

CLOSE CORPORATIONS ACT 69 OF 1984

[ASSENTED TO 19 JUNE 1984]

[DATE OF COMMENCEMENT: 1 JANUARY 1985]

(English text signed by the State President)

as amended by

Close Corporations Amendment Act 38 of 1986

Close Corporations Amendment Act 64 of 1988

Close Corporations Amendment Act 17 of 1990

Close Corporations Amendment Act 81 of 1992

Close Corporations Amendment Act 26 of 1997

Close Corporations Amendment Act 22 of 2001

Judicial Matters Amendment Act 16 of 2003

Prevention and Combating of Corrupt Activities Act 12 of 2004

Close Corporations Amendment Act 25 of 2005

also amended by

Corporate Laws Amendment Act 39 of 2002

[with effect from a date to be proclaimed - see PENDLEX]

Regulations under this Act

ADMINISTRATIVE REGULATIONS

ACT

To provide for the formation, registration, incorporation, management, control and liquidation of close corporations; and for matters connected therewith.

Cases

1 Definitions

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

'**accounting records**', in relation to a corporation, includes accounts, deeds, writings and such other documents as may be prescribed;

'**association agreement**', in relation to any corporation or the members thereof, means an association agreement which has been entered into in terms of section 44 by the members of the corporation, including any such agreement which has been altered or added to as contemplated in subsection (3) of section 49, or an agreement which has replaced it as contemplated in that subsection;

'**Companies Act**' means the Companies Act, 1973 (Act 61 of 1973);

'**company**' means a company as defined in section 1 (1) of the Companies Act;

'**corporation**' means a close corporation referred to in section 2 (1) which has been registered under Part III of this Act;

'**Court**', in relation to-

(a) any corporation, means any court having jurisdiction in terms of section 7; and

(b) any offence under this Act, means any court having jurisdiction in respect of that offence;

[Definition of 'Court' substituted by s. 1 (a) of Act 26 of 1997.]

'**deregistration**', in relation to a corporation, means the cancellation of the registration of the corporation's founding statement; and '**deregister**' has a corresponding meaning;

'**director**', in relation to a company, means a director as defined in section 1 (1) of the Companies Act;

'electronic' includes created, recorded, transmitted or stored in digital or other intangible form of electronic, optical or similar means;

[Definition of 'electronic' inserted by s. 1 (a) of Act 22 of 2001.]

'founding statement', in relation to a corporation, means the founding statement of the corporation referred to in section 12 which has been registered in terms of section 13, and also any amended founding statement in respect of that corporation registered in terms of section 15 (1) or (2);

'holding company', in relation to a company, means a holding company as defined in section 1 (1) of the Companies Act;

'Master' means the Master of the Supreme Court, and in relation to-

- (a) a corporation in respect of which application is made to a Court for a winding-up order, the Master having jurisdiction in the area of jurisdiction of the Court where application is made;
- (b) a corporation being wound up by a Court, the Master having jurisdiction in the area of jurisdiction of the Court which issued the winding-up order;
- (c) a corporation other than a corporation referred to in paragraph (a) or (b), the Master having jurisdiction in the area in which the registered office of that corporation is situated;

'member', in relation to a corporation, means a person qualified for membership of a corporation in terms of section 29 and designated as a member in a founding statement of the corporation, including, subject to the provisions of this Act, a trustee, administrator, executor or curator, or other legal representative, referred to in paragraph (c) of subsection (2) of section 29, in respect of any such person who is insolvent, deceased, mentally disordered or otherwise incapable or incompetent to manage his or her affairs, but excluding any such person who has in terms of this Act ceased to be a member;

[Definition of 'member' amended by s. 4 of Act 25 of 2005.]

'member's interest' or **'interest'**, in relation to a member of a corporation, means the interest of the member in the corporation expressed in accordance with section 12 (e) as a percentage in the founding statement of the corporation;

'Minister', in relation to any matter to be dealt with in the office of a Master in connection with the winding-up of a corporation, means the Minister of Justice and, in relation to any other matter, means the Minister of Trade and Industry;

[Definition of 'Minister' substituted by s. 1 of Act 38 of 1986.]

'name', in relation to a corporation, means the full registered name of that corporation, or a registered literal translation of that name into any one other official language of the Republic, or a registered shortened form of that name or any such translation thereof, referred to in section 12(a);

[Definition of 'name' inserted by s. 1 (b) of Act 26 of 1997.]

'officer', in relation to-

- (a) a corporation, means any manager or secretary thereof, whether or not such manager or secretary is also a member of the corporation;
- (b) a company, means an officer as defined in section 1 (1) of the Companies Act;

'prescribe' means prescribe by regulation; and **'prescribed'** has a corresponding meaning;

'Registrar' means the Registrar of Close Corporations referred to in section 4;
'registration', in relation to-

- (a) any corporation, means the registration of the founding statement of the corporation referred to in section 12;
- (b) the founding statement or any amended founding statement of a corporation, means the registration thereof in terms of section 13 or section 15 (1) or (2), as the case may be;
- (c) any matter in connection with a corporation, or any member thereof, particulars of which are specified in terms of this Act in a founding statement of the corporation, means the specifying of particulars thereof in any such statement; and
- (d) any other matter in connection with which any duty or power in relation to the registration thereof is in terms of this Act imposed on or granted to the Registrar, means the registration thereof by him or her in accordance with any applicable provision of this Act; and **'registered'** has a corresponding meaning;

[Para. (d) amended by s. 4 of Act 25 of 2005.]

