constitution and may be amended in accordance with section 44 subject to the requirements of section 114.

(4) Subject to subsection (5) ,within 14 days of the issue of shares under this section, the company shall -

(a) give notice to the Registrar in a form approved by him of -

(i) the number of shares issued;

(ii) the amount of the consideration for which the shares have been issued, or its value as determined by the Board under section 56;

(iii) the amount of the company's stated capital following the issue of the shares; and

(iv) the name and description of the persons, to whom the shares are issued together with the number and class of shares issued to each person;

(b) deliver to the Registrar, a certified copy of -

(i) any terms of issue approved under subsection
(ii) the certificate referred to in subsection(6);.

(5) The Registrar may dispense any open-ended fund or investment company from the obligations imposed by subsection (4).

(6) (a) Where shares are issued to a non-citizen, the Board shall, notwithstanding the constitution of the company, ascertain that the non-citizen has obtained the certificate under the Non-Citizens (Property Restriction) Act authorising him to purchase, acquire or hold such shares before the shares are actually issued to him.

(b) Paragraph (a) shall apply to a transfer of shares in the same way as it applies to an issue of shares.

Amended by [Act No. 20 of 2002], [Act No. 22 of 2005]; [Act No. 20 of 2011]

53. Alteration in number of shares

(1) A company may by ordinary resolution -

(a) divide or subdivide its shares into shares of a smaller amount if the proportion between the amount paid, and the amount, if any, unpaid on each reduced share remains the same as it was in the case of the share from which the reduced share is derived;

(b) consolidate into shares of a larger amount than its existing shares.

(2) Where shares are consolidated, the amount paid and any unpaid liability thereon, any fixed sum by way of dividend or repayment to which such shares are entitled, shall also be consolidated.

(3) Where a company has altered its share capital in a manner specified in subsection (1), it shall within 14 days of the date of the alteration file a notice to that effect with the Registrar.

(4) A notice under subsection (3) shall include particulars with respect to the classes of shares affected.

54. Fractional shares

A company may, where its constitution so provides, issue fractions of shares which shall have corresponding fractional liabilities, limitations, preferences, privileges, qualifications, restrictions, rights and other attributes as those which relate to the whole share of the same class or series of shares.

55. Pre-emptive rights to new issues

(1) Subject to its constitution, where a company issues shares which rank equally with, or in priority to existing shares as to voting or distribution rights, those shares shall

be offered to the holders of existing shares in a manner which would, if the offer were accepted, maintain the relative voting and distribution rights of those shareholders.

(2) An offer under subsection (1) shall remain open for acceptance for a reasonable time, which shall not be less than 14 days.

56. Consideration for issue of shares

(1) Before it issues any shares the Board shall determine the amount of the consideration for which the shares shall be issued and shall ensure that such consideration is fair and reasonable to the company and to all existing shareholders.

(2) The consideration for which a share is issued may take any form including payment in cash, promissory notes, contracts for future services, real or personal property, or other securities of the company.

(3) The amount of consideration for which a share with par value is issued in accordance with any dispensation given by the Registrar under section 47, shall not be less than the par value.

57. Shares not paid for in cash

(1) Shares shall be deemed not to have been paid for in cash except to the extent that the company has actually received cash in payment of the shares at the time of or subsequently to the agreement to issue the shares.

(2) Before shares that have already been issued are credited as fully or partly paid up other than for cash, the Board shall determine the reasonable present cash value of the consideration and shall ensure that the present cash value of the consideration is -

(a) fair and reasonable to the company and to all existing shareholders; and

(b) not less than the amount to be credited in respect of the shares.

(3) A certificate shall be signed by one of the directors or his agent authorised in waiting describing the consideration in sufficient detail to identify it and state -

(a) the present cash value of the consideration and the basis for assessing it;

(b) that the present cash value of the consideration is fair and reasonable to the company and to all existing shareholders, and

(c) that the present cash value of the consideration is not less than the amount to be credited in respect of the shares.

(4) The Board shall deliver a copy of a certificate issued under subsection (3) to the Registrar for registration within 14 days of its signature.

(5) Nothing in this section shall apply to the issue of shares in a company on –

(a) the conversion of any convertible securities; or

(b) the exercise of any option to acquire shares in the company.

(6) Where the Registrar is dissatisfied with the value mentioned in the certificate delivered to the Registrar under subsection (4), the Registrar may refer the matter to the Registrar-General who may assess the value in accordance with section 17 of the Registration Duty Act and section 28 of the Land (Duties and Taxes) Act 1984 and the provisions of those sections including the right of appeal under those sections shall mutatis mutandis apply to a valuation for the purposes of this section.

(7) An officer who fails to comply with subsection (3) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees.

(8) Where the Board fails to comply with subsection (4), every officer of the company shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees.

Amended by [Act No. 20 of 2002]

58. Calls on shares

Where a call is made on a share or any other obligation attached to a share is performed by the shareholder, the company shall within 14 days give notice to the Registrar in a form approved by him of -

(a) the amount of the call or its value as determined by the Board under section 57 (2); and

(b) the amount of the stated capital of the company following the making of the call.

59. Consent to issue of shares

The issue by a company of a share that -

(a) increases a liability of a person to the company; or

(b) imposes a new liability on a person to the company,

shall be void where that person, or his agent who is authorized in writing, does not consent in writing to becoming the holder of the share before it is issued.

60. Time of issue of shares

Notwithstanding section 51(1), a share is issued when the name of the holder is entered on the share register.

61. Board may authorise distributions

(1) A company shall not make any distribution to any shareholder unless that distribution -

(a) has been authorized by the Board under subsection (2); and

(b) subject to the constitution, has been approved by the shareholders by ordinary resolution.

(2) The Board may authorize a distribution at such time and of such amount as it thinks fit, if it is that the company shall, upon the distribution being made, satisfy the solvency test.

(3) The directors who vote in favour of a distribution shall sign a certificate stating that, in their opinion, the company shall, upon the distribution being made, satisfy the solvency test.

(4) Where, after a distribution is authorized and before it is made, the Board ceases to be satisfied that the company shall, upon the distribution being made, satisfy the solvency test, any distribution made by the company shall be deemed not to have been authorised.

62. Reduction of stated capital

(1) Subject to subsection (3), a company may by special resolution reduce its stated capital to such amount as it thinks fit.

(2) Public notice of a proposed reduction of a company's stated capital shall be given not less than 30 days before the resolution to reduce stated capital is passed.

(3) A company may agree in writing with a creditor of the company that it shall not reduce its stated capital -

(a) below a specified amount without the prior consent of the creditor; or

(b) unless specified conditions are satisfied at the time of the reduction.

(4) A resolution to reduce the stated capital passed in breach of any agreement referred to in subsection (3) shall be invalid and of no effect.

(5) A company shall not take any action -

(a) to extinguish or reduce a liability in respect of an amount unpaid on a share; or

(b) to reduce its stated capital for any purpose (other than the purpose of declaring that its stated capital is reduced by an amount that is not represented by the value of its assets), unless there are reasonable grounds on which the directors may determine that, immediately after the taking of such action, the company will be able to satisfy the solvency test.

(6) Where -

(a) a share is redeemed at the option of the shareholder under section 79 or on a fixed date under section 80; or

(b) the company purchases a share under section 68, and the Board is satisfied that as a consequence of the redemption or purchase, the company would, but for this subsection, fail to satisfy the solvency test -

(i) the Board shall resolve that the stated capital of the company shall be reduced by the amount by which the company would so fail to satisfy the solvency test; and

(ii) the resolution of the Board shall have effect notwithstanding subsections (1) to (3).

(7) A company which has reduced its stated capital shall within 14 days of the reduction give notice of the reduction to the Registrar, specifying the amount of the reduction and the reduced amount of its stated capital.

Sub-Part B - Dividends and distributions

63. Dividends

(1) A dividend shall be a distribution other than a distribution to which sections 68 and 81 apply.

(2) The Board shall not authorize a dividend -

(a) in respect of some but not all the shares in a class;

(b) of a greater amount in respect of some shares in a class than other shares in that class except where -

(i) the amount of the dividend is reduced in proportion to any liability attached to the shares under the constitutions;

(ii) a shareholder has agreed in writing to receive no dividend, or a lesser dividend than would otherwise be payable;

(c) unless it is paid out of retained earnings, after having made good any accumulated losses at the beginning of the accounting period.

(3) The Board shall not declare a dividend unless it is satisfied that, on payment of that dividend, the company shall continue to satisfy the solvency test.

(4) Where the Board declares a dividend, it shall ensure that that dividend is paid not later than 12 months after the date on which the dividend is declared.

Amended by [Act No. 14 of 2019]

64. Shares in lieu of dividends

Subject to the constitution of the company, the Board may issue shares to any shareholders who have agreed to accept the issue of shares, wholly or partly, in lieu of a proposed dividend or proposed future dividends provided that -

(a) the right to receive shares, wholly or partly, in lieu of the proposed dividend or proposed future dividends has been offered to all shareholders of the same class on the same terms;

(b) where all shareholders elected to receive the shares in lieu of the proposed dividend, relative voting or distribution rights, or both, would be maintained;

(c) the shareholders to whom the right is offered are afforded a reasonable opportunity of accepting it;

(d) the shares issued to each shareholder are issued on the same terms and subject to the same rights as the shares issued to all shareholders in that class who agree to receive the shares; and

(e) the provisions of section 56 are complied with by the Board.

65. Shareholder discounts

(1) The Board may resolve that the company shall offer shareholders discounts in respect of some or all of the goods sold or services provided by the company.

(2) The Board shall not approve a discount scheme under subsection (1) unless it has previously resolved that the proposed discounts are -

(a) fair and reasonable to the company and to all shareholders and

(b) made available to all shareholders or all shareholders of the same class on the same terms.

(3) A discount scheme shall not be approved, or where it had previously been approved shall not be continued by the Board unless it has reasonable grounds to believe that the company satisfies the solvency test.

(4) Subject to subsection (5), a discount accepted by a shareholder under a discount scheme approved under this section shall not be a distribution for the purposes of this Act.

(5) Where -

(a) a discount is accepted by a shareholder under a scheme approved by the Board; and

(b) after the scheme is approved or the discount was offered, the Board ceases to be satisfied on reasonable grounds that the company would satisfy the solvency test,

section 66 shall apply in relation to the discount with such modifications as may be necessary as if the discount were a distribution that is deemed not to have been authorized.

66. Recovery of distributions

(1) A distribution made to a shareholder at a time when the company did not, upon distribution being made, satisfy the solvency test may be recovered by the company from the shareholder unless -

(a) the shareholder received the distribution in good faith and without knowledge of the company's failure to satisfy the solvency test;

(b) the shareholder has altered the shareholder's position in reliance on the validity of the distribution; and

(c) it would be unfair to require repayment in full or at all.

(2) Where, in relation to a distribution made to a shareholder -

(a) the procedure set out in section 61 has not been followed; or

(b) reasonable grounds for believing that the company would satisfy the solvency test in accordance with section 61 or 81, as the case may be, did not exist at the time the certificate was signed,

a director who failed to take reasonable steps to ensure the procedure was followed or who signed the certificates as the case may be, shall be personally liable to the company to repay to the company so much of the distribution which cannot be recovered from shareholders.

(3) Where, by virtue of section 61(4), a distribution is deemed not to have been authorized, a director who -

(a) ceases after authorization but before the making of the distribution to be satisfied on reasonable grounds for believing that the company would satisfy the solvency test upon the distribution being made; and

(b) fails to take reasonable steps to prevent the distribution being made,

shall be personally liable to the company to repay to the company so much of the distribution which cannot be recovered from shareholders.

(4) Where, by virtue of section 65(5), a distribution is deemed riot to have been authorized, a director who fails to take reasonable steps to prevent the distribution being made shall be personally liable to the company to repay to the company so much of the distribution which cannot be recovered from shareholders.

(5) Where, in an action brought against a director or shareholder under this section, the Court is satisfied that the company could, by making a distribution of a lesser amount, have satisfied the solvency test, the Court may -

(a) permit the shareholder to retain; or

(b) relieve the director from liability in respect of,

an amount equal to the value of any distribution that could property have been made.

67. Reduction of shareholder liability treated as distribution

(1) Where a company -

(a) alters its constitution;

(b) acquires shares issued by it; or

(c) redeems shares under section 78,

in a manner which would cancel or reduce the liability of a shareholder to the company in relation to a share held prior to that alteration, acquisition, or redemption, the cancellation or reduction of liability shall be treated for the purposes of section 61 as if it were a distribution and for the purposes of section 63(2) as if it were a dividend.

(2) Where a company has altered its constitution, or acquired shares, or redeemed shares under Sub-Part E in a manner which cancels or reduces the liability of a shareholder to the company in relation to a share held prior to that alteration, acquisition, or redemption, that cancellation or reduction of liability shall be treated for the purposes of section 62 as a distribution of the amount by which that liability was reduced.

(3) Where the liability of a shareholder of an amalgamating company to that company in relation to a share held before the amalgamation is -

(a) greater than the liability of that shareholder to the amalgamated company in relation to a share or shares into which that share is converted; or

(b) cancelled by the cancellation of that share in the amalgamation.

the reduction of liability effected by the amalgamation shall be treated for the purposes of section 66(1) and (3) as a distribution by the amalgamated company to that shareholder, whether or not that shareholder becomes a shareholder of the amalgamated company of the amount by which that liability was reduced.

Sub-Part C - Acquisition and redemption of company's own shares

68. Company may acquire or redeem its own shares

(1) Subject to subsection (5), a company shall not purchase or otherwise acquire any of its own shares except -

(a) as provided under sections 69 and 70 or sections 108 to 110;

(b) in the case of a private company, with the unanimous approval of all shareholders under section 272;

(b) with the approval of a unanimous resolution under section 106; or

(d) in accordance with an order made by the Court under this Act.

(2) A company may redeem a share which is a redeemable share in accordance with sections 76 to 80 but not otherwise.

(3) Where shares are acquired by a company pursuant to subsection (1) or redeemed pursuant to subsection (2), the stated capital of the class of shares so acquired or redeemed shall be decreased, or in the case of a company having par value shares, the nominal issued share capital and share premium account shall be decreased, so as to take into account the extent to which the amount received by the company as stated capita under section 7 is reduced by the company's acquisition or redemption of its own shares.

(4) A company shall not make any payment in whatever form to acquire or redeem any share issued by the company where there are reasonable grounds for believing that the company is, or would after the payment, be unable to satisfy the solvency test.

(5) A company shall not acquire or redeem its own shares where, as a result of such acquisition or redemption, there would no longer be any shares on issue other than convertible or redeemable shares.

(6) Except where dispensation has been granted under section 52(5), the company shall immediately following the acquisition or redemption of shares by the company, give notice to the Registrar of the number and class of shares acquired or redeemed.

Amended by [Act No. 15 of 2006]

(7) Where a company fails to comply with subsection (4), the company and every officer of the company who is in default shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees.

Amended by [Act No. 20 of 2002]

69. Purchase of own shares

(1) A company may, subject to -

(a) the approval of the Board;

(b) its constitution authorizing it to do so, purchase or otherwise acquire its own shares.

(2) The company shall not offer or agree to purchase or otherwise acquire its own shares unless -

(a) the Board is satisfied that -

(i) the acquisition is in the best interests of the company;

(ii) the terms of the offer or agreement and the consideration to be paid for the shares are fair and reasonable to the company;

(iii) in any case where the offer is not made to, or the agreement is not entered into with, all shareholders, the offer or the agreement, as the case may be, is fair to those shareholders to whom the offer is not made, or with whom no agreement is entered into;

(iv) shareholders to whom the offer is made have available to them any information which is material to an assessment of the value of the shares; and

(v) the company shall immediately after the acquisition satisfy the solvency test; and

(b) the Board has disclosed to shareholders or members or otherwise has made available to them all information which is material to the assessment of the value of the shares.

(3) Any offer by a company to purchase or otherwise acquire its own shares on a securities exchange shall be made in accordance with such conditions as may be prescribed under the Securities Act 2005

Amended by [Act No. 22 of 2005]

70. Disclosure document

(1) This section shall not apply to -

(a) an offer which -

(i) is made to all shareholders to acquire a proportion of their shares;

(ii) if accepted, would leave unaffected relative voting and distribution rights; and

(iii) affords a reasonable opportunity to shareholders to accept the offer;

(b) an offer to which all shareholders have consented in writing or which is the subject of unanimous approval under section 272;

(c) an offer made pursuant to a unanimous resolution under section 106;

(d) an offer where the purchase or acquisition is made on any securities exchange whether within or outside Mauritius in accordance with the rules of the exchange or as required under the Securities Act 2005; or
Amended by [Act No. 22 of 2005]

(e) a private company holding Global Business Licence or an Authorised Company, as the case may be.

(2) Subject to subsection (1), before an offer is made pursuant to a resolution under section 69(2), the company shall send to each shareholder a disclosure document that complies with subsection (3).

(3) A disclosure document issued under this section shall set out -

(a) the nature and terms of the offer, and if made to specified shareholders only, the names of those shareholders;

(b) the nature and extent of any relevant interest of any director of the company in any shares the subject of the offer; and

(c) the text of the resolution required by section 69(2), together with such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed acquisition.

(4) A reporting issuer may issue or transfer shares held by the reporting issuer itself subject to the provisions of the Securities Act 2005.

Amended by [Act No. 22 of 2005]; [Act No. 11 of 2018]

71. Cancellation of shares repurchased

(1) Subject to sections 72 to 74, shares that are acquired by a company pursuant to section 69 or 110, or redeemed pursuant to sections 76 to 80, are deemed to be cancelled immediately on acquisition.

(2) For the purposes of subsection (1), shares are acquired on the date on which the company would, in the absence of this section, become entitled to exercise the rights attached to the shares.

Sub-Part D - Treasury shares

72. Company may hold its own shares

(1) Section 71 (1) shall not apply to shares acquired by a company pursuant to section 69 or 110 where -

(a) the constitution of the company expressly permits the company to hold its own shares;

(b) the Board of the company resolves that the shares concerned shall not be cancelled on acquisition; and

(c) except in the case of a private company holding a Global Business Licence or an Authorised Company, as the case may be, the number of shares acquired, when aggregated with shares of the same class held by the company pursuant to this section at the time of the acquisition, does not exceed 15 percent of the shares of that class previously issued by the company, excluding shares previously deemed to be cancelled under section 71 (1).

(2) Any share acquired by a company pursuant to section 69 or 110 and, which is held by the company pursuant to subsection (1) shall be held by the company in itself.

(3) A share that a company holds in itself under subsection (2) may be cancelled by the Board resolving that the share is cancelled and the share shall be deemed to be cancelled on the making of such a resolution.

Amended by [Act No. 11 of 2018]

73. Rights and obligations of shares that company holds in itself suspended

(1) The rights and obligations attaching to a share that a company holds in itself pursuant to section 72 shall not be exercised by or against a company while it holds the share.

(2) Without limiting subsection (1), while a company holds a share in itself pursuant to section 72, the company shall not -

(a) exercise any voting rights attaching to the share; or

(b) make or receive any distribution authorized or payable in respect of the share.

74. Reissue of shares that company holds in itself

(1) Subject to subsection (2), section 56 shall apply to the transfer of a share held by a company in itself as if the transfer were the issue of the share under section 52.

(2) Subsection (1) shall not apply unless it is specifically provided in the constitution that the company may transfer the shares so held.

(3) A company shall not make an offer to sell any share it holds in itself or enter into any obligations to transfer such a share where the company has received notice in writing of a take-over scheme.

Amended by [Act No. 22 of 2005]

75. Enforceability of contract to repurchase shares

(1) A contract with a company for the acquisition by the company of its shares shall be specifically enforceable against the company except to the extent that the company would, after performance of the contract, fail to satisfy the solvency test.

(2) The company bears the burden of proving that performance of the contract would result in the company being unable to satisfy the solvency test.

(3) Subject to subsection (1), where the company has entered into a contract for the acquisition by the company of its shares. the other party to the contract shall, on the conclusion of the contract, become a creditor and shall -

(a) be entitled to be paid as soon as the company is lawfully able to do so; or

(b) prior to the removal of the company from the register of companies.

be ranked subordinate to the rights of creditors but in priority to the other shareholders.

Sub Part E - Redemption of shares

76. Meaning of "redeemable"

A company may issue a redeemable share where -

(a) in the case of -

(i) a company, other than a company holding a Global Business Licence, the constitution of the company makes provision for the company to issue redeemable shares; and

(ii) a company holding a Global, Business Licence, the constitution does not forbid the company from issuing redeemable shares;

(b) the shares are fully paid up at the time of redemption; and

(c) the constitution or the terms of issue of the share makes provision for the redemption of the share -

(i) at the option of the company;

(ii) at the option of the holder of the share; or

(iii) on a date specified in the constitution or the terms of issue of the share for a consideration that is -

(A) specified;

(B) to be calculated by reference to a formula; or

(C) required to be fixed by a suitably qualified person who is not associated with or interested in the company.

Amended by [Act No. 11 of 2018]

77. Application of Act to redemption of shares

The provisions of sections 68(3) to (7) and 71 shall apply to a redemption of shares.

78. Redemption at option of company

A redemption of a share at the option of the company shall be deemed to be -

(a) an acquisition by the company of the share for the purposes of section 69(2) and 70; and

(b) a distribution for the purposes of section 61.

79. Redemption at option of shareholder

(1) Where a share is redeemable at the option of the holder of the share, and the holder gives proper notice to the company requiring the company to redeem the share,

(a) the company shall redeem the share on the date specified in the notice, or if no date is specified, on the date of receipt of the notice;

(b) the share is deemed to be cancelled on the date of redemption; and

(c) from the date of redemption the former shareholder ranks as an unsecured creditor of the company for the sum payable on redemption.

(2) A redemption under this section -

(a) shall not be a distribution for the purposes of sections 61 and 63; but

(b) shall be deemed to be a distribution for the purposes of section 66(1) and (5).

80. Redemption on fixed date

(1) Subject to this section, if a share is redeemable on a specified date –

(a) the company shall redeem the share on that date;

(b) the share shall be deemed to be cancelled on that date; and

(c) from that date the former shareholder shall rank as an unsecured creditor of the company for the sum payable on redemption.

(2) A redemption under this section -

(a) shall not be a distribution for the purposes of sections 61 and 63; but

(b) shall be deemed to be a distribution for the purposes of sections 66(1) and (5).

Sub Part F - Financial assistance in connection with purchase of shares

81. Restrictions on giving financial assistance

(1) A company shall not give financial assistance directly or indirectly for the purpose of or in connection with the acquisition of its own shares, other than in accordance with this section.

(2) A company may give financial assistance for the purpose of or in connection with the acquisition of its own shares if the Board has previously resolved that -

(a) giving the assistance is in the interests of the company;

(b) the terms and conditions on which the assistance is given are fair and reasonable to the company and to any shareholders not receiving that assistance; and

(c) immediately after giving the assistance, the company shall satisfy the solvency test.

(3) Where the amount of any financial assistance approved under subsection (2) together with the amount of any other financial assistance which is still outstanding exceeds 10 per cent of the company's stated capital, the company shall not give the assistance unless it first obtains from its auditor or, if it does not have an auditor, from a person qualified to act as its auditor, a certificate that -

(a) the person has inquired into the state of affairs of the company; and

(b) there is nothing to indicate that the opinion of the Board that the company shall, immediately after giving the assistance, satisfy the solvency test, is unreasonable in all the circumstances.

(4) The amount of any financial assistance under this section shall not be a distribution for the purposes of sections 61 and 63.

(5) For the purposes of' this section, the term "financial assistance" includes giving a loan or guarantee, or the provision of security.

82. Transactions not prohibited by section 81

Section 81 shall not apply to -

(a) a distribution to a shareholder approved under section 61;

(b) the issue of shares by the company;

(c) a repurchase or redemption of shares by the company;

(d) anything done under a compromise under Part XVII or a compromise or arrangement approved under Part XVIII; or

(e) where the ordinary business of a company includes the lending of money by the company in the ordinary course of business.

Sub Part G - Cross-holdings

83. Subsidiary may not hold shares in holding company

(1) Subject to this section, a subsidiary shall not hold shares in its holding company.

(2) An issue of shares by a holding company to its subsidiary shall be void.

(3) A transfer of shares from a holding company to its subsidiary shall be void.

(4) Where a company that holds shares in another company becomes a subsidiary of that other company -

(a) the company may, notwithstanding subsection (1), continue to hold those shares; but

(b) the exercise of any voting rights attaching to those shares shall be of no effect.

(5) Nothing in this section shall prevent a subsidiary holding shares in its holding company in its capacity as a personal representative or a trustee unless the holding company or another subsidiary has a beneficial interest under the trust other than an interest that arises by way of security for the purposes of a transaction made in the ordinary course of the business of lending money.

(6) This section applies to a nominee for a subsidiary in the same way as it applies to the subsidiary.

Sub Part H - Statement of shareholders' rights

84. Statement of rights to be given to shareholders

(1) Every company shall issue to a shareholder, on request, a statement that sets out -

(a) the class of shares held by the shareholder, the total number of shares of that class issued by the company, and the number of shares of that class held by the shareholder;

(b) the rights, privileges, conditions and limitations. including restrictions on transfer attaching to the shares held by the shareholders; and

(c) the rights, privileges, conditions and limitations attaching to the classes of shares other than those held by the shareholder.

(2) The company shall not be under any obligation to provide a shareholder with a statement if -

(a) a statement has been provided within the previous 6 months;

(b) the shareholder has not acquired or disposed of shares since the previous statement was provided;

(c) the tights attached to shares of the company have not been altered since the previous statement was provided; and

(d) there are no special circumstances which would make it unreasonable for the company to refuse the request.

(3) The statement shall not be evidence of title to the shares or of any of the matters set out in it.

(4) The statement shall state in a prominent place that it is not evidence of title to the shares or of the matters set out in it.

PART VIII - TITLE, TRANSFERS, SHARE REGISTER AND CERTIFICATES

85. Privilege or lien on shares

(1) Notwithstanding any other enactment, a company shall, where the constitution so provides, be entitled to a privilege or lien, independently of and without the necessity for inscription, in priority to any other claim, over every issued share, not being a fully paid share, and over any dividend payable on the share, for all money due by the holder of that share to the company whether by way of money called or payable at a fixed time in respect of that share.

(2) In the case of a company, other than a public company, the constitution may provide for a privilege or lien of the same kind as referred to in subsection (1) over fully paid shares and dividends on those shares for all money owing by the shareholders to the company.

(3) Subject to subsection (4), a company may, in such manner as the directors think fit, sell any share on which the company has a privilege or lien.

(4) No sale shall be made unless -

(a) a sum in respect of which the lien exists is presently payable; and

(b) until the expiry of 14 days after a written notice, stating and demanding payment of such part of the amount in respect of which the privilege or lien exists as is presently payable, has been given to the registered holder for

the time being of the share, or the person entitled to the share by reason of the death or bankruptcy of the registered holder.

(5) The directors may, to give effect to any sale under subsection (3), authorize some person to transfer the shares sold to the purchaser of the shares.

(6) The purchaser referred to in subsection (5) shall be registered as the holder of the share comprised in any such transfer; and shall not be bound to see to the application of the purchase money, nor shall the title of the purchaser to the share be affected by any irregularity or invalidity in the proceedings relating to the sale.

(7) The proceeds of the sale shall be received by the company and applied for the payment of such part of the amount in respect of which the lien exists as is presently payable, and any residue shall, subject to a like lien for sums not presently payable as existed upon the share before the sale, be paid to the person entitled to the share at the date of the sale.

(8) The directors may, where the constitution so provides, decline to register the transfer of a share on which the company has a lien.

86. Pledges

(1) Any share or debenture may be given in pledge in all civil and commercial transactions in accordance with the Code Civil Mauricien and any other applicable law.

Amended by [Act No. 15 of 2006]

(2) Every company shall keep a register in which –

(a) the transfer of shares or debentures given in pledge may be inscribed;

(b) it shall be stated that the pledgee holds the share or debenture not as owner but in pledge of a debt the amount of which shall in the case of a civil pledge be mentioned.

(3) A pledge shall be sufficiently proved by a transfer inscribed in the register.

(4) The transfer shall be signed by the pledger and by the pledgee and by the secretary of the company.

87. Instrument of transfer

(1) (a) Subject to subsection (5) and notwithstanding any provision in its constitution, a company shall enter a transfer of shares or debentures in the share register or the register of debenture holders where –

(i) in the case of a company which, directly or indirectly, reckons amongst its assets any freehold or leasehold immovable property, a valid instrument of transfer in the form required by section 24 of the Registration Duty Act has been delivered to the company; or

(ii) in any other case, a valid instrument of transfer in the form approved by the Registrar has been delivered to the company.

(b) The company shall forthwith file with the Registrar a certified copy of the instrument of transfer referred to in paragraph (a).

(2) Nothing in subsection (1) shall prejudice any power to register as a shareholder or debenture holder a person to whom the right to any share or debenture has been transmitted by operation of law.

(3) A transfer of the share, debenture or other interest of a deceased shareholder of a company made by his heir or by the Curator shall, subject to any enactment relating to stamp duty or registration dues, be as valid as if he had been such a shareholder at the time of the execution of the instrument of transfer, even if the heir or the Curator is not himself a shareholder.

(4) Before entering a transfer made under subsection (3) in the share register or the register of debenture holders, the directors of the company may require production of proper evidence of the title of the heir or in the case of the Curator, of the vesting order.

(5) Subsection (1) shall not apply to securities traded on a securities exchange .

Amended by [Act No. 22 of 2005];[Act No. 27 of 2012]; [Act No. 27 of 2013]

88. Request of transfer or for entry in register

(1) On the written request of the transferor of any share, debenture or other interest in a company, the company shall enter in the appropriate register 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.

(2) On the written request of the transferor of a share or debenture or other interest in a company, the company shall by written notice require the person having the possession, custody or control of the debenture or share certificate if a certificate has been issued and the instrument of transfer thereof or either of them, to deliver it or them to its registered office, within such period as may be specified in the notice, being not less than 7 nor more than 28 days after the date of the notice, to have the share certificate or debenture cancelled or rectified and the transfer entered in the appropriate register or otherwise dealt with.

(3) Where a person refuses or neglects to comply with a notice under subsection (2) the transferor may apply to the Court to issue a summons for that person to appear

before the Court and show cause why the document mentioned in the notice should not be delivered or produced.

(4) The Court may order the person summoned under subsection (3) to deliver a document referred to in subsection (2) to the company on such terms or conditions as the Court thinks fit.

(5) A list of all share certificates or debentures called for under this section and not delivered shall be exhibited at the registered office of the company and shall be advertised in such newspapers and at such times as the company thinks fit.

89. Notice of refusal to enter transfer in register

Where a company refuses to register a transfer of any share, debenture or other interest in the company, it shall, within 28 days of the date on which the transfer was delivered to it, send to the transferor and to the transferee notice of the refusal and in the case of a public company the reasons for the refusal shall be given in the notice.

90. Certification of transfers

(1) The certification by a company of an instrument of transfer of a share, debenture or other interest in the company shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a prima facie title to the share, debenture or other interest in the transferor named in the instrument of transfer but not as a representation that the transferor has any title to the share, debenture or other interest.

(2) Where a certification is expressed to be limited to 42 days or any longer period from the date of certification, the company and its officers shall not, in the absence of fraud, be liable in respect of the registration of any transfer of a share, debenture or other interest comprised in the certification after expiry of the period so limited or any extension thereof given by the company if the instrument of transfer has not,

within that period been delivered to the company for entry in the appropriate register.

(3) For the purposes of this section -

(a) an instrument of transfer shall be deemed to be certificated if it bears the words "certificate delivered" or words to the like effect;

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

(i) the person issuing the instrument is a person apparently authorized to issue certificated instruments of transfer on the company's behalf;

(ii) the certification is signed by a person apparently authorized to certify transfers on the company's behalf or by any officer of the company so apparently authorized; and

(c) a certification that purports to be authenticated by a person's signature or initials, whether handwritten or not, shall be deemed to be signed by him unless it is shown that the signature or initials were not placed there by him and were not placed there by any other person apparently authorized to use the signature or initials for the purpose of certificating transfers on the company's behalf.

91. Company to maintain share register

(1) A company shall maintain a share register which shall record the shares issued by the company and which shall state -

(a) whether, under the constitution of the company or the terms of issue of the shares, there are any restrictions or limitations on their transfer; and

(b) the place where any document that contains the restrictions or limitations may be inspected.

(2) A public company or subsidiary or holding company of a public company shall maintain in accordance with section 146 of the Companies Act 1984 a register of substantial shareholders in which it shall enter the particulars specified in subsection (3) in respect of every share held by a substantial shareholder or in which directly or indirectly he has an interest.

(3) The share register under subsection (1) shall state, with respect to each class of shares -

(a) (i) the names, in alphabetical order, and the last known address of each person who is, or has within the last 7 years been, a shareholder;

(ii) where the shares are held by a nominee, the names in alphabetical order and the last known addresses of the beneficial owners or the ultimate beneficial owners and the information required under subsection (3A)(a)(iii), giving to the shareholder instructions to exercise a right in relation to a share either directly or through the agency of one or more persons;

(b) the number of shares of that class held by each shareholder within the last 7 years; and

(c) the date of any -

(i) issue of shares to;

(ii) repurchase or redemption of shares from; or

(iii) transfer of shares by or to,

each shareholder within the last 7 years, and in relation to the transfer, the name of the person to or from whom the shares were transferred.

(3A) (a) (i) A company shall, at all times, identify its beneficial owner or ultimate beneficial owner and, where applicable, any nominee.

(ii) A company shall record the information under subparagraph (i) in a separate register.

(iii) The register under subparagraph (ii) shall include the following information –

(A) the full name and usual residential address of the beneficial owner or, in case no natural person is identified or where there is a nominee, the full name and the usual residential address of the nominee, if applicable, and the ultimate beneficial owner;

(B) the National Identification Number or passport number, as applicable;

(C) the citizenship or nationality, as applicable;

(D) an ownership structure identifying the ultimate beneficial owner; and

(E) such other information as may be prescribed.

(b) (i) Every company shall, in such manner as the Registrar may determine, keep a record of the action taken for the purpose of identifying a beneficial owner or an ultimate beneficial owner.

(ii) For the purpose of subparagraph (i), the company shall ensure that the action taken to identify a beneficial owner or an ultimate beneficial owner comprises a written declaration by the beneficial owner or ultimate beneficial owner himself that he is the beneficial owner or ultimate beneficial owner, as the case may be.

(iii) The beneficial owner or ultimate beneficial owner, as the case may be, shall, upon any change in status, notify the company.

(iv) A company incorporated before the commencement of this paragraph shall, not later than 30 June 2026, comply with the requirements of this paragraph.

(c) Every company shall ensure that any record, register or any other information required to be kept under this section shall, at all times, be accurate and up to date and, on request, be made available forthwith to competent authorities.

Added by [Act No. 18 of 2025]

(3B) (a) A company shall keep an updated and accurate record of –

(i) the information referred to in subsections (3)(a)(ii) and (3A)(a);

(ii) action taken to identify a beneficial owner or an ultimate beneficial owner.

(b) Where a company ceases to carry on business, the last directors of the company shall keep the information of paragraph (a) for a period of at least 7 years from the date of such cessation of business.

(c) The information referred to in subsections (3)(a)(ii) and (3A)(a) shall be lodged with the Registrar through the CBRIS or such other electronic system or in such other manner as the Registrar may approve –

(i) at the time of incorporation of a company;

(ii) at the time of registration of a foreign company;

(iii) at the time of registration by way of continuation of a company;

(iv) on filing of the annual return of the company;

(v) in the case of a foreign company, on filing the financial statements of the company;

(vi) upon any change, including transfer, in the shareholding of a company;

(vii) at the time of an issue of shares.

(d) The information referred to in paragraph (c)(vi) and (vii) shall be filed with the Registrar within 14 days from the

date by which any entry or alteration is made in the share register.

(3C) The share register referred to in subsection (1) shall be kept by a company for a period of at least 7 years from the date of the completion of the transaction, act or operation to which it relates.

(3D) (a) A company other than a small private company, which fails to comply with subsection (3)(a)(ii), (3A)(a) or (b), (3B)(a) or (c) or (3C) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 300,000 rupees.

(b) A director or former director of a company, other than a director or former director of a small private company who fails to comply with subsection (3A)(b) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 300,000 rupees.

(c) The Court shall, in addition to any penalty imposed under paragraph (a), order the company to comply with subsection (3)(a)(ii), (3A) or (3B), as the case may be.

(4) An agent may maintain the share register of the company provided that the agent is qualified to be the secretary of a public company in accordance with section 165.

(5) Every company having more than 50 shareholders shall -

(a) unless the share register is in such a form as to constitute in itself an index, keep an index of the names of the shareholders of the company; and

(b) within 14 days from the day on which any alteration is made in the share register, make any necessary alteration in the index.

(6) Notwithstanding subsection (5), where a company has more than 50 shareholders, the Registrar may require the company to keep the share register in such form as the Registrar deems fit.

(7) The index shall contain sufficient indication to enable the particulars of each shareholder to be readily found in the register.

Amended by [Act No. 10 of 2017]; [Act No. 11 of 2018]; [Act No. 13 of 2019] ; [Act No. 5 of 2020]; [Act No. 10 of 2024]; [Act No. 18 of 2025]

92. Place where register kept

(1) Subject to subsection (2), the share register may, if expressly permitted by the constitution, be divided into 2 or more registers kept in different places.

(2) The principal register shall be kept in Mauritius.

(3) Where a share register is divided into 2 or more registers kept at different places -

(a) the company shall, within 14 days of the date on which the share register is divided, by notice in writing inform the Registrar of the places where the registers are kept;

(b) in case the place where a register is kept is altered, the company shall, within 14 days of the alteration, by notice in writing inform the Registrar of the alteration;

(c) a copy of every branch register shall be kept at the same place as the principal register; and

(d) if an entry is made in a branch register, a corresponding entry shall be made within 14 days in the copy of that register kept with the principal register.

(4) In this section -

"principal register", in relation to a company, means -

(a) in case the share register is not divided, the share register;

(b) in case the share register is divided into 2 or more registers,

the register described as the principal register in the last notice sent to the Registrar.

"branch register" means a register other than the principal register.

93. Share register as evidence of legal title

(1) Subject to section 95, the entry of the name of a person in the share register as holder of a share shall be prima facie evidence that legal title to the share is vested in that person.

(2) A company may treat a shareholder as the only person entitled to -

(a) exercise the right to vote attaching to the share;

(b) receive notices;

(c) receive a distribution in respect of the share; and

(d) exercise the other rights and powers attaching to the share.

94. Secretary's duty to supervise share register

(1) The secretary shall take reasonable steps to ensure that the share register is properly kept and that share transfers are promptly entered on it in accordance with section 88.

(2) A secretary who fails to comply with subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees.

Amended by [Act No. 20 of 2002]

95. Power of Court to rectify share register

(1) Where the name of a person is wrongly entered in, or omitted from, the share register of a company, the person aggrieved, or a shareholder, may apply to the Court -

(a) for rectification of the share register;

(b) for compensation for loss sustained; or

(c) for both rectification and compensation.

(2) On an application under this section the Court may order -

(a) rectification of the register;

(b) payment of compensation by the company or a director of the company for any loss sustained; or

(c) rectification and payment of compensation.

(3) On an application under this section, the Court may decide -

(a) any question relating to the entitlement of a person who is a party to the application to have his name entered in, or omitted from, the register; and

(b) any question necessary or expedient to be decided for rectification of the register.

96. Trusts not to be entered on register

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

97. Share certificates

(1) Subject to subsection (2), a public company shall, within 28 days after the issue, or registration of a transfer, of shares in the company, as the case may be, send a share certificate to every holder of those shares stating -

(a) the name of the company;

(b) the class of shares held by that person; and

(c) the number of shares held by that person.

(2) Subsection (1) shall not apply in relation to a company the shares of which have been deposited under a system conducted by a central depository and settlement company approved under the Securities (Central Depository, Clearing and Settlement) Act 1996.

(3) A shareholder in a company, not being a company to which subsection (1) or (2) applies, may apply to the company for a certificate relating to some or all of the shareholder's shares in the company.

(4) On receipt of an application for a share certificate under subsection (3), the company shall, within 28 days after receiving the application -

(a) if the application relates to some but not all of the shares, separate the shares shown in the register as owned by the applicant into separate parcels, one parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares; and

(b) send to the shareholder a certificate stating -

(i) the name of the company;

(ii) the class of shares held by the shareholders; and

(iii) the number of shares held by the shareholder to which the certificate relates.

(5) Notwithstanding section 87, where a share certificate has been issued, a transfer of the shares to which it relates shall not be registered by the company unless the instrument of transfer required by that section is accompanied -

(a) by the share certificate relating to the share; or

(b) by evidence as to its loss or destruction and, if required, an indemnity in a form required by the Board.

(6) Subject to subsection (1), where shares to which a share certificate relates are to be transferred, and the share certificate is sent to the company for registration of the transfer, the share certificate shall be cancelled and no further share certificate shall be issued except at the request of the transferee.

(7) This section shall not apply to an investment company either on issue of a share certificate or on registration of a transfer of shares.

Added by [Act No. 20 of 2002]

98. Loss or destruction of certificates

(1) Subject to subsections (2) and (3), where a certificate or other document of title to a share or a debenture is lost or destroyed, the company shall on application being made by the owner and on payment of a fee specified in item I of the Third Schedule issue a duplicate certificate or document to the owner.

(2) The application shall be accompanied by a written undertaking that where the certificate or document is found, or received by the owner, it shall be returned to the company.

(3) Where the value of the shares or debentures represented by the certificate or document is greater than 10,000 rupees, the directors shall, before accepting an application for the issue of a duplicate certificate or document, require the applicant to furnish such indemnity as the directors consider to be adequate against any loss following on the production of the original certificate or document.

PART IX - SHAREHOLDERS AND THEIR RIGHTS AND OBLIGATIONS

Sub-Part A - Liability of shareholder

99. Meaning of "shareholder"

In this Part -

"shareholder" means -

(a) a person whose name is entered in the share register as the holder for the time being of one or more shares in the company;

(b) until the person's name is entered in the share register, a person named as a shareholder in an application for the registration of a company at the time of incorporation of the company;

(c) until the person's name is entered in the share register, a person who is entitled to have his name entered in the share register, under a registered amalgamation proposal, as a shareholder in an amalgamated company.

100. Liability of shareholders

(1) Subject to the constitution of a company, a shareholder shall not be liable for an obligation of the company by reason only of being a shareholder.

(2) Subject to the constitution of a company, the liability of a shareholder to the company shall be limited to -

(a) any amount unpaid on a share held by the shareholder;

(b) any liability that arises pursuant to section 128(2)(c);

(c) any liability to repay a distribution received by the shareholder to the extent that the distribution is recoverable under section 66;

(d) any liability expressly provided for in the constitution of the company;

(e) any liability under section 101.

(3) Nothing in this section shall affect the liability of a shareholder to a company -

(a) under a contract, including a contract for the issue of shares;

(b) for any delict;

(c) for any breach of a fiduciary duty;

(d) for any other actionable wrong committed by the shareholder; or

(e) in the case of an unlimited company.

101. Liability for calls

(1) Subject to subsection (2), where a share renders its holder liable to calls, or otherwise imposes a liability on its holder, that liability shall attach to the holder of

the share for the time being, and not to a prior holder of the share, whether or not the liability became enforceable before the share was registered in the name of the current holder.

(2) Where -

(a) all or part of the consideration payable in respect of the issue of a share remains unsatisfied; and

(b) the person to whom the share was issued no longer holds that share,

liability in respect of that unsatisfied consideration shall not attach to subsequent holders of the share, but shall remain the liability of the person to whom the share was issued, or of any other person who assumed that liability at the time of issue.

(3) Subject to the constitution of a company, the procedure-for making calls in respect of any money unpaid on shares and the procedure for forfeiture of shares in the event of non-payment of calls shall be the procedure set out in the Fourth Schedule.

102. Shareholders not required to acquire shares by alteration to constitution

Notwithstanding anything in the constitution of the company, a shareholder shall not be bound by an alteration of the constitution of a company that -

(a) requires the shareholder to acquire or hold more shares in the company than the number held on the date the alteration is made; or

(b) increases the liability of the shareholder to the company,

unless the shareholder agrees in writing to be bound by the alteration.

Sub-Part B - Powers of shareholders

103. Exercise of powers reserved to shareholders

Subject to section 105, the powers reserved to the shareholders of a company by this Act or by the constitution of the company shall be exercised only -

(a) at a meeting of shareholders pursuant to section 115 or 116;

(b) by a resolution in lieu of a meeting pursuant to section 117;

(c) by a unanimous resolution; or

(d) by a unanimous shareholder agreement under section 272.

104. Exercise of powers by ordinary resolution

(1) Subject to this Act and the constitution of a company, a power reserved to shareholders may be exercised by an ordinary resolution.

(2) An ordinary resolution shall be a resolution that is approved by a simple majority of the votes of those shareholders entitled to vote and voting on the matter which is the subject of the resolution.