'Registration Office' means the Close Corporations Registration Office referred to in section 3;

'regulation' means any regulation made under this Act;

'subsidiary', in relation to a company, means a subsidiary as defined in section 1 (1) of the Companies Act;

'this Act' includes the regulations.

(2) Subject to subsection (3), the performance of the acts denoted by any of the following words or expressions, namely-

- (a) 'give notice';
- (b) 'issue, distribute, deliver or cause it to be done';
- (c) 'lodge';
- (d) 'lodge in the prescribed form';
- (e) 'lodge in the prescribed manner';
- (f) 'lodge under cover of';
- (g) 'notify in the prescribed form';
- (h) 'payment of prescribed fee';
- (i) 'publish',
- (j) 'registration'; and
- (k) 'written application',

and any word or expression derived therefrom, must be regarded as including all electronic methods of performing such acts.

[Sub-s. (2) added by s. 1 (b) of Act 22 of 2001.]

(3) (a) Subsection (2) shall not apply to a section of this Act until the Registrar publishes a notice in the *Gazette* making it applicable to that section.

(b) Different dates may be determined by the Registrar in respect of the application of subsection (2) to different sections of this Act.

[Sub-s. (3) added by s. 1 (b) of Act 22 of 2001.]

PART I

FORMATION AND JURISTIC PERSONALITY OF CLOSE CORPORATIONS (s

2)

2 Formation and juristic personality of close corporations

(1) Any one or more persons, not exceeding ten, who qualify for membership of a close corporation in terms of this Act, may form a close corporation and secure its incorporation by complying with the requirements of this Act in respect of the registration of its founding statement referred to in section 12.

(2) A corporation formed in accordance with the provisions of this Act is on registration in terms of those provisions a juristic person and continues, subject to the provisions of this Act, to exist as a juristic person notwithstanding changes in its membership until it is in terms of this Act deregistered or dissolved.

(3) Subject to the provisions of this Act, the members of a corporation shall not merely by reason of their membership be liable for the liabilities or obligations of the corporation.

(4) A corporation shall have the capacity and powers of a natural person of full capacity in so far as a juristic person is capable of having such capacity or of exercising such powers.

PART II

ADMINISTRATION OF ACT (ss 3-11)

3 Registration Office and register

(1) For the registration of corporations under this Act there shall be an office in Pretoria called the Close Corporations Registration Office.

(2) Registers of names and registration numbers and such other matters concerning corporations as may be prescribed, shall be kept in the Registration Office.

4 Registrar

(1) The Minister shall, subject to the laws governing the public service, appoint a Registrar of Close Corporations, who shall-

- (a) exercise the powers and perform the duties assigned to the Registrar by this Act; and
- (b) subject to the directions of the Minister, be responsible for the administration of the Registration Office.

(2) The Minister may likewise appoint a Deputy Registrar and an Assistant Registrar, who shall, subject to the control of the Registrar, exercise any power or perform any duty conferred or imposed in terms of this Act on the Registrar, and whenever the Registrar is for any reason unable to perform his or her functions the Deputy Registrar shall act in his or her stead.

[Sub-s. (2) amended by s. 4 of Act 25 of 2005.]

(3) The Registrar may delegate any of the powers and entrust any of the duties assigned to him or her by this Act to any officer or employee in the public service.

[Sub-s. (3) amended by s. 4 of Act 25 of 2005.]

5 Inspection and copies of documents in Registration Office

(1) Any person may, on payment of the prescribed fee (including an additional fee if any document is not collected personally at the Registration Office)-

- (a) inspect any document kept under this Act by the Registrar in respect of any corporation; or
- (b) obtain a certificate from the Registrar as to the contents or part of the contents of any such document open to inspection; or

(c) obtain a copy of or extract from any such document.

(1A) Any person may, on payment of the prescribed fee, through any electronic medium approved by the Registrar-

(a) inspect any document which has been lodged with the Registrar under this Act and converted into electronic format, or

(b) obtain a copy of or extract from any such converted document.

[Sub-s. (1A) inserted by section 2 (a) of Act 22 of 2001.]

(2) If the Registrar is satisfied-

(a) that any such inspection, certificate, copy or extract is required on behalf of a foreign government accredited to the Government of the Republic; and

(b) that no fee is payable in the foreign country concerned in respect of a corresponding inspection, certificate, copy or extract required on behalf of the Government of the Republic,

no fee referred to in subsection (1) or (1A) shall be payable.

[Sub-s. (2) amended by s. 2 (b) of Act 22 of 2001.]

(3) If the Registrar is satisfied that any such inspection, certificate, copy or extract is required for purposes of research by or under the control of an institution for higher education, he or she may permit such inspection or furnish such certificate, copy or extract without payment of fees.

[Sub-s. (3) amended by s. 4 of Act 25 of 2005.]

6 Payment of fees

(1) The payment of any fee, additional fee or other money payable to the Registrar in terms of this Act shall, subject to the provisions of subsection (3), be effected-

(a) by affixing revenue stamps to any document concerned, which stamps may be cancelled by a Receiver of Revenue or the Registrar; or

[NB: Para. (a) has been deleted by s. 7 of the Corporate Laws Amendment Act 39 of 2002, a provision which will be put into operation by proclamation.]

(b) by impressing a stamp on any document concerned by means of a die approved by the Commissioner for Inland Revenue; or

[NB: Para. (b) has been deleted by s. 7 of the Corporate Laws Amendment Act 39 of 2002, a provision which will be put into operation by proclamation.]

(bA) by means of such electronic form of transfer of money as the Registrar may approve; or

[Para. (bA) inserted by s. 3 (a) of Act 22 of 2001.]

(c) in such other manner as the Registrar may direct.

(2) No document, form, return or notice in respect of which any fee is payable or any payment is required to be done in terms of this Act, shall be complete unless proof of payment of the required fee or other money has been lodged with, or acknowledged as having been received by, the Registrar.

[Sub-s. (2) substituted by s. 3 (b) of Act 22 of 2001.]

(3) For the purposes of subsection (1) the decision of the Registrar as to the manner in which in any particular case, or category of cases determined by him or her, any fee, additional fee or other money is in terms of this Act to be paid, shall be final.

[Sub-s. (3) amended by s. 4 of Act 25 of 2005.]

(4) Any fees and other moneys payable in terms of this Act to the Registrar, shall be debts due to the State recoverable by the Minister in any competent court.

7 Courts having jurisdiction in respect of corporations

Cases

For the purposes of this Act any High Court and any magistrate's court, within whose area of jurisdiction the registered office or the main place of business of the corporation is situated, shall have jurisdiction.

[S. 7 substituted by s. 1 of Act 64 of 1988 and by s. 2 of Act 26 of 1997.]

8 Security for costs in legal proceedings by corporations

Cases

When a corporation in any legal proceedings is a plaintiff or applicant or brings a counterclaim or counterapplication, the court concerned may at any time during the proceedings if it appears that there is reason to believe that the corporation or, if it is being wound up, the liquidator thereof, will be unable to pay the costs of the defendant or respondent, or the defendant or respondent in reconvention, if he or she is successful in his or her defence, require security to be given for those costs, and may stay all proceedings till the security is given.

[S. 8 amended by s. 4 of Act 25 of 2005.]

9 Transmission of copies of Court orders to Registrar and Master

Cases

When a Court makes any order in terms of this Act in relation to any corporation, the Registrar or clerk of the Court shall without delay by registered post transmit a copy of the order to the Registrar and, if such order relates to the winding-up of any corporation, a copy thereof to the Master as well.

[S. 9 amended by s. 14 of Act 22 of 2001.]

10 Regulations and policy

(1) The Minister may make regulations-

- (a) providing for the conduct and administration of the Registration Office, and prescribing the practice and procedure to be observed therein;
- (b) prescribing the practice and procedure to be observed in the office of the Master in connection with the winding-up of corporations;
- (c) providing for the reproduction of any records relating to corporations in the Registration Office or the office of the Master by means of microfilm, microcard, miniature photographic process, the conversion into electronic format in such a way as to allow such records to be reconverted to their original form without changing their original contents or form or any other process deemed suitable by the Minister;
- (d) providing for the use for official purposes and the admissibility in evidence in any proceedings, whether in a court of law or otherwise, of any reproduction contemplated in paragraph (c);
- (e) providing for the keeping and preservation of any records, or any reproductions thereof contemplated in paragraph (c), in the Registration Office or the office of the Master, the removal from such offices of such records or reproductions and the preservation thereof in any other place, and prescribing the circumstances under which such records or

- reproductions may be destroyed;
- (f) prescribing how records required under this Act to be kept by a corporation may be kept, and prescribing the circumstances under which such records may be destroyed;
 - (g) prescribing the procedure to be followed with respect to any matter in connection with the winding-up of corporations;
 - (h) prescribing the form and the contents of any return, notice or document provided for by this Act;
 - (i) prescribing when an additional copy or copies of documents to be lodged under this Act shall require to be lodged, and whether such additional copy or copies shall be in the form of a copy or copies certified in a defined manner or shall be in duplicate original form;
 - (j) with the concurrence of the Minister of Finance, prescribing the matters in respect of which fees shall be payable, the persons by whom and to whom the fees shall be payable and the tariff of such fees;
 - (k) providing for a table of fees, subject to taxation by the Master, which shall be payable to a liquidator as remuneration;
 - (l) prescribing a tariff of remuneration payable to any person performing on behalf of a liquidator any act relating to the winding-up of a corporation which the liquidator is not required to perform personally, and prohibiting the charging or recovery of remuneration at a higher tariff than the tariff so prescribed;
 - (m) providing for the appointment by the Registrar in specified circumstances of an inspector to investigate the affairs of a corporation, for the powers of an inspector in conducting any such investigation, for the duty of any member, officer, employee or accounting officer of a corporation to make available books and documents in his or her custody or under his or her control and to afford such assistance as an inspector may require in connection with any such investigation; for reporting by an inspector to the Registrar; for the making available by the Registrar of any such report to other persons; for the admissibility of any such report as evidence in legal proceedings; and for defraying the expenses of, and in connection with, any such investigation;
 - (n) as to any other matter required or permitted by this Act to be prescribed; and
 - (o) generally, as to any matter which he or she considers it necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