105. Powers exercised by special resolution

(1) Notwithstanding the constitution of a company, where the shareholders exercise a power to -

(a) adopt a constitution or, if it has one, to alter or revoke the company's constitution;

(b) reduce the stated capital of the company under section 62;

(c) approve a major transaction;

(d) approve an amalgamation of the company under section 246;

(e) put the company into liquidation, the power shall be exercised by special resolution.

(2) A special resolution pursuant to subsection (1)(a) to (d) may be rescinded only by a special resolution.

(3) A special resolution pursuant to subsection (1)(e) shall not be rescinded in any circumstances.

(4) At any meeting at which a special resolution is passed, a declaration of the Chairperson that the resolution is so passed, shall, unless a poll is demanded, be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour or against the resolution.

Amended by [Act No. 20 of 2002]; [Act No. 28 of 2004]

106. Unanimous resolution

Any power which the Act or the constitution of a company requires to be exercised by an ordinary resolution or a special resolution may be exercised by way of unanimous resolution.

Amended by [Act No. 20 of 2002]

107. Management review by shareholders

(1) Notwithstanding anything in this Act or the constitution of a company, the Chairperson of any meeting of shareholders shall give the shareholders a reasonable opportunity to discuss and comment on the management of the company.

(2) Notwithstanding anything in this Act or the constitution of a company, a meeting of shareholders may pass a resolution under this section which makes recommendations to the Board on matters affecting the management of the company.

(3) Unless carried as a special resolution or unless the constitution so provides, any recommendation under subsection (2) shall not be binding on the Board.

Sub-Part C - Minority buy-out rights

108. Shareholder may require company to purchase shares

A shareholder may require a company to purchase his shares where –

(a) a special resolution is passed under -

(i) section 105(1)(a) for the purposes of altering the constitution of a company with a view to imposing or removing a restriction on the business or activities of the company; or

(ii) section 105(l)(c) or (d); and

(b) the shareholder -

(i) cast all the votes, attached to shares registered in his name and for which he is the beneficial owner, against the resolution; or

(ii) where the resolution to exercise the power was passed under section 117, did not sign the resolution.

Amended by [Act No. 14 of 2009]

109. Notice requiring purchase of shares

(1) A shareholder of a company who wishes the company to purchase his shares under section 108 shall, within 14 days of -

(a) the passing of the resolution at a meeting of shareholders; or

(b) where the resolution was passed under section 117, the date on which notice of the passing of the resolution is given to the shareholder,

give a written notice to the company requiring the company to purchase those shares.

(2) Upon receipt of a notice under subsection (1), the Board may –

(a) arrange for the purchase of the shares by the company;

(b) arrange for some other person to purchase the shares;

(c) apply to the Court for an order under section 112 or 113; or

(d) before the resolution is implemented, arrange for the resolution to be rescinded in accordance with section 105;

(3) The Board of directors shall, within 28 days of receipt of a notice under subsection (1), give written notice to the shareholder of its decision under subsection (2).

110. Purchase of shares by company

(1) Where the Board of directors agrees under section 109(2)(a) to the purchase of the shares by the company, it shall, within 7 days of issuing notice under section 109(3) -

(a) state a fair and reasonable price for the shares to be acquired; and

(b) give written notice of the price to the shareholder.

(2) A shareholder who considers that the price stated by the Board is not fair and reasonable, shall forthwith, but at any rate, not later than 14 days of receipt of notice under subsection (1) give written notice of objection to the company.

(3) Where the shareholder does not raise an objection under subsection (2), the Company shall, on such date as the company and the shareholder agree or, in the absence of any agreement, as soon as practicable, purchase all the shares at the stated price.

(4) Where the shareholder gives notice of an objection under subsection (2), the company shall -

(a) refer the question of what is a fair and reasonable price to arbitration; and

(b) within 7 days, pay a provisional price in respect of each share equal to the price stated by the Board.

(5) At the time of payment of the provisional price under subsection (4), the shareholder shall -

(a) deliver to the company an executed instrument of transfer of the shares together with any relevant share certificate; or

(b) otherwise take all steps required to transfer the shares to the company.

(6) Where the price determined -

(a) exceeds the provisional price, the company shall forthwith pay the balance owing to the shareholder;

(b) is less than the provisional price paid, the company may recover the excess paid from the shareholder.

(7) A reference to arbitration under this section shall be deemed to be a submission to arbitration for the purposes of the Code de Procédure Civile and the arbitration shall be dealt with in accordance with the Code de Procédure Civile.

(8) The arbitrator shall expeditiously determine a fair and reasonable price for the shares on the day prior to the date on which the vote of the shareholders authorising the action was taken or the date on which written consent of the shareholders without a meeting was obtained excluding any appreciation or depreciation directly or indirectly induced by the action or its proposal, and that price shall be binding on the company and the shareholder for all purposes.

(9) In the case of shares which are listed on a securities exchange the arbitrator shall determine the price for the shares as being the price at which such shares are traded on the securities exchange as at the close of business on the day prior to the date on which the vote of shareholders authorizing the action was taken or the date on which written consent of shareholders without a meeting was obtained, excluding any appreciation or depreciation directly or indirectly induced by the action or its proposal, and that value shall be binding on the company and the shareholder for all purposes.

Amended by [Act No. 22 of 2005]

(10) The arbitrator may award interest on any balance payable or in excess to be repaid under subsection (6) at such rate as he thinks fit having regard to whether the provisional price paid or the reference to arbitration, as the case may be, was reasonable.

(11) Where -

(a) the company fails to refer a question to arbitration in accordance with subsection (4); or

(b) the arbitrator to whom the matter is referred by the company is not independent of the company, or is not suitably qualified to conduct the arbitration,

the shareholder who has given a notice of objection under subsection (2) may apply to a Judge in Chambers to appoint an arbitrator, and the Judge may appoint such person as it thinks fit to act as arbitrator for the purposes of this section.

(12) A purchase of shares by a company under this section -

(a) shall not be a distribution for the purposes of section 61;

(b) shall be deemed to be a distribution for the purposes of section 66(1) and (3).

111. Purchase of shares by third party

(1) Section 110 shall apply to the purchase of shares by a person with whom the company has entered into an arrangement for purchase in accordance with section 109(2)(b) subject to such modifications as may be necessary, and, in particular, as if references in that section to the Board and the company were references to that person.

(2) Every holder of shares that are to be purchased in accordance with the arrangement shall be indemnified by the company in respect of loss suffered by reason of the failure by the person who has agreed to purchase the shares to purchase them at the price nominated or fixed by arbitration, as the case may be.

112. Court may grant exemption

(1) A company to which a notice has been given under section 109 may apply to the Court for an order exempting it from the obligation to purchase the, shares to which the notice relates, on the grounds that -

(a) the purchase would be disproportionately damaging to the company;

(b) the company cannot reasonably be required to finance the purchase; or

(c) it would not be just and equitable to require the company to purchase the shares.

(2) On an application under this section, the Court may make an order exempting the company from the obligation to purchase the shares, and may make any other order it thinks fit, including an order -

(a) setting aside a resolution of the shareholders;

(b) directing the company to take, or refrain from taking, any action specified in the order;

(c) requiring the company to pay compensation to the shareholders affected; or

(d) that the company be put into liquidation.

(3) The Court shall not make an order under subsection (2) on the grounds set out in subsection (1)(a) or (b) unless it is satisfied that the company has made reasonable efforts to arrange for another person to purchase the shares in accordance with section 109(2)(b).

113. Court may grant exemption where company insolvent

(1) The company shall apply to the Court for an Order exempting it from the obligation to purchase its shares, where -

(a) a notice is given to a company under section 109;

(b) the Board has resolved that the purchase by the company of the shares to which the notice relates would result in it failing to satisfy the solvency test; and

(c) the company has, following reasonable efforts to do so, been unable to arrange for the shares to be purchased by another person in accordance with section 109(2)(b).

(2) Where the Court is satisfied that the purchase of the shares would result in the company failing to satisfy the solvency test and the company has made reasonable efforts to arrange for the shares to he purchased by another person in accordance with section 109(2)(b), the Court may make -

(a) an order exempting the company from the obligation to purchase the shares;

(b) an order suspending the obligation to purchase the shares; or

(c) such other order as it thinks fit, including any order referred to in section 112(2).

(3) For the purposes of this section, the stated capital of a company shall not be taken into account in determining whether the company shall, after the purchase, fail to satisfy the solvency test.

(4) Notwithstanding subsection (3), where the company has entered into an agreement with a shareholder under section 110(3), the stated capital shall be taken into account to the extent required by the agreement unless the shareholder's prior consent is obtained.

Sub-Part D - Variation of rights

114. Variation of rights

(1) Where the share capital of a company is divided into different classes of shares, a company shall not take any action which varies the rights attached to a class of

shares unless that variation is approved by a special resolution, or by consent in writing of the holders of 75 per cent of the shares of that class.

(2) Where the variation of rights attached to a class of shares is approved under subsection (1) and the company becomes entitled to take the action concerned, the holder of a share of that class, who did not consent to or cast any votes in favour of the resolution for the variation, may apply to the Court for an order under section 178, or may require the company to purchase those shares in accordance with section 108.

(3) In this section -

"class" means a class of shares having attached to the shares the same rights, privileges: limitations and conditions;

"variation" includes abrogation and the expression "varied" shall be construed accordingly.

(4) A resolution which would have the effect of -

(a) diminishing the proportion of the total votes exercisable at a meeting of shareholders of the company by the holders of the existing shares of a class; or

(b) reducing the proportion of the dividends or distributions payable at any time to the holders of the existing shares of a class,

shall be deemed to be a variation of the rights of the class.

(5) The company shall within one month from the date of the consent or resolution referred to in subsection (1) file with the Registrar in a form approved by him the particulars of such consent or resolution.

Sub-Part E - Meetings of shareholders

115. Annual meeting of shareholders

(1) Subject to subsection (2), the Board of directors shall call an annual meeting of shareholders to be held -

(a) not more than once in each year;

(b) not later than 6 months after the balance sheet date of the company or such other period as the Registrar may determine; and

(c) not later than 15 months after the previous annual meeting.

(1A) **Deleted by [Act No. 15 of 2022]**

(2) A company may not hold its first annual meeting in the calendar year of its incorporation but shall hold that meeting within 18 months of its incorporation.

(3) The company shall hold the meeting on the date on which it is called to be held.

(4) The business to be transacted at an annual meeting shall, unless already dealt with by the company, include -

(a) the consideration and adoption of the financial statements;

(b) the receiving of any auditor's report;

(c) the consideration of the annual report;

(d) the appointment of any directors whose appointment on an annual or rotational basis is required by the constitution of the company; and

(e) the appointment of any auditor pursuant to section 200.

(5) Where the financial statements are not approved at the annual meeting, they shall be presented at a further special meeting called by the Board.

Amended by [Act No. 18 of 2008]; [Act No. 1 of 2020]; [Act No. 15 of 2022]

116. Special meeting of shareholders

A special meeting of shareholders entitled to vote on an issue –

(a) may be called at any time by -

(i) the Board of directors; or

(ii) a person who is authorized by the constitution to call the meeting;

(b) shall be called by the Board on the written request of shareholders holding shares carrying together not less than 5 per cent of the voting rights entitled to be exercised on the issue.

117. Resolution in lieu of meeting

(1) Subject to subsections (2) and (3), a resolution in writing, signed by shareholders, shall be valid as if it has been passed at a meeting of those shareholders, where the resolution is signed by shareholders who –

(a) are entitled to vote on that resolution at a meeting of shareholders; and

(b) hold not less than 75 per cent of the votes entitled to be cast on that resolution, or such percentage above 75 per cent as is required under the constitution.

(2) Where a resolution in writing -

(a) relates to a matter that is required by this Act or by the constitution to he decided at a meeting of the shareholders of a company; and

(b) is signed by the shareholders specified in subsection (3),

it shall be deemed to be made in accordance with this Act or the constitution of the Book company.

(3) For the purposes of subsection (2)(b), the shareholders shall be the shareholders referred to in subsection (1).

(4) For the purposes of subsection (2), any resolution may consist of one or more documents in similar form (including letters, facsimiles, electronic mail, or other similar means of communication) each signed or assented to by or on behalf of one or more of the shareholders specified in subsection (3).

(5) It shall not be necessary for a private company to hold an annual meeting of shareholders under section 115 where everything required to be done at that meeting, by resolution or otherwise, is done by resolution in accordance with subsections (2) and (3).

(6) Within 7 days of a resolution being passed under this section, the company shall send a copy of the resolution to every shareholder who did not sign the resolution or on whose behalf the resolution was not signed.

(7) A resolution may be signed under subsection (1) or (2) without any prior notice being given to shareholders.

Amended by [Act No. 27 of 2012]

118. Court may call meeting of shareholders

(1) Where the Court is satisfied that -

(a) it is impracticable to call or conduct a meeting of shareholders in the manner prescribed by this Act or the constitution of the company; or

(b) it is in the interests of a company that a meeting of shareholders be held,

the Court may order a meeting of shareholders to be held or conducted in such manner as the Court directs.

(2) For the purposes of subsection (1), an application to the Court may be made by a director, a shareholder or a creditor of the company.

(3) The Court may make an order on such terms as it thinks fit with regard to the costs of conducting the meeting and security for the costs.

(4) Subject to subsection (3), the Court may in addition give such directions as it thinks fit, including the direction that the heir of any deceased member may exercise all or any of the powers that the deceased member could have exercised if he were present at the meeting.

119. Proceedings at meetings

The provisions specified in the Fifth Schedule shall govern the proceedings at meetings of shareholders of a company except to the extent that the constitution of the company makes provision for the matters that are expressed in that Schedule to be subject to the constitution of the company.

Sub-Part F - Ascertaining shareholders

120. Shareholders entitled to receive distributions, attend meetings and exercise rights

(1) The shareholders who are entitled –

(a) to receive distributions;

(b) to exercise pre-emptive rights to acquire shares in accordance with section 55; or

(c) to exercise any other right or receive any other benefit under this Act or the constitution,

shall be -

(i) where the Board fixes a date for that purpose, those shareholders whose names are registered in the share register on that date; or

(ii) where the Board does not fix a date for that purpose, those shareholders whose names are registered in the share register on the day on which the Board passes the resolution concerned.

(2) Where a date is fixed under subsection (1), that date shall not precede by more than 28 days the date on which the proposed action is taken.

(3) The shareholders who are entitled to receive notice of a meeting of shareholders shall be -

(a) where the Board of directors fixes a date for the purpose, those shareholders whose names are registered in the share register on that date;

(b) where the Board of directors does not fix a date for the purpose, those shareholders whose names are registered in the share register at the close of business on the day immediately preceding the day on which the notice is given.

(4) where a date is fixed under subsection (3), that date shall not precede by more than 30 days or less than 15 days the date on which the meeting is held.

PART X - DEBENTURES AND REGISTRATION OF CRARGES

121. Debenture holders' representative

(1) Where a company issues or agrees to issue debentures of the same class to more than 25 persons, or to any one or more persons with a view to the debentures or any of them being offered for sale to more than 25 persons, the company shall before issuing any of the debentures -

(a) sign an agency deed; and

(b) procure the signature to the deed by a person qualified to act as a debenture holders' representative.

(2) For the purposes of this section, debentures shall not be deemed to be of the same class where -

(a) they do not rank equally for repayment when any security created by the debenture is enforced or the company is wound up; or

(b) different rights attach to them in respect of -

(i) the rate of, or dates for, payment of interest;

(ii) the dates when, or the instalments by which, the principal of the debentures 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 shall be selected by the company for repayment at different dates during that period by drawings, ballot or otherwise;

(iii) any right to subscribe for or convert the debentures into shares or other debentures of the company or any other company or corporation; or

(iv) the powers of the debenture holders to realise any security.

(3) For the purposes of this section -

(a) the agency deed shall not cover more than one class of debentures;

(b) the provisions specified in the Sixth Schedule shall apply to -

(i) the qualification, appointment and removal of a debenture holders' representative;

(ii) the naming of a successor to a debenture holders' representative;

(iii) the matters to be set out in an agency deed;

(iv) the powers of the debenture holders' representative;

(v) the right of the debenture holders' representative to obtain information from the borrowing company;

(vi) meetings of debenture holders;

(vii) the duties of the debenture holders' representative;

(viii) the repayment of loans or deposits where the purpose stated in a prospectus issued in relation to debentures, is not achieved; or

(ix) the release of the debenture holders' representative.

Amended by [Act No. 4 of 2017]

122. Special powers of Court

The Court may compel any person to take up and pay for any debenture which he has contracted with the company to take up or pay for.

123. Perpetual debentures

Notwithstanding any other enactment, a condition contained in a debenture or in an agency deed for securing a debenture, whether the debenture or agency deed is issued or made before or after the commencement of this Act, shall not be invalid by reason that the debentures are thereby made irredeemable only on the happening of a contingency, however remote, or on the expiration of a period however long.

124. Register of debenture holders

(1) Every company which issues debentures shall at its registered office keep a register of debenture holders which shall contain -

(a) the names and addresses of the debenture holders;

(b) the amount of debentures held by them.

(2) The register shall except when duly closed pursuant to subsection (3), be open to the inspection of a debenture holder or a member.

(3) For the purposes of this section a register shall be deemed to be duly closed if closed in accordance with a provision contained in the articles, the debenture, the debenture stock certificate, the agency deed or any other document relating to or securing the debenture, during such period, not exceeding in the aggregate 30 days in any year, as is specified in the document.

(4) (a) Every company shall, at the request of a debenture holder c)i, a member and on payment of the fee specified in item 2 of the Third Schedule for every page required to be copied, forward to him a copy of the register of debenture holders.

(b) The copy need not include any particulars as to a debenture holder other than his name and address and the debenture held by him.

125. Reissue of redeemed debentures

(1) Where a company has, whether before or after the commencement of this Act, redeemed a debenture, it shall subject to subsection (2) -

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

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

have and be deemed always to have had the power to reissue the debentures by reissuing the same debentures or by issuing other debentures in their place.

(2) The reissue of a debenture or the issue of one debenture in place of another under subsection (1), shall not be regarded as the issue of a new debenture for the purpose of any provision in the constitution or in any contract entered into by the company limiting the amount or number of debentures that may be issued by the company.

(3) After the reissue 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.

(4) Where, whether before or after the commencement of this Act, a company has given a debenture to secure advances on current account or otherwise, the debenture shall not be deemed to have been redeemed by reason that the account of the company with the debenture holder has ceased to be in debit while the debenture remains unsatisfied.

126. Inscription of mortgages

(1) Where a company has decided to issue debentures and to secure their payment by a mortgage or floating charge, the inscription of such mortgage or floating charge shall be valid where the first and last serial numbers of the said debentures are mentioned.

(2) Subject to section 121 and to the Sixth Schedule, the appointment of a debenture holders' representative, with power to require the inscription of a mortgage with an election of domicile and renewal or erasure of such inscription, and generally to take all measures for the protection of the rights of the debenture holders, shall be made in such manner as the company may at the time of the issuing of the said debentures determine.

127. Filing of particulars of charges

(1) Every company shall, within 28 days of the creation by the company of any charge or of making any issue of debentures charged on or affecting any property of the company, file with the Registrar, a statement of the particulars specified in subsection (3) and a copy of the instrument of charge in a form approved by the Registrar.

Amended by [Act No. 15 of 2022]

(2) Where -

(a) a company acquires any property which is subject to a charge referred to in subsection (1), particulars of which would, if it had been created by the company after the acquisition of the property, have been required to be filed;

(b) a registered foreign company has, before registration, created a charge subject to subsection (1), particulars of which would if it had been created by the company while it was registered, have been required to be filed; or

(c) a registered foreign company has before registration acquired any property which is subject to a charge subject to subsection (1) particulars of which would, if it had been created by the company after the acquisition and while it was registered, have been required to be filed,

the company shall, within 28 days after the date on which the acquisition is completed or the date of the registration of the company in Mauritius, as the case may be, cause to be filed with the Registrar a statement of the particulars specified in a form approved by the Registrar.

(3) The particulars required to be given in the statement are -

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

(b) the amount secured by the charge;

(c) a description sufficient to identify the property charted; (d) the name of the person entitled to the charge; and

any prohibition or restriction contained in the instrument creating the charge, or in any agency deed, on the power of the company to create any other charge or issue debentures ranking in priority to or equally with the charge or debentures in respect of which the application is made.

Amended by [Act No. 27 of 2012]

PART XI - DIRECTORS AND THEIR POWERS AND DUTIES

Sub-Part A - Directors and Board of directors

128. Meaning of "Board" and "directors"

(1) For the purposes of this Act, "directors" -

(a) includes a person occupying the position of director of the company by whatever name called; and

(b) includes an alternate director; but

(c) does not include a receivers.

(2) For the purposes of sections 143 to 157 and 160 to 162, "directors" includes -

(a) a person in accordance with whose directions or instructions a person referred to in subsection (1) may be required or is accustomed to act;

(b) a person in accordance with whose directions or instructions the Board of the company may be required or is accustomed to act;

(c) a person who exercises or who is entitled to exercise or who controls or who is entitled to control the exercise of powers which, apart from the constitution of the company, would fall to be exercised by the Board; and

(d) a person to whom a power or duty of the Board has been directly delegated by the Board with that person's consent or acquiescence, or who exercises the power or duty with the consent or acquiescence of the Board.

(3) for the purposes of sections 143 to 157, a director includes a person in accordance with whose directions or instructions a person referred to in subsections (1) and (2) may be required or is accustomed to act in respect of his duties and powers as a director.

(4) Where the constitution of a company confers a power on shareholders which is exercisable by the Board, any shareholder who exercises that power or who takes part in deciding whether to exercise that power shall be deemed, in relation to the exercise of the power or any consideration concerning its exercise, to be a director for the purposes of sections 143, 160 and 162.

(5) Where the constitution of a company requires a director or the Board to exercise or refrain from exercising a power in accordance with a decision or direction of shareholders, any shareholder who takes part in -

(a) the making of any decision that the power should or should not be exercised; or

(b) the making of any decision whether to give a direction,

as the case may be, shall be deemed, in relation to the making any such decision, to be a director for the purposes of sections 143 to 146.

(6) Subsection (2) shall not include a person to the extent that the person acts only in a professional capacity.

(7) In this Act, "Board" or "Board of directors", in relation to a company, means -

(a) the directors of the company where the number is not less than the required quorum acting together as a Board of directors; or

(b) where the company has only one director, that director.

Sub-Part B - Powers of management

129. Management of company

(1) The business and affairs of a company shall be managed by, or under the direction or supervision of, the Board.

(2) The Board shall have all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.

(3) Subsections (1) and (2) shall be subject to any modifications, adaptations, exceptions, or limitations contained in this Act or in the company's constitution.

130. Major transactions

(1) A company shall not enter into a major transaction unless the transaction is -

(a) approved by special resolution; or

(b) contingent on approval by special resolution.

(2) In this section -

"assets" includes property of any kind, whether tangible or intangible;

"major transaction", in relation to a company, means -

(a) the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than 75 per cent of the value of the company's assets before the acquisition;

(b) the disposition of, or an agreement to dispose of, whether contingent or not, assets of the company the value of which is more than 75 per cent of the value of the company's assets before the disposition; or

(c) a transaction that has or is likely to have the effect of the company acquiring rights or interests or incurring obligations or liabilities the value of which is more than 75 per cent of the value of the company's assets before the transaction;

(3) A company shall not enter into a transaction of the kind referred to in subsection (1) which involves the acquisition or disposition or the acquiring of rights, interests or incurring obligations of, in any case, more than half the value of the company's assets unless the transaction is -

(a) approved by ordinary resolution; or

(b) contingent on approval by ordinary resolution,

and the description of a major transaction in subsection (2)(a)(b) and (c) shall, in all respects, apply when determining the nature of such transaction except that "half of the value" shall be applied instead of "75 per cent of the value".

(4) The provisions of subsection (5) shall apply to a transaction under subsection (3) in the same manner as they apply to a major transaction except that "75 per cent of the value "shall be applied instead of "half of the value".

(5) Nothing in paragraph (c) of the definition of "major transaction" in subsection (2) shall apply by reason only of the company giving, or entering into an agreement to give, a charge secured over assets of the company, the value of which is more than 75 per cent of the value of the company's assets for the purpose of securing the repayment of money or the performance of an obligation.

(6) This section shall not apply to a major transaction or a transaction under subsection (3) entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of the property of a company.

(7) No lender or other person dealing with a company shall be concerned to see or inquire whether the conditions of this section have been fulfilled and no debt

incurred or contract entered into with the company by a person dealing with it shall be invalid or ineffectual, except in the case of actual notice to that person, at the time when the debt was incurred or the contract was entered into, that the company was acting in breach of this section.

(8) This section shall not apply to an investment company including an authorised mutual fund.

Added by [Act No. 20 of 2002]

131. Delegation of powers

(1) Subject to any restriction in the constitution of the company, the Board of a company may delegate to a committee of directors, a director or employee of the company, or any other person, any one or more of its powers other than its powers under any section specified in the Seventh Schedule.

(2) A Board that delegates a power under subsection (1) shall be responsible for the exercise of the power by the delegate as if the power had been exercised by the Board, unless the Board -

(a) believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on directors of the company by this Act and the company's constitution; and

(b) has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.

Sub-Part C - Appointment and removal of directors

132. Number of directors

A company shall have at least one director who shall be ordinarily resident in Mauritius.

133. Qualifications of directors

(1) (a) A company shall appoint a natural person as director.

(b) Notwithstanding any provision of this Act, there shall be at least one woman on the Board of a public company.

(ba) Notwithstanding paragraph (b), a public listed company shall have a minimum of 25 per cent of women on its Board.

(c) The Board of directors of a public company shall at all times include at least 2 independent directors.

(2) No person shall be appointed, or hold office, as a director of a company if he is a person who -

(a) is under 18 years of age;

(b) subject to section 138(4) to (7), is, in the case of a public company, over 70 years of age;

(c) is an undischarged bankrupt;

(d) would, but for the repeal of section 117 of the Companies Act 1984, be prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company within the meaning of that Act;

(e) is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under sections 337 or 338;

(f) is not a natural person;

(g) has been adjudged to be of unsound mind;

(2) by virtue of the constitution of a company, does not comply with any qualifications for directors; or

(3) A person who is disqualified from being a director but who acts as a director shall be deemed to be a director for the purposes of a provision of this Act that imposes a duty or an obligation on a director of a company.

Amended by [Act No. 13 of 2019]; [Act No. 7 of 2020]; [Act No. 12 of 2023]

134. Director's comment required

A person shall not be appointed a director of a company unless that person has consented in writing to be a director and certified that he is not disqualified from being appointed or holding office as a director of a company.

135. Appointment of first and subsequent directors

(1) A person named as a director in an application for registration or in an amalgamation proposal shall hold office as a director from the date of registration or the date the amalgamation proposal is effective as the case may be, until that person ceases to hold office as a director in accordance with this Act;

(2) All subsequent directors of a company shall, unless the constitution of the company otherwise provides, be appointed by ordinary resolution.

136. Court may appoint directors

(1) Where -

(a) there are no directors of a company, or the number of directors is less than the quorum required for a meeting of the Board; and

(b) it is not possible or practicable to appoint directors in accordance with the company constitution or under section 140(3),

a shareholder or creditor of the company may apply to the Court to appoint one or more persons as directors of the company, and the Court may make an appointment if it considers that it is in the interests of the company to do so.

(2) An appointment shall be made on such terms and conditions as the Court thinks fit.

137. Appointment of directors to be voted on individually

(1) Subject to the constitution of the company, the shareholders of a company shall not vote on a resolution to appoint a director of the company unless -

(a) the resolution is in respect of the appointment of one director; or

(b) where the resolution is a single resolution for the appointment of 2 or more persons as directors of the company, a separate resolution that it be so voted on has first passed without a vote being cast against it.

(2) A resolution in contravention of subsection (1) shall be void even though no objection was taken at the time it was passed.

(3) Subsection (2) shall not limit the operation of section 141.

(4) No provision for the automatic reappointment of retiring directors in default of another appointment shall apply on the passing of a resolution in contravention of subsection (1).

(5) Nothing in this section shall prevent the election of 2 or more directors by ballot or poll.

138. Removal of directors

(1) Notwithstanding anything in its constitution or in any agreement between it and a director, a director of a public company may be removed from office by an ordinary resolution passed at a meeting called for the purpose that include the removal of a director.

(2) Subject to the constitution of a company, a director of a private company may be removed from office by special resolution passed at a meeting called for the purpose that include the removal of the director.

(3) The notice of meeting shall state that the purpose of the meeting is the removal of the director.

(4) The office of director of a public company or of a subsidiary of a public company shall become vacant at the conclusion of the annual meeting commencing next after the director attains the age of 70 years.

(5) Where the office of director has become vacant under subsection (4), no provision for the automatic reappointment of retiring directors in default of another appointment shall apply to that director.

(6) Notwithstanding anything in this section, a person of or over the age of 70 years may -

(a) by an ordinary resolution of which no shorter notice is given than that required to be given for the holding of a meeting of shareholders, be appointed or re-appointed as a director of that company to hold office until the next annual meeting of the company or be authorised to continue to hold office as a director until the next annual meeting of the company; or

(b) in the case of an application for incorporation of a public company, be appointed with the consent in writing of the proposed shareholders.

Amended by [Act No. 15 of 2006]

(7) Nothing in this section shall limit or affect the operation of any provision in the constitution of a company preventing any person from being appointed a director or requiring any director to vacate his office at any age below 70 years.

(8) The provisions of the constitution of a, company relating to the rotation and retirement of directors shall not apply to a director who is appointed or re-appointed pursuant to subsections (5) to (7) but such provisions of the constitution shall continue to apply to all other directors of the company.

139. Director ceasing to hold office

(1) The office of director of a company shall be vacated if the person holding that office -

(a) resigns in accordance with subsection (2);

(b) is removed from office in accordance with this Act or the constitution of the company;

(c) becomes disqualified from being a director pursuant to section 133;

(d) becomes disqualified from being a director pursuant to subsection (4);

(e) dies; or

(f) otherwise vacates office in accordance with the constitution of the company.

(2) A director of a company may resign office by signing a written notice of resignation and delivering it to the address for service of the company.

(3) A notice under subsection (2) shall be effective when it is received at that address or at a later time specified in the notice.

(4) Notwithstanding the, vacation of office, a person who held office as a director shall remain liable under the provisions of this Act that imposes liabilities on directors in relation to acts and omissions and decisions made while that person was a director.

140. Resignation or death of last remaining director

(1) Where a company has only one director, that director shall not resign office until that director has called a meeting of shareholders to receive notice of the resignation, and to appoint one or more new directors.

(2) A notice of resignation given by the sole director of a company shall not take effect, notwithstanding its terms, until the date of the meeting of shareholder, called in accordance with subsection (1)

(2A) (a) The meeting of shareholders for considering the resignation of the last remaining director and the appointment of one or more new directors shall be held within one month of the intention to resign or from the date of the death of the last remaining director, or within one month of the appointment of one or more new directors, as the case may be.

(b) Where, in relation to a company, paragraph (a) has not been complied with, the Registrar may remove that company from the Register.

(3) Every company which for a continuous period of 6 months has been a one person company shall, if it has not already made the nomination at the time of incorporation, file with the Registrar a notice nominating a to be the secretary of the company in the event of the death of the sole shareholder and director.

(4) A notice under subsection (3) shall state the full name, usual residential address, service address and occupation of the person nominated and shall be accompanied by the consent to act in writing signed by that person.

(5) Notwithstanding section 166, the person nominated by a one person company pursuant to subsection (3) shall assume office as secretary of the company upon the death of the sole shareholder and director with the responsibility of calling as soon as practicable a meeting of the heirs or other personal representative of the deceased for the purpose of appointing a new director or directors.

(6) The secretary shall resign from office at the meeting referred to in subsection (5) and during the interim period until the meeting is called, shall attend to the filing of any returns that may be required from the company.

(7) The secretary shall be entitled to be indemnified by the company in relation to any reasonable costs and expenses of acting together with the payment of such fee as shall be agreed in writing with the company at the time of appointment or at any subsequent time.

(8) Where a person who is the only director aid shareholder of a private company dies, the heirs, or where lie leaves no heir, the Curator of Vacant Estates, subject to the Curatelle Act, may appoint a director.

(9) Where the heirs fail to appoint a director within 3 months of the death of the last director, the Registrar may apply to the Court for the appointment of a fit and proper person to art as director, until the appointment of a director by the heirs.

(10) Where a person who is the only director and shareholder of a private company is unable to manage the affair of the company by reason of his mental incapacity, the guardian appointed under the Code Civil Mauricien may act as director or appoint a person as director.

Amended by [Act No. 27 of 2012]; [Act No. 12 of 2023]; [Act No. 11 of 2024]

141. Validity of director's acts

The acts of a director shall be valid even though -

(a) the director's appointment was defective; or

(b) the director is not qualified for appointment.

142. Notice of change of directors and secretaries

(1) The Board shall deliver or cause to be delivered to the Registrar for registration notice in an approved form of -

(a) any change in the directors or the secretary of a company or person nominated pursuant to section 140 (3);

(b) any change in the name, the usual residential address, the service address

or other particulars of a director or secretary of a company or person nominated pursuant to section 140(3); or

(c) any notification received under sections 139(3) and 167(1).

(2) A notice under subsection (1) shall -

(a) specify the date of the change;

(b) include, the full name, the usual residential address and the service address of every person who is a director or secretary of the company or person nominated under section 140(3) from the date of the notice;

(c) in the case of the appointment of a new director or secretary, or person nominated under section 140(3), be accompanied by the forms of consent and certificate required pursuant to sections 134 and 163(2); and

(d) be delivered to the Registrar within 28 days of -

(i) in the case of an appointment or resignation of a director or secretary, the date on which the change occurs;

(ii) in the case of the death of a director or secretary or a change in the name usual residential address or service address, of a director or secretary, so of the date on which the company becomes aware of the change.

(3) Where the Board fails to comply with this section, every director and any secretary of the company shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees.

Amended by [Act No. 20 of 2002]; [Act No. 27 of 2012]; [Act No. 11 of 2024]

Sub-Part D - Duties of directors

143. Duty of directors to act, in good faith and in best interests of company

(1) Subject to this section, the director of a company shall -

(a) exercise their powers in accordance with this Act and with the limits and subject to the conditions and restrictions established by the company's constitution;

(b) obtain the authorization of a meeting of shareholders before doing any act or entering into any transaction for which the authorization or consent of a

meeting of shareholders is required by this Act or by the company's constitution;

(c) exercise their powers honestly in good faith in the best interests of the company and for the respective purposes6for which such powers are explicitly or impliedly conferred;

(d) exercise the degree of care, diligence and skill required by section 160;

(e) not agree to the company incurring any obligation unless the director believes at that time, on reasonable grounds that the company shall be able to perform the obligation when it is required to do so;

(f) account to the company for any monetary gain, or the value of any other gain or advantage, obtained by them in connection with the exercise of their powers, or by reason of their position as directors of the company, except remuneration, pensions provisions and compensation for loss of office in respect of their directorships of any company which are dealt with in accordance with section 159;

(g) not make use of or disclose any confidential information received by them on behalf of the company as directors otherwise than as permitted and in accordance with section 153;

(h) not compete with the company or become a director or officer of a competing company, unless it is approved by the company under section 146;

(i) where directors are interested in a transaction to which the company is a party, disclose such interest pursuant to sections 147 and 148;

(j) not use any assets of the company for any illegal purpose or purpose in breach of paragraphs (a) and (c), and not do, or knowingly allow to be done,

anything by which the company's assets may be damaged or lost, otherwise than in the ordinary course of carrying or its business;

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

(l) attend meetings of the directors of the company with reasonable regularity, unless prevented from so doing by illness or other reasonable excuse;

(m) keep proper accounting records in accordance with sections 193 and 194 and make such records available for inspection in accordance with sections 125 and 226; and

(n) at all times act in a manner which is not, oppressive, unfairly discriminatory, or unfairly prejudicial to shareholders.

(2) A director of a company that is a wholly-owned subsidiary may, when exercising powers or performing duties as a director, if expressly permitted to do so by the constitution of the company, act in a manner which he believes is in the best interests of that company's holding company even though it may not be in the best interests of the company.

(3) A director of a company that is a subsidiary, other than a wholly-owned subsidiary, may, when exercising powers or performing duties as a director, if expressly permitted to do so by the constitution of the company and with the prior agreement of the shareholders (other than its holding company), act in a manner which he believes is in the best interests of that company's holding company even though it may not be in the best interests of the company.

(4) A director of a company incorporated to carry out a joint venture between the shareholders may, when exercising powers or performing duties as a director in connection with the carrying out of the joint venture, if expressly permitted to do so by the constitution of the company, act in a manner which he believes is in the best interests of a shareholder or Shareholders, even though it may not be in the best interests of the company.

(5) (a) Subject to paragraph (b), the duties imposed by this section shall be owed to the company, and not to the shareholders, debenture holders or creditors of the company.

(b) Without prejudice to any other action with regard to the same matter that is lawfully available, including an action under section 170, any member or debenture holder, as the case may be, may apply to the Court for -

(i) a declaration that an act of transaction, or proposed act or transaction, by the directors or any director or former director constitutes a breach of any of their duties under this Act;

(ii) an injunction to restrain the directors or any director or former director from doing any proposed act or transaction in breach of their duties under this Act.

(6) Any director who fails to comply with subsection (1), (2), (3), (4) or (5) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 12 months.

Amended by [Act No. 7 of 2020]

144. Exercise of powers in relation to employees

(1) Section 143 shall not limit the power of a director to make provision for the benefit of employees of the company in connection with -

(a) the company ceasing to carry on the whole or part of its business; or

(b) the setting up of an employees' share scheme.

(1A) For the purposes of subsection (1)(b), an employees' share scheme shall be set up in such manner as may be prescribed.

(1B) A copy of the employees' share scheme shall be filed with the Registrar within 28 days of its approval by the board of directors.

(2) In subsection (1) -

"employees" includes former employees and the dependents of employees or former employees but does not include an employee or former employee who is or was a director of the company;

"company" includes a subsidiary of a company.

Amended by [Act No. 28 of 2004]

145. Use of information and advice

(1) Subject to subsection (2), a director of a company, when exercising powers or performing duties as a director, may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by any -

(a) employee of the company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;

(b) professional adviser or expert In relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence;

(c) other director or committee of directors upon which the director did not serve in relation to matters within the director's or committee's designated authority

(2) Subsection (1) shall apply to a director only where the director –

(a) acts in good faith;

(b) makes proper inquiry where the need for inquiry is indicated by the circumstances; and

(c) has no knowledge that such reliance is unwarranted.

146. Approval of company

(1) The approval of the company for the purposes of section 143(l)(h) and of section 153(l)(d) shall require that after full disclosure of all material facts, including the nature and extent of any interest of the director, the transaction has been specifically authorised by either -

(a) a form of resolution which has been circulated to all the members and is signed by three-fourths of all members entitled to attend and vote at a meeting of shareholders; or

(b) an ordinary resolution of the company passed at a meeting of shareholders at which neither the director concerned nor the holder of any share in which he is beneficially interested, either directly or indirectly, has voted as member on such resolution, or where such person has voted, such vote or votes are not counted.

(2) Subject to subsection (3) the approval of the company in accordance with subsection (1) may be given either before or after the occurrence of the transaction to which it relates.

(3) A resolution approving a transaction or transactions or series of related transactions which has already taken place shall not be effective for purposes of subsection (1) unless it was signed or passed not later than 15 months after the date when the transaction or the first of the series of transactions took place.

Sub-Part E - Transactions involving self-interest

147. Meaning of "interested"

(1) Subject to subsection (2), a director of a company shall be interested in a transaction to which the company is a party where the director -

(a) is a party to, or shall or may derive a material financial benefit from the transaction;

(b) has a material financial interest in or with another party to the transaction;

(c) is a director, officer, or trustee of another party to, or person who shall or may derive a material financial benefit from, the transaction, Pot being a party or person that is -

(i) the company's holding company being a holding company of which the company is a wholly-owned subsidiary;

(ii) a wholly-owned subsidiary of the company; or

(iii) a wholly-owned subsidiary of a holding company of which the company is also a wholly-owned subsidiary;

(d) is the parent, child or spouse of another party to, or person who shall or may derive a material financial benefit from, the transaction; or

(e) is otherwise directly or indirectly materially interested in the transaction.

(2) A director of a company shall not be deemed to be interested in a transaction to which the company is a party if the transaction comprises only the giving by the company of security to a third party and at the request of that third party which has no connection with the director and in respect of a debt or obligation of the company for which the director or another person has personally assumed responsibility in whole or in part under a guarantee, indemnity, or by the deposit of a security.

148. Disclosure of interest

(1) A director of a company shall, forthwith after becoming aware of the fact that he is interested in a transaction or proposed transaction with the company, cause to be entered in the interests register where it has one, and, where the company has mote than one director, disclose to the Board of the company -

(a) where the monetary value of the director's interest is able to be quantified, the nature and monetary value of that interest; or

(b) where the monetary value of the director's interest cannot be quantified, the nature and extent of that interest.

(2) A director of a company shall not be required to comply with subsection (1) where -

(a) the transaction or proposed transaction is between the director and the company; and

(b) the transaction or proposed transaction is or is to be entered into in the ordinary course of the company's business and on usual terms and conditions.

(3) For the purposes of subsection (1), a general notice entered in the interests register or disclosed to the Board to the effect that a director is a shareholder, director, officer or trustee of another named company or other person and is to be regarded

as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.

(4) A failure by a director to comply with subsection (1) shall not affect the validity of a transaction entered into by the company or the director.

(5) Any director who fails to comply with subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100, 000 rupees and to imprisonment for a term not exceeding one year.

Amended by [Act No. 11 of 2018]

149. Avoidance of transactions

(1) A transaction entered into by the company in which a director of the company is interested may be avoided by the company at any time before the expiration of 6 months after the transaction is disclosed to all the shareholders whether by means of the company's annual report or otherwise.

(2) A transaction shall not be avoided where the company receives fair value under it.

(3) For the purposes of subsection (2), the question as to whether a company receives a fair value under a transaction shall be determined on the basis of the information known to the company and to the interested director at the time the transaction is entered into.

(4) Where a transaction is entered into by the company in the ordinary course of its business and on usual terms and conditions, the company shall be presumed to have received a fair value under the transaction.

(5) For the purposes of this section -

(a) a person seeking to uphold a transaction and who knew or ought to have known of the director's interest at the time the transaction was entered into shall have the onus of establishing a fair value; and

(b) in any other case, the company shall have the onus of establishing that it did not receive a fair value.

(6) A transaction in which a director is interested shall only be avoided on the ground of the director's interest in accordance with this section or the company's constitution.

150. Effect on third parties

The avoidance of a transaction under section 149 shall not affect the title or interest of a person in or to property which that person has acquired where the property was acquired -

(a) from a person other than the company;

(b) for valuable consideration; and

(c) without knowledge of the circumstances of the transaction under which the person referred to in paragraph (a) acquired the property from the company.

151. Application of sections 149 and 150 in certain cases

Sections 149 and 150 shall not apply in relation to -

(a) remuneration or any other benefit given to a director in accordance with section 159; or

(b) an indemnity given or insurance provided in accordance with section 161.

152. Interested director may vote

(1) Subject to subsection (2) and to the constitution of the company, a director of a company who is interested in a transaction entered into, or to be entered into, by the company, may -

(a) in the case of a public company, not vote on any matter relating to the transaction, and if he does vote, his vote shall not be counted;

(b) in the case of a private company, vote on any matter relating to the transaction provided he discloses his interest under section 148;

(c) attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purpose of a quorum;

(d) sign a document relating to the transaction on behalf of the company; and

(e) do any other thing in his capacity as a director in relation to the transaction,

as if the director were not interested in the transaction.

(3) This section shall not apply to a transaction to which section 146 applies.

153. Use of company information

(1) A director of a company who has information in his capacity as a director or employee of the company, being information that would not otherwise be available to him, shall not disclose that information to any person, or make use of or act on the information, except -

(a) for the purposes of the company;

(b) as required by law;

(c) in accordance with subsection (2); or

(d) in any other circumstances authorized by the constitution, or approved by the company under section 146.

(2) A director of a company may, if authorized by the Board under subsection (3), make use of, or act on information or disclose information to -

(a) a person whose interests the director represents; or

(b) a person in accordance with whose directions or instructions the director may be required or is accustomed to act in relation to the director's powers and duties,

subject to the director entering the particulars of the authorization and the name of the person to whom it is disclosed in the interests register where it has one.

(3) The Board may authorize a director to disclose, make use of, or act on information where it is satisfied that to do so is not likely to prejudice the company.

(4) Any monetary gain made by a director from the use of information which a director has in his capacity as a director shall be accounted for to the company.

154. Meaning of "relevant interest"

(1) For the purposes of section 155, a director of a company has a relevant interest in a share issued by a company (whether or not the director is registered in the share register as (be holder of it) if the director -

(a) is a beneficial owner of the share;

(b) has the power to exercise any right to vote attached to the share;

(c) has the power to control the exercise of any right to vote attached to the share;

(d) has the power to acquire or dispose of the share;

(e) has the power to control the acquisitions or disposition of the share by another person; or

(f) under, or by virtue of, any trust, agreement, arrangement or understanding relating to the share (whether or hot that person is a party to it -

(i) may at any time have the power to exercise any right to vote attached to the share;

(ii) may at any time have the power to control the exercise of any right to vote attached to the share;

(iii) may at any time have the power to acquire or dispose of the share; or

(iv) may at any time have the power to control the acquisition or disposition of that share by another person.

(2) Where a person would (if that person were a director of the company have a relevant interest in a share by virtue of subsection (1) and -

(a) that person or its directors are accustomed or under an obligation, whether legally enforceable or not, to act in accordance with the directions, instructions, or wishes of a director of the company in relation to -

(i) the exercise of the right to vote attached to the share;

(ii) the control of the exercise of any right to vote attached to the share;

(iii) the acquisition or disposition of the share; or

(iv) the exercise of the power to control the acquisition or disposition of the share by another person;

(b) a director of the company has the power to exercise the right to vote attached to 20 percent or more of the shares of that person;

(c) a director of the company has the power to control the exercise of the right to vote attached to 20 percent or more of the, shares of that person;

(d) a director of the company has the power to acquire or dispose of 20 percent or more of the shares of that person; or

(e) a director of the company has the power to control the acquisition or disposition of 20 percent or more of the shares of that person,

that director has a relevant interest in the share.

(3) A person who has, or may have, a power referred to in any of the paragraphs (b) to (f) of subsection (1), has a relevant interest in a share regardless of whether the power -

(a) is expressed or implied;

(b) is direct or indirect;

(c) is legally enforceable or not;

(d) is related to a particular share or not;

(e) is subject to restraint or restriction or is capable of being made subject to restraint or restriction;

(f) is exercisable presently or in the future;

(g) is exercisable on the fulfillment of a condition;

(h) is exercisable alone or jointly with another person or persons

(4) A power referred to in subsection (1) exercisable jointly with another person or persons is deemed to be exercisable by either or any of those persons.

(4) A reference to a power includes a reference to a power that arises from or is capable of being exercised as the result of, a breach Of any, trust, agreement, arrangement, or understanding, or any of them, whether or not it is legally enforceable.

155. Relevant interests to be disregarded in certain cases

(1) For the purposes of section 156, no account shall be taken of a relevant interest of a person in a share if -

(a) the ordinary business of the person who has the relevant interest consists of, or includes the lending of money or the provision of financial services, or both, and that person has the relevant interest only as security given for the purposes of a transaction entered into in the ordinary course of the business of that person;

(b) that person has the relevant interest by reason only of acting for another person to acquire or dispose of that share on behalf of the other person in the ordinary course of business of a licensed investment dealer;
Amended by [Act No. 22 of 2005]

(c) that person has the relevant interest solely by reason of being appointed as a proxy to vote at a particular meeting of members, or of a class of members, of the company and the instrument of that person's appointment is produced before the start of the meeting in accordance with paragraph 6(4) of the Fifth Schedule, or by a time specified in the company’s constitution, as the case may be;

(d) that person -

(i) is a trustee corporation or a nominee company; and

(ii) has the relevant interest by reason only of acting for another person in the ordinary course of business of that trustee corporation or nominee company; or

(e) the person has the relevant interest by reason only that the person is a bate trustee of a trust to which the share is subject.

(2) For the purposes of subsection (1)(d), a trustee corporation is a collective investment scheme authorised under the Securities Act 2005
Amended by [Act No. 22 of 2005]

(3) For the purposes of subsection (1)(e), a trustee may be a bare trustee notwithstanding that he is entitled as a trustee to be remunerated out of the income or property of the trust.

Amended by [Act No. 20 of 2002]

156. Disclosure of share dealing by directors

(1) A person who -

(a) on the coming into operation of this section, is a director of a public company; or

(b) becomes a director of a public company,

and who has a relevant interest in any shares issued by the company shall forthwith -

(i) disclose to the Board the number and class of shares in which the relevant interest is held and the nature of the relevant interest; and

(ii) ensure that the particulars disclosed to the Board under paragraph (2)(a) are entered in the interests register.

(2) A director of a public company who acquires or disposes of a relevant interest in shares issued by the company shall forthwith, after the acquisition or disposition -

(a) disclose to the Board -

(i) the number and class of shares in which the relevant interest has been acquired or the number and class of shares in which the relevant interest was disposed of, as the case may be;

(ii) the nature of the relevant interest;

(iii) the consideration paid or received; and

(iv) the date of the acquisition or disposition; and

(b) ensure that the particular disclosed to the Board under paragraph (a) are entered in the interests register.

157. Restrictions on share dealing by directors

(1) Where a director of a company in his capacity as a director; or an employee of the company or a related company, has information which is material to an assessment of the value of shares or other securities issued by the company or a related company, being information that would not otherwise be available to him, the director may acquire or dispose of those shares or securities only where -

(a) in the case, of an acquisition, the consideration given for the acquisition is not less than the fair value of the shares or securities; or

(b) in the case of a disposition, the consideration received for the disposition is not more than the fair value of the shares or securities.

(2) For the purposes of subsection (1), the fair value of shares or securities is to be determined on the basis of all information known to the director or publicity available at the time.

(3) Subsection (1) shall not apply in relation to a share or security that is acquired or disposed of by a director only as a nominee for the company or a related company.

(4) Where a director acquires shares or securities in contravention of subsection (1)(a), the director shall be liable to the person from whom the shares or securities were acquired for the amount by which the fair value of the shares or securities exceeds the amount paid Ivy the director.

(5) Where a director disposes of shares or securities in contravention of subsection (1)(b), the director shall be liable to the person to whom the shares or securities were disposed of for the amount by which the consideration received by the director exceeds the fair
value of the shares or securities.

(6) This section shall not apply in relation to a listed company.

Amended by [Act No. 22 of 2005]

Sub-Part F - Miscellaneous provisions relating to directors

158. Proceedings of Board

Subject to the constitution of a company, the provisions set out in the Eighth Schedule shall govern the proceedings of the Board.

159. Remuneration and other benefits

(1) Subject to subsections (5) to (10) and the constitution -

(a) the company shall by ordinary resolution approve the remuneration of the directors and any benefit payable to the directors, including any compensation for loss of employment of a director or former director;

(b) the Board may determine the terms of any service contract with a managing director or other executive director;

(c) the directors may be paid all travelling, hotel and other expenses properly incurred by them in attending any meetings of the Board or in connection with the business of the company.

(2) Subject to subsections (5) to (10), the constitution may provide that the Board, instead of the meeting of shareholders of a company, may, where the Board considers that it is fair to the company, approve -

(a) the payment of remuneration or the provision of other benefits by the company to a director;

(b) the payment by the company to a director or former director of compensation for loss of office.

(3) Where the Board takes over any payment under subsection (2), the Board shall forthwith enter, or cause to be entered, in the interests register, if the company has one, and in the minutes of directors' meetings particulars of any such payment.

(4) Where a payment is made under subsection (2, any shareholders who -

(a) consider that the payment was not to the company; and

(b) hold between them not less than 10 per cent of the company's voting share capital,

may, within one month of the date on which the existence of the payment or other benefit was, first made known to shareholders, whether through the annual report, production of the interests register to a shareholders' meeting or otherwise, require the directors to call a meetings of shareholders to approve the payment by way of ordinary resolution and to the extent to which the payment is not approved by ordinary resolution, it shall constitute a debt payable by the director to the company.

(5) Subject to subsection (6) a company shall not -

(a) make a loan to a director of the company or any relative or related entity of the director; or

(b) enter, into any guarantee or provide any security in connection with a loan made by any person to any person referred to in paragraph (a).

(6) Subsection (5) shall not prevent a company from -

(a) making a loan to it related company, with the approval of the Board;

(b) entering into a guarantee or providing security in connection with a loan made by any person to a related company;

(c) providing a director with funds to meet expenditure incurred or to be incurred by him for the purpose of the company or for the purpose of enabling him to perform his duties as an officer of the company;

(d) making a loan in the ordinary course of the business of lending money, where that business is carried on by the company;

(e) making a loan to a director who is engaged in the salaried employment of the company or its holding company, in accordance with a scheme for the

making of loans to employees of the company which is approved by the meeting of shareholders of the company in so far as its application to directors is concerned; or

(f) making a loan pursuant to section 81 in respect of a director who holds salaried employment under the company or in a holding company or subsidiary of the company.

(7) Where a loan is made in breach of subsection (5) the loan shall be voidable at the option of the company and the loan shall be immediately repayable upon being avoided by the company, notwithstanding the terms of any agreement relating to the loan.

(8) Where a transaction other than a loan to a director is entered into by it company in breach of subsection (5) -

(a) the director shall be liable to indemnify the company for any loss or damage resulting front the transaction; and

(b) the transaction shall be voidable it the option of the company unless -

(i) the company has been indemnified under paragraph (a) for any loss or damage suffered by it; or

(ii) any rights acquired by a person other than the directors in good faith and for value, without actual notice of the circumstances giving rise to the breach of this section, would be affected by its avoidance.

(9) Notwithstanding the provisions of this section, the shareholders of a company may, by unanimous resolution or by unanimous shareholder agreement, approve any payment, provision, benefit, assistance or other distribution referred to in this section provided that there are reasonable grounds to believe that, after the distribution, the company is likely to satisfy its solvency test.

(10) For the purposes of this section, "a related entity of a director" means a company or corporation in which the director and any relative or relatives of the director between them hold, by themselves or through nominees, voting interests that equal or exceed 50 per cent or the Board or managing body of which is otherwise controlled by such persons within the meaning of section 5.

160. Standard of care and civil liability of officers

(1) Every officer of a company shall exercise -

(a) the powers and discharge the duties of his office honestly, in good faith and in the best interests of the company; and

(b) the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) Where a director of a public company also holds office as an executive, the director shall exercise that degree of care, diligence and skill which a reasonably prudent and competent executive in that position would exercise.

(3) Subject to section 149 and without limiting any liability of a director under section 143, where an officer commits a breach of any duty under this Part -

(a) the officer and every person who knowingly participated in the breach shall be liable to compensate the company for any loss it suffers as a result of the breach;

(b) the officer shall he liable to account to the company for any profit made by the officer as a result of such breach; and

(c) any contract or other transaction entered into between the officer and the company in breach of those duties may he rescinded by the company.

(4) A director or other officer of a company who makes a business judgment shall be taken to meet the requirements of subsections (1) and (2) in respect of the judgment where the director or officer -

(a) makes the judgment in good faith for a proper purpose;

(b) does not have a material personal interest in the subject matter of the judgment;

(c) informs the company of the subject matter of the judgment to the extent he reasonably believes to be appropriate; and

(d) reasonably believes that the judgment is in the best interests of the company.

(5) The director's or officer's belief that the judgment is in the best interests of the company shall be taken to be a reasonable one unless the belief is one that no reasonable person in his position would hold.

(6) In this section “business judgment” means any decision to take or not take action in respect of a matter relevant to the business operations of the company.

Amended by [Act No. 20 of 2002]

161. Indemnity and insurance

(1) Except as provided in this section, a company shall not indemnify, or directly or indirectly effect insurance for, a director or employee of the company or a related company in respect of -

(a) liability for any act or omission in his capacity as a director or employee; or

(b) costs incurred by that director or employee in defending or settling any claim or proceedings relating to any such liability.

(2) An indemnity given in breach of this section shall be void.

(3) Subject to its constitution, a company may indemnify a director or employee of the company or a related company for any costs incurred by him or the company in respect of any proceedings -

(a) that relates to liability for any act or omission in his capacity as a director or employee; and

(b) in which judgment is given in his favour, or in which he is acquitted, or which is discontinued or in which he is granted relief under section 350 or where proceedings are threatened and such threatened action is abandoned or not pursued.

(4) Subject to its constitution, a company may indemnify a director employee of the company or a related company in respect of -

(a) liability to any person, other than the company or a relate company, for any act or omission in his capacity as a director or employee; or

(b) costs incurred by that director or employee in defending or settling any claim or proceedings relating to any such liability.

(5) Subsection (4) shall not apply to criminal liability or liability in respect of a breach, in the case of a director, of the duty specified in section 143(1)(c).

(6) Subject to its constitution, a company may with the prior approval of the Board, effect insurance for a director or employee of the company or a related company in respect of -

(a) liability, not being criminal liability, for any act or omission in his capacity as a director or employee;

(b) costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability; or

(c) costs incurred by that director or employee in defending any criminal proceedings -

(i) that have been brought against the director or employee in relation to any act or omission in that person s capacity as a director or employee;

(ii) in which that person is acquitted; or

(iii) in relation to which a nolle prosequi is entered.

(7) The Board shall -

(a) enter or cause to be entered in the interests register where the company has one;

(b) record or cause to be recorded in the minutes of directors;

(c) disclose or cause to be disclosed in the annual report,
the particulars of any indemnity given to, or insurance effected for, any director or employee of the company or a related company.

(8) Where an insurance is effected for a director or employee of a company or a related company and the provisions of subsection (6) or (7) have not been complied with, the director or employee shall be personally liable to the company for the cost of effecting the insurance unless the director or employee proves that it was fair to the company at the time the insurance was effected.

(9) In this section -

"director" -

(a) means an officer of a company, a management company or registered agent; and

(b) includes a person formerly holding anyone of these offices;

"effect insurance" includes pay, whether directly or indirectly, the costs of the insurance.

"employee" includes a former employee;

"indemnify" includes relieve or excuse from liability, whether before or after the liability arises, and "indemnity" has a corresponding meaning.

162. Duty of directors on insolvency

(1) A director of a company who believes that the company is unable to pay its debts as they fall due shall forthwith call a meeting of the Board to consider whether the Board should appoint a liquidator or an administrator.

(2) Where a meeting is called under this section, the Board shall consider whether to appoint a liquidator or an administrator, or to carry on the business of the company.

(3) Where -

(a) a director fails to comply with subsection (1):

(b) at the time of that failure the company was unable to pay its debts as they fell due; and

(c) the company is subsequently placed in liquidation, the Court may, on the application of the liquidator or of a creditor of the company, make an order that the director shall be liable for the whole or any part of any loss suffered by creditors of the company as a result of the company continuing to trade.

(4) Where -

(a) at a meeting called under this section the Board does not resolve to appoint a liquidator or an administrator;

(b) at the time of the meeting there were no reasonable Grounds for believing that the company was able to pay its debts as they fell due; and

(c) the company is subsequently placed in liquidation,

the Court may, on the application of the liquidator or of a creditor of the company, make an order that the directors, other than those directors who attended the meeting and voted in favour of appointing a liquidator or an administrator, shall be liable for the whole or any part of any loss suffered by creditors of the company as a result of the company continuing to trade.

(5) This section shall not apply during such period as may be prescribed.

Amended by [Act No. 1 of 2020]; [Act No. 15 of 2022]

Sub-Part G - Secretaries

163. Secretary

(1) Every company, other than a small private company or an Authorised Company, shall have one or more secretaries each of whom shall, subject to section 164 be a natural person of full age and capacity who shall ordinarily be resident in Mauritius.

(2) No person shall be appointed as a secretary of a company unless that person has, in an approved form -

(a) consented to be a secretary; and

(b) certified that the person has the qualifications specified under section 165.

(3) A person named as a secretary of the company in an application for incorporation or in an amalgamation proposal shall hold office as a secretary from the date of the incorporation of the company or the date the amalgamation proposal is effective, until that person ceases to hold office in accordance with this Act or the constitution of the company.

(4) Subject to the constitution of a company, the Board may appoint or remove a secretary of the company.

(5) The office of the secretary shall not be left vacant for more than 3 months at any time.

(6) Where the directors fail to appoint a secretary within the period of 3 months, referred to in subsection (5), the Registrar or the Court may, on application by a shareholder or director, order the company or its directors to appoint a secretary.

(7) Where a company, other than a small private company or an Authorised Company , or its directors knowingly fail to appoint a secretary within 2 months by the Registrar or the Court in terms of subsection (6), the company and every director of the company shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees.

(8) The directors may, during any period that the office of the secretary is vacant, authorise any officer of the company to carry out all or any of the secretary's duties.

Amended by [Act No. 20 of 2002]; [Act No. 11 of 2018]

164. Registrar may approve firm or corporation for appointment as secretary

(1) The Registrar may approve the appointment of a firm or corporation to act as secretary provided that -

(a) at least one member of the firm or one director of the corporation is ordinarily resident in Mauritius;

(b) the member of the firm or the director of the corporation who accepts responsibility for the work of the firm or corporation as secretary are qualified to act as secretary under section 165; and

(c) the Registrar is satisfied tat the firm or corporation is a fit and proper person to be appointed a company secretary;

(2) The Registrar may approve the firm or corporation for appointment as secretary -

(a) in respect of a named company;

(b) generally as a company secretary and the firm or corporation may then without further approval accept appointment as secretary companies generally.

(3) The Registrar may revoke an approval given under subsection (2) but shall not do so without first providing the firm or corporation with an opportunity to make representations on the matter.

(3A) Subsections (1) to (3) shall not apply to a corporation which is a Foundation registered under the Foundations Act.

(4) Any firm which is approved by the Registrar for the purposes of this section shall keep the Registrar promptly informed of the names of all partners in the firm and of any changes.

Amended by [Act No. 27 of 2013]

165. Qualifications of secretary

(1) Every secretary of a public company or of private company other than a small private company or an Authorised Company shall be-

(a) a law practitioner, legal consultant, a law firm, a member of one of the bodies referred to in section 198(1), a member of the Chartered Governance Institute or a member of the Chartered Institute of Management Accountants of United Kingdom; or

(b) a member of a professional association of company secretaries approved by the Minister under section 111(2) of the Companies Act 1984 or by the Minister under subsection (2).

(2) The Minister may for the purposes of subsection (1)(b), approve an association of company secretaries and notify such approval in the Gazette.

(3) Subject to subsection (4) the Minister may revoke an approval granted under subsection (2), or any approval given by the Minister under the Companies Act 1984, where he is satisfied that the association is not maintaining satisfactory standards in the admission of its members or is failing to exercise effective supervision and discipline of its members.

(4) The Minister shall not revoke the approval of any association which has been approved under subsection (2) without first providing that association with an opportunity to make representations.

Amended by [Act No. 14 of 2009]; [Act No. 9 of 2015]; [Act No. 11 of 2018]; [Act No. 11 of 2024]

166. Duties of secretary

The duties of a secretary shill include but shall not be restricted to -

(a) providing the Board with guidance is to its duties, responsibilities and powers:

(b) informing the Board of all legislation relevant to or affecting meetings of shareholders and directors and reporting at any meetings and the filing of any documents required of the company and any failure to comply with such legislation;

(c) ensuring that minutes of all meetings of shareholders or directors are properly recorded in accordance with paragraph 8 of the Fifth Schedule and all statutory registers be properly maintained;

(d) certifying in the annual financial statements of the company that the company has filed with the Registrar all such returns as are required of the company under this Act;

(e) ensuring that a copy of the company's annual financial statements and where applicable the annual report are sent in accordance with sections 219 and 220 to every person entitled to such statements of- report in terms of this Act.

167. Notice to be given of removal or resignation of secretary

(1) Where, during any accounting period of the company, the secretary resigns or is removed from office, the company shall notify the Registrar within 28 days Of such resignation or removal.

(2) Where the secretary is removed, the secretary may require the company in its annual financial statements relating to that accounting period, to include a statement not exceeding a reasonable length, setting out the secretary's statement as to the
circumstances that resulted in the removal.

(3) Where the secretary wishes to exercise the power referred to in subsection (2), the secretary shall give written notice to that effect to the company not later than the end of the accounting period in which the removal took place and such notice shall include the statement referred to in subsection (2).

(4) The statement of the secretary referred to in subsection (2) shall be included in the annual report and, where no annual report is required, shall he included under a separate heading in the company's annual financial statements.

(5) Where, on the application of the company or any other person who claims to be aggrieved by the secretary's statement under subsection (2) being provided to shareholders, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity of defamatory matter, the Court may order that the statement need not he included in the annual report or financial statements and need not be provided to shareholders or be read out at the meeting, and the Court may further order that the costs of the application be paid in whole or in part by the secretary.

Sub-Part H – Company Service Providers

167A. Registration as company service provider

(1) No person shall provide any of the following services, as a business, unless he is registered as a company service provider with the Registrar –

(a) acting as a formation agent of a legal person with a view to assisting another person to incorporate, register or set up, as the case may be, a company, a foundation, a limited liability partnership or such other entity as may be prescribed;

(b) acting, or causing for another person to act, as a director, as a secretary, as a partner or in any other similar position, as the case may be, of a legal person such as a company, a foundation, a limited liability partnership or such other entity as may be prescribed;

(c) providing a registered office, a business address or an accommodation, a correspondence or an administrative address for a legal person such as a company, a foundation, a limited liability partnership or such other entity as may be prescribed; or

(d) acting, or causing for another person to act, as a nominee shareholder for

another person.

(2) The Registrar may register a person as a company service provider, provided that –

(a) the person is ordinarily resident or has a place of business in Mauritius; and

(b) the Registrar is satisfied that the person is a fit and proper person to be a company service provider.

(3) The Registrar shall not deregister a person as a company service provider unless the Registrar has given the person an opportunity to make representations on the matter.

(4) Any company service provider shall keep the Registrar promptly informed of any change in its status.

(5) A Secretary referred to in section 164 and the holder of a management licence under section 77 of the Financial Services Act that provides, as a business, any of the services specified in subsection (1) shall not be required to be registered under this section.

(6) Every company service provider shall –

(a) comply with such directions as the Registrar may give to him;

(b) as soon as practicable, but not later than 5 working days from the date on which he becomes aware of a transaction which he has reason to believe may be a suspicious transaction –

(i) make a suspicious transaction report to FIU;

(ii) comply with such guidelines as FIU may issue.

(7) A company service provider may, upon authorisation by the company for which it acts, provide to a competent authority under section 190(6), the information specified in that section.

Amended by [Act No. 9 of 2019]; [Act No. 15 of 2021]

PART XII - ENFORCEMENT

168. Interpretation of Part XII

In this Part, "entitled person", "former shareholder", of "shareholder" includes a reference to the Curator and heir of an entitled person, former shareholder, or shareholder and a person to whom shares of any of those persons have passed by operation of law.

Sub-Part A - Injunctions

169. Injunctions

(1) The Court may, on an application under this section, make an order restraining a company that, or a director of a company who, proposes to engage in conduct that would contravene the constitution of the company or this Act from engaging in that conduct.

(3) An application may be made by-

(a) the company;

(b) a director or shareholder of the company; or

(c) an entitled person.

(3) Where the Court makes an order under subsection (1), it may also grant such consequential relief as it thinks fit.

(4) An order may not be made under this section in relation to a conduct or a course of conduct that has been completed.

(5) The Court may, at any time before the final determination of an application under subsection (1), make, as an interim order, any order that it is empowered to make under that subsection.

Sub-Part B - Derivative actions

170. Derivative actions

(1) Subject to subsection (3), the Court may, on the application of a shareholder or director of a company, grant leave to that shareholder or director to -

(a) bring proceedings in the name and on behalf of the company or its subsidiary; or

(b) intervene in proceedings to which the company or any related company is a party for the purpose of continuing, defending, or discontinuing the proceedings on behalf of the company or its subsidiary, as the case may be.

(2) Without prejudice to subsection (1), in determining whether to grant leave under that subsection, the Court shall have regard to-

(a) the likelihood of the proceedings that may follow;

(b) the costs of the proceedings in relation to the relief likely to be obtained;

(c) any action already taken by the company or its subsidiary to obtain relief;

(d) the interests of the company or its subsidiary in the proceedings being commenced, continued, defended, or discontinued, as the case may be.

(3) Leave to bring proceedings or intervene in proceedings may be granted under subsection (1), only where the Court is satisfied that either-

(a) the company or related company does not intend to bring, diligently continue or defend, or discontinue, the proceedings, as the case may be; or

(b) it is in the interests of the company or its subsidiary that the conduct of the proceedings should not be left to the directors or to the determination of the shareholders as a whole.

(4) Notice of the application shall be served on the company or its subsidiary.

(5) The company or related company-

(a) may appear and be heard; and

(b) shall inform the Court, whether or not it intends to bring, continue, defend, or discontinue the proceedings, as the case may be.

(6) Except as provided for in this section, a shareholder or director of a company is not entitled to bring or intervene in any proceedings in the name of, or on behalf of, a company or its subsidiary.

171. Costs of derivative action to be met by company

The Court shall, on the application of the shareholder or director to whom leave was granted under section 170 to bring or intervene in the proceedings, order that the whole or part of the reasonable costs of bringing or intervening in the proceedings, including any costs relating to any settlement, compromise, or discontinuance approved under section 170, shall he met by the company unless the Court considers that it would be unjust or inequitable for the company to bear those costs.

172. Powers of Court where leave granted

The Court may, at any time, make any order it thinks fit in relation to proceedings brought by a shareholder or a director or in which a shareholder or director intervenes, as the case may be, with leave of the Court under section 170, and without prejudice to the generality of this section may -

(a) make an order authorising the shareholder or any other person to control the conduct of the proceedings;

(b) give directions for the conduct of the proceedings;

(c) make an order requiring the company or the directors to provide information or assistance in relation to the proceedings;

(d) make an order directing that any amount ordered to be paid by a defendant in the proceedings shall be paid, in whole or part, to former and present shareholders of the company or its subsidiary instead of to the company or the related company.

173. Compromise, settlement or withdrawal of derivative action

No proceedings brought by a shareholder or a director or in which a shareholder or a director intervenes, as the case may be, with leave of the Court under section 170, may be settled or compromised or discontinued without the approval of the Court.

Sub-Part C - Personal actions by shareholders

174. Personal actions by shareholders against directors

(1) A shareholder or former shareholder may bring an action against a director and in the case of section 91, a secretary, for breach of a duty owed to him as a shareholder.

(2) An action may not be brought under subsection (1) to recover any loss in the form of a reduction in the value of shares in the company or a failure of the shares to increase in value by reason only of a loss suffered, or a gain forgone, by the company.

(3) For the purposes of subsection (1), the duties set out in sections 94, 148 and 156 are duties owed to shareholders while the duties of directors set out in sections

143(1)(c), (e), (f), (h), (j), (k) and (m), 153, 160. 162, 193 and 194 are duties owed to the company and not to shareholders.

175. Personal actions by shareholders against company

Any shareholder of a company may bring an action against the company for breach of a duty owed by the company to him as a shareholder.

176. Actions by shareholders to require company to act

Notwithstanding section 175, the Court may, on the application of a shareholder of a company, if it is satisfied that it is just and equitable to do so, make an order requiring the company or its Board or a director of the company to take any action that is required to be taken by the constitution of the company or this Act and, on making the order. the Court may giant such other consequential relief as it thinks fit.

177. Representative actions

Where a shareholder of a company brings proceedings against the company or a director, and other shareholders have the same or substantially the same interest in relation to the subject-matter of the proceedings, the Court may appoint that shareholder to represent all or some of the shareholders having the same or substantially the same interest, and may, for that purpose, make such order as it thinks fit including, without prejudice to the generality of this section, an order-

(a) as to the control and conduct of the proceedings;

(b) as to the costs of the proceedings;

(c) directing the distribution of any amount ordered to be paid by a defendant in the proceedings among the shareholders represented.

178. Prejudiced shareholders

(1) Any shareholder or former shareholder of a company, or any other entitled person, who considers that the affairs of a company have been, or are being, or are likely to be, conducted in a manner that is, or any act or acts of the company have been, or are, or are likely to be, oppressive, unfairly discriminatory, or unfairly prejudicial to that person in that capacity or in any other capacity, may apply to the Court for an order under this section.

(2) Where, on an application under this section, the Court considers that it is just and equitable to de so, it may make such order as it thinks fit including, without prejudice to the generality of this subsection, an order -

(a) requiring the company or any other person to acquire the shareholder's shares; or

(b) requiring the company or any other person to pay compensation to a person; or

(c) regulating the future conduct of the company's affairs; or

(d) altering or adding to the company's constitution; or

(e) appointing a receiver of the company; or

(f) directing the rectification of the records of the company; or

(g) putting the company into liquidation; or

(h) setting aside action taken by the company or the Board in breach of this Act or the constitution of the company.

(3) (a) No order may be made against the company or any other person under subsection (2) unless the company or that person is a party to the proceedings in which the application is made.
Amended by [Act No. 3 of 2009]

(b) When an order is made under this section the Court shall record on the order the date and time at which the order is made.

Added by [Act No. 3 of 2009]

Amended by [Act No. 3 of 2009]

179. Alteration to constitution

(1) Notwithstanding this Act but subject to the order, where the Court makes an order under section 178 altering or adding to the constitution of a company, the constitution shall not, to the extent that it has been altered or added to by the Court, again be altered or added to without the leave of the Court.

(2) Any alteration or addition to the constitution of a company made by an order under section 178 has the same effect as if it had been made by the shareholders of the company pursuant to section 44 and the provisions of this Act shall apply to the constitution as altered or added to.

(3) The Board of the company shall, within 14 days of the making of an order under section 44 altering, or adding to, the constitution of a company, ensure that a copy of the order and the constitution as altered or added to as filed with the Registrar for registration.

Sub-Part D - Ratification

180. Ratification of certain actions of directors

(1) The purported exercise by a director or the Board of a company of a power vested in the shareholders or any other person may be ratified or approved by those shareholders or that person in the same manner in which the power may be exercised.

(2) The purported exercise of a power that is ratified under subsection (1) shall be deemed to be, and always to have been, a proper and valid exercise of that power.

PART XIII - ADMINISTRATION OF COMPANIES

Sub-Part A - Authority to bind company

181. Method of contracting

(1) A contract made on behalf of a company -

(a) which, where made between private persons, would he required to he in writing, may he made on behalf of the company in writing -

(i) signed by the company; or

(ii) by any person acting under its authority express or implied, and may in the same manner, be varied or discharged;

(b) which, where made between private persons would be valid if made orally, may be made orally on behalf of the company by any person acting under its authority, and may in the same manner be varied or discharged.

(2) Nothing in subsection (1) shall limit or prevent a company upon entering into a contract or other enforceable obligation in writing.

(3) Subsection (1) shall apply to a contract or other obligation -

(a) whether or not that contract or obligation was entered into in Mauritius; and

(b) whether or not the law governing the contract or obligation is the law of Mauritius.

Amended by [Act No. 4 of 2017]

182. Attorneys

(1) Subject to its constitution, a company may, by an instrument in writing executed in accordance with section 18](1)(a), appoint a person as its attorney either generally or in relation to a specified matter.

(2) An act of the attorney in accordance with the instrument binds the company.

(3) The law relating to powers of attorney shall apply, with the necessary modifications, in relation to a power of attorney executed by a company to the same extent as if the company was a natural person and as if the commencement of the liquidation or, if there is no liquidation, the removal from the register, of the company was the death of a person within the meaning of Part XI of the Companies Act 1984 and Part XXVI of this Act.

Sub-Part B - Pre-incorporation contracts

183. Pre-incorporation contracts may be ratified

(1) In this section and in sections 184 and 185, "pre-incorporation contract" means-

(a) a contract purporting to be made by a company before its incorporations or

(b) a contract made by a person on behalf of a company before and in contemplation of its incorporation.

(2) Notwithstanding any enactment, a pre-incorporation contract may be ratified within such period as may be specified in the contract, or where no period is specified, then within a reasonable time after the incorporation of the company in the name of which, or on behalf of which, it has been made.

(3) A contract that is ratified is as valid and enforceable as if the company had been a party to the contract when it was made.

(4) A pre-incorporation contract may be ratified by a company in the same manner as a contract may be entered into on behalf of a company under section 181.

184. Warranties implied in pre-incorporation contracts

(1) Notwithstanding any enactment, in a pre-incorporation contract, unless a contrary intention is expressed in the contract, there is an implied warranty by the person who purports to make the contract in the name of, or on behalf of, the company -

(a) that the company shall be incorporated within such period as may be specified in the contract, or if no period is specified, then within a reasonable time after the making of the contract; and

(b) that the company shall ratify the contract within such period as may be specified in the contract, or if no period is specified, then within a reasonable time after the incorporation of the company.

(2) The amount of damages recoverable in an action for breach of a warranty implied by subsection (1) shall be the same as the amount of damages that would be recoverable in an action against the company for damages for breach by the company of the unperformed obligations under the contract where the contract had been ratified by the company.

(3) Where, after its incorporation, a company enters into a contract in the same terms as, or in substitution for, a pre-incorporation contract, not being a contract ratified by the company under section 180, the liability of a person under subsection (1), including any liability under an order made by a court for the payment of damages, shall be discharged.

185. Failure to ratify

(1) A party to a pre-incorporation contract that has not been ratified by the company after its incorporation may apply to the Court for an order -

(a) directing the company to return property, whether real or personal, acquired under the contract to that party; or

(b) for any other relief in favour of that party relating to that property; or

(c) validating the contract whether in whole or in part.

(2) The Court may, if it considers it just and equitable to do so, make any order or grant any relief it thinks fit and may do so whether, or not In order has been made under section 184(2).

186. Duties of promoters

(1) Until the formation of a company is complete and its working capital has been raised, every promoter shall -

(a) observe the utmost good faith towards the company in any transaction with it or on its behalf; and

(b) shall compensate the company for any loss suffered by it by reason of his failure to exercise such good faith.

(2) A promoter who acquires any property or information in circumstances in which it was his duty 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 a company may be rescinded by the company unless, after full disclosure of all material facts known to the promoter; the transaction has been entered into or ratified on behalf of the company -

(a) where no director is a relative or nominee of the promoter, by the Board of directors; or

(b) by all the members; or

(c) by the company at a meeting of shareholders at which neither the promoter nor the holder of any shares in which he is beneficially interested shall have voted on the resolution to enter into that transaction.

(4) Notwithstanding any other enactment, 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 on such terms as it thinks fit from any liability under subsection (1) or (2) where in all the circumstances, including lapse of time, the Court thinks it equitable so to do.

Sub-Part C - Registered office

187. Registered office

(1) Every company shall always -

(a) have a registered office in Mauritius to which all communications and notices may be addressed and which shall constitute the address for service of legal proceedings on the company; and

(b) cause its name and the word “Registered Office” to be permanently displayed in a conspicuous place in legible romanised letters on the outside of its registered office.

Amended by [Act No. 15 of 2006]

(2) Subject to section 188, the registered office of a company at a particular time is the place that is described as its registered office in the register of companies at that time.

(3) The description of the registered office shall -

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

(b) where the registered office is at the offices of a firm of chartered accountant, attorney it law, or any other person, state-

(i) that the registered office of the company is at the address of the offices of that firm or person; and

(ii) particulars of the location in any building of those offices.

188. Change of registered office

(1) Subject to the company's constitution and to subsection (3), the Board of a company may, at any time, change the registered office of the company.

(2) Notice, in form approved by the Registrar, of the change shall be filed with the Registrar for registration.

(3) The change of the registered office shall take effect on the date stated in the notice not being a date that is earlier than 7 days after the notice is registered.

189. Requirement to change registered office

(1) Subject to the other provisions of this section, a company shall change its registered office where it is required to do so by the Registrar.

(2) The Registrar may require a company to change its registered office by notice in writing delivered or sent to the company at its registered office.

(3) The notice shall -

(a) state that the company is required to change its registered office by a date specified in the notice, not being a date that is earlier than 28 days after the date of the notice;

(b) state the reasons for requiring the change;

(c) state that the company has the right to appeal to the Court under section 16;

(d) be dated and signed by the Registrar.

(4) A copy of the notice shall also be sent to each director of the company.

(5) The Company shall change its registered office –

(a) by the date specified in the notice; or

(b) where it appeals to the Court and the appeal is dismissed, within 7 days of the due of the decision of the Court.

(6) Where a company fails to comply with this section, every director and the secretary of the company shall commit an offence and shall on conviction, be liable to a fine not exceeding 200,000 rupees.

Amended by [Act No. 20 of 2002]

Sub-Part D - Company records

190. Company records

(1) Subject to subsection (4) and to sections 91(1) and 194, a company shall keep at its registered office the records specified in subsection (2).

(2) The records to be kept under subsection (1) shall include -

(a) the constitution of the company;

(b) minutes of the meetings and resolutions of shareholders within the last 7 years;

(c) in interests register;

(d) minutes of all meetings and resolutions of directors and directors' committees within the last 7 years;

(e) certificates given by directors under this Act within the last 7 years;

(f) the full names and addresses of the current directors;

(g) copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports made under section 218;

(h) copies of all financial statements and group financial statements required to be completed by section 210 for the last 7 completed accounting periods of the company;

(i) the accounting records required by section 193 for the Current accounting period and for the last 7 completed accounting periods of the company;

(j) the share register required to be kept under section 91; and

(k) the copies of instruments creating or evidencing charges required to be registered under section 127.

(2A) The directors of a company shall, at all times and even where the company is removed from the register, ensure that the records referred to in subsection (2) are kept for a period of at least 7 years from the

date of the completion of the transaction, act or operation to which it relates.

(3) The number of years specified in subsection (2)(b), (d), (e) and (g) and the completed accounting periods specified in subsection (2)(h) and (i) include such lesser number of years or accounting periods, as the case may be, as the Registrar may approve by notice in writing to the company.

(4) The documents specified in subsection (2) may be kept at any other place in Mauritius, notice of which shall be given to the Registrar in accordance with subsection (5).

(5) Where the company changes the place at which its records are kept, it shall, within 14 days of the change, notify the Registrar in writing of the place at which the records are kept.

(6) (a) Notwithstanding any other enactment, a company shall appoint an authorised person and his alternate, who shall be ordinarily resident in Mauritius, for providing all basic information and available beneficial ownership information to competent authorities upon request.

(b) A company shall, within 14 days of an authorisation under paragraph (a) or of any change of an officer under paragraph (a), notify the Registrar, in such form as the Registrar may approve, the name and particulars of the officer.

(ba) The basic information referred to in paragraph (a) shall be kept at the registered office or at such other place as the Registrar may determine.

(bb) A company shall ensure that the basic information referred to in paragraph (a) is kept accurately and updated in a timely manner.

(c) In this subsection –

"basic information", in relation to a company means –

(a) the company name, proof of incorporation, legal form and status, the address of its registered office, basic regulating powers, a list of its directors; and

(b) a register of its shareholders or members, containing the names of the shareholders and members and number of shares held by each shareholder and categories of shares, including the nature of the associated voting rights;

"investigating authorities" has the same meaningas in the Financial Intelligence and Anti-Money Laundering Act".

Amended by [Act No. 11 of 2018]; [Act No. 5 of 2020]; [Act No. 15 of 2021]; [Act No. 10 of 2024]

191. Form of records

(1) The records of a company required to be kept under section 190 shall be kept -

(a in the English or French language;

(b) in written form; or

(c) in a form or in a manner that allows the documents and information that comprise the records to be easily accessible and convertible into written form.

(2) The Board shall ensure that adequate measures exist to-

(a) prevent the records being falsified; and

(b) detect any falsification of them.

192. Inspection of records by directors

(1) Subject to subsection (2), every director of a company shall be entitled, on giving reasonable notice, to inspect the records of the company –

(a) in written form;

(b) without charge; and

(c) at a reasonable time specified by the director.

(2) The Court may, on application by the company, if it is satisfied that -

(a) it would not be in the company's interests for a director to inspect the records; or

(b) the proposed inspection is for a purpose that is not properly connected with the director's duties,

direct that the records need not be made available for inspection or restrict the inspection of them in any manner it thinks fit.

PART XIV - ACCOUNTING RECORDS AND AUDIT

Sub-Part A - Accounting records

193. Accounting records to be kept

(1) Subject to the other provisions of this section, the Board of a company shall cause accounting re4;ords to he kept that -

(a) correctly record and explain the transactions of the company;

(b) shall at any time enable the financial position of the company to be determined with reasonable accuracy;

(c) shall enable the directors to prepare financial statements that comply with this Act; and

(d) shall enable the financial statements of the company to be readily and properly audited.

(2) The accounting records shall contain -

(a) entries of money received and spent each day and the matters to which it relates;

(b) a record of the assets and liabilities of the company;

(c) where the company's business involves dealing in goods-

(i) a record of goods bought and sold, except goods sold for cash in the ordinary course of carrying on a retail business, that identifies both the goods and buyers and sellers and relevant invoices;

(ii) a record of stock held at the end of its accounting period together with records of any stock takings during that period;

(d) where, the company's business involves providing services, a record of services provided and relevant invoices.

(3) The accounting records shall be kept-

(a) in written form and in the English or French language; or

(b) where not kept in the English or French language, then the directors shall cause to be made a true translation in the English or French language of such accounting records at intervals of not more than 7 days and the transition shall be kept with the original accounting records for so long as the original accounting records are required to be retained under this Act.

194. Place accounting records to be kept

(1) A company shall keep its accounting records in Mauritius, except where the directors determine that the accounting records may be kept outside Mauritius and in that event the provisions of subsection (2) shall apply.

(2) Where, the re4cords am not kept in Mauritius -

(a) the company shall ensure that the accounts and returns for the operations of the company that -

(i) disclose with reasonable accuracy the financial position of the company at intervals not exceeding 6 months; and

(ii) enable the preparation in accordance with this Act of the company's financial statements and any group financial statements and any other document required under this Act,

are sent to, and kept at, a place in Mauritius; and

(b) notice of the place where -

(i) the accounting records; and

(iii) the accounts and returns required under paragraph (a), are kept, shall be given to the Registrar.

Sub-Part B - Auditors

195. Appointment of auditor

(1) Subject to section 209 and to this section, a company shall, at each annual meeting, appoint an auditor to-

(a) hold office from the conclusion of the meeting until the conclusion of the next annual meeting; and

(b) audit the financial statements of the company and. if the company is required to complete group financial statements, those group financial statements, for the accounting period next after the meeting.

(2) The Board 8f a company may fill any casual vacancy in the office of auditor, but while the vacancy remains, the surviving or continuing auditor, if any, may continue to act as auditor.

(3) Where -

(a) at an annual meeting of a company, no auditor is appointed or re-appointed and no notice has been given pursuant to section 209(5); or

(b) a casual vacancy in the office of auditor is not filled within one month of the vacancy occurring,

the Registrar may appoint an auditor.

(4) A company shall, within 7 days of the power becoming exercisable, give written notice to the Registrar of the fact that the Registrar is entitled to appoint an auditor under subsection (3).

196. Auditor's fees and expenses

The fees and expenses of an auditor of a company shall be fixed -

(a) where the auditor is appointed at a meeting of the company, by the company at the meeting or in such manner as the company may determine at the meeting;

(b) where the auditor is appointed by the directors, by the directors; or

(c) where the auditor is appointed by the Registrar, by the Registrar.

197. Appointment of partnership as auditor

(1) A partnership may be appointed by the firm name to be the auditor of a company where -

(a) at least one member of the firm is ordinarily resident in Mauritius;

(b) all or some of the partners including the partner who is ordinarily resident in terms of paragraph (a) are qualified for appointment under section 198;

(c) no member of the firm is indebted in an Amount exceeding 10,000 rupees to the company or a related corporation unless the debt is in the ordinary course of business;

(d) no member of the firm is -

(i) an officer or employee of the company; or

(ii) a partner, or in the employment, of a director or employee of the company or a related corporation;

(e) except in the case of a small private company, no officer of the company receives any remuneration from the firm or acts as a consultant to it on accounting or auditing matters.

(2) The appointment of a partnership by the firm name to be the auditor of a company shall, notwithstanding section 198, be deemed to be the appointment of all the persons who are partners in the firm from time to time whether ordinarily resident in Mauritius or not at the date of the appointment.

(3) Where a partnership that includes persons who are not qualified to be appointed as auditors of a company is appointed as auditor of a company, the persons who are not qualified to be appointed as auditors shall not act as auditors of the company.

(4) Where a firm has been appointed as auditor of a company and the members constituting the firm change by reason of the death, retirement, or withdrawal of a member or by reason of the admission of a new member, the firm as newly constituted shall, if it is not disqualified from acting as auditor of the company by virtue of subsection (1), be deemed to be appointed under this section as auditor of the company and that appointment shall be taken to be an appointment of all persons who are members of the firm as newly constituted.

(5) A report required to be signed on behalf of a firm appointed as auditor of a company shall be signed in the firm's name and in his own name by if member of the firm who is a qualified auditor.

198. Qualifications of auditor

(1) A person shall not be appointed or act as auditor of a company other than a small private company unless the person is -

(a) a member of -

(i) the Institute Accountants in England and Wales;

(ii) the Institute of Chartered Accountants of Scotland;

(iii) the Institute of Chartered Accountants of Ireland;

(iv) the Association of Chartered Certified Accountants;

(v) the Institute of Chartered Accountants of India; or

(vi) the South African Institute of Chartered Accountants;

and is licensed under section 33 of the Financial Reporting Act;

Amended by [Act No. 14 of 2009]

(b) a person who possesses such qualifications as are, in the opinion of the Minister, equivalent to those of a member of any body specified in paragraph (a), hereinafter referred to as an "approved auditor" and who is licensed under section 33 of the Financial Reporting Act; or

Amended by [Act No. 14 of 2009]

(c) a firm or partnership which provides auditing services performed by a person specified in paragraphs (a) or (b).

Amended by [Act No. 14 of 2009]

(2) None of the following persons shall be appointed or act as an auditor of a company -

(a) a director or employee of the company;

(b) a person who is a partner, or in the employment, of a director or employee of the company;

(c) a liquidator or a person who is a receiver in respect of the property of the company;

(d) a body corporate, except a limited liability partnership;

(e) a person who is not ordinarily resident in Mauritius;

(f) a person who is indebted in an amount exceeding 10,000 rupees to the company, or to a related company unless the debt is in the ordinary course of business; or

(g) a person who, by virtue of paragraph (a) or (b), may not be appointed or act as auditor of a related company.