(1A) (a) The Minister may determine policy for the appointment of a liquidator by the Master in order to promote consistency, fairness, transparency and the achievement of equality for persons previously disadvantaged by unfair discrimination.

(b) Any policy determined in accordance with the provisions of paragraph (a) must be tabled in Parliament before publication in the *Gazette*.

(2) Regulations made under subsection (1) may prescribe penalties for any contravention thereof or failure to comply therewith, not exceeding a fine or imprisonment for a period of six months or both a fine and such imprisonment.

[S. 10 amended by s. 2 of Act 38 of 1986 and by s. 4 of Act 22 of 2001 and substituted by s. 20 of Act 16 of 2003.]

11 Functions of standing advisory committee on company law in relation to corporations

(1) The standing advisory committee on company law, appointed in terms of section 18 of the Companies Act, may from time to time make recommendations to the Minister in regard to any amendments to this Act which may appear to it to be advisable, and shall advise the Minister on any matter pertaining to this Act referred to it by the Minister.

(2) The standing advisory committee shall constitute and maintain a standing sub-committee for the purpose of considering and of advising it on such matters relating to corporations as may be referred by it to the sub-committee.

(3) The provisions of-

- (a) the Companies Act and regulations made thereunder in relation to standing sub-committees of the standing advisory committee, and the members thereof, shall apply in respect of the standing sub-committee referred to in subsection (2) as if that sub-committee were constituted under subsection (4) of section 18 of the said Act; and
- (b) subsections (2) and (5) (in so far as they relate to the calling of persons to assist the standing advisory committee) of the said section 18 shall apply in respect of the standing advisory committee in the exercising by it of any power granted to it in terms of subsection (1) of this section.

PART III

REGISTRATION, DEREGISTRATION AND CONVERSION (ss 12-27)

12 Founding statement

Cases

Any person qualified for membership in terms of section 29 or, subject to section 28, any number of such persons who intend to form a corporation, shall draw up a founding statement in the prescribed form in one of the official languages of the Republic, which shall be signed by or on behalf of every person who is to become a member of the corporation upon its registration and which shall, subject to the provisions of this Act, contain the following particulars:

- (a) The full name of the corporation: Provided that a literal translation of that name into any one other official language of the Republic, or a shortened form of that name or such translation thereof, may in addition be given;
[Para. (a) substituted by s. 3 of Act 26 of 1997.]
- (b) the principal business to be carried on by the corporation;
- (c) (i) a postal address for the corporation; and
(ii) the address (not being the number of a post office box) of the office of the corporation referred to in section 25 (1);
- (d) the full name of each member, his or her identity number or, if he or she has no such number, the date of his or her birth, and his or her residential address;

[Para. (d) substituted by s. 1 of Act 81 of 1992 and amended by s. 4 of Act 25 of 2005.]

- (e) the size, expressed as a percentage, of each member's interest in the corporation;

- (f) particulars of the contribution of each member to the corporation in accordance with section 24 (1), including-
 - (i) any amounts of money; and
 - (ii) a description, and statement of the fair value, of any property (whether corporeal or incorporeal) or any service referred to in section 24 (1);
- (g) (i) the name and postal address of a qualified person who or firm which has consented in writing to his or her or its appointment as accounting officer of the corporation; and
[Sub-para. (i) amended by s. 4 of Act 25 of 2005.]
 - (ii) the date of the end of the financial year of the corporation.

13 Registration of founding statement

If a founding statement referred to in section 12 complying with the requirements of this Act is lodged with the Registrar in the manner prescribed, and if the business to be carried on by the corporation is lawful, the Registrar shall upon payment of the prescribed fee register such statement in his or her registers and shall give notice of the registration in the *Gazette*.

[S. 13 substituted by s. 3 of Act 38 of 1986 and by s. 5 of Act 22 of 2001.]

14 Certificate of incorporation

(1) Upon the registration of such founding statement the Registrar shall assign a registration number to the corporation concerned and endorse under his or her hand on the statement, or otherwise issue in writing, a certificate that the corporation is incorporated: Provided that the Registrar may change or amend such registration number in order to rectify duplications of such numbers or to achieve any other objective which it is necessary or expedient to achieve for the proper maintenance of the register of close corporations.

[Sub-s. (1) substituted by s. 6 of Act 22 of 2001.]