(3) No person shall -

(a) where he has been appointed auditor of a company, wilfully disqualify himself, while the appointment continues, from acting as auditor of the company; or

(b) where he is it member of a firm that has been appointed auditor of a company, wilfully disqualify the firm while the appointment continues from acting as auditor of the company.

Amended by [Act No. 24 of 2016]

199. Approved auditor

(1) Every application by a person to be an approved auditor shall be made to the Minister who may, on the grounds provided in section 198(1)(b), grant such approval subject to such restrictions or conditions as he thinks fit and the approval treaty be revoked at any time by him by serving a notice of revocation on the approved auditor.

(2) (a) The Minister may delegate all or any of its powers under subsection (1) to any person or body of persons charged with the responsibility for the registration or control of accountants in Mauritius.

(b) Any person who is aggrieved by the decision of any person or body of persons to whom the Minister has delegated all or any of its powers under this section may appeal to the Minister who may, in his discretion, confirm, reverse or vary the decision.

(3) The Minister may -

(a) on recommendation from a body of persons charged with the responsibility for the registration and control of accountants in Mauritius; or

(b) where it appears from an investigation under Part XV that a qualified auditor is not a fit and proper person to continue to act as a qualified auditor,

inquire into the conduct of an auditor and the Minister may, where he is satisfied that the conduct of the auditor is such as to render him unfit to continue to discharge the function of a qualified auditor, declare by notice in the Gazette, that such person is no longer a qualified auditor and on publication of the notice he shall cease to be a qualified auditor under this Act.

(4) Any person who is aggrieved by a decision of the Minister under subsection (3) may, within 21 days of the date of the notice, appeal to the Court which may vary or reverse the decision on such terms as it thinks fit.

200. Automatic reappointment of auditor

(1) An auditor of a company, other than an auditor appointed under section 201, shall be automatically re-appointed at an annual meeting of the company unless -

(a) the auditor is not qualified for appointment; or

(b) the company passes a resolution at the meeting appointing another person to replace him as auditor; or

(c) a small private company passes a resolution under section 209 that no auditor shall be appointed; or

(d) the auditor has given notice to the company that he does not wish to be re-appointed.

(2) An auditor shall not be automatically re-appointed where the person to be re-appointed becomes incapable of, or disqualified from, appointment.

201. Appointment of first auditor

(1) The first auditor of a company may be appointed by the directors of the company before the first annual meeting, and, if so appointed, holds office until the conclusion of that meeting.

(2) Where the directors do not appoint an auditor under subsection (1), the company shall appoint the first auditor at a meeting of the company.

202. Replacement of auditor

(1) A company shall not remove or appoint a new auditor in the place of an auditor who is qualified for reappointment, unless-

(a) at least 28 days' written notice of a proposal to do so has been given to the auditor; and

(b) the auditor has been given a reasonable opportunity to make representations to the shareholders on the appointment of another person either, at the option of the auditors in writing or by the auditor or his representative speaking at the annual meeting of shareholders at which it is proposed not to reappoint the auditor or at a special meeting of shareholders called for the purpose of removing and replacing the auditor.

(2) An auditor shall be entitled to be paid by the company reasonable fees and expenses for making the representations to the shareholders.

(3) Where, on the application of the company or any other person who claims to be aggrieved by the auditor's representations being sent out or being lead out at the meeting of shareholders, the Court is satisfied that the rights conferred by subsection (1) are being abused to secure needless publicity of defamatory matter, the Court may -

(a) order that the auditor's representations shall not be sent out or shall not be read at the meeting of shareholders;

(b) order the costs of the application to the Court to be paid in whole or in part by the auditor.

203. Auditor not seeking reappointment or giving notice of resignation

(1) Where an auditor gives the Board of a company written notice that he does not wish to be re-appointed, the Board shall, if requested to do so by that auditor -

(a) distribute to all shareholders and to the Registrar at the expense of the company, a written statement of the auditor's reasons for his wish not to be re-appointed; or

(b) permit the auditor or his representative to explain at a shareholders' meeting the reasons for his wish not to be re-appointed.

(2) An auditor may resign prior to the annual meeting by giving notice to the company calling on the Board to call a special meeting of the company to receive the auditor's notice of resignation.

(3) Where a notice is given by an auditor under subsection (2), the auditor may, at the time of giving his notice to the Board, request the Board to distribute a written

statement providing him or his representative with the opportunity to give an explanation on the same terms as are set out in subsection (1).

(4) Where a written statement is provided for by an auditor under subsection (3), the provisions of section 202 (3) shall apply to that statement and explanation.

(5) Where a notice of resignation is given by an auditor under this section, the appointment of the auditor shall terminate at that meeting and the business of the meeting shall include the appointment of a new auditor to the company.

(6) An auditor shall be entitled to be paid by the company reasonable fees and expenses for making the representations to shareholders.

204. Auditor to avoid conflict of interest

An auditor of a company shall ensure, in carrying out the duties of an auditor under this Part, that his judgement is not impaired by reason of any relationship with or interest in the company or any of its subsidiaries.

205. Auditor's report

(1) The auditor of a company shall make a report to the shareholders on the financial statements which have been audited.

(2) The auditor's report shall state -

(a) the work done by the auditor;

(b) the scope and limitations of the audit;

(c) the existence of any relationship (other than that of auditor) which the auditor has with, or any interests which the auditor has in, the company or any of its subsidiaries, other than dealings with the company in the ordinary

course of business not involving indebtedness to the company or a related company in an amount exceeding 10,000 rupees;

(d) whether the auditor has obtained all information and explanations that the auditor has required;

(e) whether, in the auditor's opinion, as far as it appears from an examination, proper accounting records have been kept by the company;

(f) whether, in the auditor's opinion, the financial statements and any group financial statements give a true and fair view of the matters to which they relate, and where they do not, the respects in which they fail to do so and whether the financial statements have been prepared in accordance with the International Accounting Standards; and

(f) whether, in the auditor's opinion, the financial statements and any group financial statements comply with section 211 or 214, as the case may be, and where they do not, the respects in which they fail to do so.

(2A) (a) Where an auditor practising on his own account makes the report under subsection (1), he shall, under his signature, specify –

(i) his name; and

(ii) beside his name, the words “Licensed by FRC”.

(b) Where an audit firm makes the report under subsection (1), its signing partner shall, under his signature, specify –

(i) his name;

(ii) beside his name, the words “Licensed by FRC”; and

(iii) the name of the audit firm.

(c) In paragraphs (a) and (b), "FRC" means the Financial Reporting Council established under the Financial Reporting Act.

Added by [Act No. 20 of 2011]

(3) The audit of the financial statements shall, in the case of a public company or a private company other than a small private company, be carried out, in accordance with the International Standards on Auditing, and it shall be sufficient compliance with this section if the auditor's report complies with the International Standards on Auditing.

206. Access to information

(1) The Board of a company shall ensure that an auditor of the company has access at all times to the accounting records and other documents of the company.

(2) An auditor of a company is entitled to receive from a director or employee of the company such information and explanations as he thinks necessary for the performance of his duties as auditor.

(3) Where the Board of a company fails to comply with subsection (1), every director shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees.

(4) A director or employee who fails to comply with subsection (2) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees.

(5) It shall be a defence to an employee charged with an offence under subsection (4) where the employee proves that-

(a) he did not have the information required in his possession or under his control; or

(b) by reason of the position occupied by him or the duties assigned to him, he was unable to give the explanations required,

as the case may be.

Amended by [Act No. 20 of 2002]

207. Auditor's attendance at shareholders' meeting

The Board of a company shall ensure that an auditor of the company -

(a) is permitted to attend a meeting of shareholders of the company;

(b) receives the notices and communications that a shareholder is entitled to receive relating to a meeting of the shareholders; and

(c) may be heard at a meeting of the shareholders which he attends on any part of the business of the meeting which concerns him as auditor.

208. Duties of auditor towards debenture holder's representative

(1) The auditor of a borrowing company shall, within 7 days after furnishing the company with any financial statements or any report, certificate or other document which the auditor is required by this Act or by the agency deed to give to the company, send a copy to every debenture holder's representative.

(2) Where in the performance of the auditor's duties as auditor of a borrowing company, the auditor becomes aware of any matter which is in the auditor's opinion relevant to the exercise of the powers and duties imposed by this Act or by any agency deed on any debenture holder's representative, the auditor shall, within 7 days after becoming aware of the matter, send a report in writing of such matter to the borrowing company and a copy to the representative.

(3) The auditor of a borrowing company shall at the request of the debenture holder's representative, furnish to the representative such further information relating to the borrowing company as are within the auditor's knowledge and which, in the opinion of the auditor, are relevant to the exercise of the powers or duties conferred or imposed on the representative by this Act or by the agency deed.

209. Small private companies

(1) Subject to subsection (5), a small private company need not appoint an auditor or where it does appoint an auditor under subsection (5), that person need not be a qualified auditor unless the resolution referred to in that subsection requires this.

(2) Where the shareholders of a small private company resolve under subsection (5) to appoint an auditor, the appointment and removal of the auditor of a small private company shall, subject to this section be made in accordance with sections 200 and 202 and the auditor shall carry out the auditor's duties in accordance with section 204.

(3) An auditor of a small private company may resign by written notice to the directors.

(4) Where the auditor gives written notice to resign under subsection (3), the directors shall call a meeting of shareholders or circulate a resolution to the shareholders under section 116 as soon as practicable for the purpose of appointing an auditor in the place of the auditor who desires to resign and on the appointment of another auditor, the resignation shall take effect.

(5) Where at, or before the time required for the holding of the annual meeting all Private company, notice is given to the Board of the company, signed by a shareholder who holds at least 5 per cent of the shares of the company, the company shall appoint an auditor and such resolution shall cease to have effect at the next annual meeting, and the auditor shall thereupon be re-appointed under section 200 unless the shareholders by unanimous resolution agree not to appoint the auditor.

Sub-Part C - Financial statements

210. Obligation to prepare financial statements

(1) The Board of every company shall ensure that, within 6 months or such other period as the Registrar may determine after the balance sheet date of the company, financial statements that comply with section 211 are -

(a) completed in relation to the company at its balance sheet date; and

(b) dated and signed on behalf of the Board by 2 directors of the company, or, where the company has only one director, by that director.

(2) The Registrar may, where he considers it appropriate to do so, extend the period of 6 months specified in subsection (1).

Amended by [Act No. 1 of 2020]; [Act No. 15 of 2022]

211. Contents and form of financial statements

(1) Subject to the other provisions of this section, the financial statements of a company shall present fairly the financial position, financial performance and where stated the cash flow of the company.

(2) The financial statements shall, in the case of public companies and private companies -

(a) be prepared in accordance with and comply with the International Accounting Standards; and

(b) comply with any requirement which applies to the company's financial statements under any other enactment.

(3) The financial statements of a small private company shall comply with any regulations made under this Act or any accounting standards issued or any regulations made under the Financial Reporting Act 2004 which prescribe the form and content of financial statements for small private companies.

(4) Where in complying with the standards or regulations referred to in subsection (2) and (3), the financial statements do not present fairly the matters to which they relate, the director shall add such information and explanations as are necessary to present fairly those matters.

(5) Notwithstanding subsection (2), a private company, other than a small private company, or public company, which does not qualify as a public interest entity as defined in the Financial Reporting Act may prepare its financial statements in accordance with the International Financial Reporting Standards for SMEs, issued by the International Accounting Standards Board.

(6) Islamic financial institutions and Islamic banks may adopt accounting standards issued by the Accounting and Auditing Organization for Islamic Financial Institutions instead of those issued by the International Accounting Standards Board.

Amended by [Act No. 45 of 2004]; [Act No. 20 of 2011]; [Act No. 10 of 2017]

212. Presentation of Consolidated Financial Statements

The Board of a company that has, on the balance sheet date of the company, one or more subsidiaries, shall, in addition to complying with section 210, ensure that, within 6 months after the balance sheet date, it complies with IFRS in relation to the presentation of group financial statements.

Amended by [Act No. 20 of 2002]; [Act No. 45 of 2004]

213. Financial statements to be presented in Mauritius currency unless otherwise approved by Registrar

(1) Subject to the other provisions of this section, a company shall present its financial statements in Mauritius currency.

(2) The Registrar may approve the presentation by a company of its financial statements in a foreign currency where the Registrar is satisfied -

(a) that the company's principal operational activity during the accounting year in question has been undertaken in that foreign currency; and

(b) that the presentation of the financial statements in that foreign currency shall result in the financial statements providing a more faithful view of the company's affairs than by presentation in Mauritius currency.

(3) Where approval is given by the Registrar under subsection (2), the company shall provide in a note to the balance sheet a statement of the average exchange rate on balance sheet date as provided by the Bank of Mauritius.

(4) A company which, with the approval of the Registrar, presents its financial statements in a foreign currency shall not revert to presentation of its financial statements in Mauritius currency, or any other foreign currency without first obtaining the further approval of the Registrar and where such approval is given, the company shall state in a note to the accounts the reason for the change in the currency in which the financial statements am presented.

214. Contents and form of group financial statements

(1) Subject to the other provisions of this section, the group financial statements of a group shall present fairly the financial position, financial performance and where stated the cash flow of the group.

(2) The financial statements of a group shall, in the case of public companies and private companies -

(a) be prepared in accordance with and comply with the International Accounting Standards; and

(b) comply with any requirements which apply to the group financial statements of public companies and private companies under any other enactment.

(3) The financial statements of the group shall, in the case of a small private company, comply with any regulations made under this Act or any accounting standards issued or regulations made under the Financial Reporting Act 2004 which prescribe the form and content of group financial statements of small private companies.

(4) Where a subsidiary becomes a subsidiary of a company during the accounting period to which the group financial statements relate, the consolidated profit and loss statement, or the consolidated income and expenditure statement for the group, shall relate to the profit or loss of the subsidiary for each part of that accounting period 'during which it was a subsidiary, and not to any other part of that accounting period.

(5) Subject to subsection (4) -

(a) in the case where the balance sheet date of a subsidiary company is different from the balance sheet date of its parent company, the financial statements of the subsidiary company may be incorporated into the group financial statements provided that the difference between the reporting dates does not exceed 3 months; or

(b) in any other case, the group financial statements shall incorporate the interim financial statements of the subsidiary completed in respect of a period that is the same as the accounting period of the company.

Amended by [Act No. 20 of 2002]; [Act No. 45 of 2004]

(6) Subject to subsections (2) and (4), group financial statements shall incorporate the financial statements of every subsidiary of the company.

Amended by [Act No. 20 of 2002]

(7) Where, in complying with the standards or regulations referred to in subsections (2) and (3), the financial statements do not present fairly the matters to which they relate, the directors shall add such information and explanations as are necessary to present fairly those matters.

(8) Notwithstanding subsection (2), any group of companies which does not qualify as a public interest entity under the Financial Reporting Act may prepare its group financial statements in accordance with the International Financial Reporting Standards for SMEs, issued by the International Accounting Standards Board.

Added by [Act No. 20 of 2011]

Sub-Part D - Registration of financial statements

215. Registration of financial statements

(1) Subject to subsection (4), every company, other than a small private company, shall ensure that, within 28 days or such other period as the Registrar may determine after the financial statements of the company and any group financial statements are required to be signed, copies of those statements together with a copy of the auditor's report on those statements are filed with the Registrar for registration.

(1A) The financial statements referred to in subsection (1) shall be in such form and manner as the Registrar may, in accordance with Practice Directions issued under section 12(8), determine.

(2) The copies filed with the Registrar under this section shall be certified to be correct copies by two directors of the company, or, where the company has only one director, by that director.

(3) Subject to subsections (3A) and (3B), a small private company shall file with the Registrar for registration with the annual return required to be registered under section 223, a financial summary containing the information set out in the Ninth Schedule or the financial statements in accordance with section 211.

(3A) An enterprise, not having net assets or having net assets not exceeding 50 million rupees or such other amount as may be prescribed, and which has an annual turnover not exceeding 20 million rupees, incorporated as a company under this Act and registered under the Small and Medium Enterprises Development Authority Act on or after 2 June 2015 –

(a) shall be exempt from filing with the Registrar for registration its financial summary for a period of 8 years from the date of its incorporation;

(b) after the expiry of the period referred to in paragraph (a), may file with the Registrar for registration a financial summary prepared on a cash basis showing a profit and loss statement only.

(3B) A small private company which has an annual turnover not exceeding 100 million rupees may file with the Registrar for registration a financial summary prepared on a cash basis showing a profit and loss statement only.

(4) A company holding a Global Business Licence shall file its financial statements and auditors' report with the Commission.

(5) Where the audited financial statements are filed with the Commission under subsection (4), the Commission shall give notice to that effect to the Registrar.

(6) Every company required to file with the Registrar financial statements and the auditor's report under subsection (1) shall, at the same time, file a copy of the annual report required to be sent to shareholders.

Amended by [Act No. 14 of 2009]; [Act No. 9 of 2015]; [Act No. 4 of 2017]; [Act No. 11 of 2018]; [Act No. 1 of 2020]; [Act No. 15 of 2022];

216. Meaning of "balance sheet date"

(1) In this Act, the term "balance sheet date", in relation to a company, means such date as the Board of the company has adopted as the company's balance sheet date and notified to the Registrar under subsection (7).

(2) Subject to subsections (3) and (4), a company shall have a balance sheet date in each calendar year.

(3) A company may not have a balance sheet date in the calendar year in which it is incorporated where its first balance sheet date is in the following calendar year and is not later than 18 months after the date of its formation or incorporation.

(4) Where a company changes its balance sheet date, it may not have a balance sheet date in a calendar year if -

(a) the period between any two balance sheet dates does not exceed 18 months; and

(b) the Registrar approves the change of balance sheet date before it is made.

(5) The Registrar may approve a change of balance sheet date for the purposes of subsection (4) with or without conditions.

(6) Where a company changes its balance sheet date, the period between any two balance sheet dates shall not exceed 18 months.

(7) Where a company adopts a balance sheet date other than the 30th day of June, or changes its balance sheet date, it shall forthwith give notice of the balance sheet date of the company to the Registrar and upon receipt of that notice by the Registrar, the adoption or change of the balance sheet date shall have effect.

(8) The Board of a company shall ensure that, unless in the Board's opinion there are good reasons against it, the balance sheet date of each subsidiary of the company is the same as the balance sheet date of the company.

(9) Where the balance sheet date of a subsidiary of a company is not the same as that of the company, the balance sheet date of the subsidiary for the purposes of any particular group financial statements shall be that preceding the balance sheet date of the company.

217. Meaning of "financial statements" and "group financial statements"

(1) In this Act, the term "financial statements", in relation to a company and its balance sheet date, means -

(a) a balance sheet for the company as at the balance sheet date and in income statement which shall -

(i) in the case of a company trading for profit, be a profit and loss statement for the company in relation to the accounting period ending at the balance sheet date; and

(ii) in the case of a company not trading for profit, be an income and expenditure statement for the company in relation to the accounting period ending at the balance sheet date,

together with any notes or documents giving information relating to the balance sheet or income statement, including a statement of accounting policies.

(2) The financial statements shall, in the case of companies which are required to comply with the International Accounting Standards, also include -

(a) a statement of changes in equity between its last two balance sheet dates; and

(b) a cash flow statement.

(3) In this Act, the term "group financial statements", in relation to a group and its balance sheet date, means -

(a) a consolidated balance sheet for the group as at that balance sheet date; and

(b) a consolidated income statement as described in section 217(1)(b),

together with any notes or documents giving information relating to the balance sheet or income statement including a statement of accounting policies.

(4) The group financial statements shall, in the case of companies which are required to comply with the International Accounting Standards, also include -

(a) a consolidated statement of changes in equity between the last two balance sheet dates; and

(b) a consolidated cash flow statement.

Sub-Part E - Disclosure to shareholders

218. Obligation to prepare annual report

(1) Subject to subsections (2) and (3), the Board of every company shall, within 6 months after the balance sheet date of the company, prepare an annual report on the affairs of the company during the accounting period ending on that date.

(1A) Every public interest entity under the Financial Reporting Act shall, within 6 months of its balance sheet date, prepare an annual report of its affairs for the accounting period ending on that date.

(2) The shareholders of a private company or small private company may resolve by unanimous resolution that this section shall not apply to the company, and from the date of that resolution the Board shall not be required to comply with this section and sections 219 to 221, provided that where any shareholder during the period of 3 months after the company's balance sheet date in any year request the Board in writing to comply with this section, the Board shall comply with this section and sections 219 to 221 in relation to the annual report next due and in relation to any subsequent year until any further unanimous resolution is passed under this subsection.

(3) This section does not apply to a one person company.

Added by [Act No. 18 of 2025]

219. Sending of annual report to shareholders

(1) (a) Subject to subsection (2), the Board of a company shall cause a copy of the annual report to be sent to every shareholder of the company not less than 21 days before the date fixed for holding the annual meeting of the shareholders.

(b) Subject to paragraph (c), the copy of the annual report to be sent to every shareholder under paragraph (a) may be in such form as the Registrar may approve.

(c) The shareholders shall retain the right to receive a hard copy of the annual report within a reasonable time.

(2) The Board of a company shall not be required to send an annual report to a shareholder where -

(a) the shareholder has given notice in writing to the company waiving the right to be sent a copy of the annual report or copies of annual reports of the company generally; and

(b) the shareholder has not revoked that notice; and

(c) a copy of the report is available for inspection by the shareholder in the manner specified in section 227.

(3) A public company shall deliver a copy of its annual report to the Registrar for registration at the same time as it delivers its financial statements to the Registrar under section 215.

Amended by [Act No. 12 of 2023]

220. Sending of financial statements to shareholders who elect not to receive annual report

(1) The Board of a company shall cause to be sent to every shareholder of the company referred to in sections 218 and 219(2), not less than 21 days before the annual meeting of the shareholders -

(a) the financial statements for the most recent accounting period in accordance with section 210 and any completed and signed recent accounting period group financial statements for the most with completed and signed in accordance with sections 210 and 212 respectively;

Amended by [Act No. 15 of 2006];[Act No. 14 of 2009]

(b) any auditor's report on those financial statements and any group financial statements.

(2) (a) Subject to paragraph (b), the copy of the financial statements to be sent to shareholders under subsection (1) may be in such form as the Registrar may approve.

(b) The shareholders shall retain the right to receive a hard copy of the financial statements within a reasonable time.

(3) In this section and section 219 –

"hard copy" means a printed copy of the financial statements.

Amended by [Act No. 12 of 2023]

221. Contents of annual report

(1) Every annual report for a company shall be in writing and be dated and shall -

(a) describe, so far as the Board believes is material for the shareholders to have an appreciation of the state of the company's affairs and is not harmful to the business of the company or of any of its subsidiaries, any change during the accounting period in -

(i) the nature of the business of the company or any of its subsidiaries; or

(ii) the classes of business in which the company has an interest, whether as a shareholder of another company or otherwise;

(b) include financial statements for the accounting period completed and signed in accordance with section 210 and any group financial statements for the accounting period completed and signed in accordance with section 212;

(ba) include a report on corporate governance referred to in the Financial Reporting Act;

(bb) where a parent company, other than an investment entity as defined in the International Financial Reporting Standards (IFRS), has not presented a consolidated financial statement in Mauritius on grounds of an exemption under the IFRS, include a statement that the consolidated financial statements in Mauritius of the intermediate parent company or ultimate beneficial owner are in compliance with the IFRS and are available for public use;

(c) where an auditor's report is required under Part XV in relation to the financial statements or group financial statements, as the case may be, included in the report, include that auditor's report;

(d) state particulars of entries in the interests register made during the accounting period;

(e) state, with respect to the accounting period, the amount which represents the total of the remuneration and benefits received, or due and receivable, from the company by -

(i) executive directors of the company engaged in the full-time or part-time employment of the company, including all bonuses and commissions receivable by them as employees;

(ii) non-executive directors of the company, in a separate statement; and

(iii) each director individually;

(ea) state, in the case of a holding company, with respect to the accounting period, the amount which represents the total of the remuneration and benefits received, or due and receivable, from the holding company and from its subsidiaries by -

(i) executive directors of the holding company engaged in the full-time or part-time employment of the holding company, including all bonuses and commissions receivable by them as employees; and

(ii) non-executive directors of the holding company, in a separate statement;

Amended by [Act No. 14 of 2005]

(f) state the total amount of donations made by the company and any subsidiary during the accounting period;

(g) state the names of the persons holding office as directors of the company as at the end of the accounting period and the names of any persons who ceased to hold office as directors of the company during the accounting period;

(h) state the amounts payable by the company to the person or firm holding office as auditor of the company as audit fees and, as a separate item, fees payable by the company for other services provided by that person or firm;

(i) be signed on behalf of the Board by 2 directors of the company or, where the company has only one director, by that director; and

(j) disclose any major transaction as defined under section 130 (2).

(2) The information to be disclosed under subsection (1)(d) shall be -

(a) the term of the director's service contract with its date of expiry;

(b) any notice period for termination of the contract;

(c) particulars of any provisions for predetermined compensation on termination exceeding one year's salary and of any benefits including benefits in kind.

(2A) A company that is required to include group financial statements in its annual report shall include, in relation to each of its subsidiaries, the information specified in subsection (1)(d), (f), (g), (h) and (j).

(3) **Deleted by [Act No. 15 of 2021]**

(4) The annual report of a company need not comply with any of the paragraphs (a), and (d) to (i) of subsection (1) where all the shareholders agree that the report need not do so and any such agreement shall be noted in the annual report.

(5) Subsection (4) shall not apply to an entity specified in the First Schedule to the Financial Reporting Act.

Amended by [Act No. 14 of 2005]; [Act No. 10 of 2017]; [Act No. 11 of 2018]; [Act No. 14 of 2019]; [Act No. 15 of 2021]

222. Failure to send annual report

Subject to the constitution of a company, the failure to send an annual report, notice, or other document to a shareholder in accordance with this Act does not affect the validity of proceedings at a meeting of the shareholders of the company where the failure to do so was accidental.

223. Annual return

(1) Subject to subsections (1A), (1B) and (3), every company shall, once in every year, file with the Registrar for registration, an annual return.

(1A) Subsection (1) shall not apply to an enterprise, not having net assets or having net assets not exceeding 50 million rupees or such other amount as may be prescribed, and which has an annual turnover not exceeding 20 million rupees –

(a) incorporated as a company under this Act; and

(b) registered under the Small and Medium Enterprises Development Authority Act,

on or after 2 June 2015, for a period of 8 years from the date of its incorporation.

(1B) A small private company which has an annual turnover not exceeding 100 million rupees shall not be required to file with the Registrar an annual return, unless there is a change in its shareholding or in the composition of the board of directors or any other particulars in relation thereto.

(2) Subject to subsection (3), the annual return shall be completed and filed with the Registrar within 28 days of the date of the annual meeting of the company or where section 117 applies, the date by which the company is required to complete the entries in its minute book relating to the matters which are required to be done at an annual meeting.

(3) A company which keeps a branch register outside Mauritius shall comply with the requirements of subsection (2) within 8 weeks after the dates referred to in subsection (2).

(4) The annual return shall be signed by a director or secretary.

(5) The annual return shall contain the matters specified in the Tenth Schedule provided that where the matters required to be stated are in each case unchanged from the last preceding annual return. the company may present a "No change Return" in which it is certified by a director or secretary of the company that there is no change with respect to any of the matters stated from the last preceding annual return.

(6) A company may not make an annual return in the calendar year of its incorporation.

(7) Where the number of members of a private company exceeds 50, the company shall send with its annual return a certificate signed by a director or the secretary of the company to the effect that the excess of the number of members of the company over 50 consists wholly of persons who are not to be included in computing the number of 50.

(8) A public company which -

(a) has more than 500 members; and

(b) provides reasonable accommodation and facilities at a place approved by the Registrar for persons to inspect and take a list of its members and particulars of shares transferred, shall not, unless the Registrar otherwise directs, be required to include a list of members with the annual return where a certificate by the secretary is included that the company is of a kind to which this subsection applies.

Amended by [Act No. 9 of 2015]; [Act No. 13 of 2019]; [Act No. 15 of 2022]

224. Exemption from accounting and disclosure provisions

(1) The Board of a company may make a written application to the Registrar for an order relieving the directors from any requirement of sections 211, 214, 215, 221

and 223 relating to the form or content of financial statements or consolidated or group financial statements or to the form or content of the annual report and the form and content of the annual return, and the Registrar may, subject to subsection (3), make an order subject to such conditions as the Registrar thinks fit to impose, including a condition that the directors shall comply with such other requirements relating to the form or content of the accounts, reports or statements as the Registrar thinks fit.

(2) The Registrar may, where he thinks fit, make an order in respect of a specified class of companies relieving the directors of a company in that class from compliance with any requirement of the provisions specified in subsection (1) and the order may be made subject to any condition specified in that subsection.

(3) The Registrar shall not make an order under subsection (1) unless the Registrar is of the opinion that the compliance with the requirements of this Act would render the accounts or consolidated accounts or report, as the case may be, misleading or inappropriate to the circumstances of the company, or would impose unreasonable burdens on the company, or any officer of the company.

Sub-Part F - Inspection of company records

225. Public inspection of company records

(1) A company shall keep the records specified in subsection (2) and make them available for inspection in the manner specified in section 227 by a person who serves written notice on the company of his intention to inspect the records.

(2) The records to be kept under subsection (1) shall be -

(a) the certificate of incorporation or registration of the company;

(b) the constitution of the company, if it has one;

(c) the share register;

(d) the full names and residential addresses of the directors;

(e) the registered office and address for service of the company; and

(f) copies of the instruments creating or evidencing charges which are required to be registered under section 127.

226. Inspection of company records by shareholders

(1) A company shall, in addition to the records available for public inspection, keep the records specified in subsection (2) and make them available for inspection, in the manner specified in section 227, by a shareholder of the company, or by a person authorised in writing by a shareholder for the purpose, who serves on the company written notice of intention to inspect the records.

(2) The records to be made available for inspection under subsection (1) shall be -

(a) Minutes of all meetings and resolutions of shareholders;

(b) copies of written communications to all shareholders or to all holders of a class of shares during the preceding 7 years, including annual reports, financial statements, and group financial statements;

(c) certificates given by directors under this Act; and

(d) the interests register of the company, where it has one.

227. Manner of inspection

(1) Documents which may be inspected under section 225 or 226 shall be available for inspection at the place at which the company's records are kept between the hours of 9.00 a.m. and 5.00 p.m. on each working day during the inspection period.

(2) In this section, the term "inspection period" means the period commencing on the third working day after the day on which notice of intention to inspect is served on the company by the person or shareholder concerned and ending with the eighth working day after the day of service.

228. Copies of documents

A person may require a copy of, or extract from, a document which is available for inspection by that person under section 225 or 226 to be sent to him -

(a) within 7 days after he has made a request in writing for the copy or extract; and

(b) where that person has paid a reasonable copying, and administration fee prescribed by the company.

PART XV - INVESTIGATIONS

229. Qualifications of inspector

An inspector designated or appointed under this Part shall be either a qualified auditor of at least 5 years' post qualification experience or a person who holds or has held judicial office.

230. Declared companies

Where the Minister is satisfied that -

(a) for the protection of the public, the shareholders or creditors of a company, it is desirable that the affairs of the company should be investigated;

(b) it is in the public interest that the affairs of the company should be investigated; or

(c) in the case of a foreign company, the appropriate authority of another country had requested that a designation be made under this section in respect of the company,

he may, by notice published in the Gazette, designate the company or foreign company to be a declared company.

231. Investigation of declared companies

(1) The Registrar shall require an inspector to investigate the affairs of every declared company and to make a report on his investigation in such form and manner as the Registrar may direct.

(2) The expenses of and incidental to an investigation of a decided company shall, subject to subsection (3), be paid out of the Consolidated Fund.

(3) Where the Minister is of the opinion that the whole or any part of' the expenses of and incidental to the investigation should be paid or refunded -

(a) by the company; or

(b) by the person or authority who requested the designation of a declared company,

he may direct that the expenses be so paid or refunded.

(4) Where a direction is made for the payment of the whole or part of the expenses by a company and the company is in liquidation or subsequently goes into liquidation the expenses shall, for the purposes of section 283 of the Companies Act 1984, be part of the costs and expenses of the winding up.

232. Investigation of other companies

(1) The Registrar may -

(a) in the case of a company having a share capital, on the application of -

(i) not less than fifty shareholders;

(ii) shareholders holding not less than one-tenth of the issued shares; or

(iii) debenture holders holding not less than one-fifth in nominal value of the issued debentures;

(b) in the case of a company limited by guarantee, on the application of not less than one-fifth in number of the persons on the share register; or

(c) where he considers that the appointment of an inspector is necessary to safeguard the interests of shareholders or creditors or is necessary in the public interest,

require an inspector to investigate the affairs of a company or such aspects of the affairs of a company as are specified in the instrument of appointment and in the case of a debenture agency deed, the conduct of the debenture holders' representative, and to make a report on his investigation in such form and manner as the Registrar may direct.

(2) An application under this section shall be supported by such evidence as the Registrar may require as to the reasons for the application and the grounds of the applicants in requiring the investigation, and the Registrar may, before appointing an inspector, require the applicants to give security in such amount as he thinks fit for payment of the costs of the investigation.

233. Inspector's reports

(1) An inspector who makes an investigation under section 231 or 232 may, and if so directed by the Registrar shall, make interim reports to the Registrar.

(2) Subject to section 236(3), a copy of the inspector's final report shall be forwarded to the Registrar and to the registered office of the company, and a further copy shall,

at the request of the authority who requested the designation for the declared company under section 230(c) or an applicant under section 232, be delivered to the authority or the applicant, as the case may be.

(3) The Registrar may, where he is of the opinion that it is necessary in the public interest to do so, cause the report to be published.

(4) Where from a report of an inspector it appears to the Registrar that proceedings ought in the public interest to be brought by a company dealt with by the report -

(a) for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with -

(i) the promotion or formation of that company; or

(ii) the management of its affairs; or

(b) for the recovery of any property of the company which has been misapplied or wrongly retained,

the Registrar may bring proceedings for that purpose in the name of the company.

(5) Where from a report of an inspector it appears that any qualified auditor -

(a) has been guilty of misconduct; or

(b) has conducted an audit in a manner which renders him in the opinion of the inspector unfit to be a qualified auditor,

the Registrar shall refer that matter to the Minister who may take action under section 199(3).

(6) Where from a report of an inspector it appears to the Registrar that in the case of any public company or private company other than a small private company -

(a) the use of -

(i) a holding company or any subsidiary company;

(ii) shares with restricted voting rights or special rights; or

(iii) any voting trust or arrangement,

by any member has been made in order to confer or maintain control in that member; and

(b) such control unfairly discriminates against or is unfairly prejudicial to other members of the company,

the Registrar may apply to the Court under section 178 for an order under that section.

234. Investigation at company's request

(1) A company other than a declared company may. by ordinary resolution, appoint an inspector to investigate its affairs.

(2) On the conclusion of the investigation, the inspector shall report his opinion in such manner and to such persons as the company in meeting of shareholders directs.

235. Investigation of related corporation

Where an inspector thinks it necessary for the purposes of the investigation of the affairs of a company to investigate the affairs of a related corporation, he may, with the Registrar’s written consent, investigate the affairs of that corporation.

236. Investigation of financial or other control of corporation

(1) The Registrar -

(a) may, where he is of opinion that there is reasonable ground to do so; and

(b) shall, unless he is of opinion that the request is vexatious or unreasonable, at the request of a like number of applicants as is specified in section 232(1),

require an inspector to investigate -

(i) the membership of a corporation;

(ii) any other matter relating to the corporation for the purpose of determining the true persons who are or have been financially interested in the success or failure, real or apparent, of a corporation or able to control or materially influence its policy,

and to make a report on his investigation in such form and manner as the Registrar may direct.

(2) Subject to subsection (1), the powers of an inspector making an investigation under this section shall extend to the investigation of any circumstances which suggest 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.

(3) Where the Registrar is of opinion that there is good reason for not divulging the contents of the report or of any part thereof, he shall not be bound to furnish the corporation or any other person with a copy of a report by an inspector making an investigation under this section.

237. Procedure and powers of inspector

(1) Every person concerned shall, if required to do so, produce to an inspector every book in his custody, control or possession and give to the inspector all assistance in connection with the investigation which he is reasonably able to give.

(2) An inspector may by written notice require any person concerned to appear for examination on oath in relation to the business of a corporation and the notice may require the production of every book in the custody, control or possession of the person concerned.

(3) Where an inspector requires the production of a book in the custody, control or possession of a person concerned, he -

(a) may take possession of the book;

(b) may retain the book for such time as he considers necessary for the purpose of the investigation; and

(c) shall, where the book is in his possession, permit the corporation to have access, at all reasonable times to the book.

(4) An inspector, on giving 72 hours notice to the corporation concerned, may exercise the same powers of inspection as are conferred on the Registrar under section 14.

(5) (a) No person concerned shall refuse to answer a question which is relevant or material to the investigation on the ground that his answer might tend to incriminate him.

(b) Where the person concerned claims that the answer to a question might incriminate him and, but for this subsection, he would have been entitled to refuse to answer the question, the answer to the question shall not be used in any subsequent criminal proceedings, except in the case of a charge against him for making a false statement in answer to that question.

(6) An inspector may cause notes of any examination under this Part to be recorded and reduced to writing and to be read to or by and signed by the person examined and the notes may, subject to subsection (5)(b), thereafter be used in evidence in any legal proceedings against that person.

(7) Any person who fails to comply with subsection (1) or (2) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees.

Amended by [Act No. 20 of 2002]

238. Costs of investigations

(1) Subject to subsection (4), the expenses of and incidental to an investigation by an inspector under sections 232, 234 and 236 including the costs of any proceedings brought by the Registrar in the name of the company, shall be paid by the company investigated or where the Registrar so directs, by the applicant or in part by the company and in part by the applicant.

(2) Where a company fails to pay the whole or any part of the sum which it is liable to pay under subsection (1), the applicant shall make good the deficiency up to the amount by which the security given by him under this part exceeds any amount which he has been directed to pay under subsection (1).

(3) Any balance of the expenses not paid either by the company or the applicant shall, following reasonable steps to recover the same, be paid out of the Consolidated Fund.

(4) Any person who is convicted on a prosecution instituted by the Director of Public Prosecutions as a result of the investigation may be directed by the court before which the person is prosecuted to pay by way of reimbursement to the Consolidated Fund, the applicant, or the company as the case may be, the said expenses either in whole or in part.

239. Report of inspector admissible as evidence

A copy of the report of an inspector certified as a true copy by the Registrar shall be admissible in any legal proceedings as evidence of the opinion of the inspector and of the facts on which his opinion is based in relation to any matter contained in the report.

240. Suspension of proceedings in relation to declared company

Where an inspector has been required to investigate a declared company, no proceedings shall, until the expiry of one month after the inspector has presented his final report, be commenced or proceeded with before any court, except with the Registrar's consent -

(a) by the company on or in respect of any contract, bill of exchange or promissory note; or

(b) by the holder or any other person in respect of any bill of exchange or promissory note made, drawn or accepted by or issued, transferred, negotiated or endorsed by or to the company unless the holder or other person -

(i) at the time of the negotiation, transfer, issue, endorsement or delivery, gave adequate pecuniary consideration; and

(ii) was not at the time of the negotiation, transfer, issue, endorsement or delivery or at any time within three years before that time a member, officer, person concerned or employee or the wife or husband of a shareholder, officer, person concerned or employee.

241. Power to require information as to person interested in shares or debentures

(1) Subject to subsection (2), where the Registrar is of opinion that there is reasonable ground to investigate the ownership of any shares or debentures of any corporation including a banking company, but that it is unnecessary to require an inspector to make an investigation for that purpose, he may require any person whom he has reasonable ground to believe-

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

(b) to act or to have acted in relation to the shares or debentures as the agent of someone interested therein,

to give him any information which he has or can reasonably be expected to obtain as to the present and past interests 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) Nothing in subsection (1) shall, subject to the Banking Act 2004, require a banking company to disclose to the Registrar any information as to the affairs of a customer other than a company of which it is the banker.

Amended by [Act No. 14 of 2005]

242. Power to impose restrictions on shares or debentures

(1) Where in connection with an investigation under section 236 or a request under section 241, it appears to the Registrar that there is difficulty in finding out the relevant facts about any shares, whether issued or to be issued, and that the difficulty is due wholly or mainly to the unwillingness of a person concerned to assist the investigation or the inquiry, the Registrar may, by public notice direct that -

(a) any transfer of those shares or any exercise of the right to acquire or dispose of those shares or in the 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; or

(d) except in a liquidation, no payment shall be made of any sum due from the corporation on those shares whether in respect of capital or otherwise.

(2) Where the Registrar directs that shares shall cease to be subject to the restrictions specified in subsection (1) and the notice is expressed to be made with a view to permitting a transfer of those shares, he may direct that subsection (1)(c) and (d) shall continue to apply in relation to those shares, either in whole or in part, so far as those paragraphs relate to a right acquired or an offer made before the transfer.

(3) This section shall apply in relation to debentures as it applies in relation to shares.

243. Inspectors appointed in other countries

Where -

(a) under a corresponding law of another country, an inspector has been appointed to investigate the affairs of a corporation; and

(b) the Registrar is of the opinion that, in connection with that investigation, it is expedient that an investigation be made in Mauritius,

the Registrar may, by public notice, direct that the inspector so appointed shall have the same powers and duties in Mauritius in relation to the investigation as if the corporation were a declared company.

PART XVI - AMALGAMATIONS

244. Amalgamations

Two or more companies may amalgamate, and continue as one company, which may be one of the amalgamating companies, or may be a new company.

245. Amalgamation proposal

(1) An amalgamation proposal shall set out the terms of the amalgamation, and in particular -

(a) the name of the amalgamated company where it is the same as the name of one of the amalgamating companies;

(b) the registered office of the amalgamated company;

(c) the full name, the usual residential address and the service address of the director or directors and the secretary of the amalgamated company;

(d) the address for service of the amalgamated company;

(e) the share structure of the amalgamated company, specifying –

(i) the number of shares of the company;

(ii) the rights, privileges, limitations, and conditions attached to each share of the company, if different from those set out in section 46(2);

(f) the manner in which the shares of each amalgamating company are to be converted into shares of the amalgamated company;

(g) where the shares of an amalgamating company are not to be converted into shares of the amalgamated company, the consideration that the holders of those shares are to receive instead of shares of the amalgamated company;

(h) any payment to be made to a shareholder or director of an amalgamating company, other than a payment of the kind described in paragraph (g);

(i) details of any arrangement necessary to complete the amalgamation and to provide for the subsequent management and operation of the amalgamated company; and

(j) a copy of the proposed constitution Of the amalgamated company.

(2) An amalgamation Proposal may specify the date on which the amalgamation is intended to become effective.

(3) Where the shares of one of the amalgamating companies are held by. or on behalf of another of the amalgamating companies, the amalgamation proposal -

(a) shall provide for the cancellation of those shares without payment or the provision of other consideration when the amalgamation becomes effective;

(b) shall not provide for the conversion of those shares into shares of the amalgamated company.

Amended by [Act No. 27 of 2012]

246. Approval of amalgamation proposal

(1) The Board of each amalgamating company shall resolve that -

(a) in its opinion, the amalgamation is in the best interest of the company; and

(b) it is satisfied on reasonable grounds that the amalgamated company shall, immediately after the amalgamation becomes effective, satisfy the solvency test.

(2) The directors who vote in favour of a resolution under subsection (1) shall sign a certificate stating that, in their opinion, the conditions set out in that subsection are satisfied, and the grounds for that opinion.

(3) The Board of each amalgamating company shall send to each shareholder of the company, not less than 28 days before the amalgamation is proposed to take effect -

(a) a copy of the amalgamation proposal;

(b) copies of the certificates given by the directors of each Board;

(c) a summary of the principal provisions of the constitution of the amalgamated company, if it has one;

(d) a statement that a copy of the constitution of the amalgamated company shall be supplied to any shareholder who requests it;

(e) a statement setting out the rights of shareholders under section 108;

(f) a statement of any material interests of the directors in the proposal, whether in that capacity or otherwise; and

(g) such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed amalgamation.

(4) The Board of each amalgamating company shall, not less than 28 days before the amalgamation is proposed to take effect-

(a) send a copy of the amalgamation proposal to every secured creditor of the company; and

(b) give public notice of the proposed amalgamation, including a statement that -

(i) copies of the amalgamation proposal are available for inspection by any shareholder or creditor of an amalgamating company or any person whom an amalgamating company is under an obligation at the registered offices of the amalgamating companies and at such other places as may be specified during normal business hours; and

(ii) a shareholder or creditor of an amalgamating company or any person to whom an amalgamating company is under an obligation is entitled to be supplied free of charge with a copy of the amalgamation proposal upon request to an amalgamating company.

(5) The amalgamation proposal shall be approved -

(a) by the shareholders of each amalgamating company, in accordance with section 105; and

(b) where a provision in the amalgamation, proposal would, if contained in an amendment to an amalgamating company's constitution or otherwise proposed in relation to that company, require the approval of an interest group, by a special resolution of that interest group.

247. Short form amalgamation

(1) A company and one or more other companies that is or that are directly or indirectly wholly owned by it may amalgamate and continue as one company (being the company first referred to) without complying with section 245 or 246 where -

(a) the amalgamation is approved by a resolution of the Board of each amalgamating company; and

(b) each resolution provides that -

(i) the shares of each amalgamating company, other than the amalgamated company, shall be cancelled without payment or other consideration;

(ii) the constitution of the amalgamated company, if it has one, shall be the same as the constitution of the company first referred to, if it has one; and

(iii) the Board is satisfied on reasonable grounds that the amalgamated company shall, immediately after the amalgamation becomes effective, satisfy the solvency test.

(2) Two or more companies, each of which is directly or indirectly wholly owned by the same company, may amalgamate and continue as one company without complying with section 245 or 246 where -

(a) the amalgamation is approved by a resolution of the Board of each amalgamating company; and

(b) each resolution provides that-

(i) the shares of all but one of the amalgamating companies shall be cancelled without payment or other consideration;

(ii) the constitution of the amalgamated company, if it has one, shall be the same as the constitution of the amalgamating company whose shares are not cancelled, if it has one; and

(iii) the Board is satisfied on reasonable grounds that the amalgamated company shall, immediately after the amalgamation becomes effective, satisfy the solvency test.

(3) The Board of each amalgamating company shall, not less them 28 days before the amalgamation is proposed to take effect, give written notice of the proposed amalgamation to every secured creditor of the company.

(4) The resolutions approving an amalgamation under this section, taken together, shall be deemed to constitute an amalgamation proposal that has been approved.

(5) The directors who vote in favour of a resolution under subsection (1) or (2), as the case may be, shall sign it certificate stating that, in their opinion, the conditions set out in subsection (1) or (2) are satisfied, and the grounds for that opinion.

(6) A director who fails to comply with subjection (5) shift commit an offence and shall, on conviction, be liable to the penalty set out in section 330(1).

248. Registration of amalgamation proposal

(1) For the purpose of affecting an amalgamation, the documents specified in subsection (2) shall be delivered to the Registrar for registration.

(2) The documents to be delivered under subsection (1) shall be -

(a) the approved amalgamation proposal;

(b) any certificate required under section 246(2) or 247(5);

(c) a certificate signed by the Board of each amalgamating company stating that the amalgamation has been approved in accordance with this Act and the constitution of the company, if it has one;

(d) where the amalgamated company is a new company or the amalgamation proposal provides for a change of the name of the amalgamated company, a copy of the notice reserving the name, if any, of the company;
Amended by [Act No. 21 of 2006]

(e) a certificate signed by the Board, or proposed Board, of the amalgamated company stating that, where the proportion of the claims of creditors of the amalgamated company in relation to the value or the assets of the company is greater than the proportion of the claims of creditors of an amalgamating company in rotation to the value of the assets of that amalgamating company, no creditor shall be prejudiced by that fact;

(f) a document in a form approved by the Registrar signed by each of the persons named in the amalgamation proposal as a director or secretary of the amalgamated company consenting to act as a director or secretary of the company, as the case may be.

Amended by [Act No. 21 of 2006]; Amended by [Act No. 27 of 2012]

249. Certificate of amalgamation

(1) On receipt of the documents under section 248, the Registrar shall forthwith -

(a) where the amalgamated company is the same as one of the amalgamating companies, issue a certificate of amalgamation; or

(b) where the amalgamated company is a new company -

(i) enter the particulars of the company on the Register; and

(ii) issue a certificate of amalgamation together with a certificate of incorporation.

(2) Where an amalgamation proposal specifies a date on which the amalgamation is intended to become effective, and that date is the same as, or later than, the date on which the Registrar receives the documents, the certificate of amalgamation and any certificate of incorporation shall be expressed to have effect on the date specified in the amalgamation proposal.

250. Effect of certificate of amalgamation

(1) An amalgamation shall be effective on the date shown in the certificate of amalgamation.

(2) Where the name is the same as one of the amalgamating companies, the amalgamated company shall have the name specified in the amalgamation proposal.

(3) Subject to subsections (4) and (5), the Registrar shall remove from the register all the amalgamating companies, other than the amalgamated company retained under subsection (2).

(4) The property, rights, Powers, and privileges of each of the amalgamating companies which have been removed from the register under subsection (3) shall continue to be the property, rights, powers and privileges of the amalgamated company.

(5) The amalgamated company shall continue to be liable for all the liabilities and obligations of each of the amalgamating companies and all pending proceedings by, or against, an amalgamating company shall be continued by, or against, the amalgamated company.

(6) A conviction, ruling, order, or judgment in favour of, or against, an amalgamating company may be enforced by, or against, the amalgamated company.

(7) Any provisions of the amalgamation proposal that provide for the conversion of shares or rights of shareholders in the amalgamating companies shall have effect according to their tenor.

251. Registers

(1) Subject to the other provisions of this section, where an amalgamation becomes effective, the Registrar including the Registrar-General, the Conservator of Mortgages or any other person charged with the keeping of any books or resisters shall not be obliged, solely by reason of the amalgamation becoming effective, to change the name of an amalgamating company to that of an amalgamated company in those books or registers or in any documents.

(2) Subject to subsection (3), the presentation to the Registrar or any other person referred to in subsection (1) of any instrument, whether or not comprising an instrument of transfer, by the amalgamated company -

(a) executed or purporting to be executed by the amalgamated company;

(b) relating to any property held immediately before the amalgamation by an amalgamating company; and

(c) stating that, that property has become the property of the amalgamated company by virtue of this Part and producing the relevant certificate of amalgamation issued under section 249,

shall, in the absence of evidence to the contrary, be sufficient evidence that the property has become the property of the amalgamated company.

(3) Where any security issued by any person or any rights or interests in property of any person become, by virtue of this Part of this Act, the property of an amalgamated company, that person, on presentation of a certificate signed on behalf of the Board of the amalgamated company, stating that, that security or any such rights or interests have, by virtue of this Part, become the property of the amalgamated company. shall, notwithstanding any other enactment or rule of law or the provisions of any instrument, register the amalgamated company as the holder of that security or as the person entitled to such rights or interests, as the case may be.

252. Powers of Court in other cases

(1) Where the Court is satisfied that giving effect to an amalgamation proposal would unfairly prejudice a shareholder or creditor of an amalgamating company or a person to whom an amalgamating company is under an obligation, it may, on the application made by the person at any time before the date on which the amalgamation becomes effective, make any order it thinks fit in relation to the

proposal, and may, without limiting the generality of this subsection, make an order -

(a) directing that effect shall not be given to the proposal;

(b) modifying the proposal in such manner as may be specified in the order;

(c) directing the company or its Board to reconsider the proposal or any part of it.

(2) An order made under subsection (1) may be made on such conditions as the Court thinks fit.

PART XVII - COMPROMISES WITH CREDITORS

253. Interpretation of Part XVII

In this Part -

"compromise" means a compromise between a company and its creditors, including a compromise -

(a) cancelling all or part of a debt of the company; or

(b) varying the rights of its creditors or the terms of a debt; or

(c) relating to an alteration of a company's constitution that affects the likelihood of the company being able to pay a debt;

"creditor" includes -

(a) a person who, in a liquidation, is entitled to claim in accordance with section 282 of the Companies Act 1984 that a debt is owing to
that person by the company; and

(b) a secured creditor;

"proponent" means a person referred to in section 254 who proposes a compromise in accordance with this Part.

254. Compromise proposal

(1) Any of the persons specified in subsection (2) may propose a compromise under this Part where he has reason to believe that a company is, or is likely to be, unable to pay its debts within the meaning of section 2(11) of the Companies Act 1984.

(2) The persons referred to in subsection (1) shall be -

(a) the Board of directors of the company;

(b) a receiver appointed in relation to the whole or substantially the whole of the assets and undertaking of the company;

(c) a liquidator of the company; or

(d) with the leave of the Court, any creditor or shareholder of the company.

(3) Where the Court grants leave to a creditor or shareholder under subsection (2)(d), the Court may make an order directing the company to supply to the creditor or shareholder, within such time as may be specified, a list of the names and addresses of the company's creditors showing the amounts owed to each of them or such other information as may be specified to enable the creditor or shareholder to propose a compromise.

255. Notice of proposed compromise

(1) The proponent shall compile, in relation to each class of creditors of the company, a list of creditors known to the proponent who would be affected by the proposed compromise, setting out-

(a) the amount owing or estimated to be owing to each of them; and

(b) the number of votes which each of them is entitled to cast on a resolution approving the compromise.

(2) The proponent shall give to each known creditor, the company, any receiver or liquidator, and deliver to the Registrar for registration -

(a) notice of the intention to hold a meeting of creditors, or any 2 or more classes of creditors, for the purpose of voting on the resolution; and

(b) a statement -

(i) containing the name and address of the proponent and the capacity in which the proponent is acting;

(ii) containing the address and telephone number to which inquiries may be directed during normal business hours;

(iii) setting out the terms of the proposed compromise and the reasons for it;

(iv) setting out the reasonably foreseeable consequences for creditors of the company of the compromise being approved;

(v) setting out the extent of any interest of a director in the proposed compromise;

(vi) explaining that the proposed compromise and any amendment to it proposed at a meeting of creditors or any classes of creditors shall be binding on all creditors, or on all creditors of that class, if approved in accordance with section 256; and

(vii) containing details of any procedure proposed as part of the proposed compromise for varying the compromise following its approval; and

(c) a copy of the list or lists of creditors referred to in subsection (1).

256. Effect of compromise

(1) A compromise, including any amendment proposed at the meeting, shall be approved by creditors, or a class of creditors, where, at a meeting of creditors or that class of creditors conducted in accordance with section 256 of the Companies Act 1984, the compromise, including any amendment, is adopted in accordance with that section.

(2) A compromise, including any amendment, approved by creditors or a class of creditors of a company in accordance with this Part is binding on the company and on-

(a) all creditors; or

(b) where there is more than one class of creditors, on all creditors of that class to whom notice of the proposal was given under section 255.

(3) Where a resolution proposing a compromise, including any amendment, is put to the vote of more than one class of creditors, it shall be presumed, subject to the resolution, that the approval of the compromise, including any amendment, by each class is conditional on the approval of the compromise, including any amendment, by every other class voting on the resolution.

(4) The proponent shall give written notice of the result of the voting to each known creditor, the company, any receiver or liquidator, and the Registrar.

257. Variation of compromise

(1) A compromise approved under section 256 may be varied either -

(a) in accordance with any procedure for variation incorporated in the compromise as approved; or

(b) by the approval of a variation of the compromise in accordance with this Part which, for that purpose, shall apply with such modifications as may be necessary as if any proposed variation were a proposed compromise.

(2) The provisions of this Part shall apply to any compromise that is varied in accordance with this section.

258. Powers of Court

(1) On the application of the proponent of the company, the Court may -

(a) give directions in petition to a procedural requirement under this Part, or waive or very any such requirement, where the Court is satisfied of, the justification so to do; or

(b) order that during a period specified in the order, beginning not later than the date on which notice was given of the proposed compromise and ending not later than 14 days after the date on which notice was given of the result of the voting on it -

(i) proceeding in petition to a debt owing by the company be stayed; or

(ii) a creditor refrain from taking any other measure to enforce payment of a debt owing by the company.

(2) Nothing in subsection (1)(b) affects the right of a secured creditor during that period to take possession of, realise, or otherwise deal with, property of the company over which that creditor has a charge.

(3) Where the Court is satisfied, on the application of it creditor of a company who was entitled to vote on a compromise that-

(a) insufficient notice of the meeting or of the matter required to be notified under section 255(2)(b) was given to that creditors;

(b) there was some other material irregularity in obtaining approval of the compromise; or

(c) in the case of a creditor who voted against the compromise, the compromise is unfairly prejudicial to that creditor, or to the class of creditors to which that creditor belongs,

the Court may order that the creditor shall not be bound by the compromise or make such other order as it thinks fit.

(4) An application under subsection (3) shall be made not later than 14 days after the date on which notice of the result of the voting was given to the creditor.

259. Effect of compromise in liquidation of company

(1) Where a compromise is approved under section 256, the Court may, on the application of -

(a) the company;

(b) a receiver appointed in relation to property of the company; or

(c) with the leave of the Court, any creditor or shareholder of the company,

make such order as the Court thinks fit with respect to the extent, if any, to which the compromise shall, where the company is put into liquidation, continue in effect and be binding on the liquidator of the company.

(2) Where a compromise is approved under section 256 and the company is subsequently put into liquidation, the Court may, on the application of -

(a) the liquidator;

(b) a receiver appointed in relation to property of the company; or

(c) with the leave of the Court, any creditor or shareholder of the company,

make such order as the Court thinks fit with respect to the extent, if any, to which the compromise shall continue in effect and be binding on the liquidator of the company.

260. Costs of compromise

Unless the Court orders otherwise. the costs incurred in organising and conducting a meeting of creditors for the purpose of voting on a proposed compromise -

(a) shall be met by the company;

(b) where incurred by a receiver or liquidator, are a cost of the receivership or liquidation; or

(c) where incurred by any other person, are a debt due to that person by the company and, where the company is put into liquidation, are payable in the order of priority required in the liquidation.

PART XVIII - APPROVAL OF ARRANGEMENTS, AMALGAMATIONS AND COMPROMISES BY COURT

261. Interpretation of Part XVIII

In this Part -

"arrangement" includes a reorganisation of the share capital of a company by the consolidation of shares of different classes, or by the division of shares into shares of different classes, or by both those methods;

"company" means -

(a) a company within the meaning of section 2;

(b) a foreign company that is registered on the foreign company register;

"creditor" includes -

(a) a person who, in a liquidation, is entitled to claim that a debt is owing to him by the company; and

(b) a secured creditor.

262. Approval of arrangements, amalgamations and compromises

(1) Notwithstanding the provisions of this Act or the constitution of a company, the Court may, on the application of a company or, with the leave of the court, any shareholder or creditor of a company, order that an arrangement or amalgamation or compromise shall be binding on the company and on such other persons or classes of persons as the Court may specify and any such order may be made on such terms and conditions as the Court thinks fit.

(2) Before making an order under subsection (1), the Court may, on the application of the company or any shareholder or creditor or other person who appears to the Court to be interested, or of its own motion, make any one or more of the orders specified in subsection (3).

(3) The orders under subsection (2) shall be -

(a) an order that notice of the application, together with such information relating to it as the Court thinks fit, be given in such form and in such manner and to such persons or classes of persons as the Court may specify;

(b) an order directing the holding of a meeting or meetings of shareholders or any class of shareholders or creditors or any class of creditors of a company to consider and, if thought fit, to approve, in such manner as the Court may specify, the proposed arrangement or amalgamation or compromise and, for that purpose, may determine the shareholders or creditors that constitute a class of shareholders or creditors of a company;

(c) an order requiring that a report on the proposed arrangement or amalgamation or compromise be prepared for the Court by a person specified by the Court and, if the Court thinks fit, be supplied to the shareholders or any class of shareholders or creditors or any class of creditors of a company or to any other person who appears to the Court to be interested;

(d) an order as to the payment of the costs incurred in the preparation of any such report;

(a) an order specifying the persons who shall be entitled to appear and be heard on the application to approve the arrangement or amalgamation or compromise.

(4) An order made under this section shall have effect on and from the date specified in the order.

(5) The Board Of the company shall, within 14 days of an order made by the Court, ensure that a copy of the order is filed with the Registrar for registration.

263. Court may make additional orders

(1) Subject to section 262, the Court may, for the purpose of giving effect to any arrangement or amalgamation or compromise approved under that section, either by the order approving the arrangement or amalgamation or compromise, or by any subsequent order, provide for, and prescribe terms and conditions relating to -

(a) the transfer or vesting of real or personal property, assets, rights, powers, interests, liabilities, contracts, and engagements;

(b) the issue of shares, securities, or policies of any kind;

(c) the continuation of legal proceedings;

(d) the liquidation of any company;

(e) the provisions to be made for persons who voted against the arrangement or amalgamation or compromise at any meeting called in accordance with any order made under subsection (2) of that section or who appeared before the Court in opposition to the application to approve the arrangement or amalgamation or compromise; or

(f) such other matters that are necessary or desirable to give effect to the arrangement or amalgamation or compromise.

(2) Within 14 days of an order being made by the Court, the Board of the company shall ensure that a copy of the order is filed with the Registrar for registration.

264. Parts XVI and XVII not affected

The Court may -

(a) approve an amalgamation under section 262 even though the amalgamation could be effected under Part XVI; or

(b) approve a compromise under section 262 even though the compromise could be approved under Part XVII;

265. Application of section 259

The provisions of section 259 shall apply with such modifications as may he necessary in relation to any compromise approved under section 263.

PART XIX - ALTERATION IN NATURE OF COMPANIES

266. Conversion of company limited by shares to company limited by guarantee

(1) A company limited by shares may be converted to a company limited by guarantee without a share capital where -

(a) there is no unpaid liability on any of its shares;

(b) all its members agree in writing to the conversion and to the voluntary surrender to the company for cancellation of all the shares held by them immediately before the conversion;

(c) a new constitution appropriate to a company limited by guarantee is filed; and

(d) the total liability of the members to contribute to the assets of the company, in the event of its being wound up, is not less than 10,000 rupees.

(2) Where -

(a) a copy of the new constitution and of the special resolution adopting them; and

(b) a declaration by a director and the secretary of the company stating that the requirements of subsection (1) have been complied with,

are filed, the Registrar shall, subject to the other provisions of this Act, issue a certificate of the conversion.

(3) The conversion of a company under this section shall -

(a) take effect on the issue of the certificate;

(b) operate so that all shares are deemed to have been validly surrendered and cancelled notwithstanding anything in Part VII;

(c) have effect so that every member who has not agreed to contribute to the assets of the company in the event of its being wound up shall cease to be a member; and

(d) not affect any right or obligation of the company except as otherwise provided in this section or render defective, any proceedings by or against the company.

267. Conversion of limited and unlimited companies

(1) An unlimited company may convert to a limited company by passing a special resolution to that effect and by making any necessary amendments to its constitution and filing with the Registrar a copy of the resolution.

(2) A limited company may convert to an unlimited company by passing a unanimous resolution to that effect and filing with the Registrar a copy of the resolution.

(3) Where a company has complied with subsection (1) or (2), the Registrar shall, subject to the other provisions of this Act, issue to the company a new certificate confirming the conversion and cancel the previous certificate of incorporation.

(4) The conversion of a company under this section shall –

(a) take effect on the issue of the certificate; and

(b) not affect the identity of the company or any right or obligation of the company or render defective any proceedings by or against the company.

268. Conversion of public companies and private companies

(1) A public company that has not for the time being more than 50 members may convert to a private company by filing with the Registrar -

(a) a copy of a special resolution passed to that effect, and

(b) a declaration by a director or secretary of the company stating the full names, addresses and descriptions of all the members, and the number of shares held by each of them respectively.

(2) A private company may, subject to its constitution, convert to a public company by filing with the Registrar a copy of a special resolution passed to that effect.

(3) Where a company has complied with subsection (1) or (2), the Registrar shall issue to the company a new certificate, in such form as the Registrar may determine, confirming the conversion and cancel the previous certificate of incorporation.

(4) The conversion of a company under this section shall -

(a) take effect on the issue of the certificate; and

(b) not affect the identity of the company or any right or obligation of the company or render defective any proceedings by or against the company.

Amended by [Act No. 9 of 2015]; [Act No. 15 of 2021]

PART XX - COMPANIES LIMITED BY GUARANTEE

269. Provisions of Act not applicable to company limited by guarantee

(1) (a) Subject to subsection (2), Part VII, sections 91(3)(b) and (c), 92(1) and (3), 95, 108 to 113, 154 to 157, Part XVI and section 223(5) shall not apply to a company limited by guarantee without a share capital.

(b) Section 270(a) shall not apply to a company limited by guarantee or a company limited byboth shares and guarantee.

(2) The provisions of this Act other than those referred to in subsection (1) shall apply to a company limited by guarantee without a share capital with all necessary modifications, as if -

(a) the company were a company limited by shares;

(b) references to shareholders were references to members;

(c) references to the share register were references to the register of members.

(3) The annual return of a company limited by guarantee shall contain such matters as may be prescribed.

(4) A company limited by guarantee may, by delivering to the Registrar an application containing the matters required by section 23(1)(c)(iii), (v) and (vii) and (2)(d) and

(i), be registered as a company limited by both shares and guarantee and, where the Registrar is satisfied that the application complies with the Act, the Registrar shall, upon payment of the prescribed fee, issue a certificate of incorporation of the company as a company limited by both shares and guarantee and shall cancel the previous certificate of incorporation.

(5) (a) A company limited by shares and guarantee may apply to the Registrar to be converted into a company limited by shares.

(b) An application under paragraph (a) shall be accompanied by -

(i) a copy of a special resolution to that effect passed by the shareholders of the company;

(ii) a declaration by a director or the secretary of the company to the effect that the members of the company have no objection to the conversion;

(iii) a document signed by a director of the company setting out the terms of the conversion;

(iv) a certificate signed by the directors of the company stating that, upon conversion, the company is able to satisfy the solvency test; and

(v) the documents, particulars and declaration referred to in section 23(1)(c)(vii) and (2)(d) and (i).

(c) Where the Registrar is satisfied that the application complies with the Act, he shall, on payment of the prescribed fee, issue a certificate of incorporation of the company as a company limited by shares and shall cancel the previous certificate of incorporation.

(6) The Registrar may undertake outreach and educational programmes to raise and deepen awarenessamong companies limited by guarantee and the donor community on the potential vulnerabilities of the sector to terrorism financing abuse and terrorism financing risks and the measures that they can take to protect themselves against such

abuse.

(7) The Registrar may share, with Mauritian and foreign law enforcement agencies and institutions involved in the prevention of money laundering and combatting of terrorism financing and proliferation financing, information which he obtains on companies limited by guarantee pursuant to this Act.

Amended by [Act No. 20 of 2002]; [Act No. 28 of 2004]; [Act No. 15 of 2021]

269A. Risk-based approach and powers of Registrar

(1) Every company limited by guarantee shall implement programmes against terrorism financing, which are commensurate with the terrorism financing risks to which it is exposed and the size and nature of its business.

(2) For the purpose of ensuring that a company limited by guarantee complies with the relevant enactments relating to the prevention of terrorism financing and this Act, the Registrar may –

(a) conduct, at any time and in such manner as it may determine, a risk-based inspection of that company limited by guarantee; and

(b) take such measures as may be necessary to identify, assess and understand the terrorism financing risks and periodically review such risk assessment.

(3) For the purpose of subsection (2), the Registrar shall collect and maintain such statistics and information as may be required in such form and manner, and for such period, as he may determine.

(4) The Registrar shall have such powers as may be necessary to enable him to effectively discharge his functions under the relevant enactments relating to the prevention of terrorism financing and this Act and may, in particular –

(a) issue guidelines;

(b) give directives to any company limited by guarantee to ensure compliance with the relevant enactments relating to the prevention of terrorism financing, this Act and any guidelines issued under this Act;

(c) require any company limited by guarantee to furnish, in such form and manner as he may determine, such information or statistical data relating to its business at such intervals and within such time as the Registrar may determine;

(d) require a company limited by guarantee to submit a report on corrective measures it is taking to ensure compliance with the relevant enactments relating to the prevention of terrorism financing, this Act and any guidelines or directives issued under this Act, at such intervals as the Registrar may determine;

(e) where the Registrar has reasonable cause to believe that a company limited by guarantee no longer satisfies the requirements of the relevant enactments relating to the prevention of terrorism financing and this Act, or any of its present or past officer or member has or is about to engage in unsafe and unsound practices and knowingly or negligently permit the violation of the relevant enactments relating to the prevention of terrorism financing and this Act, apply any or all of the following administrative sanctions against the company limited by guarantee, its present or past officer, or its member, as the case may be –

(i) issue a private warning;

(ii) impose such administrative penalty as may be prescribed;

(iii) issue a cease and desist order that requires the company limited by guarantee, its officer or its member to cease and desist from the actions and violations specified in the order and may require affirmative action to correct the conditions resulting from any such actions or violations;

(iv) ban a person from being a member of the board of a company limited by guarantee for a period not exceeding 5 years; and

(v) remove the company limited by guarantee from the register of companies as provided under section 308.

(5) Any person who fails to comply with a guideline, a directive or an order issued under subsection (4)(a), (b), (c) or (e)(iii) shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 5 years.

(6) In this section –

"inspection" includes –

(a) an on-site or off-site regular examination;

(b) a special examination;

(c) an off-site monitoring; and

(d) an audit of the books and records of a company limited by guarantee.

Added by [Act No. 10 of 2024]

PART XXI - PRIVATE COMPANIES

270. Provisions relating to private company

A private company -

(a) shall not have more than 50 shareholders provided that where two or more of its shareholders hold one or more shares jointly they shall be deemed to be one shareholder and provided further that, in computing the number of 50, no account shall be taken of persons who are in the employment of the company, and who, having been formerly in the employment of the company were while in that employment and have continued, after the determination of that employment, to be members of the company;

(b) shall not make any offer to the public to subscribe for its shares or debentures;

(c) may provide in its constitution that the right to transfer its shares is restricted;

(d) may dispense with the holding of shareholders meetings if
resolutions which would otherwise require the holding of a meeting are passed by means of entry in the minute book of the company under section 117 or by a unanimous resolution under section 106;

Amended by [Act No. 20 of 2002]

(e) subject to its constitution, may remove a director from office by special resolution under section 138(2);

(f) which is a small private company shall not, pursuant to section 163(1), be required to appoint a company secretary;

(g) which is a small private company shall not, pursuant to section 209, be required to appoint an auditor;

(h) which is a small private company shall, pursuant to section 215(3), be required to file with the Registrar a financial summary or its financial statements in accordance with section 211;

(i) which is a small private company shall not, pursuant to section 21 1, be required to prepare and, present its accounts in accordance with the International Accounting Standards;

(j) may dispense with the provision of an annual report by unanimous resolution under section 218; or

(k) may by unanimous agreement among the shareholders dispense with the observance of any of the matters referred to in section 272.

Amended by [Act No. 13 of 2019]

271. Private companies need not keep interests register

(1) A private company may, by unanimous resolution of its shareholders, dispense with the need to keep an interests register.

(2) The provisions of this Act which require any matter to be entered in the interests register shall not apply to a private company while a resolution under subsection (1) is in force.

(3) A resolution under subsection(l) shall cease to have effect where any shareholder gives notice in writing to the company that he requires the company to keep an interests register.

272. Unanimous agreement by shareholders

(1) Where all shareholders of a private company agree to or concur in any action which has been taken or is to be taken by the company -

(a) the taking of that action is deemed to be validly authorised by the company, notwithstanding any provision in the constitution of the company; and

(b) the provisions of this Act referred to in the Eleventh Schedule shall not apply in relation to that action.

(2) Without limiting the matters which may be agreed to or concurred in under subsection (1), that subsection shall apply where all the shareholders of a private company agree to or concur in -

(a) the issue of shares by the company;

(b) the making of a distribution by the company;

(c) the repurchase or redemption of shares in the company;

(d) the giving of financial assistance by a company for the purpose of, or in connection with, the purchase of shares in the company;

(e) the payment of remuneration to a director (or member in the case of a small private company) or the making of a loan to a director (or member) or the conferral of any other benefit on a director (or member);

(f) the making of a contract between an interested director (or member in the case of a small private company) and the company;

(g) the entry into a major transaction; or

(h) the ratification after the event of any action which could have been authorized under this section.

(3) Where -

(a) a distribution is made by a company under this section; and

(b) as a consequence of the making of the distribution, the company fails to satisfy the solvency test -

the distribution is deemed not to have been validly made.

(4) A distribution to a shareholder which is deemed not to have been validly made may be recovered by the company from the shareholder unless -

(a) the shareholder received the distribution in good faith and without knowledge of the company's failure to satisfy the solvency test;

(b) the shareholder has altered his position in reliance on the validity of the distribution; and

(c) it would be unfair to require repayment in full or at all.

(5) Where reasonable grounds did not exist for believing that the company would satisfy the solvency test after the making of a distribution which is deemed not to have been validly made, each shareholder who agreed to or concurred in the making of the distribution is personally liable to the company to repay to the company so much of the distribution as is not able to be recovered from the shareholders to whom the distribution was made.

(6) Where in an action brought against a shareholder under subsection (4) or (5), the Court is satisfied that the company could, by making a distribution of a lesser amount, have satisfied the solvency test, the Court may -

(a) permit the shareholder to retain; or

(b) relieve the shareholder from liability in respect of,

an amount equal to the value of any distribution that could properly have been made.

(7) Notwithstanding any other provisions of this Act, all the shareholders or members of a private company may, by agreement in writing, restrict in whole or in part the discretion and powers of the directors of the company to manage the business and affairs of the company and may confer on any person who is a party to such agreement, whether or not a shareholder, a member or director of the company, such powers and discretions as they think fit.

(8) A person who is a party to a unanimous shareholder agreement under subsection (7) on whom such powers and discretions are conferred shall have, to the extent that such agreement so provides, all the rights, powers and duties incurred in relation to the exercise of such rights, powers and duties all the liabilities of a director of the company under this Act and the director or directors concerned shall, to such extent and, subject to section 131(2), be relieved of their duties and liabilities.

(9) Where a person who is a holder or registered owner of all the issued shares of a private company makes a declaration in writing that restricts in whole or in part the discretion and powers of that director to manage the business and affairs of the company. the declaration shall be deemed to be a unanimous shareholder agreement.

(10) A unanimous shareholder agreement under subsection (7) shall not have effect until all the directors of the company, and in the case of an Authorised Company, its management company and in the case of a company holding a Category 2 Global Business Licence, its registered agent shall have been notified of its contents, and notice of the entry into of the agreement and its effect has been given to the Registrar.

(11) Nothing in subsections (7) to (10) shall operate to relieve persons who are directors of the company of their obligations to file any return or notice with the Registrar required by this Act.

Amended by [Act No. 11 of 2018]

PART XXII - FOREIGN COMPANIES

273. Application of Part XXII

This Part shall apply to a foreign company only if it has a place of business or is carrying on business in Mauritius.

274. Meaning of "carrying on business"

For the purposes of this Part -

(a) a reference to a foreign company carrying on business in Mauritius includes a reference to the foreign company -

(i) establishing or using a share transfer office or a share registration office in Mauritius; or

(ii) administering, managing, or dealing with property in Mauritius as an agent, or personal representative, or trustee, and whether through its employees or an agent or in any other manner;

(b) a foreign company shall not be held to carry on business in Mauritius merely because in Mauritius it -

(i) is or becomes a party to a legal proceeding or settles a legal proceeding or a claim or dispute;

(ii) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs;

(iii) maintains a bank account;

(iv) effects a sale of property through an independent contractor;

(v) solicits or procures an order that becomes a binding contract only if the order is accepted outside Mauritius;

(vi) creates evidence of a debt or creates a charge on property;

(vii) secures or collects any of its debts or enforces its rights in relation to securities relating to those debts;

(viii) conducts an isolated transaction that is completed within a period of 31 days, not being one of a number of similar transactions repeated from time to time; or

(ix) invests its funds or holds property.

275. Availability of name before carrying on business

Amended by [Act No. 21 of 2006]

(1) A foreign company shall not carry on business in Mauritius on or after the commencement of this Act unless the name of the foreign company is available.

Amended by [Act No. 21 of 2006]

(2) Subsection (1) shall not apply to a foreign company that, immediately before the commencement of this Act, is registered under Part XII of the Companies Act 1984.

(3) A foreign company registered under this Part that carries on business in Mauritius shill not change its name unless the name is available.

Amended by [Act No. 21 of 2006]

(4) Sections 33, 34 and 35 shall apply, subject to any necessary modifications to the reservation of the name, if any, of a foreign company, including reservation on a change of name, if any, in the same way as they apply to the registration of companies under this Act and to the change of names of companies registered under this Act.

Amended by [Act No. 21 of 2006]

(5) Where a foreign company contravenes this section, the company and every director of the company shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees.

Amended by [Act No. 20 of 2002]

276. Registration of foreign companies

(1) Every foreign company shall, within one month after it establishes a place of business or commences to carry on business in Mauritius, file with the Registrar-

(a) a duly authenticated copy of the certificate of its incorporation or registration in its place of incorporation or origin or a document of similar effect;

(b) a duly authenticated copy of its constitution, charter, statute or memorandum and articles or other instrument constituting or defining its constitution;

(ba) a list of its shareholders, including the name of any beneficial owner, in its place of incorporation, together with all information required under section 91 (3)(a)(ii);

(c) a list of its directors containing similar particulars with respect to directors as are, by this Act, required to be contained in the register of the directors, managers and secretaries of a company;

(d) where the list includes directors resident in Mauritius who are members of the local Board of directors of the company, a memorandum duly executed by or on behalf of the foreign company stating the powers of the local directors;

(e) a memorandum of appointment of power of attorney under the seal of the foreign company or executed on its behalf, in such manner is to be binding on the company, stating the names and addresses of 2 or more persons resident in Mauritius, not including a company, authorized to accept on its behalf service of process and any notices required to be served on the company;

(f) notice of the situation of its registered office in Mauritius and. unless he office is open and accessible to the public during ordinary business hours on each day, other than Saturdays and public holidays, the days and hours during which it is open and accessible to the public; and

(g) a declaration made by the authorized agents of the company.

(2) Where a memorandum of appointment or power of attorney filed under subsection (1)(c) is executed by it person on behalf of the company. A duly authenticated copy of the deed or document by which that person is authorized to execute the memorandum of appointment or power of attorney shall be filed.

(3) Where a foreign company has compiled with subsection (1), the Registrar shall, subject to section 12(2), register the company under this Part and shall issue a certificate in such form as the Registrar may determine.

Amended by [Act No. 9 of 2015]; [Act No. 11 of 2018]

277. Registered office and authorized agents

(1) A foreign company shall have a registered office in Mauritius to which all communications and notices may be addressed and which shall be open and accessible to the public for not less than 4 hours on every day other thin a Saturday or a public holiday,

(2) An authorised shall, until he ceases to be such in accordance with subsection (4) -

(a) continue to be the authorized agent of the company;

(b) be answerable for the doing of all such acts, matters and things as are required to be done by the company by or under this Act.

(3) A foreign company or its authorized agent may file with the Registrar a written notice stating that the authorized agent has ceased to be the authorized agent or shall cease to be the authorized agent on a date specified in the notice.

(4) The authorized agent in respect of whom the notice has been filed shall cease to be an authorized agent -

(a) on the expiry of a period of 21 days after the date of filing of the notice or on the date of the appointment of another authorized agent, the memorandum of whose appointment has been filed in accordance with subsection (5), whichever is earlier; or

(b) where the notice states a date on which he is to so cease and the date is later than the expiry of that period, on that date.

(5) Where an authorized agent ceases to be the authorized agent and the company is then without an authorized agent in Mauritius, the company shall, where it continues to carry on business or has a place of business agent in Mauritius, within 21 days after the authorized agent ceased to be one, appoint an authorized agent.

(6) On the appointment of a new authorized agent the company shall file with the Registrar a memorandum of the appointment in accordance with section 276(1) and, if not already filed in pursuance of section 276(2), a copy of the deed or document or power of attorney referred to in that subsection.

278. Return of alterations

(1) Where any change or alteration is made in -

(a) the constitution, charter, statutes, memorandum or articles or other instrument filed;

(b) the directors;

(c) the authorized agents or the address of an authorized agent;

(d) the situation of the registered office in Mauritius or of the days or hours during which it is open and accessible to the public;

(e) the address of the registered office in its place of incorporation or origin;

(ea) the share register, and the name of the beneficial owner, if any;

(f) the name of the company; or

(g) the powers of any directors resident in Mauritius who are members of the local Board of directors,

the foreign company shall, within one month, file with the Registrar particulars of the change or alteration.

(2) Where a foreign company increases its authorized share capital, it shall, within one month, file with the Registrar a notice of the amount from which and of the amount to which it has been so increased.

(3) Where a foreign company not having a share capital increases the number of its members beyond the registered number it shall, within one month, file with the Registrar a notice of the increase.

(4) Where an order is made by a court under any law in force in the country in which a foreign company is incorporated which corresponds to orders made under Parts XVI, XVII and XVIII, the company shall, within one month, file with the Registrar a copy of the order.

Amended by [Act No. 11 of 2018]

279. Registrar's certificate

On the registration of a foreign company under this Part or the filing with the Registrar of particulars of a change or alteration in a matter referred to in section 278(1)(a), (c), or (f) the Registrar shall issue a certificate to that effect.

280. Validity of transactions not affected

A failure by a foreign company to comply with section 337 or 338 shall not affect the validity or enforceability of any transaction entered into by the foreign company.

281. Balance Sheet

(1) Subject to the other provisions of this section, a foreign company shall, within 3 months of its annual meeting of shareholders, file with the Registrar -

(a) a copy of its balance sheet made up to the end of its last preceding accounting period in such form and containing such particulars and accompanied by copies of such documents as the company is required to

annex, attach or send with its balance sheet by the law for the time being applicable to that company in the place of its incorporation or origin; and

(b) a declaration certifying that the copies are true copies of the documents so required.

(2) (a) Where the Registrar is of the opinion that the balance sheet and other documents referred to in subsection (1) do not sufficiently disclose the company's financial position, he may by written notice to the company require the company to file a balance sheet within such period, in such form and containing such particulars and to annex thereto such documents as he requires.

(b) Nothing in paragraph (a) shall authorize the Registrar to require a balance sheet to contain any particulars, or the company to annex, attach or to send, any document, that would not be required to be furnished if the company were a public company.

(3) Where a foreign company is not required by the law of the place of its incorporation or origin to hold an annual meeting of shareholders and prepare a balance sheet, the company shall prepare and file with the Registrar a balance sheet within such period, in such form and containing such particulars and annex thereto such documents as the directors of the company would have been required to prepare or obtain if the company were a public company.

(4) Subject to subsection (6), a foreign company shall, in addition to the balance sheet and other documents required to be filed by subsections (1), (2) and (3), file its financial statements which shall comply with the International Accounting Standards, fairly showing the assets employed in, and liabilities arising out of, and its profit or loss arising out of, its operations conducted in or from Mauritius.

(5) The financial statements referred to in subsection (4) shall be filed with the Registrar within 6 months after the end of the accounting period of the company.

(5A) Any information regarding the beneficial ownership of a foreign company shall be disclosed in accordance with section 91(3A)(c).

(6) (a) The company shall be entitled to make such apportionment's of expenses incurred in connection with operations or administration affecting both Mauritius and elsewhere and to add such notes and explanations as in its opinion are necessary or desirable in order to give a true and fair view of the profit or loss of its operations in Mauritius.

(b) The Registrar may waive compliance with subsection (4) in relation to any foreign company where he is satisfied that -

(i) it is impracticable to comply with this subsection having regard to the nature of the company's operations in Mauritius;

(ii) it would be of no real value having regard to the amount involved;

(iii) it would involve expense unduly out of proportion to its value; or

(iv) it would be misleading or harmful to the business of the company or to any related corporation.

(7) The financial statements referred to in subsection (4) shall be deemed to have been duly audited for the purpose of that subsection where it is accompanied by a qualified auditor's report which complies, so far as is practicable, with section 205.

Amended by [Act No. 5 of 2020]

282. Notice by foreign company of particulars of its business in Mauritius

A foreign company shall file with the Registrar in each year at the time a copy of its balance sheet is filed, a notice containing particulars with respect to the business being carried out by the company in Mauritius.

283. Name and country of incorporation

(1) Except with the written consent of the Minister, a foreign company shall not be registered by a name or an altered name that, in the opinion of the Registrar, is undesirable or is a name, or a name of a kind, that he has directed the Registrar not to accept for registration.

(2) No foreign company shall use in Mauritius any name other than that under which it is registered.

(3) A foreign company shall -

(a) conspicuously exhibit outside its registered office and every place of business established by it in Mauritius, its name and the place where it is formed or incorporated;

(b) cause its name and the place where it is formed or incorporated to be stated on all its bill heads and letter paper and in all its notices, prospectuses and other official publications; and

(c) where the liability of its members is limited, unless the last word of its name is the word "Limited" or "Limitée" or the abbreviation "Ltd" or "Ltée" cause notice of the fact -

(i) to be stated in legible characters in every prospectus issued by it and in all its bill heads. letter paper, notices, and other official publications in Mauritius; and

(ii) except in the case of a banking company, to be exhibited outside its registered office and every place of business established by it in Mauritius.

(4) Where the name of a foreign company is indicated on the outside of its registered office or any place of business established by it in Mauritius or on any of the

documents referred to in subsection (3) in characters or in any other way than by the use of Romanised letters, the name of the company shall also be exhibited outside such office or place of business or stated on such document in Romanised letters not smaller than any of the characters so exhibited or stated on the relevant office, place of business or
document.

284. Service of notices

Any document required to be served on a foreign company shall be deemed to have been served -

(a) if addressed to the foreign company and left at or sent by Post to its registered office in Mauritius:

(b) if addressed to an authorized agent and left at or sent by post to his registered address; or

(c) in the case of a foreign company which has ceased to maintain a place of business in Mauritius, if addressed to the foreign company and left at or sent by post to its registered office in the place of its incorporation.

285. Branch registers

(1) Subject to the other provisions of this section, a foreign company which has a share capital and has a shareholder resident in Mauritius shall keep at its registered office in Mauritius or at some other place in Mauritius a branch register for the purpose of registering shares of shareholders resident in Mauritius who apply to have the shares registered therein.

(2) The company shall not be obliged to keep a branch register until after the expiry of 2 months from the receipt by it of a written application by a shareholder resident in Mauritius for registration of his shares.

(3) This section shall not apply to a foreign company which by its constitution prohibits an invitation to the public to subscribe for shares in the company.

(4) (a) Every branch register shall be kept in the manner provided by section 91 and any transfer shall be effected in the same manner.

(b) Every transfer registered at its registered office in Mauritius shall be binding on the company and the Court shall have the same powers in relation to rectification of the register as it has under section 95.

(5) Where a foreign company opens a branch register, it shall, within 14 days of the date the branch register is opened, file with the Registrar a notice to that effect specifying the address where the register is kept.

(6) Where any change is made in the place where the register is kept or where the register is discontinued, the company shall, within 14 days of the date of the change, file with the Registrar a notice to that effect.

(7) Where a company or corporation is entitled under a law of the place of incorporation of a foreign company corresponding with section 183 of the Companies Act 1984 to give notice to it dissenting shareholder in that foreign company that it desires to acquire any of his shares registered on a branch register kept in Mauritius, this section shall cease to apply to that foreign company until -

(a) the shares have been acquired; or

(b) the company or corporation has ceased to be entitled to acquire the shares.

(8) On application made in that behalf by a member resident in Mauritius, the foreign company shall register in its branch register the shares held by a member which are registered in any other register kept by the company.

(9) On application made in that behalf by a member holding shares registered in a branch register, the foreign company shall remove the shares from the branch

register and register them in such other register within Mauritius as specified in the application.

(10) Sections 225 to 228 shall, with such adaptations and modifications as may be necessary, apply respectively to the inspection and the closing of the register.

(11) Sections 91 to 95 shall with such adaptations and modifications as may be necessary, apply with respect to the transfer of shares on, and the rectification of, the branch register.

(12) A branch register shall be prima facie evidence of any matter under this Part directed or authorized to be inserted therein.

(13) A certificate under the seal of a foreign company or started by a director of the company specifying any shares held by any shareholder of that company and registered in the branch register shall be prima facie evidence of the title of the shareholder to the shares and the registration of the shares in the branch register.

286. Cessation of business in Mauritius

(1) Where a foreign company ceases to have a place of business or to carry on business in Mauritius, it shall, within 7 days of the date of the cessation, file with the Registrar a notice to that effect. and as from the day on which the notice is filed. its obligation to file any document other than a document that ought to have been filed shall cease, and the Registrar shall on the expiry of 3 months after the filing of the notice remove the name of the company from his registers.

(2) Where a foreign company goes into liquidation or is dissolved in its place of incorporation or origin -

(a) every person who immediately before the commencement of the liquidation proceedings was an authorized agent shall, within one month after the commencement of the liquidation or the dissolution, file or cause to he filed

with the Registrar a notice to that effect and, where a liquidator is appointed, notice of the appointments and

(b) the liquidator shall, until a liquidator for Mauritius is appointed by the Court, have the powers and functions of a liquidator for Mauritius.

(3) A liquidator of a foreign company appointed for Mauritius by the Court or a person exercising the powers and functions of such a liquidator shall -

(a) before any distribution of the foreign company's assets is made, by advertisement in a newspaper circulating generally in each country where the foreign company had been carrying on business before the liquidation and where no liquidator has been appointed for that place, invite all creditors to make their claims against the foreign company within a reasonable time before the distribution;

(b) not, subject to subsection (7), without leave of the Court, pay out any creditor to the exclusion of any other creditor;

(c) unless the Court otherwise directs, only recover and realise the assets of the foreign company in Mauritius and shall, subject to paragraph (b) and to subsection (7). pay the net amount so recovered and realised to the liquidator of that foreign company for the place where it was formed or incorporated after paying any debts and satisfying any liabilities incurred in Mauritius by the foreign company.