(2) A certificate of incorporation given by the Registrar in terms of subsection (1) or section 27 (4) (c), or a copy thereof, as the case may be, shall upon its mere production, in the absence of proof of fraud or error, be conclusive evidence that all the requirements of this Act in respect of registration of the corporation concerned and of matters precedent and incidental thereto have been complied with, and that the corporation concerned is duly incorporated under this Act.

[Sub-s. (2) substituted by s. 4 of Act 38 of 1986.]

15 Registration of amended founding statement

Cases

(1) If any change is made or occurs in respect of any matter particulars of which are stated in a founding statement of a corporation in accordance with paragraph (b), (d), (e) or (f) of section 12, the corporation shall, subject to the provisions of section 29 (3) (c) and (d), within 28 days after such change lodge with the Registrar for registration in his or her registers an amended founding statement, in the prescribed form together with the prescribed fee, signed by or on behalf of every member of the corporation and by or on behalf of any person who will become a member on such registration, and which contains particulars and the date of the change.

[Sub-s. (1) substituted by s. 2 (a) of Act 81 of 1992 and by s. 7 (a) of Act 22 of 2001.]

(2) If any change is made or occurs in respect of any matter particulars of which

are so stated in accordance with paragraph (a), (c) or (g) of section 12, an amended founding statement shall in accordance with the requirements of subsection (1) be lodged with the Registrar for registration, and any such change shall only take effect when such statement has been so registered in the relevant registers, or upon a later date mentioned in such statement: Provided that a statement in the prescribed form which upon registration thereof shall form part of the founding statement or amended founding statement, shall, instead of an amended founding statement, be lodged with the Registrar for registration if any such change is made or occurs in respect of-

- (a) any matter of which particulars are so stated in accordance with paragraph (c) of section 12, in which case the accounting officer may sign such statement on behalf of the members if the corporation has approved of the said change and the accounting officer so certifies in writing; or
- (b) the name or address of the duly appointed accounting officer, in which case the accounting officer may sign such statement on behalf of the members, and the said change shall take effect upon the date mentioned in the statement.

[Sub-s. (2) amended by s. 2 (b) of Act 81 of 1992.]

(2A) If a founding statement is altered or something is added thereto by an order of court referred to in section 49, the provisions of subsection (1) in relation to the lodging of an amended founding statement therein referred to, shall *mutatis mutandis* apply in respect of such founding statement.

[Sub-s. (2A) inserted by s. 5 (a) of Act 38 of 1986.]

(2B) Upon registration of any amended founding statement in accordance with the requirements of subsection (1), (2) or (2A), the Registrar shall issue a certificate to the effect that the amended founding statement has been registered.

[Sub-s. (2B) inserted by s. 7 (b) of Act 22 of 2001.]

(3) (a) If a corporation fails to lodge an amended founding statement in terms of and in accordance with the provisions of subsection (1), (2) or (2A), as the case may be, the Registrar may on his or her own initiative or on application by any member or creditor of the corporation serve on the members of the corporation in accordance with section 25 (2) (a) a reminder by registered post to make good the default within 28 days of the date of the reminder.

[Para. (a) substituted by s. 5 (b) of Act 38 of 1986 and amended by s. 14 of Act 22 of 2001 and by s. 4 of Act 25 of 2005.]

(b) If the members concerned fail to comply with any such reminder, the Registrar may direct those members by written notice, so served on the members by registered post, to make good the default within 28 days of the date of the notice.

[Para. (b) amended by s. 14 of Act 22 of 2001.]

(c) If the members concerned fail to comply with any such direction, the Registrar may by further written notice so served on the members by registered post, impose on the members, or any of them, a penalty not exceeding five rand per day from the date upon which the reminder referred to in paragraph (a) was sent.

(d) When the Registrar has served a notice referred to in paragraph (c) on the members, he or she may not less than 21 days after the date of that notice forward a certified copy thereof to the clerk of the magistrate's court in whose area of jurisdiction the registered office of the corporation is situated, who shall record it, and thereupon such

notice shall have the effect of a civil judgment of that magistrate's court against every such member for the amount of the penalty in question.

[Para. (d) amended by s. 4 of Act 25 of 2005.]

(e) On application by one or more of the members concerned the court in question may reduce or rescind the penalty, or exempt any one or some of the members from the effect of the notice.

[NB: A. s. 15A has been inserted by s. 8 of the Corporate Laws Amendment Act 39 of 2002, a provision which will be put into operation by proclamation. See PENDLEX.]

16 Keeping of copies of founding statements by corporations

(1) A corporation shall keep a copy of its founding statement and any proof of its registration at the registered office of the corporation.

(2) A document referred to in subsection (1) shall during the business hours of the corporation be open to inspection by any person upon payment to the corporation, in the case of a person who is not a member of the corporation, of one rand or such lesser amount as the corporation may determine.

(3) A member or officer of a corporation who refuses access for the purposes of an inspection in terms of subsection (2) to a person entitled thereto, shall be guilty of an offence.

17 No constructive notice of particulars in founding statement and other documents

No person shall be deemed to have knowledge of any particulars merely because such particulars are stated, or referred to, in any founding statement or other document regarding a corporation registered by the Registrar or lodged with him or her, or which is kept at the registered office of a corporation in accordance with the provisions of this Act.