(4) Where a foreign company has been wound up so far as its assets in Mauritius are concerned and there is no liquidator for the place of its incorporation or origin, the liquidator may apply to the Court for directions as to the disposal of the net amount recovered under subsection (3).

(5) On receipt of a notice from an authorised agent that the company has been dissolved, the Registrar shall remove the name of the company from his register.

(6) Where the Registrar has reasonable cause to believe that a foreign company has ceased to carry on business or to have a place of business in Mauritius, Part XXVI shall, with such adaptations and modifications as may be necessary, apply to a foreign company as they apply to a company.

(7) Section 283 of the Companies Act 1984 shall, with such adaptations and modifications as may be necessary, apply to a foreign company as it applies to a company under this Act.

PART XXIII - LIMITED LIFE COMPANIES

287. Registration as limited life company

(1) An application may be made to the Registrar for the registration of a company as a limited life company at the time of incorporation, or at the time of applying for continuation under Part XXV or at any other time after incorporation or registration by way of continuation.

(2) An application in respect of a company to which a certificate of incorporation under section 24 or a certificate of registration by way of continuation under section 299 has been issued, shall be accompanied by a certified copy of the relevant extract of its constitution limiting the life or duration of the company to a period not exceeding 50 years from the date of incorporation or, where necessary of a resolution of the company altering its constitution for that purpose.

(3) The Registrar shall register the company to which the application refers as a limited life company where immediately on incorporation or registration-

(a) the company satisfies the requirements of section 289;

(b) the company has at least one subscriber or shareholder; and

(c) the constitution of the company limits the life of the company to a period not exceeding 50 years from the date of its incorporation.

(4) On registering a company as a limited life company, the Registrar shall certify in the certificate of incorporation issued under section 25 or in the certificate of registration by way of continuation issued under section 299 that the company is registered as a limited life company, stating the date of the registration.

Amended by [Act No. 18 of 2008]

288. Maximum duration of limited life company

A limited life company may by resolution alter its constitution extending the duration of the company to such period or periods not exceeding in aggregate 150 years from the date of the incorporation of the company.

289. Contents of constitution

(1) The constitution of a limited life company may -

(a) prohibit the transfer of any share or other interest of a shareholder of the company absolutely or may provide that the transfer of any share or other interest of a shareholder requires either the unanimous resolution of all the members, & a resolution passed by such proportion of the shareholders as the constitution may specify;

(b) distinguish for the purpose of paragraph (a) between various interests in the company, such as an interest in the profits of the company, an interest in the capital of the company, or an interest in management of the company;

(c) provide that a person shall cease to be a shareholder of the company upon the happening of any one or more of the events specified in the constitution, and may further provide that the rights of such former shareholders shall be

limited to an entitlement to receive such value for their shares in the company is may be determined by the constitution;

(d) provide that the affairs Of the company may be managed by its shareholders in their capacity as such, or by some person designated as manager with such rights, powers and duties as may be specified in the constitution;

(e) designate a person to be the administrator of the company in the event of the company being in dissolution by operation of section 290;

(f) provide that where the company dissolves by virtue of section 290(1)(c) -

(i) the administrator designated in the constitution shill discharge any liabilities existing immediately before dissolution and distribute any surplus assets remaining after dissolution among the former shareholders according to their respective rights;

(ii) any one or more of the shareholders of the dissolved company may retain the assets of the company and continue its business as a new enterprise not incompatible with the provisions of this Act; and any shareholders who do not wish to continue in the new enterprise shall be entitled to receive such value for their share in the dissolved company as may be determined by the constitution;

(g) provide that a shareholder shall be liable generally to the creditors of the company, or that a shareholder shall be liable upon dissolution of the company, after application of all the assets of the company, to the creditors of the company and to other shareholders for their unreturned capital.

Amended by [Act No. 18 of 2016]

290. Winding up of limited life company

(1) Notwithstanding Part XI of the Companies Act 1984, a limited life company shall be dissolved -

(a) when the period fixed for the duration of the company expires;

(b) where the shareholders of the company pass a special resolution requiring the company to be wound up and dissolved;

(c) where the constitution of the company so provides, upon the happening of any one or more of the following events as are stipulated in the constitution -

(i) the bankruptcy, death, insanity, retirement, resignation, withdrawal, expulsion, termination, cessation or dissolution of a shareholder.

(ii) the transfer of any share or other interest in the company in contravention of the constitution of the company,

(iii) the-redemption, repurchase or cancellation of all the shares of a shareholder of the company; or

(iv) the occurrence of any other event (whether or not relating to the company or a shareholder) on which it is provided in the constitution that the company is to be dissolved.

2(a) Where a limited life company dissolves by virtue of subsection (1) and no administrator is designated to act in the constitution of the company, the shareholders of the dissolved company shall by resolution appoint a administrator for the purposes of the winding up, and if they fail to pass such a resolution, the Court may appoint a administrator.

(b) In paragraph (a), “administrator” includes a director or such other person as may be appointed by the Board of directors.

(c) The administrator referred to in paragraph (a) need not be a registered Insolvency Practitioner under the Insolvency Act, but shall be a natural person.

(d) The administrator referred to in paragraph (c) shall, as far as possible, conduct the winding up in accordance with the Insolvency Act.

Amended by [Act No. 20 of 2011]; [Act No. 18 of 2016]

Amended by [Act No. 3 of 2009]

(3) Sections 251(1) and 254 of the Companies Act 1984 shall not apply to the winding up of a limited life company.

(4) Any reference to the passing of a resolution for the winding up of a company in section 251(4) to (7) and section 253 of the Companies Act 1984 shall be construed as including a reference to the happening of an event causing a limited life company to dissolve.

(5) Any reference to a liquidator or the appointment of a liquidator in sections 223 to 227 of the Companies Act 1984 inclusive shall be construed as including a reference to a liquidator appointed in the constitution of the company.

Amended by [Act No. 3 of 2009]; [Act No. 18 of 2016]; [Act No. 11 of 2024]

291. Cancellation of registration

(1) A company shall cease to be a limited life company where -

(a) the Registrar removes its name from the register under section 306; or

(b) the company passes a resolution to alter its constitution to provide for a period of duration for the company that exceeds or is capable of exceeding 150 years from the date of its incorporation.

(2) On a company ceasing to be a limited life company -

(a) the Registrar shall, where the company has ceased to be a limited life company by virtue of subsection (1)(b), on payment of the prescribed fee, record the alteration on the certificate of incorporation in order to meet the circumstances of the case; and

(b) the certificate issued by virtue of section 287(4) ceases to have effect.

(3) A resolution passed for the purpose of subsection (1)(b) has no effect until a certificate of incorporation is issued by the Registrar under subsection (2)(a).

292. Definition of “transfer”

In this Part, "transfer", in relation to any shares, means the transfer, sale, assignment, mortgage, creation or permission to subsist of any pledge, lien, charge or encumbrance over, grant of any option, interest or other rights in, or other disposition of any such shares, any part thereof or any interest therein, whether by agreement. operation of law or otherwise.

PART XXIV - DORMANT COMPANIES

293. Meaning of "dormant company"

(1) For the purposes of this Part, a company -

(a) shall be a dormant company for any period during which no significant accounting transaction occurs in relation to the company; and

(b) shall cease to be a dormant company when any significant accounting transaction occurs in relation to the company.

(2) In this Part -

(a) no significant accounting transaction shall be deemed to have occurred unless it is a transaction which is required to be entered in the accounting records of the company under section 193;

(b) a significant accounting transaction shall not include -

(i) any transaction which arises under section 51 from the issue to a subscriber, of shares in the company in respect of the application for incorporation;

(ii) the payment of bank charges, licence fees or any other compliance costs.

294. Company may be recorded in register as dormant company

(1) Where a company has -

(a) been dormant from the time of its formation; or

(b) has been dormant since the end of its previous accounting period,

and is not required to prepare group accounts for that period, the company may, by a special resolution passed at a meeting of shareholders of the company at any time after copies of the annual accounts and reports for that year have been duly sent to shareholders under section 219, declare itself to be a dormant company.

(2) A company shall not declare itself to be a dormant company where it is a company formed for the business of banking or insurance.

(3) The company shall, within 14 days of the passing of the special resolution referred to in subsection (1), give notice to the Registrar of the passing of that resolution and

the Registrar shall, on receipt of that resolution for registration, record the company in the register as being a dormant company.

(4) Where a company which has declared itself to be a dormant company under subsection (1) ceases to be dormant, the company shall, within 14 days of any significant accounting transaction taking place which has resulted in the company ceasing to be dormant, give notice to the Registrar that the company has ceased to be dormant.

(5) Where the Registrar receives a notice under subsection (4), he shall enter in the register of companies the fact that the company has ceased to be dormant.

295. Exemption available to dormant companies

Any company, which is recorded by the Registrar as being a dormant company, shall, for so long as it continues to be a dormant company -

(a) be exempted from the requirement of having its accounts audited under section 195; and

(b) be exempted from the payment of the fee specified in item 1, 2, 4 or 5 of Part I of the Twelfth Schedule.

PART XXV - TRANSFER OF REGISTRATION

Sub-Part A - Registration and continuation of companies incorporated outside Mauritius as companies under this Act

296. Registration and continuation of company incorporated outside Mauritius

(1) A company incorporated under the laws of any country other than Mauritius, may, where it is so authorised by the laws of that country, apply to the Registrar to be

registered as, and continue as, a company in Mauritius as if it had been incorporated in Mauritius under this Act.

(2) An application under subsection (1) shall be accompanied by -

(a) a certified copy of the certificate of incorporation or other such document that evidences the incorporation of the company;

(b) a copy of the resolution authorizing the continuation of the company in Mauritius;

(c) a certified copy of the documents containing its constitution;

(d) a statement of the charges on the company's assets;

(e) documentary evidence which satisfies the Registrar that the conditions for registration under section 297 or 298, as the case may be, has been complied with;

(f) the documents and information that are required to incorporate a company under Part III;

(g) documentary evidence which satisfies the Registrar that the company is in good standing in the country of its incorporation and in the countries in which it has any significant activity; and

(h) such other document or information as may be required by the Registrar.

(3) The Registrar may direct that a document that has been delivered to the Registrar or registered under Part XXII need not accompany the application.

297. Companies incorporated outside Mauritius authorised to register

A company incorporated outside Mauritius shall not be registered as a company under this Act unless -

(a) the company is authorised to transfer its incorporation under the law of the country in which it is incorporated;

(b) the company has compiled with the requirements of that law in relation to the transfer of its incorporation; and

(c) where that law does not require its shareholders, or a specified proportion of them, to consent to the transfer of its incorporation -

(i) the transfer has been consented to by not less than 75 percent of its shareholders entitled to vote and voting in person or by proxy at a meeting; and

(ii) a notice specifying the intention to transfer the company's incorporation was given to the shareholders at least 21 days prior to the meeting.

298. Companies incorporated outside Mauritius that cannot be registered

(1) A company incorporated outside Mauritius shall not be registered as, and continue as, a company under this Act where -

(a) the company is in the process of winding up or liquidation;

(b) a receiver or manager has been appointed, whether by a court or not, in relation to the property of the company; or

(c) there is a scheme or order in force in relation to the company whereby the rights of the creditors are suspended or restricted.

(2) A company incorporated outside Mauritius shall not be registered as a company under this Act unless that company would, immediately after becoming registered under this Act, satisfy the solvency test.

299. Registration

(1) The Registrar shall, on receipt of a properly completed application and on being satisfied that the requirements for registration under this Part have been complied with –

(a) issue a conditional certificate of registration; and
(b) request the company to be deregistered from its original place of registration.

(1A) The Registrar shall, on receipt of the certificate of deregistration –

(a) enter on the register of companies the particulars of the company in accordance with section 11; and
(b) issue a certificate of registration as from the date of deregistration of the company from its original place of registration, in such form as the Registrar may determine.

(2) A certificate of registration of a company issued under this section is conclusive evidence that -

(a) in the requirements of this Act as to registration have been complied with; and

(b) the company is registered under this Act as from the date of registration specified in the certificate.

Amended by [Act No. 9 of 2015]; [Act No. 15 of 2022]

300. Effect of registration

(1) The registration of a company incorporated outside Mauritius under this Act shall not -

(a) create a new legal entity;

(b) prejudice or affect the identity of the body corporate constituted by the company or its continuity as a legal entity;

(c) affect the property, rights or obligations of the company; or

(d) affect proceedings by or against the company.

(2) Proceedings that could have been commenced or continued by or against the company incorporated outside Mauritius before registration under this Act may be commenced or continued by or against the company after its registration under this Act.

Sub-Part B - Transfer of registration of companies to other jurisdictions

301. Company may transfer incorporation

Subject to this Part, a company may be removed from the register of companies for the purposes of becoming registered or incorporated under the law in force in, or in any part of, another country.

302. Application to transfer incorporation

(1) An application by a company for its removal from the register of companies under section 301 shall be made in a form approved by the Registrar and shall be accompanied by -

(a) documentary evidence which satisfies the Registrar that sections 303 and 304 have been complied with;

(b) documentary evidence which satisfies the Registrar that the removal of the company from the register is not prevented by section 305;

(c) written notice from the Commissioner of income Tax and the Commissioner for Value Added Tax that there is no objection to the company being removed from the register;

(d) documentary evidence which satisfies the Registrar that the company is to be incorporated under the law in force in another country; and

(e) such other document or information as may be required by the Registrar.

Amended by [Act No. 28 of 2004]

303. Approval of shareholders

A company shall not apply to be removed from the register of companies under 302 unless the making of the application has been approved by special resolution.

304. Company to give public notice

A company shall not apply to be removed from the register of companies under 302 unless -

(a) the company gives public notice -

(i) stating that it intends, after the date specified in the notice, which shall not be less than 28 days after the date of the notice, to apply under section 302 for the company to be removed from the register for the purposes of becoming incorporated under the law in force in, or in any part of, another country;

(ii) specifying the country or part of the country under the law of which it is proposed that the company shall be incorporated; and

(b) the application is made after that date.

305. Companies that cannot transfer incorporation

(1) A company shall not be removed from the register of companies under 305 where -

(a) the company is in liquidation or an application has been made to the Court under section 216 of the Companies Act 1984 to put the company into liquidation;

(b) a receiver manager has been appointed, whether by a Court or not, in relation to the property of the company;

(c) the company has entered into a compromise with creditors or a class of creditors under Part XVII or a compromise has been proposed under that Part in relation to the company; or

(d) a compromise has been approved by the Court under Part XVII in relation to the company or an application has been made to the Court to approve a compromise under that Part.

(2) A company shall not he removed from the register under section 306 unless the company, immediately before its removal, satisfies the solvency test.

306. Removal from register

(1) (a) Where the Registrar receives an application to remove a company from the register, and the application satisfies the requirements of this Sub-part, the Registrar shall request the company to be registered or incorporated under the law in force in, or in any part of, another country.

(b) The Registrar shall, on receipt of the certificate of registration, remove the company from the register as from the date of its registration or incorporation under the law in force in, or in any part of, another country.

(2) A company shall be removed from the register when a notice signed by the Registrar stating that the company which has been removed from the register is registered under this Act.

Amended by [Act No. 15 of 2022]

307. Effect of removal from register

(1) The removal of a company from, the register of companies under section 306 shall not -

(a) prejudice or affect the identity of the body corporate that was constituted under this Act or its continuity as a legal person;

(b) affect the property, rights, or obligations of that body corporate;

(c) affect proceedings by or against that body corporate.

(2) Proceedings that could have been commenced or continued by or against a Company before the company was removed from the register under section 306 may be commenced or continued by or against the body corporate that continues in existence after the removal of the company from the register.

PART XXVI - REMOVAL FROM REGISTER OF COMPANIES

308. Removal from register

A company shall be removed from the register of companies when a notice signed by the Registrar stating that the company is removed from the register, is registered under this Act.

309. Grounds for removal from register

(1) Subject to the other provisions of this section, the Registrar shall remove a company from the register of companies where -

(a) the company is an amalgamating company, other than an amalgamated company, on the day on which the Registrar issues a certificate of amalgamation under section 249 of this Act; or

(b) the Registrar is satisfied that -

(i) the company has ceased to carry on business;

(ii) the company has failed to pay its registration fees;

(iii) the company has not filed its annual return as required under section 223(2); or

(iv) there is no reason for the company to continue to exist; or

Amended by [Act No. 27 of 2013]; [Act No. 15 of 2022]

(c) the company has been put into liquidation, and –

(i) no liquidator is acting; or

(ii) the documents referred to in section 265(3) of the Companies Act 1984 have not been sent or delivered to the Registrar within 6 months of the date on which the liquidation of the company is completed; or

(d) the Registrar receives a request, in a form approved by him, from -

(i) a shareholder authorised to make the request by a special resolution of shareholders entitled to vote and voting on the question; or

(ii) the Board or any other person, where the constitution of the company so requires or permits,

that the company be removed from the register on any grounds specified in subsection (2);

(e) a liquidator sends or delivers to the Registrar the documents referred to in section 265(4) of the Companies Act 1984; or

(f) the company fails to comply with section 91(3A)(c).

(2) A request that a company be removed from the register under subsection (1)(d) may be made on the grounds -

(a) that the company has ceased to carry on business, has discharged in full its liabilities to all its known creditors and has distributed its surplus assets in accordance with its constitution and this Act; or

(b) that the company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court under section 216 of the Companies Act 1984 for an order putting the company into liquidation.

(3) A request that a company be removed from the register under subsection (1)(d) shall be accompanied by a written notice from the Director-General of the Mauritius Revenue Authority and, where applicable, by the Financial Services Commission stating that there is no objection to the company being removed from the Register.

(4) The Registrar shall not remove a company from the register under subsection (1)(b) unless -

(a) the Registrar has given notice in accordance with section 310; and

(b) the company has satisfied the Registrar that it is carrying on business or that reasons exist for the company to continue in existence; and

(c) the Registrar -

(i) is satisfied that no person has objected to the removal under section 312; or

(ii) where an objection to the removal has been received, has complied with section 313.

(5) The Registrar shall not remove a company from the register under subsection (1)(c) or (e) unless -

(a) the Registrar is satisfied that notice has been given in accordance with section 310; and

(b) the Registrar -

(i) is satisfied that no person has objected to the removal under section 312; or

(ii) where an objection to the removal has been received, has complied with section 313.

Amended by [Act No. 28 of 2004]; [Act No. 5 of 2020]; [Act No. 11 of 2024]

310. Notice of intention to remove where company has ceased to carry on business

(1) Before removing a company from the register under section 309(l)(b), be Registrar shall -

(a) give notice to the company in accordance with subsection (2);

(b) give notice of the matters set out in subsection (3) to any person who is entitled to a charge registered under section 127, and

(c) give notice in the Gazette of the matters set out in subsection (3).

(2) The notice to be given under subsection (1)(a) shall -

(a) state the section under. and the grounds on, which it is intended to remove the company from the register; and

(b) state that, unless -

(i) by the date specified in the notice, which shall not be less than 28 days after the date of the notice, the company satisfies the Registrar by notice in writing that it is still carrying on business or there is other reason for it to continue in existence; or

(ii) the Registrar does not proceed to remove the company from the register under section 313,

the company shall be removed from the registers

(5) The notice to be given under subsection (1) (b) and (c) shall specify -

(a) the name of the company and its registered office;

(b) the section under, and the grounds on, which it is intended to remove the company from the register; and

(c) the date by which an objection to the removal under section 309 shall be delivered to the Registrar, which shall not be less than 28 days after the date of the notice.

Amended by [Act No. 20 of 2009]

311. Notice of intention to remove in other cases

(1) Where a company is to be removed from the register under section 309(1)(c) or (f), the Registrar shall give public notice of the matters set out in subsection (4).

(2) Where a company is to be removed from the register under section 309(1)(d) or (e), the applicant, or the liquidator, as the case may be, shall give public notice of the matters set out in subsection (4).

(3) Where a company is to be removed from the register under section 309(1)(c), the Registrar, or, where it is to be removed from the register under section 309(1)(d), the applicant, as the case may be, shall also give notice of the matters set out in subsection (4) to -

(a) the company; and

(b) any person entitled to a charge registered under section 127.

(4) The notice to be given under this section shall specify -

(a) the name of the company and its registered office;

(b) the section under, and the grounds on, which it is intended to remove the company from the register; and

(c) the date by which an objection to the removal under section 313 shall be delivered to the Registrar, which shall be not less than 28 days after the date of the notice.

Amended by [Act No. 15 of 2021]

312. Objection to removal from register

(1) Where a notice is given of an intention to remove a company from the register, any person may deliver to the Registrar, not later than the date specified in the notice, an objection to the removal on grounds that -

(a) the company is still carrying on business or there is other reason for it to continue in existence;

(b) the company is a party to legal proceedings;

(c) the company is in receivership, or liquidation, or both;

(d) the person is a creditor, or a shareholder, or a person who has an undischarged claim against the company;

(e) the person believes that there exists, and intends to pursue, a right of action on behalf of the company under Part XII; or

(f) for any other reason, it would not be just and equitable to remove the company from the register.

(1A) Where a person delivers an objection under subsection (1), he shall, at the same time, serve a copy of same on the company.

(1B) Where a person delivers an objection under subsection (1), he shall file proof of the ground of objection with the Registrar within 2 weeks of the date of the objection and shall, at the same time, serve a copy thereof on the company.

(1C) Where a person fails to comply with subsection (1B), the objection delivered under subsection (1) shall be deemed to have lapsed.

(1D) (a) Where an objection delivered before 1 July 2009 has not been withdrawn, the objection shall not be entertained and shall be deemed to have lapsed unless proof of the grounds of objection is filed with the Registrar within a period of 6 weeks from the commencement of this subsection.

(b) Where the proof referred to in paragraph (a) is not submitted within the period referred to in that paragraph, the Registrar shall remove the company from the register.

(2) For the purposes of subsection (1)(d) -

(a) a claim by a creditor against a company is not an undischarged claim where -

(i) the claim has been paid in full;

(ii) the claim has been paid in part under a compromise entered into under Part XVII or by being otherwise compounded to the reasonable satisfaction of the creditor;

(iii) the claim has been paid in full or in part by a receiver or a liquidator in the course of a completed receivership or liquidation; or

(iv) a receiver or a liquidator has notified the creditor that the assets of the company are not sufficient to enable any payment to he made to the creditors; and

(b) a claim by a shareholder or any other person against a company is not an undischarged claim unless -

(i) payment has been made to the shareholder or that person in accordance with a right under the company's constitution or this Act to receive or share in the company's surplus assets; or

(ii) a receiver or liquidator has notified the shareholder or that person that the company has no surplus assets.

Amended by [Act No. 14 of 2009]; [Act No. 18 of 2016]; [Act No. 4 of 2017]

313. Duties of Registrar where objection received

(1) Where an objection to the removal of a company from the register is made on a ground specified in section 312(1)(a), (b), or (c), the Registrar shall not proceed with the removal unless the Registrar is satisfied that -

(a) the objection has been withdrawn;

(b) any facts on which the objection is based are not, or are no longer, correct; or

(c) the objection is frivolous or vexatious.

(2) Where an objection to the removal of a company from the register is made on a ground specified in section 312(1)(d), (e), or (f), the Registrar shall give notice to the person objecting that, unless notice of an application to the Court by that person for an order -

(a) under section 216 of the Companies Act 1984 that the company be put into liquidation; or ,

(b) under section 314, that, on any ground specified in section 312, the company shall not be removed from the register, is served on the Registrar not later than 28 days after the date of the notice, the Registrar intends to proceed with the removal.

(3) Where -

(a) notice of an application to the Court under subsection (2) is not served on the Registrar;

(b) the application is withdrawn; or

(c) on the hearing of such an application, the Court refuses to grant either an order putting the company into liquidation or an order that the company not be removed from the register,

the Registrar shall proceed with the removal.

(4) Every person who makes an application to the Court under subsection (2) shall give the Registrar notice in writing of the decision of the Court within 7 days of the decision.

(5) The Registrar shall send -

(a) a copy of an objection under section 312;

(b) a copy of a notice given by or served on the Registrar under this section; and

(c) where the company is removed from the register, notice of the removal,

to a person who sent or delivered to the Registrar a request that the company be removed from the register under section 309(1)(d) or, while acting as liquidator, sent or delivered to the Registrar the documents referred to in section 309(1)(e).

314. Powers of Court

(1) A person who gives a notice objecting to the removal of a company from the register of companies on a ground specified in section 312(1)(d), (e), or (f) may apply to the Court for an order not to remove the company from the register on any ground set out in that section.

(2) On an application for an order under subsection (1), the Court may, on being satisfied that the company is not required to be removed from the register, make an order that the company shall not be removed from the register.

315. Property of company removed from register

(1) For the purposes of this section, "property" includes leasehold rights and all other rights vested in or held on behalf of or on trust for the company prior to its removal (referred to as "foreign company") but does not include property held by the foreign company on trust for any other person.

(2) Any property which, immediately before the removal of a company from the register of companies, had not been distributed or disclaimed, shall vest in the Registrar or the Curator of Vacant Estates, as the case may be, in the manner specified in this section, with effect from the removal of the company from the register.

(2A) A request for the vesting of property in the Registrar or the Curator of Vacant Estates, as the case may be, shall be made by way of application to the Court for an order for the vesting of money in the Registrar or for the vesting of any property, other than money, in the Curator of Vacant Estates and may be presented by –

(a) a contributory or any person who is the heir of a deceased contributory or the trustee in bankruptcy of the estate of a contributory;

(b) a creditor, including a contingent or prospective creditor, of the company;

(c) a liquidator; or

(d) any institution.

(2B) Where an application is made under subsection (2A), the Court may grant or refuse the application.

(2C) The applicant shall, as soon as practicable, file with the Registrar or the Curator of Vacant Estates, as the case may be, a copy of the order of the Court for the vesting of money in the Registrar or the vesting of any property, other than money, in the Curator of Vacant Estates.

(3) (a) The Registrar shall, forthwith on becoming aware of the vesting of the property –

(i) inform the Curator of Vacant Estates; and

(ii) give public notice,

of the vesting, setting out the name of the former company and particulars of the property.

(b) The applicant under subsection (2A) shall pay for the costs of the public notice under paragraph (a)(ii).

(3A) The money vested in the Registrar pursuant to an order of the Court under this section shall be paid into the Companies Special Deposit Account which shall be kept and maintained by the Registrar.

(4) Where any property is vested in the Registrar or the Curator of Vacant Estates, as the case may be, under this section, a person who would have been entitled to receive all or part of the property or payment from the proceeds of its realisation, if it had been in the hands of the company immediately before the removal of the company from the register of companies, or any other person claiming on behalf of that person, may apply to the Court for an order -

(a) vesting all or part of the property in that person; or

(b) for payment to that person of compensation of an amount not greater than the value of the property.

(5) On an application made under subsection (4), the Court may -

(a) decide any question concerning the value of the property, the entitlement of any applicant to the property or to compensation, and the apportionment of the property or compensation among 2 or more applicants;

(b) order that the hearing of 2 or more applications be consolidated;

(c) order that an application be treated as an application on behalf of all persons, or all members of a class of persons, with an interest in the property; or

(d) make an ancillary order.

(6) Any compensation ordered to be paid under subsection (4) shall be paid in such manner as the Court may direct.

Amended by [Act No. 18 of 2016]; [Act No. 13 of 2019]

316. Disclaimer of property by State

(1) The Curator of Vacant Estates may, by notice in writing, disclaim the State's title to property vesting in the manner specified in section 315, where the property is onerous property within the meaning of section 286 of the Companies Act 1984.

(2) The Curator of Vacant Estates shall forthwith give public notice in 2 daily newspapers in wide circulation in Mauritius of the disclaimer.

(3) Any property which is disclaimed under this section shall be deemed not to have vested in the manner specified in section 315.

(4) Subsections (2) to (8) of section 286 of the Companies Act 1984 shall apply to any property that is disclaimed under this section as if the property had been disclaimed under that section immediately before the company was removed from the register of companies.

(5) Subject to any order of the Court, the Curator of Vacant Estates shall not be entitled to disclaim property unless -

(a) the property is disclaimed within 12 months of the date on which the vesting of the property first comes to the notice of the Curator of Vacant Estates; or

(b) where a person gives notice in writing to he Curator of Vacant Estates requiring him to elect, before the close of such date as is stated in the notice not being, a date that is less than 60 days after the date on which the notice is received by the Curator of Vacant Estates, whether to disclaim the property, the property shall be disclaimed before the close of that date,

whichever occurs first.

(6) A statement in a notice disclaiming any property under this section that the vesting of the property first came to the notice of the Curator of Vacant Estates on a specified date shall, in the absence of proof to the contrary, be evidence of the fact stated.

Amended by [Act No. 18 of 2016]

317. Liability of directors, shareholders and others to continue

The removal of a company from the register of companies shall not affect the liability of any former director or shareholder of the company or any other person in respect of any act or omission that took place before the company was removed from the register and that liability continues and may be enforced as if the company had not been removed from the register.

318. Liquidation of company removed from register

(1) Notwithstanding the fact that a company has been removed from the register of companies, the Court may appoint a liquidator under section 223 of the Companies Act 1984 as if the company continued in existence.

(2) Where a liquidator is appointed under subsection (1) -

(a) Part XI of the Companies Act 1984 shall apply to the liquidation with such modifications as may be necessary; and

(b) the provisions of section 322 shall apply, with such modifications as may be necessary, to any property of the company which is vested under section 315 as if the company had been restored to the register of companies.

Amended by [Act No. 18 of 2016]

319. Registrar may restore company to register

(1) Subject to the other provisions of this section, the Registrar may, on the application of a person referred to in subsection (2) and on payment of the prescribed fee, or on his own motion, restore a company that has been removed from the register of companies to the register where he is satisfied that, at the time the company was removed from the register -

(a) the company was still carrying on business or other reason existed for the company to continue in existence;

(b) the company was a party to legal proceedings; or

(c) the company was in receivership, or liquidation, or both.
Amended by Act No. 14 of 2009]

(2) Any person who, at the time the company was removed from the

register, was -

(a) a shareholder or director of the company;

(b) a creditor of the company; or

(c) a liquidator, or a receiver of the property, of the company, may make an application under subsection (1).

(3) Before the Registrar restores a company to the register, the Registrar shall give notice in the Gazette and by any electronic means setting out -

(a) the name of the company;

(b) the name and address of the applicant;

(c) the section under, and the grounds on which, the application is made or the Registrar proposes to act, as the case may be; and

(d) the date by which an objection to restoring the company to the register shall be filed with the Registrar, not being less than 28 days after the date of the notice.

(3A) Where the Registrar restores a company on the register –

(a) on his own motion under subsection (1); or
(b) on an application made following the removal of the company on the ground where the Registrar has initiated the procedure under section 309(1)(b),

subsection (3) shall not apply and he shall give notice of the restoration in accordance with section 321.

(4) The Registrar shall not restore a company to the register if the Registrar receives an objection to the restoration within the period stated in the notice.

(5) Before the Registrar restores a company to the register under this section, the Registrar may require any of the provisions of this Act or any regulations made under this Act, being provisions with which the company had failed to comply before it was removed from the register, to be complied with.

(6) The Court may, on the application of the Registrar or the applicant, give such directions or make such orders as may be necessary or desirable for the purpose of placing a company that is restored to the register under this section, and any other persons, as nearly as possible in the same position as if the company had not been removed from the register.

(7) Nothing in this section shall limit or affect section 320.

Amended by [Act No. 27 of 2012]; [Act No. 11 of 2018]; [Act No. 13 of 2019]; [Act No. 7 of 2020]; [Act No. 15 of 2022]

320. The Court may restore company to register -

(1) The Court may, on the application of a person referred to in subsection (2), order that a company that has been removed from the register of companies be restored to the register on payment of the prescribed fee, where the Court is satisfied that -

(a) at the time the company was removed from the register-

(i) the Company was still carrying on business or other reason existed for the company to continue in existence;

(ii) the company was a party to legal proceedings;

(v) the company was in receivership, or liquidation, or both;

(iv) the applicant was a creditor, or a shareholder, or a person who had an undischarged claim against the company; or

(v) the applicant believed that a right of action existed, or intended to pursue a right of action, on behalf of the company under Part XII; or

(b) for any other reason it is just and equitable to restore the company to the register.

(2) An application under subsection (1) may be made by -

(a) any person who, at the time the company was removed from the register -

(i) was a shareholder or director of the company;

(ii) was a creditor of the company;

(iii) was a party to any legal proceedings against the company;

(iv) had an undischarged claim against the company; or

(v) was the liquidator, or a receiver of property of, the company;

(b) the Registrar;

(c) with the leave of the Court, any other person.

(3) Before the Court makes an order restoring a company to the register this section, it may require any provisions of this Act or any regulations made under this Act, being provisions with which the company had failed to comply before it was removed from the register, to be complied with.

(4) The Court may give such directions or make such orders as may be necessary or desirable for the put-pose of placing the company and any other persons as nearly

as possible in the same position as if the company had not been removed from the register.

Amended by [Act No. 27 of 2012]

321. Restoration to register

(1) A company shall be restored to the register of companies when a notice signed by the Registrar stating that the company is restored to the register is registered under this Act.

(2) A company that is restored to the register shall be deemed to have continued in existence as if it had not been removed from the register.

322. Vesting of property in company on restoration to register

(1) Subject to this section, any property of a company that is, at the time the company is restored to the register, vested pursuant to section 315, shall, on the restoration of the company to the register, vest in the company as if the company had not been removed from the register.

(2) Nothing in subsection (1) shall apply to any property vested pursuant to section 315 where the Court has made an order for the payment of compensation to any person pursuant to section 315(4)(b) in respect of that property.

(3) Nothing in subsection (1) shall apply to land or any estate or interest in land that has vested pursuant to section 315 where the transfer to the State of the land or interest in land has been registered under any enactment providing for the registration of such land or interest.

(4) Where the transfer to the State of land or any interest in land that has vested pursuant to section 315 has been registered, the Court may, on the application of the company, make an order-

(a) for the transfer of the land or interest to the company; or

(b) for the payment, as directed by the Court, to the company of compensation-

(i) of an amount not greater than the value of the land or interest as at the date of registration of the transfer; or

(ii) where the land or interest has been sold or contracted to be sold, of an amount equal to the net amount received or receivable from the sale.

(5) On an application under subsection (4), the Court may decide any question concerning the value of the land or the estate or interest.

(6) Compensation ordered to be paid under subsection (4) shall he paid as directed by the Court.

Amended by [Act No. 18 of 2016]

PART XXVII - SERVICE OF DOCUMENTS

323. Service of documents on company in legal proceedings

(1) A document in any legal proceedings may be served on a company -

(a) by delivery to a person named as a director of the company on the register of companies;

(b) by delivery to an employee of the company at the company's head office of principal place of business;

(c) by leaving it at the company's registered office or address for service;

(d) by serving it in accordance with any directions as to service given by the Court having jurisdiction in the proceedings, or

(e) in accordance with an agreement made with the company.

(2) The methods of service specified in subsection (1) are, notwithstanding any other enactment, the only methods by which a document in legal proceedings may be served on a company in Mauritius.

324. Service of other documents on company

A document, other than a document in any legal proceedings, may be served on a company -

(a) by any of the methods set out in section 323(1)(a), (b), (c) or (e);

(b) by posting it to the company's registered office or address for service or delivering it to a Post office box which the company is using at the time;

(c) by sending it by facsimile machine to a telephone number used for the transmission of documents by facsimile at the company's registered office or address for service or its head office or principal place of business.

325. Service of documents on foreign company in legal proceedings

(1) A document in any legal proceedings may be served on a foreign company in Mauritius as follows -

(a) by delivery to a person named in the register as a director of the foreign company and who is resident in Mauritius;

(b) by delivery to a person named in the register as being authorised to accept service in Mauritius of documents on behalf of the foreign company;

(c) by delivery to an employee of the foreign company at the foreign company's place of business in Mauritius or, if the foreign company has more than one place of business in Mauritius, at the foreign company's principal place of business in Mauritius;

(d) by serving it in accordance with any directions as to service given by the court having jurisdiction in the proceedings; or

(e) in accordance with an agreement made with the foreign company.

(2) The methods of service specified in subsection (1) are notwithstanding any other enactment, the only methods by which a document in legal proceedings may be served on a foreign company in Mauritius.

326. Service of other documents on foreign company

A document other than a document in any legal proceedings, may be served on a foreign company -

(a) by any of the methods set out in section 323(1)(a), (b), (c) or (e);

(b) by posting it to the address of the foreign company's principal place of business in Mauritius or delivering it to a post office box which the foreign company is then using at the time; or

(c) by sending it by facsimile machine to a telephone number used for the transmission of documents by facsimile at the principal place of business in Mauritius of the foreign company.

327. Service of documents on shareholders and creditors

(1) A notice, statement, report, accounts, or other document to be sent to a shareholder or creditor who is a natural person may -

(a) be delivered to that person;

(b) be posted to that person's address or delivered to a post office box which that person is using at the time;

(c) be sent by facsimile machine to a telephone number used by that person for the transmission of documents by facsimile; or

(d) subject to subsection (5), be sent by email or other electronic form of communication to the address provided by that person for the transmission of documents by electronic means.

(2) A notice, statement, report, accounts, or other document to be sent to a shareholder or creditor that is a company or a foreign company may be sent by any of the methods of serving documents referred to in section 325 or 327, as the case may be.

(3) A notice, statement, report, accounts, or other document to be sent to a creditor that is a body corporate, not being a company or a foreign company, may -

(a) be delivered to a person who is a principal officer of the body corporate;

(b) be delivered to an employee of the body corporate at the principal office of principal place of business of the body corporate;

(c) be delivered in such manner as the Court directs;

(d) be delivered in accordance with an agreement made with the body corporate;

(e) be posted to the address of the principal office of body corporate or delivered to a box at a document exchange which the body corporate is using at the time;

(f) be sent by facsimile machine to a telephone number used for transmission of documents by facsimile at the principal office or principal place of business of the body corporate; or

(g) subject to subsection (5), be sent by email or other electronic form of communication to the address provided by that person for the transmission of documents by electronic means.

(4) Where a liquidator sends documents -

(a) to the last known address of a shareholder or creditor who is a natural person; or

(b) to the address for service of a shareholder or creditor that is a company,

and the documents are returned unclaimed 3 consecutive times, the liquidator need not send further documents to the shareholder or creditor until the shareholder or creditor gives notice to the company of his new address.

(5) A document may be sent under subsection (1)(d) or (3)(g) by electronic means of communication provided that -

(a) the shareholder has consented in writing to that form of communication being used by the company or other person providing the communication; and

(b) the shareholder or creditor has provided an electronic address to which such communication may be sent.

(6) Any consent under subsection (5) may be revoked at any time on the provision of 5 days' notice in writing to the person sending the document.

328. Additional provisions relating to service

(1) Subject to subsection (2), for the purposes of sections 324 to 327 -

(a) where a document is to be served by delivery to a natural person, service shall be made -

(i) by handing the document to the person; or

(ii) where the person refuses to accept the document, by bringing it to the attention of, and leaving it in a place accessible to, the person;

(b) a document posted or delivered to a post office box is deemed to he received within 7 days, or any shorter period as the Court may determine in a particular case, after it is posted or delivered;

(c) a document sent by facsimile machine is deemed to have been received on the working day following the day on which it was sent;

(d) in proving service of a document by post or by delivery to a post office box it shall be sufficient to prove that -

(i) the document was properly addressed;

(ii) all postal or delivery charges were paid; and

(iii) the document was posted or was delivered to the document exchange;

(e) in proving service of a document by facsimile machine, it is sufficient to prove that the document was properly transmitted by facsimile to the person concerned.

(2) A document shall not be deemed to have been served or sent or delivered to a person where the person proves that, through no fault on the person's part, the document was not received within the time specified.

PART XXVIII - OFFENCES AND PENALTIES

329. Penalty where company fails to comply with Act

(1) Where a company fails to comply with section 38(1) or (4), 84(1), 91 (1), (2), (3), (3A) or (4), 92(2) or (3), 97(1) or (4), 114(5), 117(6), 190(1), (2) or (5), 195(4), 225, 226(1) or 228 the company and every director of the company shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees.

(2) Where a company fails to comply with section 159(5), 194(2) or 294(4), the company and every director of the company shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees.

(3) Where a company fails to comply with section 52(4), 58 or 62(2) or (6), the company and every officer of the company who is in default shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees.

(4) Where a person is convicted for an offence of -

(a) failure to pay the registration fee under section 355; or

(b) failure to file the annual return,

he shall, in addition to any fine imposed under subsection (1), be ordered by the court to pay the registration fee or to file the annual return, as the case may be, within such time as the court may determine.

Amended by [Act No. 10 of 2024]

330. Penalty on director or authorised agent of foreign company in cases of failure by director, agent or Board to comply with Act

(1) Every director of a company who fails to comply with section 38(1) or (4), 61(3) or 246(2) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees.

(2) Where the Board fails to comply with section 44(3), 45(3), 179(3). 191(2), 210(1), 223(1) or (2), 262(5) or 263(2), every director of the company shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees.

(3) Where the Board fails to comply with section 193, 207, 212(1), 218(1), 219(1) or 220, every director of the company shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees.

(4) Where a foreign company to which Part XXII applies commits an offence, every authorised agent of that foreign company shall commit the like offence unless he proves that the offence was committed without his knowledge or that he had exercised due diligence to ensure that the offence was not committed.

Amended by [Act No. 11 of 2018]

331. Defences

(1) In any proceedings against a director charged with an offence under this Act in relation to a duty imposed on the Board of a company, it shall be a defence where the director proves that -

(a) the Board took all reasonable and proper steps to ensure compliance with the requirements of this Act;

(b) the director took all reasonable and proper steps to ensure that the Board complies with the requirements of this Act; or

(c) in all the circumstances of the case, the director could not reasonably have been expected to take steps to ensure compliance with the requirements of this Act by the Board.

(2) In any proceedings against a director charged with an offence under this Act in relation to a duty imposed on the company, it shall be a defence where the director proves that -

(a) the company took all reasonable and proper steps to ensure compliance with the requirements of this Act;

(b) the director took all reasonable steps to ensure that the company complies with the requirements of this Act; or

(c) in all the circumstances of the case, the director could not reasonably have been expected to take steps to ensure compliance with the requirements of this Act by the company.

332. False statements

(1) Any person who, with respect to a document required by or for the purposes of this Act -

(a) makes, or authorises the making of, a statement that is false or misleading in a material particular knowing it to be false or misleading; or

(b) omits, or authorises the omission of any matter knowing that the omission makes the document false or misleading in a material particular;

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000,000 rupees and to imprisonment for a term not exceeding 5 years.

(2) Any director or employee of a company who knowingly makes or furnishes, or authorises or permits the making or furnishing of, a statement or report that relates to the affairs of the company, that is false or misleading in a material particular; to -

(a) a director, employee, auditor, shareholder, debenture holder, or trustee for debenture holders of the company;

(b) a liquidator, liquidation committee, or receiver or manager of property of the company;

(c) where the company is a subsidiary, a director, employee, or auditor of its holding company; or

(d) a securities exchange or an officer of a securities exchange.

Amended by [Act No. 22 of 2005]

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000,000 rupees and to imprisonment for a term not exceeding 5 years.

(3) For the purposes of this section, a person who voted in favour of the making of a statement at a meeting is deemed to have authorised the making of the statement.

Amended by [Act No. 22 of 2005]

333. Fraudulent use or destruction of property

Any director, employee, or shareholder of a company who -

(a) fraudulently takes or applies property of the company for his own use or benefit, or for a use or purpose other than the use or purpose of the company; or

(b) fraudulently conceals or destroys any property of the company,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000,000 rupees and to imprisonment for a term not exceeding 5 years.

334. Falsification of records

(1) Any director, employee, or shareholder of a company who, with intent to defraud or deceive a person -

(a) destroys, parts with, mutilates, alters, or falsifies, or is a party to the destruction, mutilation, alteration, or falsification of any register, accounting records, book, paper, or other document belonging or relating to the company; or

(b) makes, or is a party to the making of, a false entry in any register, accounting records, book, paper, or other document belonging or relating to the company,

shall commit ,in offence and shall, on conviction, be liable to a fine not exceeding 1,000,000 rupees and to imprisonment for a term not exceeding 5 years.

(2) Any person who, in relation to a mechanical, electronic, or other device used in connection with the keeping or preparation of any register, accounting, or other records, index, book, paper, or other document for the purposes of a company or this Act -

(a) records or stores in the device, or makes available to a person from the device, matter that he knows to be false or misleading in a material particular; or

(b) knowingly destroys, removes, or falsifies any matter recorded or stored in the device, or knowingly fails or omits to record or store any matter in the device,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000,000 rupees and to imprisonment for a term not exceeding 5 years.

335. Carrying on business fraudulently

(1) Any person who knowingly is a party to a company carrying on business with intent to defraud creditors of the company or any other person shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000,000 rupees and to imprisonment for a term not exceeding 5 years.

(2) Any director of a company who -

(a) by false pretences or other fraud induces a person to give credit to the company; or

(b) with intent to defraud creditors of the company -

(i) gives, transfers, or causes a charge to be given on, property of the company to any person;

(ii) causes property to be given or transferred to any person; or

(iii) caused or was a party to an execution being levied against any property of the company,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000,000 rupees and to imprisonment for a term not exceeding 5 years.