[S. 17 amended by s. 4 of Act 25 of 2005.]

18

[S. 18 repealed by s. 4 of Act 26 of 1997.]

19 Undesirable names and reservation of names

(1) No founding statement containing a name for a corporation to be incorporated and no amended founding statement containing a new name for a corporation shall be registered if the name is in the opinion of the Registrar undesirable.

(2) Any person who intends to form a corporation or any corporation which intends to change its name shall, on the prescribed form and on payment of the prescribed fee, apply to the Registrar for the reservation of a name: Provided that a company being converted into a corporation in terms of this Act shall not be required to so reserve its name if the name remains identical.

(3) A reservation contemplated in subsection (2) shall be valid from the date of approval by the Registrar for a period not exceeding two months.

[S. 19 substituted by s. 5 of Act 26 of 1997.]

20 Order to change name

Cases

(1) If within a period of one year after the registration of a founding statement of a corporation it appears to the Registrar that a name mentioned in the founding statement is undesirable, he or she shall order the corporation concerned to change such name.

[Sub-s. (1) amended by s. 4 of Act 25 of 2005.]

(2) Any interested person may-

- (a) within a period of one year referred to in subsection (1), on payment of the prescribed fee apply in writing to the Registrar for an order directing the corporation to change its name on the ground of undesirability or that such name is calculated to cause damage to the applicant; or
- (b) within a period of two years after the registration of a founding statement apply to a Court for an order directing the corporation to change its name on the ground of undesirability or that such name is calculated to cause damage to the applicant, and the Court may on such application make such order as it deems fit.

[Sub-s. (2) substituted by s. 3 (a) of Act 81 of 1992.]

(3) The Registrar may, after application has been made in terms of paragraph (a) of subsection (2), in writing order the corporation concerned to change its name if, in the opinion of the Registrar, it is or has become undesirable.

(3A) Any person feeling aggrieved by any decision or order of the Registrar under this section may, within one month after the date of such decision or order, apply to a competent provincial or local division of the Supreme Court for relief, and the Court may consider the merits of any such matter, receive further evidence and make any order it deems fit.

[Sub-s. (3A) inserted by s. 3 (b) of Act 81 of 1992.]

(3B) No prescribed fee mentioned in section 15 (1) shall be payable in respect of the registration of an amended founding statement by virtue of an order under subsection (1) or (3) of this section.

[Sub-s. (3B) inserted by s. 3 (b) of Act 81 of 1992 and substituted by s. 8 of Act 22 of 2001.]

(4) A corporation which fails within any period mentioned in an order under subsection (1) or (3) to comply with any such order, shall be guilty of an offence.

(5) No provision of this Act shall be construed as affecting the rights of any person at common law to bring an action against any corporation for passing off any business, goods or services as those of another person.

21 Effect of change of name

(1) A change in terms of this Act of a name of a corporation shall not affect any right or obligation of the corporation or any legal proceedings instituted by or against the corporation, and any legal proceedings that could have been continued or commenced by or against the corporation prior to the change of name may, notwithstanding such change of name, after the change be continued or commenced by or against the corporation, as the case may be.

(2) Upon the production by a corporation of a certified copy of a founding statement reflecting a change of name of that corporation to any registrar or other officer charged with the maintenance of a register under any law, and on compliance with all the requirements pursuant to any such law as to the form of application (if any) and the payment of any required fee, such registrar or other officer shall make in his or her register all such alterations as are necessary, by reason of the change of name in respect of the corporation.

[Sub-s. (2) amended by s. 4 of Act 25 of 2005.]

22 Formal requirements as to names and registration numbers

(1) The abbreviation CC, in capital letters, or its equivalent in any other official

language, shall be subjoined to the name used by a corporation.

[Sub-s. (1) substituted by s. 6 (a) of Act 26 of 1997.]

(2) A corporation shall refer to the registration number of the corporation on all prescribed documents and correspondence sent by the corporation to the Registration Office.

(3) If a corporation is being wound up, the statement 'In Liquidation' or 'In Voluntary Liquidation', as the case may be, shall for the duration of such winding-up be subjoined to the name used by the corporation.

[Sub-s. (3) substituted by s. 6 (b) of Act 26 of 1997.]

(4) Any corporation which fails to comply with the provisions of subsection (3) shall be guilty of an offence.

[Sub-s. (4) inserted by s. 6 (c) of Act 26 of 1997.]

22A Improper references to incorporation in terms of Act

Any person carrying on business under a name or title-

- (a) to which an abbreviation contemplated in section 22 (1) is subjoined; or
- (b) of which the words 'close corporation' or its equivalent in any other official language or any abbreviation thereof form part in a way which indicates incorporation as a close corporation in terms of this Act,

shall, unless duly incorporated as a close corporation in terms of this Act, be guilty of an offence.

[S. 22A inserted by s. 4 of Act 81 of 1992 and substituted by s. 7 of Act 26 of 1997.]