336. Improper use of "Limited" or "Limitée"

Any person who, not being incorporated with limited liability, whether alone or with other persons, carries on business under a name or title of which "Limited", "Limitée", or a contraction or imitation of that word is the last word, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees.

337. Persons prohibited from managing companies

(1) Where -

(a) a person has been convicted of an offence in connection with the promotion, formation, or management of a company;

(b) a person has been convicted of an offence under section 332, 333, 334 or 335 or of any crime involving dishonesty; or

(c) a person has been convicted under section 46 of the Stock Exchange Act 1988 as an insider,

(d) a person has been convicted of an offence under Part IX of the Securities Act 2005,

Amended by [Act No. 22 of 2005]

that person shall not, during the period of 5 years following the conviction or the judgment, be a director or promoter of, or in any way, whether directly or indirectly, be concerned or take part in the management of a company, unless that person

first obtains the leave of the Court which may be given on such terms and conditions as the Court thinks fit.

(2) A person intending to apply for the leave of the Court under this section shall give to the Registrar not less than 14 days' notice of that person's intention to apply.

(3) The Registrar, and such other persons as the Court thinks fit, may attend and be heard at the hearing of any application under this section.

(4) A person who acts in breach of this section, or of any order made under this section. shall commit an offence and shall, on conviction, be liable to a fine not exceeding 400,000 rupees or to imprisonment for a term not exceeding 2 years.

(5) In this section, "company" includes a foreign company that carries on business in Mauritius.

Amended by [Act No. 22 of 2005]

338. Court may disqualify directors

(1) Where -

(a) a person has been convicted of an offence in connection with the promotion, formation, or management of a company, or has been convicted of a crime involving dishonesty punishable on conviction with a term of imprisonment exceeding 3 months;

(b) a person has committed an offence under this Part;

(c) a person has, while a director of a company -

(i) persistently failed to comply with this Act, the Companies Act 2001 or the Securities Act 2005 or, where the company has failed to so

comply, persistently failed to take all reasonable steps to ensure such compliance;

Amended by [Act No. 22 of 2005]

(ii) been convicted in relation to the performance of his duties as director;

(iii) caused prejudice to the company resulting in a successful claim by a shareholder;

(d) within the period of 7 years before the making of the application, a person to whom the application relates, was a director of 2 or more companies and in relation to each of those companies, that person was wholly or substantially responsible for the company -

(i) being wound up;

(ii) ceasing to carry on business because of its inability to pay its debts as and when they become due;

(iii) having a receiver or manager of its property appointed; or

(iv) entering into a scheme of compromise or arrangement with its creditors,

the Court may make an order that the person shall not, without the leave of the Court, be a director or promoter of, or in any way, whether directly or indirectly, be concerned or take part in the management of a company for period not exceeding 5 years as may be specified in the order.

(2) Any person who intends to apply for an order under this section shall give not less than 14 days' notice of his intention to the person against whom the order is sought, and on the hearing of the application, the person against whom the order is sought may appear and give evidence or call witnesses.

(3) An application for an order under this section may be made by the Registrar, the Official Receiver, or by the liquidator of the company, or by a person who is, or has been, a shareholder or creditor of the company; and on the hearing of -

(a) an application for an order under this section by the Registrar or the Official Receiver or the liquidator; or

(b) an application for leave under this section by a person against whom an order has been made on the application of the Registrar, the Official Receiver, or the liquidator,

the Registrar, Official Receiver, or liquidator shall appear and call the attention of the Court to any matters which may be relevant, and may give evidence or call witnesses.

(4) Notwithstanding the criminal liability of the person against whom the order is made, an order under this section may be made on the ground for which the order is to be made.

(5) The Court shall, as soon as practicable after the making of an order under this section, give notice to the Registrar that the order has been made and the Registrar shall give notice in the Gazette of the name of the person against whom the order is made.

(6) Any person who acts in contravention of an order under this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000,000 rupees and to imprisonment for a term not exceeding 5 years.

(7) In this section, "company" includes a foreign company.

Amended by [Act No. 22 of 2005]; [Act No. 14 of 2019]

339. Liability for contravening section 337 or 338

Any person who acts as a director of a company in breach of section 337 or in breach of an order made under section 338 shall personally be liable to -

(a) a liquidator of the company for every unpaid debt incurred by the company; and

(b) a creditor of the company for a debt to that creditor incurred by the company,

for the period during which he acts as director.

340. Failure to keep accounting records

(1) Where on an investigation under Part XV or where a company is wound up, it is shown that proper accounting records were not kept by the company during the period of 2 years immediately preceding the commencement of the investigation or winding up or the period between registration of the company and commencement of the investigation or winding up, whichever is the lesser, any officer who is responsible by any act or omission for such default shall commit an offence and shall, on conviction, be liable to a fine not exceeding 400,000 rupees or to imprisonment for a term not exceeding 2 years.

(2) In any proceedings against an officer charged with an offence under subsection (1), it shall be a defence to prove that the officer took all reasonable steps in the circumstances to ensure that the requirements be complied with.

(3) For the purposes of this section, proper accounting records shall be deemed not to have been kept in the case of any company -

(a) where there have not been such accounting records as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stock takings and except in respect of goods sold by way of ordinary retail trade, of all goods sold and purchased. showing the goods and the buyers and

sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified;

(b) where such accounting records have not been kept in such manner as to enable them to be conveniently and properly audited, whether or not the company has appointed an auditor.

341. Other offences

Any person who -

(a) issues or makes use of a document or certificate kept or given under this Act which does not comply with this Act;

(b) fails to pay the registration fee under section 355;

(c) fails to do any act within the time within which it is required by this Act to be done;

(d) fails to comply with a request, direction or order issued under this Act by a Court, by the Registrar or by any other person;

(e) makes use of any name or title which he is not under the Act authorised to use;

(f) divulges or makes use of any information obtained under this Act which he is not otherwise authorised to disclose;

(g) personates a member or debenture holder for the purpose of obtaining an advantage;

(h) issues any letter, bill or document relating to a company otherwise than in accordance with this Act;

(i) in the exercise of any powers or functions conferred upon him by this Act or by any regulations made under this Act, fails to act in accordance with the instrument which confers the function or power; or

(j) otherwise contravenes this Act or any regulations made under this Act, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees.

Amended by [Act No. 4 of 2017]

342. Reports of offences and production and inspection of accounting records

(1) Where the Court, the Official Receiver, the Registrar or a liquidator is of opinion that an offence against the Act has been committed by any person, it shall forthwith refer the matter to the Director of Public Prosecutions.

(2) Where on application made to the Court by the Registrar or a Police officer of or above the rank of Assistant Superintendent, there is shown to be reasonable cause to believe that any person has, while a director or other officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any accounting records or papers of or under the control of the company, the Court may make an order -

(a) authorising any person named therein to inspect the said accounting records or papers or any of them for the purposes of investigating and obtaining evidence of the offence; or

(b) requiring the secretary of the company or such officer thereof as may he named in order to produce the said accounting records or papers or any of them to a person named in the order at a place so named by a special date.

(3) An auditor of a company shall, for the purposes of this section, be deemed to be an officer of the company.

342A. Compounding of offences

(1) (a) Notwithstanding section 342(1), the Registrar may with the consent of the Director of Public Prosecutions and subject to subsection (2A), compound an offence committed by a person under this Act where the person agrees in writing to pay an amount acceptable to the Registrar not exceeding the maximum penalty imposable under this Act for that offence.

(b) For the purposes of paragraph (a), the Registrar shall chair a committee which shall include of 2 other senior officers from his staff designated by him.

(2) Every agreement to compound shall be in writing and signed by the Registrar and the person referred to in subsection (1)(a), and witnessed by an officer, and a copy shall be delivered to such person.

(2A) An offence referred to in section 91(3)(a)(ii), (3A) or (3B) shall not be compounded unless the company agrees in writing to–

(a) pay an amount, acceptable to the Registrar, not exceeding the maximum penalty imposable under this Act for that offence; and

(b) comply with section 91(3)(a)(ii), (3A) or (3B).

(3) Every agreement to compound shall be final and conclusive.

(4) Where the Registrar compounds an offence in accordance with this section, no further proceedings shall be taken in respect of the offence so compounded against the person.

Amended by [Act No. 18 of 2008];[Act No. 27 of 2012]; [Act No. 5 of 2020]

PART XXIX - PROVISIONS RELATING TO COMPANIES HOLDING GLOBAL BUSINESS LICENCES

343. Provisions of Act not applicable to company holding Global Business Licence or Authorised Company

(1) The sections of this Act -

(a) specified in Part I of the Thirteenth Schedule shall not apply to it company holding a Global Business Licence or Authorised Company ,as the case may be;

(b) specified in Part II of the Thirteenth Schedule shall not apply to it an Authorised Company**.**

(2) Section 198(2)(e) shall not apply to a company holdings, it Global Business Licence.

(3) Sections 193 to 196 shall not apply to an Authorised Company.

Amended by [Act No. 11 of 2018]

344. Provisions of Companies Act 1984 not applicable to company holding Global Business Licence or Authorised Company

Sections 35, 232, and 233 of the Companies Act 1984 span not apply to a company holding a Global Business Licence or an Authorised Company, as the case may be.

Amended by [Act No. 11 of 2018]

345. Special provisions applicable to company applying for Global Business Licence or authorization or hold a Global Business Licence or an Authorised Company

(1) Notwithstanding this Act, the provisions set out in Part I of the Fourteenth Schedule shall apply to a company applying for or holding a Global Business Licence, or Company applying as an authorised company or an Authorised Company, as the case may be.

(2) Notwithstanding this Act, the provisions set out in Part II of the Fourteenth Schedule shall apply to an Authorised Company.

Amended by [Act No. 11 of 2018]

PART XXX - MISCELLANEOUS

346. Certificate of current standing

(1) The Registrar shall, upon request by any person, issue a certificate of current standing under his hand and seal certifying that a company is of current standing where the Registrar is satisfied that the name of the company is on the register.

(2) A certificate of current standing under subsection (1) shall contain a statement as to whether -

(a) the company has submitted to the Registrar articles of merger or consolidation that have not yet become effective;

(b) the company has submitted to the Registrar articles of arrangement that have not yet become effective;

(ba) the company has submitted its annual return and any other documents required to be filed under section 223;

(c) the company has paid all fees due and payable;

(d) the company is in the process of being wound up and dissolved;

(da) the company is in receivership;

(db) the company is in administration; or

(e) any proceedings to remove the company from the register have been instituted.

(2A) A certificate of current standing issued under this section may contain such other information as the Registrar may determine.

(3) This section shall not apply to a private company holding a Global Business Licence or to an Authorised Company, unless the person who makes the request is a shareholder, officer, management company, registered agent or representative of that company or a person qualified to act as Secretary under section 165.

Amended by [Act No. 18 of 2008]; [Act No. 27 of 2013]; [Act No. 11 of 2018]; [Act No. 15 of 2021]; [Act No. 18 of 2025]

346A. Certificate of Transfer of Undertaking

Where an authorisation for a transfer of undertaking is granted under section 32A of the Banking Act, the Registrar shall, for the purposes of that section, issue a Certificate of Transfer of Undertaking in such form as may be approved and published in the *Gazette.*

Added by [Act No. 1 of 2013]

347. Directors' certificates

A requirement imposed by any provision of this Act that directors of a company shall sign a certificate shall be complied with where the directors who are required to sign the certificate -

(a) sign the same certificate; or

(b) sign separate certificates in the same terms.

348. Prohibition of large partnerships

(1) No company, association or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in
pursuance of any other enactment or of letters patent.

(2) Nothing in this section shall affect civil partnerships (société civiles) formed under the Code Civil Mauricien and those civil partnerships shall continue to be governed by that Code.

(3) Subsection (1) shall not apply to the formation of any association, or partnership for carrying on any organized professions which are designated by the Minister by notice in the Gazette, or for carrying on any combination of such professions.

349. Disposal of unclaimed shares

(1) Where by the exercise of reasonable diligence a company is unable to discover the whereabouts of a member for a period of not less than 6 years, the company may cause an advertisement to be published in 2 daily newspapers in wide circulation in Mauritius stating that the company after the expiry of one month from the date of the last advertisement intends to transfer the shares to the Official Receiver.

(2) Where after the expiry of one month from the date of the last advertisement the whereabouts of the member remain unknown, the company may transfer the shares held by the member in the company to the Official Receiver and for that purpose may execute for and on the behalf of the owner a transfer of shares to the Official Receiver.

(3) The Official Receiver shall sell or dispose of any shares so received in such manner and at such time as he thinks fit and shall deal with the proceeds of the sale or disposal as if they were unclaimed moneys paid to him pursuant to section 278 of the Companies Act 1984.

350. Power to grant relief

(1) Where in any proceedings before any court for negligence, default or breach of duty against a person to whom this section applies it appears to the court that the person is or may be liable in respect thereof, but that, that person has acted honestly and reasonably and that, having regards to all circumstances of the case including those connected with the person's appointment, the person ought fairly to be excused for the negligence, default or breach, the court may relieve that person either wholly or partly from liability on such terms as the court thinks fit.

(2) Where a person to whom this section applies has reason to apprehend that any claim is likely to be made against the person in respect of any negligence, default, or breach of duty, that person may apply to the Court for relief, and the Court shall have the same power to relieve the person under this section as it would have had if it has been a court before which proceedings against that person for negligence, default, or breach of duty had been brought.

(3) The section shall apply to -

(a) an officer;

(b) a person employed by a company as auditor;

(c) an expert;

(d) a liquidator; and

(g) a debenture holder's representative,

351. Irregularities in proceedings

(1) No proceeding under this Act shall be invalidated by any defect, irregularity or deficiency of notice or time unless the Court is of opinion that substantial injustice has been or may be caused thereby which cannot be remedied by any order of the Court.

(2) The Court may if it thinks fit make an order declaring that such proceeding is valid notwithstanding any such effect, irregularity or deficiency.

(3) Notwithstanding subsections (1) and (2) or any other provision of this Act, where an omission, defect, error or irregularity, including the absence of a quorum at any meeting of the company or of the directors, has occurred in the management of administration of a company whereby a provision of this Act has been contravened, or whereby there has been default in the observance of a memorandum or articles or whereby any proceedings at or in connection with any meeting of the company or of the directors of any assembly purporting to be such a meeting have been rendered ineffective, including the failure to make or fare with the Registrar any declaration of solvency, the Court -

(a) may, either of its own motion or on the application of any interested person, make such order as it thinks fit to rectify or cause to be rectified or to nullify

or modify or cause to be modified the consequences in law of any such omission, defect, error or irregularity, or to validate any act, matter or thing rendered or alleged to have been rendered invalid by or as a result of any such omission, defect, error or irregularity;

(b) shall before making any such order satisfy itself that such an order would not do injustice to the company or to any member or creditor;

(c) where any such order is made, may give such ancillary or consequential directions as it thinks fit; and

(d) may determine what notice or summons is to be given to other persons of the intention to make any such application or of the intention to make such an order, and whether and how it should be given or served and whether it should be advertised in any newspaper.

(4) The Court may, whether a company is in process of being wound up or not, on good cause being shown, enlarge or abridge any time for doing any act or taking any proceeding allowed or limited by this Act or any subsidiary enactment made under this Act on such terms as the justice of the case may require and any such enlargement may be ordered although the application for the same is not made until after the time originally allowed or limited.

352. Translations of instruments

(1) Where under this Act, a corporation is required to file with the Registrar any instrument, certificate, contract, statement or document or a certified copy thereof and if the same is not written in the English or French language the corporation shall file at the same time with the Registrar a certified translation in the English or French language.

(2) Where under this Act a corporation is required to make available for public inspection any instrument, certificate, contract, statement or document and the

same is not written in the English or French Language, the corporation shall keep at its registered office in Mauritius a certified translation in the English or French language.

(3) Where any account, minute book or other record of a corporation required by this Act to he kept is not kept in the English or French language, the directors shall cause -

(a) a true translation in the English or French language of such account, minute book or record to be made at intervals of not more than 7 days; and

(b) the translation to be kept with the original account, minute book or record for as long as the original account, minute book, or record is required by this Act to he kept.

353. Costs in actions by limited companies

Where a company or a foreign company is a plaintiff in any action or other legal proceeding, the court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company shall be unable to pay the costs of the defendant if successful in his defence, require sufficient security for those costs, and may stay all proceedings until the security is given.

354. Arbitration

(1) A company may, by writing under the hand of the director where the company has one director or where the company has 2 or more directors, under the hands of at least 2 directors, agree to refer and may refer, to arbitration, in accordance with the Code of Civil Procedure, any existing or future dispute between itself and any other company or person.

(2) Every company which is party to an arbitration may delegate to the arbitrator power to settle any term or to determine any matter capable of being lawfully settled or determined by the company itself or by its directors or other governing body.

355. Fees payable to Registrar

(1) Subject to the other provisions of this section and to section 295, there shall be paid to the Registrar, at the time of submission of any document or request involving a payment in respect of the matters set out in the second column of Part I and Part II of the Twelfth Schedule, such fees as may be prescribed.

(2) The registration fee payable under Part I of the Twelfth Schedule shall be in respect of every subsequent year be paid not later than 20 January in that year.

(3) For the purposes of subsection (1), "year" includes part of a year.

(4) Subject to subsection (5), the registration fee payable under subsection (1) shall be paid so long as the company or commercial partnership, as the case may be. remains registered with the Registrar.

(5) Where a company or a commercial partnership has ceased to carry on business and in respect of which a winding-up resolution or striking-off procedure or a dissolution procedure, as the case may be, has been initiated, or where the company or commercial partnership is in receivership or under administration in accordance with the provisions of the Insolvency Act, no registration fee under subsection (1) shall be required to be paid as from the year immediately following the year in which the resolution, notice for striking- off, notice of appointment of receiver or notice of appointment of administrator has been filed or issued or, in the case of a commercial partnership, the deed of dissolution or any document to that effect has been filed, with the Registrar.

(6) Where a commercial partnership files its deed of dissolution or any document to that effect with the Registrar, it shall pay to the Registrar any outstanding prescribed fee.

(7) The Registrar may waive the difference between the prescribed fee payable after the due date and the prescribed fee payable within the due date where he is satisfied that failure to pay within the due date was attributable to a reasonable cause.

(8) In the exercise of his power under subsection (7), the Registrar shall record, in writing, the reasons for waiving the difference referred to in that subsection.

Amended by [Act No. 28 of 2004]; [Act No. 18 of 2008]; [Act No. 11 of 2018]; [Act No. 11 of 2024]

356. Fees payable to company

(1) Where under this Act, a fee is payable to a company for inspecting or obtaining a copy of, any book, record or document, the company may, by resolution, provide that a lesser fee shall be paid.

(2) The maximum fee payable for the inspection or obtaining of copies of any book, record or document shall be the fee specified in item 3 of the Third Schedule.

(3) This section shall not apply to holders of securities of a reporting issuer under the Securities Act 2005.

Added by [Act No. 22 of 2005]

357. Company Law Advisory Committee

(1) The Minister may appoint a Company Law Advisory Committee to assist the Registrar in the exercise of certain powers entrusted to the Registrar specified in subsection (4) and to make recommendations to the Minister.

(2) The Committee shall have not less than 5 and not more than 9 members with relevant experience.

(3) The Advisory Committee may -

(a) meet from time to time as required in order to carry out their functions;

(b) organize their own procedure; and

(c) with the consent of the Minister, co-opt persons with specialised qualification and experience to assist the Committee at any of its meetings.

(4) The Registrar may refer to the Advisory Committee for consideration and recommendation, matters arising from the, provisions of sections 40(7) and (10), 44, 180(1) and 325(1) of the Companies Act 1984 and sections 213, 216, 224 and 281(6) of this Act.

358. Jurisdiction

Notwithstanding -

(a) section 114 of the Courts Act; and

(b) section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act,

a Magistrate shall have jurisdiction to try an offence under this Act and any subsidiary enactment made under this Act.

359. Jurisdiction in relation to Authorised Company

For the purposes of determining matters relating to title and jurisdiction, the situs of the ownership of shares, debt obligations or other securities of an Authorised Company shall be in Mauritius.

Amended by [Act No. 11 of 2018]

360. Regulations

(1) The Minister may -

(a) make such regulations as he thinks fit for the purposes of this Act;

(b) by regulations, amend the Schedules, other than the Thirteenth Schedule.

(2) Any regulations made under this Act may -

(a) provide for the taking of fees and levying of charges;

(aa) provide for the filing of particulars and documents, and for the electronic payment of fees under this Act, the Business Registration Act, the Foundations Act or the Limited Partnerships Act;

(b) provide that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 400,000 rupees and to imprisonment for a term not exceeding 2 years.

Amended by [Act No. 9 of 2015]

361. Rules

The Supreme Court may make rules -

(a) with respect to proceedings and the practice and procedures of the Supreme Court under this Act; and

(b) generally with respect to the winding up of companies.

362. Consequential amendments

363. Transitional provisions

(1) (a) Any person appointed under any enactment repealed by section 364 and holding office at the commencement of this Act, shall remain in office as if he had been appointed under this Act.

(b) Any act made, executed, issued or passed under any enactment repealed by section 364 and in force and operative at the commencement of this Act, shall so far as it could have been made, executed, issued or passed, under this Act have effect as if made, executed, issued or passed, under this Act.

(c) Subject to this section, the memorandum of association and articles of association of an existing company in force and operative at the commencement of this Act, and the provisions of Table A in the First Schedule to the Companies Act 1913 or the Companies Act 1984 if adopted as all or part of the articles of a company at the commencement of this Act, shall have effect as if made or adopted under this Act.

(d) Where a company formed prior to the commencement of this Act has, pursuant to its memorandum or articles or a resolution of the meeting of shareholders, authorised the directors of the company to issue shares (its "authorised capital") and some part of the authorised capital remains unissued, the directors shall have authority to issue shares under section 52 on the terms and conditions and up to the limit expressed in the memorandum, articles or resolution, without requiring the authority of a further ordinary resolution of the meeting of shareholders.

(e) For the purposes of section 115(1)(b), an existing company may, notwithstanding section 115(1)(a), hold more than one annual meeting of shareholders following its first accounting period after the commencement of this Act.

(f) All proceedings, judicial or otherwise commenced before and pending immediately before the commencement of this Act under the Companies Act 1984 or under the International Companies Act 1994 shall be deemed to have commenced and may be continued under those Acts.

(2) Any resister, fund and account kept under any enactment repealed by this Act shall be deemed to be part of the fund and account kept under the corresponding provision of this Act.

(3) Subject to the other provisions of this Act, a company registered under any enactment repealed by section 364, including a protected cell company under the Protected Cell Companies Act 1999, shall be deemed to be registered under this Act and the Act shall extend and apply to the company accordingly and any reference to this Act, express or implied, to the date of registration of such it company shall be construed as a reference to the date upon which the company was registered under the repealed Act or any amendment repealed by that Act.

(4) (a) A private company which, at the commencement of this Act, is an exempt private company under the Companies Act 1984 shall be deemed to be a small private company under this Act and this Act shall extend and apply to the company accordingly.

(b) A company which, at the commencement of this Act, holds a valid offshore certificate issued under section 16(4) of the Mauritius Offshore Business Activities Act 1992 shall be deemed to be an existing company under this Act holding a Global Business Licence and this Act shall extend and apply to the company accordingly.

(5) A company which is on the register of companies under the International Companies Act 1994 shall be deemed to be an existing Authorised Company entitling it to continue to carry on such activities as the company was entitled to

carry on immediately prior to the commencement of this Act and this Act shall extend and apply to the company accordingly.

(6) A company holding a Category 1 Global Business Licence or a Category 2 Global Business Licence which, before the commencement of this Act, has created a charge specified in section 127 shall, within three months of the commencement of this Act, file with the Registrar a statement giving, with respect to every such charge, the particulars specified in section 127(3) or (4).

(7) A public company which on the commencement of this Act is deemed by virtue of subsection (5) to be the holder of a Category 1 Global Business Licence shall, within 9 months of the commencement of this Act, file -

(a) with the Registrar, a prospectus complying with the provisions of the Companies Act 1984 in the case of any of this Act, is offering securities to the public in Mauritius;

(b) with the Commission, any financial statements relating to its immediately preceding accounting year within the time prescribed for the filing of such statements by section 215; and

(c) with the Registrar, a notice providing the particulars of its directors and secretary required by section 23(2)(b) and (c).

(8) Every person who became a substantial shareholder of a public company holding a Category 1 Global Business Licence before the commencement of this Act shall, within three months after that date, give the notice required by section 146(3) of the Companies Act 1984.

(9) Notwithstanding the provisions of this Act, the debentures issued by an offshore company to bearers before the commencement of this Act shall continue to have

effect as if this Act had not been passed but the terms of such debentures shall not be renewed.

(10) The Minister may, by regulations, provide for any matters in force before the commencement of this Act to be dealt with in such manner to bring them in conformity with this Act.

Amended by [Act No. 20 of 2002]; [Act No. 11 of 2018]

364. Repeal and savings

(1) The following enactments are repealed –

(a) The Companies Act 1984; and

(b) The International Companies Act 1994.

(2) Notwithstanding the repeal of the enactments specified in subsection (1) -

(a) **Deleted by [Act No. 3 of 2009]**

(b) any fee, charge or any sum paid or unpaid tinder the repealed enactments on the date immediately before the coming into operation of the relevant provisions of this Act shall, in respect of the corresponding period, be deemed to have been paid-or unpaid under the provisions of this Act;

(c) any approval given, or authorisation granted, and in force before the coming into operation of the relevant provisions of this Act or any act or thing done tinder the repealed enactments shall be deemed to have been given, granted or done under the relevant provisions of this Act and any such approval or authorisation shall remain valid for the period specified therein; and

(d) a company registered under the International Companies Act 1994 and which is in the course of winding up shall continue to he wound up under the provisions of that Act which shall continue to apply for the purposes of the winding up and dissolution of the company as if, it had not been repealed.

(3) The provisions of this Act shall continue to apply up to 30 June 2021 to the holder of a valid Category 1 Global Business Licence or Category 2 Global Business Licence, issued on or before 16 October 2017, as if the provisions of this Act have not been amended on the commencement of this subsection.

(4) The provisions of this Act shall continue to apply up to 31 December 2018 to the holder of a valid Category 1 Global Business Licence or Category 2 Global Business Licence, issued after 16 October 2017, as if the provisions of this Act have not been amended on the commencement of this subsection.

Amended by [Act No. 3 of 2009]; [Act No. 11 of 2018]

365. Commencement

Proclaimed by [Proclamation No. 21 of 2001] w.e.f. 1st December 2001

FIRST SCHEDULE
(section 10(3))

Oath

I,..... being appointed ..... do hereby swear/solemnly affirm that I shall not, on any account and at any time, disclose, otherwise than with the authorisation of the Court or where it is strictly necessary for the performance of my duties, any confidential information obtained by me by virtue of my official capacity.

Taken before me ..... the Master and Registrar of the Supreme Court on .....

SECOND SCHEDULE

(sections 40 and 42(1))

A private company may, in a constitution registered by it, exclude or modify any of the provisions of this schedule to the extent permitted by the Act.

Added by [GN No. 167 of 2001]

Constitution of a private company limited by shares

1. Issue of new shares

New shares shall be issued in accordance with section 52 with the preemptive rights provided for under section 55.

2. Transfer of shares

Every change in the ownership of shares in the capital of the company shall be subject to the following limitations and restrictions -

(a) Pre-emptive provisions

No share in the capital of the company shall be sold or transferred by any shareholder unless and until the rights of pre-emption hereinafter conferred have been exhausted.

(b) Transfer notice and fair price

(i) Every shareholder including the personal representative of a

deceased shareholder or the assignee of the property of a bankrupt shareholder who desires to sell or transfer any share shall give notice in writing to the Board of such desire.

(ii) Where the notice under subparagraph (i) includes several shares, it shall not operate as if it were a separate notice in respect of each such share, and the proposing transferor shall be under no obligation to sell or transfer some only of the shares specified in such notice.

(iii) The notice under subparagraph (i) shall be irrevocable and shall be deemed to appoint the Board as the proposing transferor's agent to sell such shares in one or move lots to any shareholder or shareholders of the company, including the directors or any of them.

(iv) The price of the shares sold under paragraph (iii) -

(A) shall be the price agreed upon between the party giving such notice and the Board; or

(B) failing any agreement between them within 28 days of the Board receiving such notice, such fair price as shall be determined by a person appointed jointly by the parties.

(v) In the absence of an agreement under subparagraph (iv)(B). either party may apply to the Judge in Chambers to appoint an arbitrator;

(vi) The person appointed under subparagraph (iv) or (v) shall certify the sum which, in his opinion, is the fair price for the share.

(c) Offer to shareholders and consequent sale

(i) Where the price for the shares sold under paragraph (b) is agreed upon or determined, as the case may be, the Board shall immediately give notice to

each of the shareholders, other than the person desiring to sell or transfer such shares.

(ii) A notice under subparagraph (i) shall state the number and price of such shares and shall request each of the shareholders to whom the notice is given to state in writing to the Board within 21 days of the date of the notice. whether he is willing to purchase any and, if so, what maximum number of such shares.

(iii) At the expiration of 21 days from the date of the notice, the Board shall -

(A) apportion such shares amongst the shareholders (if more than one) who have expressed a desire to purchase the shares and, as far as possible, on a pro rata basis according to the number of shares already held by them respectively, or

(B) if there is only one shareholder, all the shares shall be sold to that shareholder,

provided that no shareholder shall be obliged to take more than the maximum number of shares stated in that shareholder's response to such notice.

(iv) Where the apportionment is being made or any shareholder notifies his willingness to purchase, the party desiring to sell or transfer such share or shares shall, on payment of the said price, transfer such share or shares to the shareholder or respective shareholders who has or have agreed to purchase the shares and, in default thereof, the Board may receive and give a good discharge for the purchase money on behalf of the party desiring to sell and enter the name of the purchaser or purchasers in the share register as holder or holders of the share or shares so sold.

(d) Shares on offer not taken up by shareholders

(i) Where all the shares remain unsold under paragraph (e) at the expiry of the period of 60 days of the Board receiving a notice under paragraph (c)(ii), the person desiring to sell or transfer the shares, may, subject to subparagraph (ii), within a further period of 30 days, sell the shares not so sold, but not a portion only, to any person who is not a shareholder.

(ii) The person desiring to sell the shares shall not sell the shares for a price less than the price at which the shares have been offered for sale to the shareholders under this paragraph (that is, paragraph 2), but every such sale shall nevertheless he subject to the provisions of paragraph 4.

(e) Family transactions

(i) Any share may be transferred by a shareholder to, or to trustees for, the spouse, father, mother, child, grandchild, son-in-law or daughter-in-law of that shareholder, and any share of a deceased shareholder may be transferred by his executors or administrators to the spouse, father, mother, child, grandchild, son-in-law or daughter-in-law of the deceased shareholder.

(ii) Any share held by trustees under any trust may be transferred to any beneficiary, being the spouse, father, mother, child, grandchild, son-in-law or daughter-in-law of such shareholder, of such trust, and shares standing in the name of the trustee of the will of any deceased shareholder or trustees under any such trust may be transferred upon any change of trustees for the time being of such will or trust.

(iii) The restrictions contained in paragraphs (a) to (d) shall not apply to any transfer authorised by this paragraph but every such transfer shall be subject to paragraph 3.

3. Directors' right to refuse registration of transfers

Subject to compliance with sections 87 to 89, the Board may refuse or delay the registration of any transfer of any share to any person whether an existing shareholder or not, where -

(a) so required by law;

(b) registration would impose on the transferee a liability to the company, and the transferee has not signed the transfer;

(c) a holder of any such share has failed to pay on the due date any amount payable thereon either in terms of the issue thereof or in accordance with the constitution including any call made thereon);

(d) the transferee is a minor or a person of unsound mind;

(e) the transfer is not accompanied by such proof as the Board reasonably requires of the right of the transferor to make the transfer;

(f) the pre-emptive provisions contained in paragraph 2 have not been complied with; or

(g) the Board acting in good faith decides in its sole discretion that registration of the transfer would not be in the best interests of the company and/or any of its shareholders.

4. Purchase or other acquisition of own shares

(a) Authority to acquire own shares

For the purposes of section 68, the company shall be expressly authorised to purchase or otherwise acquire shares issued by it.

(b) Authority to hold own shares

Subject to any restrictions or conditions imposed by law, the company shall be expressly authorised to hold shares acquired by it pursuant to section 68 or 110.

5. Calls on shares and forfeiture of shares

Calls on shares and forfeiture of shares shall be conducted in accordance with the Fourth Schedule.

6. Shareholders meetings

Shareholders meetings shall be conducted in accordance with the Fifth Schedule.

7. Directors

(a) The directors of the company shall be such person or persons as may be appointed from time to time by ordinary resolution or by notice to the company signed by the holder or holders for the time being of the majority of ordinary shares in the capital of the company but so that the total number of directors shall not at any time exceed the number fixed pursuant to paragraph (b) or by ordinary resolution pursuant to paragraph (c).

(b) The first directors and the number of directors shill be determined in writing by the subscribers to the application for incorporation.

(c) The company may by ordinary resolution increase or reduce the number of directors.

(d) The directors may appoint any person to be a director to fill it casual vacancy or as an addition to the existing directors but the total number of directors shall not it any time exceed the number fixed in accordance with paragraph (b) or by ordinary resolution pursuant to paragraph (c).

(e) Any director appointed under paragraph (d) shall hold office only until the next following annual meeting and shall then retire but shall he eligible for appointment at that meeting.

(f) A director shall hold office until removed by such resolution pursuant to section 138(2) or ceasing to hold office pursuant to Section 139.

8. Remuneration of directors

The remuneration of directors shall be determined in accordance with section 159(1).

9. Proceedings of directors

The directors meetings and the proceedings of directors shall be conducted in accordance with the Eighth Schedule.

10. Managing Director

(a) The directors may appoint one or more members of the Board to the office of managing director for such period and on such terms as they think fit and, subject to the terms of any agreement entered into in any particular case, may revoke that appointment.

(b) Where a managing director ceases to be a director for any reason whatsoever, his appointment shall automatically lapse.

(c) A managing director shall, subject to the terms of any agreement entered into in any particular case, receive such remuneration, whether by way of salary, commission or participation in profits, as the directors may determine.

(d) The directors may entrust to and confer upon the managing director any of the powers exercisable by them with such restrictions as they think fit, and either generally or to the exclusion of their own powers subject to section 131, and the directors may revoke, alter, or vary, all or any of these powers.

11. Dividends

(a) A dividend may be authorized and declared by the Board at such time and such amount (subject to the solvency test) as it thinks fit.

(b) Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this paragraph (that is paragraph II) as paid on the share.

(c) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but where any share is issued on terms providing that it shall rank for dividend as from a particular date, that share shall rank for dividend accordingly.

(d) The directors may deduct from any dividend payable to any shareholder all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

(e) No dividend shall bear interest against the company.

(f) Any dividend, interest, or other money payable in cash in respect of shares may be paid by cheque or postal or money order sent through the post directed to the registered address of the holder, or in the case of joint holders, to the registered address of that one of the joint holders who is first named on the share register or to such person and to such address as the holder or joint holders may in writing direct.

(g) Every such cheque or postal or money order shall be made payable to the order of the person to whom it is sent.

(h) Any one of the 2 or more joint holders may give effectual receipts for any dividends, bonuses, or other money payable in respect of the shares held by them as joint holders.

12. Winding up

(a) Subject to paragraphs (b) and (e) and to the terms of issue of any shares in the company, upon the winding up of the company, the assets, if any, remaining after payment of the debts and liabilities of the company and the costs of winding up (the surplus assets), shall be distributed among the shareholders in proportion to their shareholding.

(b) The holders of shares not fully paid up shall only receive a proportionate share of their entitlement being an amount paid to the company in satisfaction of the liability of the shareholder to the company in respect of the shares either under the constitution of the company or pursuant to the terms of issue of the shares.

(c) Where the company is wound up, the liquidator may, with the sanction of a special resolution of the company, divide in kind amongst the members the assets of the company, whether they consist of property of the same kind or not, and may for that purpose set such value as he deems fair upon any property to be divided and may determine how the division is to be carried out as between the shareholders or different classes of shareholders.

13. One person companies and companies in which all shareholders are directors

Where, at any time, the company for a continuous period exceeding 6 months is a one person company, or is a company in which all the shareholders also hold office as director, then, for so long as such circumstance continues, the following provisions shall apply -

(a) Issue of shares

New shares may be issued by unanimous resolution signed by the shareholder/s having such rights and on such terms and conditions as may be set out in the resolution and a copy of the resolution shall be filed with the Registrar of Companies.

(b) Meetings

Separate meetings of shareholders and directors need not be held provided all matters required by the Act to be dealt with by a meeting of shareholders or a meeting of directors are dealt with by way of a unanimous resolution.

THIRD SCHEDULE

(sections 98(1), 124(4) and 356(2))

Fees payable to company

	Item	**Fee payable (Rs.)**
1.	For the issue of duplicate certificate or document of title to a share or debenture	100
2.	For every page required to be copied for a debenture holder or member	5
3.	For inspection or obtaining of copies of any book, record or document (maximum fee payable)	50

FOURTH SCHEDULE

(section 101(3))

Procedure for making calls in respect of shares and forfeiture of shares Calls on shares

(a) Board may make calls

(i) The Board may, from time to time, make such calls as it thinks fit upon the shareholders in respect of any amount unpaid on their shares and not by the conditions of issue made payable at a fixed time or times, and each shareholder shall, subject to receiving at least 14 days' written 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.

(ii) A call made under subparagraph (i) may be revoked or postponed as the Board may determine.

(b) Timing of calls

A call may be made payable at such times and in such amount as the Board may determine.

(c) Liability of joint holders

The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

(d) Interest

(i) Where an amount called in respect of a share is not paid on or before the time appointed for payment thereof, the person from whom the amount is due shall pay interest on that amount from the time appointed for payment thereof to the time of actual payment at such rate not exceeding 10 per cent per annum as the Board may determine.

(ii) The Board may waive, wholly or partly, any interest payable under subparagraph (i).

(e) Instalments

Any amount which by the terms of issue of a share becomes payable on issue or at any fixed time shall for all purposes be deemed to be a call duly made and payable at the time at which by the terms of issue the same becomes payable and, in case of non-payment, all the relevant provisions of this Schedule relating to payment of interest and expenses, forfeiture or otherwise shall apply as if the amount had become payable by virtue of a call duly made and notified.

(f) Differentiation as to amounts

The Board may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

2. Forfeiture of shares

(a) Notice of default

Where any person fails to pay any call or any instalment of a call for which such person is liable at the time appointed for payment, the Board may, at any time thereafter, serve notice on such person requiring payment of the amount unpaid together with any interest which may have accrued.

(b) Final payment date

The notice under paragraph (a) 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 shall be made, and shall state that, in the event of non payment on or before the time appointed. the shares in respect of which the amount was owing are liable to be forfeited.

(c) Forfeiture

(i) Where the requirements of the notice under paragraph (b) are not complied with, any share in respect of which the notice has been given may he forfeited, at any time before the required payment has been made, by resolution of the Board to that effect.

(ii) Any forfeiture under subparagraph (i) shall include all dividends and bonuses declared in respect of the forfeited share and not actually paid before the forfeiture.

(d) Sale of forfeited shares

(i) A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Board in its sole discretion thinks fit and, at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the Board thinks fit.

(ii) Where any forfeited share is sold within 12 months of the date of forfeiture, the residue, if any, of the proceeds of sale after payment of all costs and expenses of such sale or any attempted sale and all amounts owing in respect of the forfeited share and interest thereon shall be paid to the person whose share has been forfeited.

(e) Cessation of shareholding

A person whose share has been forfeited shall cease to be a shareholder in respect of the forfeited share, but shall, nevertheless, remain liable to pay to the company all amounts which. at the time of forfeiture, were payable by such person to the company in respect of the share, but liability shall cease if and when the company receives payment in full of all such amounts.

(f) Evidence of forfeiture

A declaration in writing declaring that the declarant is a director of the company and that a share in the company has been duly forfeited on a date stated in the declaration shall be conclusive evidence of such facts as against all persons claiming to he entitled to the share.

(g) Validity of sale

The company may receive the consideration, if any, given for forfeited share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of, and such person shall then be registered as the holder of the share and shall not be bound to see the application of the purchase money, if any, nor shall such person's title to the share be effected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

FIFTH SCHEDULE

(sections 119, 155(1) and 166(c))

Proceedings at meetings of shareholders

1. Chairperson

(a) Where the directors have elected a chairperson of the Board, and the chairperson of the Board is present at a meeting of shareholders, he shall chair the meeting.

(b)(i) Where no chairperson of the Board has been elected or if, at any meeting of shareholders, the chairperson of the Board is not present within 15 minutes of the time appointed for the commencement of the meeting, the directors present shall elect one of their number to be chairperson of the meeting.

(ii) Where no director is willing to act as chairperson, or where no director is present within 15 minutes of the time appointed for holding the meeting, the shareholders present may choose one of their number to be chairperson of the meeting.

2. Notice of meetings

(a) Written notice of the date, time and place of a meeting of shareholders shall be sent to every shareholder entitled to receive notice of the meeting and to every director, secretary and auditor of the company not less than 21 days before the meeting.

(b) The notice shall state -

(i) the nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and

(ii) the text of any special resolution to be submitted to the meeting.

(ba) A notice under paragraph (b) shall be accompanied by a detailed agenda together with any other document relevant to the meeting

(c) Any irregularity in a notice of a meeting shall be waived where all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or where all such shareholders agree to the waiver.

(d) (i) Any accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a shareholder shall not invalidate the proceedings at that meeting.

(ii) The chairperson may, or where directed by the meeting, shall, 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.

(iii) When a meeting of shareholders is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(e) Notwithstanding paragraphs (a), (b) and (c), it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

(f) Paragraphs (a), (b) and (c) shall apply notwithstanding any contrary provision in any constitution adopted by the company.

Amended by [GN No. 79 of 2019]; [GN No. 82 of 2020]

3. Methods of holding meetings

(1) A meeting of shareholders may be held either -

(a) by a number of shareholders who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting;

(b) by means of audio, or audio and visual, communication by which all shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting; or

(c) in such manner as the Registrar may approve.

(2) Subparagraph (1) shall apply notwithstanding any contrary provision in any constitution adopted by the company.

4. Quorum

(a) Where a quorum is not present, no business shall, subject to paragraph (c), be transacted at a meeting of shareholders.

(b) A quorum for a meeting of shareholders shall be present where the shareholders or their proxies are present or have cast postal votes, who are between them able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.

(c) Where a quorum is not present within 30 minutes after the time appointed for the meeting -

(i) in the case of a meeting called under section 118(1)(b), the meeting shall be dissolved;

(ii) in the case of any other meeting, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the directors may appoint; and

(iii) where, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders or their proxies present shall be a quorum.

(d) Paragraphs (a),and (c)(i) and (ii) shall apply notwithstanding any contrary provision in any constitution adopted by the company.

5. Voting

(1) Where a meeting of shareholders is held under paragraph 3(a)(i), unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson of the meeting -

(i) voting by voice; or

(ii) voting by show of hands.

(2) Where a meeting of shareholders is held under paragraph 3(a)(ii), unless a poll is demanded, voting at the meeting shall be by the shareholders signifying individually their assent or dissent by voice or any electronic means approved by the Registrar.

(3) A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority shall be conclusive evidence of that fact unless a poll is demanded in accordance with paragraph (d).

(4) At a meeting of shareholders, a poll may he demanded by -

(i) not less than 5 shareholders having the right to vote at the meeting;

(ii) a shareholder or shareholders representing not less than 10 percent of the total voting rights of all shareholders
having the right to vote at the meeting;

(vi) by a shareholder or shareholders holding shares in the company that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10 percent of the total amount paid up on all shares that confer that right; or

(iv) the chairperson of the meeting.

(5) A poll may be demanded either before or after the vote is taken on a resolution.

(6) Where a poll is taken, votes shall he counted according to the votes attached to the shares of each shareholder present in person or by proxy and voting.

(7) The chairperson of a shareholders' meeting shall not be entitled to a casting vote.

(8) (i) For the purposes of paragraph 5, the instrument appointing a proxy to vote at a meeting of a company shall confer authority to demand or join in demanding a poll and a demand by a person as proxy for a shareholder shall have the same effect as a demand by the shareholder.

(ii) Subject to any rights or restrictions for the time being attached to any class of shares, every shareholder present in person or by proxy and voting by voice or by show of hands and every shareholder voting by post (where this is permitted) shall have one vote.

(iii) The chairperson may demand a poll on a resolution either before or after a vote thereon by voice or by show of hands.

(iv) The demand for a poll may be withdrawn.

(v) Where a poll is duly demanded, it shall, subject to paragraph (1), be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll is demanded.

(vi) A poll demanded -

(A) on the election of a chairperson or on a question of adjournment, shall be taken immediately;

(B) on any other question, shall be taken in such time and place as the meeting directs.

and any business other than that on which a poll is demanded may be proceeded with pending the taking of the poll.

(9) Paragraph (a) to (f) and (h) shall apply notwithstanding any contrary provision in any constitution adopted by the company.

6. Proxies

(a) A shareholder may exercise the right to vote either by being present in person or by proxy.

(b) A proxy for a shareholder may attend and be heard at a meeting of shareholders as if the proxy were the shareholder.

(c) A proxy shall be appointed by notice in writing signed by the shareholder and the notice shall state whether the appointment is for a particular meeting or a specified term.

(d) (i) No proxy shall be effective in relation to a meeting unless a copy of the notice of appointment is produced before the start of the meeting.

(ii) Any power of attorney or other authority under which the proxy is signed or notarially certified copy shall also be produced.

(iii) A proxy form shall be sent with each notice calling a meeting of the company.

(iv) The instrument appointing a proxy shall be in writing under the hand of the appointee or of his agent duly authored in writing Or in the case of a corporation under the hand of an officer or of an agent duly authorised.

(v) The instrument appointing a proxy shall be in the following form -

I/we ..... of ..... being shareholders of the above named company hereby appoint ..... or failing him/her . ..... of ..... as my/our Proxy to vote for me/us at the meeting of the company to be held on ..... and at any adjournment of the meeting.

Signed this ..... day of.....

(e) (i) The constitution of a company may provide that the instrument appointing a proxy shall not be effective unless it is produced by a specified time before the start of a meeting where the time specified is not earlier than 24 hours before the start of the meeting.

(ii) Paragraph 6 other than paragraph (d)(v) shall apply notwithstanding any contrary provision in any constitution adopted by the company.

7. Postal votes

(a) A shareholder may exercise the right to vote at a meeting by casting a postal vote in accordance with this paragraph.

(b) The notice of a meeting at which shareholders are entitled to cast a postal vote shall state the name of the person authorised by the Board to receive and count postal votes at that meeting.

(c) Where no person has been authorised to receive and count postal votes at a meeting, or where no person is named as being so authorised in the notice of the meeting, every director shall be deemed to be so authorised.

(d) (i) A shareholder may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice in the manner in which his shares are to be voted to a person authorised to receive and count postal votes at that meeting.

(ii) The notice shall reach that person not less than 48 hours before the start of the meeting.

(e) A person authorised to receive and count postal votes at a meeting shall -

(i) collect together all postal votes received by him or by the company;

(ii) in relation to each resolution to be voted on at the meeting, count -

(A) the number of shareholders voting in favour of the resolution and the number of votes cast by each shareholder in favour of the resolution; and

(B) the number of shareholders voting against the resolution, and the number of votes cast by each shareholder against the resolution;

(iii) sign a certificate that he has carried out the duties set out in subparagraphs (i) and (ii) which sets out the results of the counts required by subparagraph (ii); and

(iv) ensure that the certificate required by subparagraph (iii) is presented to the chairperson of the meeting.

(f) Where a vote is taken at a meeting on a resolution on which postal votes have been cast, the chairperson of the meeting shall -

(i) on a vote by show of hands, count each shareholder who has submitted a postal vote for or against the resolution;

(ii) on a poll, count the votes cast by each shareholder who has submitted a postal vote for or against the resolution.

(g) The chairperson of a meeting shall call for a poll on a resolution on which he holds sufficient postal votes that he believes that, where a poll is taken, the result may differ from that obtained on a show of hands.

(h) The chairperson of a meeting shall ensure that a certificate of postal votes held by him is annexed to the minutes of the meeting.

8. Minutes

(a) The Board shall ensure that minutes are kept of all proceedings at meetings of shareholders.

(b) Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

(c) Paragraph 8 shall apply notwithstanding any contrary provision in any constitution adopted by the company.

9. Shareholder proposals

(a) A shareholder may give written notice to the Board of a matter the shareholder proposes to raise for discussion or resolution at the next meeting of shareholders at which the shareholder is entitled to vote.

(b) Where the notice is received by the Board not less than 28 days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board shall, at the expense of the company, give notice of the shareholder's proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

(c) Where the notice is received by the Board less than 7 days and not more than 28 days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board shall, at the expense of the shareholder, give notice of the shareholder's proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

(d) Where the notice is received by the Board less than 7 days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board may, where practicable, and at the expense of the shareholder, give notice of the shareholder's proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

(e) Where the directors intend that shareholders may vote on the proposal by proxy or by postal vote, they shall give the proposing shareholder the right to include in or with the notice given by the Board a statement of not more than 1000 words prepared by the proposing shareholder in support of the proposal, together with the name and address of the proposing shareholder.

(f) The Board shall not be required to include in or with the notice given by the Board a statement prepared by a shareholder which the directors consider to be defamatory, frivolous or vexatious.

(g) Where the costs of giving notice of the shareholder's proposal and the text of any proposed resolution are required to be met by the proposing shareholder, the proposing shareholder shall, on giving notice to the Board, deposit with the company or tender to the company a sum sufficient to meet those costs.

(h) Paragraph 9 shall notwithstanding any contrary provision in any constitution adopted by the company.

10. Corporations may act as representative

(a) A body corporate which is a shareholders may appoint a representative to attend a meeting of shareholders on its behalf in the same manner as that in which it could appoint a proxy.

(b) Paragraph 10 shall apply notwithstanding any contrary provision in any constitution adopted by the company.

11. Votes of joint holders

(a) Where 2 or more persons are registered as the holder of a share, the vote of the person named first in the share register and voting on a matter shall be accepted to the exclusion of the votes of the other joint holders.

(b) Paragraph II shall apply notwithstanding any other provision in any constitution adopted by the company.

12. No voting right where calls unpaid

Where a sum due to a company in respect of a share has not been paid, that share may not be voted at a shareholders meeting other than a meeting of an interest group.

13. Other proceedings

Unless otherwise expressly provided in this Schedule, a meeting of shareholders may regulate its own procedure.

Amended by [GN No. 79 of 2019]; [Act No. 12 of 2023]

SIXTH SCHEDULE

(sections 121(3) and 126(2))

Provisions relating to debenture holders' representatives and agency deed

1. Qualification to act as debenture holders' representative

(a) Subject to paragraphs (b) and (c), no person shall be qualified to act as a debenture holders' representative unless he is –

(i) a notary;

(ii) a banking company;

(iii) an attorney-at-law;

(iv) an insurance company;

(v) a qualified auditor; or

(vi) an investment trust company, finance or other corporation or person approved in writing by the Minister for purpose of section 121, either generally or in respect of a particular issue.

(b) A person shall not be qualified for appointment as a debenture holders' representative if he is -

(i) a director, officer, or employee of the company which issues debentures covered by the deed; or

(ii) a substantial shareholder of the company.

(c) A debenture holders' representative shall be disqualified from acting as such and shall vacate office where he -

(i) ceases to be qualified under paragraph (a) or is disqualified under paragraph (b);

(ii) is adjudged bankrupt or, in the case of a body corporate, goes into liquidation or makes an arrangement or composition with its creditors;

(iii) becomes insane; or

(iv) is convicted of an offence involving fraud or dishonesty.

(d) (i) Where the debenture holders' representative is a person other than a body corporate, a successor to him shall be named in the agency deed.

(ii) Where the successor dies or becomes disqualified during the term of office of the representative, a meeting of the debenture holders shall be convened by the representative within 28 days to appoint another person as successor;

(iii) On the disqualification of the representative under (c) or on his death or resignation the successor shall immediately and without special appointment assume office, and shall within 28 days of assuming office convene a meeting of debenture holders to name his successor in accordance with subparagraph (ii).

(e) Where the debenture holders' representative to a body corporate, it shall not, without the consent of the Court, be discharged or retire from office until another representative has been appointed to and taken office in accordance with the agency deed.

2. Agency deed

(a) A company may, as security for a debenture, but subject to any other laws create over any of its assets or property a charge, of whatever nature, in favour of the debenture holders' representative.

(b) Every agency deed shall state -

(i) the maximum sum which the company may raise by issuing debenture of the same class:

(ii) the maximum discount which may be allowed on the issue or reissue of the debentures, and the maximum premium ,it which the debentures may be made redeemable:

(iii) where debenture stock is to be issued under the deed, that -

(A) the company is indebted to the debenture holders' representative for the amounts from time to time payable in respect of the debentures and

(B) except for his own remuneration and indemnity against expenses incurred by him, the debenture holders' representative holds on behalf of the debenture holders any amount from time to time issued under the deed and remaining outstanding in accordance with their respective rights;

(iv) the nature of any assets over which any charge is created by the deed in favour of the debenture holders' representative for the benefit of the debenture holders equally, and except where such a charge is a floating charge, the identity of the assets subject to it;

(v) the nature Of any assets Over which any charge has been or is to he created in favour of any person other than the debenture holders' representative for the benefit of the debenture holders equally, and except where such a charge is a floating charge, the identity of the assets subject to it.

(vi) whether the company has created or has power to create a charge for the benefit of some, but not all, of the holders of debentures issued under the deed;

(vii) any prohibition or restriction on the power of the company to issue debentures or to create charges on any of its assets ranking in priority to, or equally with, the debentures issued under the deed;

(viii) whether the company shall have power to -

(A) acquire debentures issued under the deed before the date for their redemption;

(B) re-issue such debentures.

(ix) the date on which interest on the debentures issued under the deed is to be paid and the manner in which payment is to be made:

(x) the date on which the principal of the debentures issued under the 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 repayment shall be effected;

(xi) in the case of convertible debentures, the date and terms on which the debentures may be converted into shares and the amounts which shall be credited as paid up on such shares, and the date and terms on which the debenture holders may exercise any right to subscribe for shares in place of the debentures held by them;

(xii) the circumstances in which the debenture holders shall be entitled to realize any charge vested in the debenture holders' representative or any other person for their benefit;

(xiii) the circumstances in which the debenture holders' representative may appoint a receiver or manager and the power and duties of the receiver or manager;

(xiv) the powers of the company and the debenture holders' representative to call meetings of the debenture holders, and the rights of debenture holders to require the company or the debenture holders' representative to call such meetings;

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

(xvi) the amount or rate of remuneration to be paid by the company to the debenture holders' representative 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 deed.

3. Powers of debenture holders' representative

(1) On the execution of an agency deed the debenture debt shall, where the deed so provides, vest as it is created in the debenture holders' representative and thereupon he shall -

(a) have power to act in his own name on behalf of the debenture holders;

(b) be entitled to represent them in all matters affecting the debentures and their rights and obligations under the deed; and

(c) notwithstanding the generality of the foregoing powers, be able to -

(i) take title in his own name to any property charged by the borrowing company under the deed;

(ii) require inscription of the deed in accordance with section 126;

(iii) notwithstanding any other law be registered on behalf of the debenture holders in any register of movable or immovable property, the entry in the register to be made in his own name followed by the words "as the debenture holder's Representative under an agency deed dated the .....

(iv) hold any document of title, certificate or other security conferring or evidencing the title or interest of the borrowing company in or otherwise relating to the property charged by the deed;

(v) take or defend legal proceedings in his own name on behalf of the debenture holders in relation to any matter connected with the protection of their interest in the assets of the borrowing company and their rights and obligations under the deed;

(vi) enter into any contract, compromise or arrangement in his own name on behalf of the debenture holders;

(vii) represent the debenture holders, in person or by proxy, at a meeting of the borrowing company, or of creditors of the borrowing company or at any other meeting which the debenture holders have a right to attend;

(viii)appoint, in terms of the deed, a receiver with power -

(A) to take possession of the assets of the borrowing company which are subject to the charge;

(B) to sell such assets and otherwise enforce any claim against the assets of the borrowing company; and

(C) to carry on any part of the business of the company with a view to preserving any part of the business of the company and selling it or realising the assets on favourable terms.

(2) Every company shall at the request of a debenture holder and on payment of the fee specified in item 2 of the Third Schedule forward to him a copy of an agency deed relating to or securing any issue of debentures held by him.

4. Right of debenture holders' representative to obtain information

(1) A debenture holders' representative may receive all notices of and other communications relating to any meeting of shareholders of the borrowing company which a member is entitled to receive.

(2) A borrowing company shall on the written request of the debenture holders' representative -

(a) make available for his inspection any book of the company;

(b) provide him with such information as he requires with respect to any matter relating to such book.

5. Meetings on request

(1) A borrowing company shall, on the written request of the debenture holders' representative or on that of persons holding not less than one-tenth in nominal value of the issued debentures to which the agency deed relates, summon a meeting of the holders of those debentures for the purpose of -

(a) considering the accounts and balance sheet of the company for its last preceding financial year; and

(b) giving directions to the debenture holders' representative in relation to the exercise of his powers.

(2) (a) Every meeting under paragraph (1) shall be summoned by sending a notice by post, specifying the time and place of the meeting; to every holder of the debentures at his last known address not later than 14 days before the date of the proposed meeting.

(b) The meeting shall be held under the chairmanship of a person nominated by the debenture holders' representative, or such other person as may be appointed in that behalf by the debenture holders present at the meeting.

6. Duties of debenture holders' representative

(1) Every debenture holders' representative shall -

(a) exercise reasonable diligence to ascertain whether or not the borrowing company has committed a breach of the terms and conditions of the agency deed;

(b) except where he is satisfied that the breach will not materially prejudice any security conferred by the deed or the interests of the debenture holders, do all such things as he is empowered to do to cause the borrowing company to remedy a breach of those terms and conditions;

(c) exercise reasonable diligence to ascertain whether or not the assets of the borrowing company that are or may be available, whether by way of security or otherwise, are sufficient or likely to be sufficient to discharge the amounts of the debentures as they become due;

(d) hold for the benefit of the debenture holders, and account to them for, any money or property coining into his hands by way of payment of principal or

interest under the agency deed or on a realization of the security conferred by the deed.

(2) Where, after due inquiry, a debenture holders' representative is of the opinion that the assets of the company are insufficient or likely to be insufficient to discharge the amounts of the debentures as they become due, he may, having regard to -

(a) any other powers or remedies available to him for the protection of the interests of the debenture holders;

(b) the availability, by way of security or otherwise, of any assets of any corporation that has guaranteed or agreed to guarantee the repayment of the amounts of the debentures;

(c) the possible effects on the borrowing company's affairs of any application to the Court under this paragraph; and

(d) all other relevant circumstances, apply to the Court for an order under paragraph (3).

(3) On an application for an order under this paragraph the Court may, after giving the borrowing company an opportunity of being heard, and having regard to the rights of all creditors of the borrowing company, give such directions as it thinks fit to protect the interests of the debenture holders, the members of the borrowing company, or the public, whether by way of -

(a) staying any proceedings by or against the borrowing company;

(b) restraining the payment by it of any money to any holders of debentures or to any class of such holders; or

(c) appointing a receiver of such of its property as constitutes the security for the debentures, or otherwise.

7. Repayment of loans and deposits

(1) Where, in a prospectus issued in connection with an invitation to subscribe for or to purchase debentures, there is a statement as to any particular purpose or project for which the moneys received by the company in response to the invitation are to be applied, the company shall report to the debenture holders' representative as the progress that has been made towards achieving the purpose or completing the project.

(2) Where it appears to the debenture holders' representative that the purpose or project referred to in the prospectus has not been achieved or completed within the time stated in the prospectus or, where no time is stated, within a reasonable time, he may and shall, if in his opinion it is necessary for the protection of the interests of the debenture holders give written notice to the company requiring it to repay the money received and, subject to paragraph (3) within one month, file a copy of the notice.

(3) The debenture holders' representative shall not give notice under paragraph (2) where he is satisfied that -

(a) the purpose or project has been substantially achieved or completed;

(b) the interests of the debenture holders have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time; or

(c) the failure to achieve or complete the purpose or project was due to circumstances beyond the control of the company that could not reasonably have been foreseen at the time the prospectus was issued.

(4) On receipt by the company of a notice referred to in paragraph (2), the company shall be liable to repay any money owing as the result of a loan or deposit made in response to the invitation unless -

(a) before the money was accepted, the company had given written notice to the person from whom the money was received specifying the purpose or project for which the money would in fact be used and the money was accepted by the company accordingly; or

(b) the company by written notice given to the debenture holders -

(i) has specified the purpose or project for which the money would in fact be applied by the company; and

(ii) has offered to repay the money to the debenture holders And they have not within 14 days after the receipt of the notice, or such longer time as it specified in the notice, demanded in writing from the company repayment of the money.

(5) Where the company has given written notice under paragraph (4), specifying the purpose or project for which the money will in fact be applied by the company, paragraph 7 shall apply and have effect as if the purpose or project so specified in the notice was the particular purpose or project specified in the prospectus as the purpose or project for which the money was to be applied.

8. Release of agent from obligations

(1) Subject to paragraphs (2) and (3) a provision in an agency deed or in a contract with debenture holders secured by an agency deed, shall be void in so far as it would have the effect of exempting the debenture holders' representative from. or indemnifying him against, liability for exercising reasonable diligence and care in the carrying out of his duties under the deed or observing any provision of paragraphs 6 and 7.

(2) Paragraph (1) shall not invalidate a provision enabling release to be given -

(a) with the concurrence of a majority of not less than three-fourths in nominal 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

(b) with respect to specific acts or omissions or on the debenture holders' representative ceasing to act.

(3) A debenture holders' representative may rely on a certificate or report given or statement made by any person who is an attorney-at-law for or auditor or officer of the borrowing company, where he has reasonable ground for believing that the person was competent to give the certificate or report or to make the statement.

SEVENTH SCHEDULE

(section 131)

Powers of directors not to be delegated

Sections 52, 56, 57(3), 61, 64, 65, 69,78, 81, 188, 246 and 247.

EIGHTH SCHEDULE

(sections 158)

Proceedings of the Board of a company

1. Chairperson

(1) The directors may elect one of their number as chairperson of the Board and determine the period for which he is to hold office.

(2) Where no chairperson is elected, or where at a meeting of the Board the Chairperson is not present within 15 minutes after the time appointed for the commencement of the meeting, the directors present may choose one of their number to be Chairperson of the meeting.

2. Notice of meeting

(1) A director or, if requested by a director to do so. an employee of the company, may convene a meeting of the Board by giving notice in accordance with this paragraph.

(2) A notice of a meeting of the Board shall be sent to every director who is in Mauritius, and the notice shall include the date, time, and place of the meeting and the matters to be discussed.

(3) An irregularity in the notice of a meeting is waived where all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or where all directors entitled to receive notice of the meeting agree to the waiver.

3. Methods of holding meetings

A meeting of the Board may be held either -

(a) by a number of the directors who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or

(b) by means of audio, or audio and visual, communication by which all directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

4. Quorum

(1) A quorum for a meeting of the Board shall be fixed by the Board and if not so fixed shall be a majority of the directors.

(2) No business may be transacted at a meeting of directors if a quorum is not present.

5. Voting

(1) Every director has one vote.

(2) The chairperson shall not have a casting vote.

(3) A resolution of the Board is passed if it is agreed to by all directors present without dissent or if a majority of the votes cast on it are in favour of it.

(4) A director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless he expressly dissents from or votes against the resolution at the meeting.

6. Minutes

The Board shall ensure that minutes are kept of all proceedings at meetings of the Board.

7. Resolution in writing

(1) A resolution in writing, signed or assented to by all directors then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

(2) Any such resolution may consist of several documents (including facsimile or other similar means of communication in like form each signed or assented to by one or more directors.

(3) A copy of any such resolution must be entered in the minute book of Board proceedings.

8. Other proceedings

Except as provided in this Schedule, the Board may regulate its own procedure.

Ninth Schedule

FIRST SCHEDULE
[Regulation 3]

NINTH SCHEDULE
[Section 215(3)]

FINANCIAL SUMMARY

Financial Summary required to be filed by small private company

FOR OFFICE USE | FS

BARCODE

Name of Company

Company No.

Financial Summary (Profit & Loss and Balance Sheet) has been:

Approved by Board of Directors on ☐☐ / ☐☐ / ☐☐☐☐ (DD/MM/YYYY)

Adopted by Shareholders by: Special Resolution ☐ or Written Resolution ☐

at: Annual Meeting ☐ or Special Meeting ☐ on ☐☐ / ☐☐ / ☐☐☐☐ (DD/MM/YYYY)

Director: ....
Signature Name

PROFIT AND LOSS STATEMENT

Accounting Period From (DD/MM/YYYY) To (DD/MM/YYYY)

*Currency MUR ☐ EUR ☐ USD ☐ GBP ☐

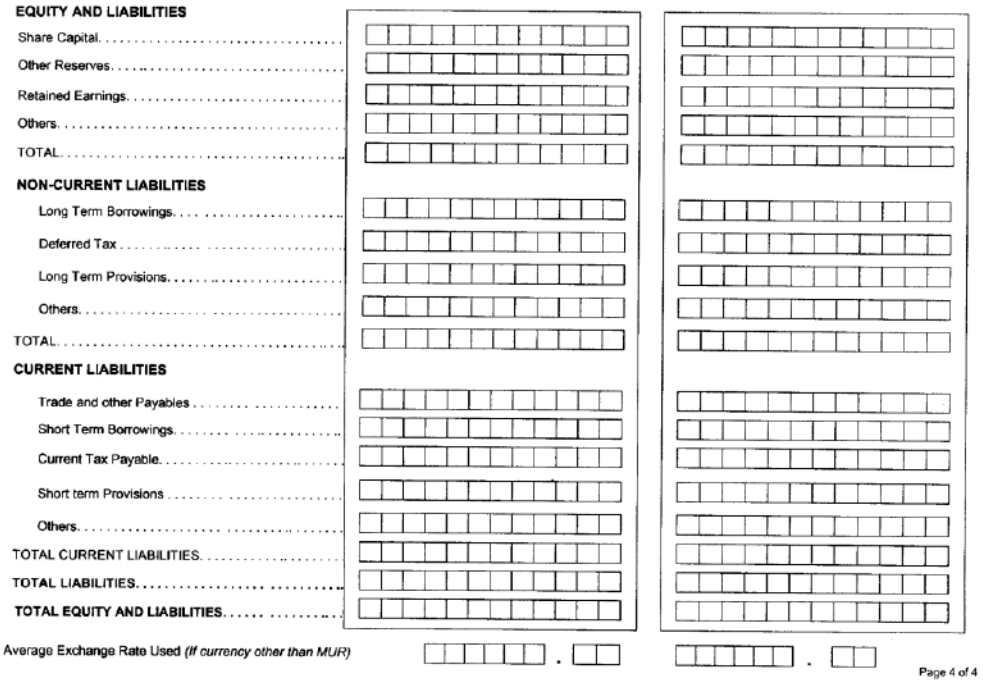
If other, please specify ☐☐☐

	Current Period Ended (DD/MM/YYYY)	Previous Period Ended (DD/MM/YYYY)
	☐☐ / ☐☐ / ☐☐☐☐	☐☐ / ☐☐ / ☐☐☐☐
*Unit	1 ☐	1 ☐
	1,000 (Thousand) ☐	1,000 (Thousand) ☐
	1,000,000 (Million) ☐	1,000,000 (Million) ☐
Turnover		
Less Cost of Sales		
GROSS PROFIT		
Add Other Income		
Less: Distribution Costs		
Administration Costs		
Other Expenses		
Finance Costs		
PROFIT/(LOSS) BEFORE TAX		
Tax Expense		
PROFIT/(LOSS) FOR THE PERIOD		

BALANCE SHEET AS AT

☐☐ / ☐☐ / ☐☐☐☐
(DD/MM/YYYY)

	Current ☐☐ / ☐☐ / ☐☐☐☐	Previous ☐☐ / ☐☐ / ☐☐☐☐
	*Unit: 1 / 1,000 (Thousand) / 1,000,000 (Million)	*Unit: 1 / 1,000 (Thousand) / 1,000,000 (Million)
NON-CURRENT ASSETS		
Property, Plant and Equipment		
Investment Properties		
Intangible Assets		
Investments in subsidiaries		
Other investments		
Biological Assets		
Others		
TOTAL		
CURRENT ASSETS		
Inventories		
Trade and Other Receivables		
Cash and Cash Equivalents		
Others		
TOTAL		
TOTAL ASSETS		



EQUITY AND LIABILITIES		
Share Capital		
Other Reserves		
Retained Earnings		
Others		
TOTAL		
NON-CURRENT LIABILITIES		
Long Term Borrowings		
Deferred Tax		
Long Term Provisions		
Others		
TOTAL		
CURRENT LIABILITIES		
Trade and other Payables		
Short Term Borrowings		
Current Tax Payable		
Short term Provisions		
Others		
TOTAL CURRENT LIABILITIES		
TOTAL LIABILITIES		
TOTAL EQUITY AND LIABILITIES		
Average Exchange Rate Used *(If currency other than MUR)*	.	.

Page 4 of 4

Repealed and replaced by [GN No. 30 of 2013]

TENTH SCHEDULE

[Sections 223(5) and 269(2)]

PART I

MATTERS TO BE CONTAINED IN THE ANNUAL RETURN OF A COMPANY, OTHER THAN A COMPANY LIMITED BY GUARANTEE

1. The address of the registered office of the company.

2. The postal address of the company.

3. Where the share register is divided into 2 or more registers kept in different places, the place in which each register is kept.

4. Where any records are not kept at the company's registered office under section 190(1) of the Act, details of those records and of the place or places where they are kept.

5. (1) The following information relating to the shares in the company —

(a) the number of shares issued and, where there is more than one class of shares, the number of shares in each class;

(b) the value of the consideration for each share issued;

(c) where the full consideration was not payable or required to be provided in respect of the issue of the share, the value of that part of the consideration paid or provided in respect of the issue of the share;

(d) the amount called up on each share;

(e) the amount received on issue;

(f) the amount of calls received;

(g) the amount of calls unpaid;

(h) the total number of shares forfeited and not sold or otherwise disposed of;

(i) the total number of shares purchased or otherwise acquired by the company;

(j) the number of treasury shares held by the company;

(k) subject to section 48(3) of the Act, the stated capital where the company has issued no par value shares. (Where par value shares have been issued the nominal and paid up value of the shares of each class having a par value shall be stated.)

(1) currency of each class of share.

(2) Subparagraph (1)(g) to (i) shall not apply to an open-ended fund, including an authorised mutual fund.

6. The total number of shares redeemed by the company.

7. The total amount of indebtedness of the company under all charges which are required to be registered with the Registrar.

8. All such particulars with respect to the persons who at the date of the return are or are deemed to be directors of the company and any person who is a secretary of the company and who are by the Act required to be notified to the Registrar.

9. The full name and address, other than residential, of any auditor or share registrar of the

company.

10. Where the company is a party to a listing agreement with a securities exchange, the names and addresses of, and the number of shares held by —

(a) the persons holding the 10 largest number of shares; or

(b) where there is more than one class of shares, the persons holding the 10 largest number of shares in each class.

11. Except in the case of a company to which section 223(8) of the Act applies, the following information relating to past and present shareholders of the company —

(a) the names and addresses (other than residential) of all the shareholders of the company;

(b) the names and addresses (other than residential) of all persons who ceased to be shareholders of the company —

(i) since the date of the last annual return; or

(ii) in the case of the first annual return of a company registered under the Act, since the date of its incorporation;

(c) the number of shares held by each shareholder;

(d) the shares transferred by existing shareholders or past shareholders (including the dates of registration of the transfers) —

(i) since the last annual return; or

(ii) in the case of the first annual return of a company registered under the Act, since the date of its incorporation;

(e) where the names are not arranged in an alphabetical order, having annexed thereto an index sufficient to enable the name of any person to be easily found.

12. A statement whether the company is —

(a) a public company;

(b) a private company, other than a small private company; or

(c) a small private company.

13. In the case of a company where at the date of the annual return is a one person company, the name and full address (other than residential) and description of the person named by the company to be its secretary under section 140(3) of the Act in the event of the death or incapacity of the sole shareholder/director.

14. Except in the case of a company which since the last annual return or, in the case of its first annual return since the date of its incorporation, has been a one person company, the date of the last annual meeting of the company held under the Act or, if the company avoided the need for an annual meeting by doing everything required to be done at that meeting by passing a resolution under section 106 of the Act, the date on which the resolution was passed.

15. A statement in the case of a private company which has passed a unanimous resolution under section 271 of the Act that no interests register need be kept by the company, the date of the resolution and that no shareholder has, at the date of the annual return, given notice in writing to the company requiring it to keep an interests register.

16. A statement in the case of a private company or a small private company which has passed a unanimous resolution under section 218 of the Act that no annual report need to be prepared by the company and that no shareholder has, within 3 months after the company's balance sheet date, given notice in writing requiring the company to prepare an annual report.

17. Subject to paragraph 18, unless the following particulars are included in the balance sheet or in a note on or a statement annexed to the balance sheet, particulars of —

(a) the names, countries of incorporation and nature of the businesses and subsidiaries of the company and of all corporations in which the company is entitled by itself or a nominee to exercise more than 25 per cent of the votes exercisable at a meeting of shareholders of the company; and

(b) where the company is a subsidiary of another company or corporation, the name of the company or corporation regarded by the directors as the ultimate holding company of the first-mentioned company, and if it is known to them the company in which it is incorporated.

18. The information required by this paragraph need not be given if the Registrar so directs and for this purpose the Registrar shall have regard to whether the disclosure of the information would be harmful to the business of the company or of that of other companies and this harm outweighs any benefit to the public in requiring this disclosure.

19. The information required by paragraph 5(1) shall show separately the number of shares issued for cash and the number of shares issued as fully or partly paid up for a consideration other than cash.

PART II

MATTERS TO BE CONTAINED IN ANNUAL RETURN OF A COMPANY LIMITED BY GUARANTEE

1. The address of the registered office of the company.

2. The place where members register is kept (if other than registered office).

3. The total amount of indebtedness of the company in respect of all charges to be filed.

4. All such particulars with respect to the persons who at the date of the return are or are deemed to be directors of the company and any person who is a secretary of the company, and who are by the Act required to be notified to the Registrar.

5. The full name and address (other than residential) of any auditor.

6. The full name and address (other than residential) of the members of the company.

Amended by [GN No.167 of 2001]; [Act No. 22 of 2005]; [GN No. 30 of 2013]

ELEVENTH SCHEDULE

(section 272(1))

Provisions of Act not applicable to a private company Under unanimous agreement

Items	Sections
1.	52
2.	63
3.	65
4.	69
5.	78
6.	79(2)
7.	80(2)
8.	81
9.	159

TWELFTH SCHEDULE

(section 295(b), 355)

Fees Payable to Registrar

PART I

Items	Matters in respect of which a fee shall be payable
1.	In the case of a small private company (a) at the time of its incorporation; and (b) in respect of ever subsequent year
2.	In the case of a foreign company (a) at the time of registration; and (b) in respect of every subsequent year
3.	In the case of a company recorded by the Registrar as being a dormant company, in respect of every subsequent year
4.	In the case of a public company (a) at the time of its incorporation; and (b) in respect of every subsequent year
5.	In the case of any other company (a) at the time of incorporation; and (b) in respect of every subsequent year
6.	In the case of a commercial partnership (société commerciale) including société commerciale de fait) (a) at the time of registration; and (b) in respect of every subsequent year

PART II

Items	Matters in respect of which a fee shall be payable

1.	For any certificate issued by the Registrar or for the certifying any copy or extract of any document in the custody of the Registrar
2.	For a copy of any document in the custody of the Registrar
3.	For search of information in respect of every company or commercial partnership

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THIRTEENTH SCHEDULE

(section 343)

PART I

Sections of the Act not applicable to company holding Global Business Licence or to Authorised Company

Items	Sections
1.	23(2)(c) in so far as it relates to a private company
2.	32
3.	50
4.	62(2)
5.	83
6.	133(1)(b), (ba) and (c)
7.	159
8.	164(1)(a)
9.	178 and 179, unless the constitution of the company provides otherwise
10.	197(1)(a)
11.	198(2)(c)
12.	218 to 222
13.	223

14.	225 and 228

Amended by [Act No. 28 of 2004]; [Act No. 15 of 2021]; [Act No. 12 of 2023]; [Act No. 11 of 2024]

PART II

Sections of the Act not applicable to Authorised Company

Items	Sections
1.	57
2.	163 and 167
3.	193 to 195
4.	210 to 217
5.	270(a)
6.	273 to 286

Amended by [Act No. 11 of 2018]

FOURTEENTH SCHEDULE

(section 345)

PART I

Provisions applicable to company applying for or holding Global Business Licence or to Authorised Company or Company applying as Authorised Company

1. Par value shares may be issued

(1) Notwithstanding section 47, the shares of a company holding a Global Business Licence or an Authorised Company may be issued with or without a par value

provided that all the ordinary shares or all the preference shares of the company shall consist of one kind or the other.

(2) Par value shares, if any, may be stated in more than one currency.

2. Report to Commission by Registrar

(1) Where the Registrar has reasonable cause to suspect that a company holding a Global Business Licence or an Authorised Company -

(a) is not complying with any of the requirements of this Act or any regulations made under this Act; or

(b) is being used in any way for the trafficking of narcotics and dangerous drugs, arms trafficking or economic crime and money laundering under the Economic Crime and Anti-Money Laundering Act 2000,

he shall report the matter indicating his suspicions to the Commission.

(2) The Registrar shall report to the Commission any management company of a company holding a Global Business Licence or any registered agent of an Authorised Company, which, in the opinion of the Registrar, fails to apply due diligence in the exercise of any of its functions as any management company or registered agent, as the case may be.

3. Register of directors

(1) A company holding a Global Business Licence or an Authorised Company shall keep a register to be known as a register of directors containing -

(a) the names and addresses of the persons who are directors of the company;

(b) the date on which each person whose name is entered on the register was appointed as a director of the company; and

(c) the date on which each person named as a director ceased to be a director of the company.

(2) (a) The register of directors may be in such form as may be approved by the directors.

(b) Where the register is in magnetic, electronic or other data storage form. the company shall be able to produce legible evidence of its contents.

4. Remuneration of directors

Subject to the constitution of the company or in a unanimous shareholder agreement, the directors may, by a resolution of directors, fix the remuneration or benefits of director s in respect of services to be rendered in any capacity to the company.

5. **Accounting standards in relation to company holding Global Business Licence**

Whenever there is a requirement under this Act for a company holding a Global Business Licence to comply with the International Accounting Standards, the company may prepare its financial statements in accordance with any other internationally accepted accounting standards.

6. Officers and agents

(1) The directors of a company holding a Global Business Licence or an Authorised Company may, by resolution of directors, appoint any person, including a person who is a director, to be an officer or agent of the company.

(2) Subject to the constitution of a company or a unanimous shareholder agreement, each officer or agent shall, subject to subparagraph (3), have such powers and authority of the directors, including the power and authority to affix the common seal of the company, where it has one, as are set forth in the

constitution or unanimous shareholder agreement or resolution of directors appointing the officer or agent.

(3) No officer or agent shall have any power or authority with respect to the matters requiring a resolution of directors under the Act.

(4) The directors may remove an officer or agent appointed under subparagraph (1) or revoke or vary a power conferred on him under subparagraph (2).

Added by [GN No. 167 of 2001]; Amended by[GN No. 119 of 2006]

7. **Solvency test in relation to any investment company holding a Global Business Licence.**

Notwithstanding paragraph 6, the provision relating to stated capital in connection with the solvency test shall not apply to any investment company holding a Global Business Licence.
Amended by [GN No. 83 of 2002]; [GN No. 119 of 2006]

8. **Issue of share certificate by any investment company holding a Global Business Licence.**

Section 97 shall not apply to any investment company holding a Global Business Licence either on issue of a share or on registration of a transfer of shares.
Added by [GN No. 83 of 2002]

9. **Definition of investment company – Added by [GN No. 83 of 2002]; Deleted by [Act No. 22 of 2005]**

10. **Financial statements of parent and subsidiaries drawn up to different reporting dates**

Notwithstanding section 214, where, in relation to any company holding a Global Business Licence or an Authorised Company, the balance sheet date of a subsidiary company is different from the balance sheet date of its parent company, the financial statements of the subsidiary company may be incorporated into the group financial statements provided the difference between the reporting dates does not exceed 3 months.

Added by [GN No. 83 of 2002]

11. **Major transactions**

(1) Nothwithstanding section 130, the directors of any investment company holding a Global Business Licence may enter into major transactions without having to obtain the approval of the shareholders of the company.

(2) The shareholders of any private company holding a Global Business Licence or an Authorised Company may, by unanimous resolution, at the time of incorporation or at any subsequent time, agree that the provisions of section 130 shall not apply to the company.

(2) A unanimous resolution under subparagraph(2) shall continue in-force until –

(a) the resolution is revoked by any shareholder;

or

(b) there is any change of shareholders by reason of -

(i) transfer of shares;
(ii) issue of shares to new shareholders;or
(iii) death, bankruptcy or otherwise.

Amended by [GN No. 83 2002]; [GN No. 119 of 2006]

12. Group Financial statements in relation to any wholly owned or virtually wholly owned company holding a Global Business Licence

Notwithstanding section 212, any company holding a Global Business Licence may not prepare group financial statements where it is a wholly owned or virtually wholly owned subsidiary of any company.

Amended by [GN No. 83 2002]; [Act No. 27 of 2013]

13. Subsidiaries to be incorporated in the group financial statements of any company holding a Global Business Licence.

Notwithstanding sections 212 and 214, any company holding a Global Business Licence shall exclude from its group financial statements, the financial statements of a any of its subsidiaries which would have been excluded had the group financial statements of the holding company been prepared in accordance with and in compliance with International Accounting Standards or with any other internationally accepted accounting standards.
Added by [GN No. 83 2002]

14. Auditing Standards in relation to any company holding a Global Business Licence

Whenever there is a requirement under the Act for the audit of any company holding a Global Business Licence to be carried out in accordance with International Standards on Auditing, the audit may be carried out in accordance with any other internationally accepted auditing standards.

Added by [GN No. 83 of 2002]

15. Registered office

(1) Subject to subparagraph (2), section 187 shall not apply to a company holding a Global Business Licence or an Authorised Company.

(2) (a) Every company holding a Global Business Licence or an Authorised Company shall –

(i) have a registered office in Mauritius to which all communications and notices may be addressed; and

(ii) cause the registered address of its management company or registered agent, as the case may be, to be displayed in the manner specified in section 187(1)(b).

(b) The registered address of a management company or registered agent, as the case may be, shall be its registered office and shall constitute the address for service of legal proceedings on the company or registered agent.

16. Audited financial statements of protected cell company

(1) Notwithstanding sections 210 and 211, a company incorporated under the Protected Cell Companies Act may, at any time, by giving irrevocable notice in writing simultaneously to the registrar and to the Director-General, elect to present separate financial statements in respect of each of its cells in accordance with and in compliance with International Accounting Standards, or any other internationally accepted accounting standards.

(2) Where a company makes an election under subparagraph (1), it shall present separate financial statements in respect of each of its cells as from the accounting period in respect of which the notice is given.

(3) In paragraph (1), "Director-General" means the Director-General of the Mauritius Revenue Authority established under the Mauritius Revenue Authority Act.

17. Consolidated financial statements of protected cell company

(1) Notwithstanding section 212, any company incorporated under the protected Cell Companies Act that has, on its balance sheet date, one or more subsidiaries, shall present, within 6 months of its balance sheet date, separated consolidated financial statements in respect of each of its cells.

(2) The separate consolidated financial statements under paragraph (1) shall be in accordance with and in compliance with the International Accounting Standards or with any other internationally accepted accounting standards.

Amended by [GN No. 119 of 2006]; ; [GN No. 234 of 2011]; [Act No. 27 of 2012]; [Act No. 11 of 2018]

PART II

Provisions applicable to Authorised Company or Company applying as authorized Company

1. **Directors of Authorised Company**

Notwithstanding sections 132 and 133(1) and (2)(f), an Authorised Company -

(a) shall have at least 1 director who need not be ordinarily resident in Mauritius; and

(b) may appoint a corporation to be a director of the company.

2. **Accounting records and common seal**

(1) An Authorised Company shall keep in the English or French language and make available, within 7 days of any record being kept in any other language, a translation of that other language into the English or French language-

(a) minutes of all meetings of, and copies of all resolutions consented to by the directors or members;

(b) such books, registers, accounts, records (including receipts, invoices and vouchers) and documents (including contracts and agreements) representing a full and proper record of all transactions and other acts engaged in by the company so as to reflect the financial position of the company;

(c) a share register or a register of members in accordance with section 91;

(d) a register of mortgages and charges.

(2) The accounting records, minutes and the register referred to in subsection (1), shall be kept at the registered office of the company or at such other place as the directors may determine for a period of at least 7 years after the completion of the transactions to which they relate.

(3) The registered agent of the company shall be notified of the full address of the place, being a place other than the registered office of the company, where the accounting records, minutes and the register of directors and officers are kept.

(4) Where the company is required by its constitution to have a common seal, an imprint of the seal shall be kept at the registered office of the company.

3. **Inspection of accounting records**

(1) A shareholder of an Authorised Company may, in person or by attorney and in furtherance of a proper purpose, request in writing, specifying the purposes, to inspect during normal business houi4s the share register or the register of members

of the company, the register of directors, the register of mortgages and charges or the books, records, minutes and consents kept by the company and to take copies or extracts of such books or registers.

(2) For purposes of subsection (1), a proper purpose is a purpose reasonably related to the shareholder's interest as a shareholder;

(3) Where a request under subsection (1) is submitted by an attorney on behalf of a member, the request shall be accompanied by a power of attorney authorizing the attorney to act for the shareholder;

(4) Where the company, by a resolution of directors, determines that it is not in the best interest of the company or of any other shareholder of the company to comply with a request under subsection (1), the company may refuse the request.

(5) On refusal by the company of a request under subsection (1), the shareholder may before the expiration of a period of 90 days of his receiving notice of the refusal, apply to the Court for an order to allow the inspection.

4. **Merger or consolidation with company incorporated outside Mauritius**

(1) One or more Authorised Companies may merge or consolidate with one or more companies incorporated under the laws of jurisdictions other than that of Mauritius in accordance with paragraphs (2) to (4), including where one of the constituent companies is a parent company and the other constituent companies are subsidiary companies, where the merger or consolidation is permitted by the laws of the jurisdictions in which the companies incorporated outside Mauritius are incorporated.

(2) In respect of a merger or consolidation under this paragraph -

(a) an Authorised Company shall comply with the provisions of this paragraph relating to the merger or consolidation, as the case may be, of companies

incorporated under this Act, and a company incorporated under the laws of a jurisdiction other than that of Mauritius shall comply with the laws of that jurisdiction; and'

(b) where the surviving company or the consolidated company is to be incorporated under the laws of a jurisdiction other than that of Mauritius, it shall submit to the Registrar -

(i) an agreement that a service of process may be effected on it in Mauritius in respect of proceedings for the enforcement of any claim, debt, liability or obligation of a constituent company incorporated under this Act or in respect of proceedings for the enforcement of the rights of a dissenting member of a constituent company incorporated under this Act against the surviving company or the consolidated company;

(ii) an irrevocable appointment of the Registrar as its agent to accept service of process in proceedings referred to in subparagraph (1);

(iii) an agreement that it shall promptly pay to the dissenting members of a constituent company incorporated under this Act the amount, if any, to which they are entitled under this Act with respect to the rights of dissenting members; and

(iv) a certificate of merger or consolidation issued by the appropriate authority of the foreign jurisdiction where it is incorporated; or, if no certificate of merger is issued by the appropriate authority of the foreign jurisdiction, such evidence of the merger or consolidation as the Registrar considers acceptable.

(3) The effect under this section of a merger or consolidation shall be the same as in the case of a merger or consolidation under Part XVI where the surviving company or the consolidated company is incorporated under this Act, but where the surviving company or the consolidated company is incorporated under the laws of a

jurisdiction other than that of Mauritius, the effect of the merger or consolidation shall be the same as in the case of a merger or consolidation under Part XVI except in so far as the laws of the other jurisdiction otherwise provide.

(4) Where the surviving company or the consolidated company is incorporated under this Act, the merger or consolidation shall be effective on the date the articles of merger or consolidation are registered by the Registrar or on such date as is stated in the articles of merger or consolidation, in any case not exceeding 30 days from the date of registration of the merger of consolidation; but where the surviving company or the consolidated company, is incorporated under the laws of a jurisdiction other than that of Mauritius, the merger or consolidation shall be effective as provided by the laws of that other jurisdiction.

5. Shares to be fully paid

Notwithstanding section 51(1), a share in an Authorised Company shall -

(a) not be issued until the consideration in respect of the share is fully paid; or

(b) when issued, be deemed for all purposes to be fully paid.

6. Officers and agents

(1) The directors of a company holding a Global Business Licence or an Authorised Company may, by resolution of directors, appoint any person who is a director, to be an officer or agent of the company.

(2) Subject to the constitution of a company or a unanimous shareholder agreement, each officer or agent shall, subject to subsection (3), have such powers and authority to affix the common seal of the company, where it has one, as are set forth in the constitution or unanimous shareholder agreement or resolution of directors appointing the officer or agent.

(3) No officer or agent shall have any power or authority with respect to the matters requiring a resolution of directors under the Act.

(4) The directors may remove an officer or agent appointed under subparagraph (1) or revoked or vary a power conferred on him under subparagraph (2).

Amended by [GN No. 139 of 2011]; [Act No. 11 of 2018]

FIFTEENTH SCHEDULE – Deleted by [Act No. 3 of 2009]

Amended by [Act No. 22 of 2005]; [Act No. 15 of 2007]

SIXTEENTH SCHEDULE - Deleted by [Act No. 3 of 2009]