23 Use and publication of names

Cases

(1) Every corporation-

- (a) shall display its registered full name (or a registered literal translation thereof into any one other official language of the Republic) and registration number in a conspicuous position and in characters easily legible on the outside of its registered office and every office or place in which its business is carried on;

[Para. (a) substituted by s. 8 (a) of Act 26 of 1997.]

- (b) shall have that name (or such translation thereof) and registration number mentioned in legible characters in all notices and other official publications of the corporation, including notices or other official publications in electronic format, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money, goods or services purporting to be signed by or on behalf of the corporation, and all letters, delivery notes, invoices, receipts and letters of credit of the corporation; and

[Para. (b) substituted by s. 5 of Act 81 of 1992 and by s. 9 of Act 22 of 2001.]

- (c) shall use a registered shortened form of that name only in conjunction with that name or such literal translation thereof.

(2) If any member of, or any other person on behalf of, a corporation-

- (a) issues or authorizes the issue of any such notice or official publication of the corporation, or signs or authorizes to be signed on behalf of the corporation any such bill of exchange, promissory note, endorsement, cheque or order for money, goods or services; or

- (b) issues or authorises the issue of any such letter, delivery note, invoice, receipt or letter of credit of the corporation,

[Para. (b) substituted by s. 8 (b) of Act 26 of 1997.]

without the name of the corporation, or such registered literal translation thereof, and its registration number being mentioned therein in accordance with subsection (1) (b), he or she shall be guilty of an offence, and shall further be liable to the holder of the bill of exchange, promissory note, cheque or order for money, goods or services for the amount thereof, unless the amount is duly paid by the corporation.

[Sub-s. (2) amended by s. 4 of Act 25 of 2005.]

(3) Any corporation which fails to comply with any provision of subsection (1) shall be guilty of an offence.

24 Contributions by members

(1) Every person who is to become a member of a corporation upon its registration, shall make to the corporation an initial contribution of money, of property (whether corporeal or incorporeal), or of services rendered in connection with and for the purposes of the formation and incorporation of the corporation, and particulars of such contribution shall be stated in the founding statement of the corporation referred to in section 12, as required by paragraph (f) of that section.

(2) The amount or value of the members' contributions, or of the contribution of any one or more members, may from time to time by agreement among all the members-

- (a) be increased by additional contributions of money or property (whether corporeal or incorporeal) to the corporation by existing members or, in terms of section 33 (1) (b), by a person becoming a member of a registered corporation; or
- (b) be reduced, provided that a reduction by way of a repayment to any member shall comply with the provisions of section 51 (1).

(3) Particulars of any increase or reduction of a member's contribution in terms of subsection (2) shall be furnished in an amended founding statement referred to in section 15 (1).

(4) Money or property referred to in subsection (1) or (2) (a) shall, in order to vest ownership thereof in the corporation, be paid, delivered or transferred, as the case may be, to the corporation within a period of 90 days-

- (a) after the date of registration of the corporation, in the case of an initial contribution referred to in subsection (1); or
- (b) after the date of the registration of an amended founding statement in connection with any additional contribution referred to in subsection (2) (a).

(5) An undertaking by a member to make an initial or an additional contribution to a corporation shall be enforceable by the corporation in legal proceedings.

25 Postal address and registered office

Cases

(1) Every corporation shall have in the Republic a postal address and an office to which, subject to subsection (2), all communications and notices to the corporation may be addressed.

(2) Any-

- (a) notice, order, communication or other document which is in terms of this

Act required or permitted to be served upon any corporation or member thereof, shall be deemed to have been served if it has been delivered at the registered office, or has been sent by registered post to the registered office or postal address, of the corporation; and

[Para. (a) amended by s. 14 of Act 22 of 2001.]

- (b) process which is required to be served upon any corporation or member thereof shall, subject to applicable provisions in respect of such service in any law, be served by so delivering or sending it.

26 Deregistration

Cases

(1) If the Registrar has reasonable cause to believe that a corporation is not carrying on business or is not in operation, he or she shall serve on the corporation at its postal address a letter by registered post in which the corporation is notified thereof and informed that if he or she is not within 60 days from the date of his or her letter informed in writing that the corporation is carrying on business or is in operation, the corporation will, unless good cause is shown to the contrary, be deregistered.

[Sub-s. (1) amended by s. 14 of Act 22 of 2001 and by s. 4 of Act 25 of 2005.]

[NB: Sub-s. (1) has been substituted by s. 9 of the Corporate Laws Amendment Act 39 of 2002, a provision which will be put into operation by proclamation. See PENDLEX.]

(2) After the expiration of the period of 60 days mentioned in a letter referred to in subsection (1), or upon receipt from the corporation of a written statement signed by or on behalf of every member to the effect that the corporation has ceased to carry on business and has no assets or liabilities, the Registrar may, unless good cause to the contrary has been shown by the corporation, deregister that corporation.

(3) Where a corporation has been deregistered, the Registrar shall give notice to that effect in the *Gazette*, and the date of the publication of such notice shall be deemed to be the date of deregistration.

(4) The deregistration of a corporation shall not affect any liability of a member of the corporation to the corporation or to any other person, and such liability may be enforced as if the corporation were not deregistered.

(5) If a corporation is deregistered while having outstanding liabilities, the persons who are members of such corporation at the time of deregistration shall be jointly and severally liable for such liabilities.

[Sub-s. (5) substituted by s. 6 (1) of Act 38 of 1986.]

(6) The Registrar may on application by any interested person, if he or she is satisfied that a corporation was at the time of its deregistration carrying on business or was in operation, or that it is otherwise just that the registration of the corporation be restored, restore the said registration.

[Sub-s. (6) amended by s. 4 of Act 25 of 2005.]

(7) The Registrar shall give notice of the restoration of the registration of a corporation in the *Gazette*, and as from the date of such notice-

- (a) the corporation shall be deemed to have continued in existence as from the date of deregistration as if it had not been deregistered; and
- (b) a member, or any other person having a material interest, may apply to a court for any one or more of the following orders:
- (i) An order that the legal liability incurred by a member in terms of

- subsection (5) shall cease to exist;
- (ii) an order that the corporation whose registration has been restored shall become liable for any liabilities incurred by any member of the corporation in terms of subsection (5);
- (iii) an order that the corporation whose registration has been restored shall compensate a member who lawfully paid a claim that arose as a consequence of the provisions of subsection (5);
- (iv) any other order that the court on the basis of fairness deems appropriate.

[Sub-s. (7) substituted by s. 1 of Act 25 of 2005.]

27 Conversion of companies into corporations

Cases

(1) Any company having ten or fewer members all of whom qualify for membership of a corporation in terms of section 29 of this Act, may be converted into a corporation, provided that every member of the company becomes a member of the corporation.

(2) In respect of a conversion referred to in subsection (1), there shall be lodged with the Registrar-

- (a) an application for conversion, in the prescribed form, signed by all the members of the company, containing a statement that upon conversion the assets of the corporation, fairly valued, will exceed its liabilities, and that after conversion the corporation will be able to pay its debts as they become due in the ordinary course of its business;
- (b) a statement in writing by the auditor of the company that he or she has no reason to believe that a material irregularity contemplated in subsection (3) of section 26 of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951), has taken place or is taking place in relation to the company or, where steps have been taken in terms of that subsection, that such steps and other proceedings in terms of the subsection have been completed; and

[Para. (b) amended by s. 4 of Act 25 of 2005.]

- (c) a founding statement referred to in section 12 lodged in accordance with section 13.

(3) For the purposes of the founding statement referred to in subsection (2) (c)-

- (a) there shall, in regard to the requirements of section 12 (f), be a statement of the aggregate of the contributions of the members, which shall be for an amount not greater than the excess of the fair value of the assets to be acquired by the corporation over the liabilities to be assumed by the corporation by reason of the conversion: Provided that the corporation may treat any portion of such excess not reflected as members' contributions, as amounts which may be distributed to its members;
- (b) the members' interests stated in terms of section 12 (e) need not necessarily be in proportion to the number of shares in the company held by the respective members at the time of the conversion.

(4) If the provisions of subsection (2) have been complied with, the Registrar shall, if he or she is satisfied that the company concerned has complied materially with

the requirements of the Companies Act-

- (a) register the founding statement in accordance with the provisions of section 13;
- (b) satisfy himself or herself that, simultaneously with such registration, the registration of the memorandum and the articles of association of the company concerned is cancelled in accordance with the provisions of the Companies Act;
- (c) endorse on the founding statement, or otherwise issue in writing, a certificate of incorporation as provided by section 14 (1): Provided that such certificate shall state the fact that the corporation has been converted from a company and shall mention the name and registration number of the former company; and

[Para. (c) substituted by s. 7 of Act 38 of 1986 and amended by s. 10 of Act 22 of 2001.]

- (d) give notice in the *Gazette* of the conversion.

[Sub-s. (4) amended by s. 6 of Act 81 of 1992 and by s. 4 of Act 25 of 2005.]

(5) (a) On the registration of a corporation converted from a company, the assets, rights, liabilities and obligations of the company shall vest in the corporation.

(b) Any legal proceedings instituted by or against the company before the registration may be continued by or against the corporation, and any other thing done by or in respect of the company shall be deemed to have been done by or in respect of the corporation.

(c) The conversion of a company into a corporation shall in particular not affect-

- (i) any liability of a director or officer of the company to the company on the ground of breach of trust or negligence, or to any other person pursuant to any provision of the Companies Act; or
- (ii) any liability of the company, or of any other person, as surety.

(d) The juristic person which prior to the conversion of a company into a corporation existed as a company, shall notwithstanding the conversion continue to exist as a juristic person but in the form of a corporation.

[Para. (d) added by s. 2 (1) of Act 64 of 1988.]

(6) The corporation shall forthwith after its conversion from a company, give notice in writing of the conversion to all creditors of the company at the time of conversion, and to all other parties to contracts or legal proceedings in which the company was involved at the time of the conversion.

(7) Upon the production by a corporation which has been converted from a company of a certified copy of its founding statement referred to in subsection (4) (a), to any registrar or other officer charged with the maintenance of a register under any law, and on compliance with all the requirements pursuant to any such law as to the form of application (if any) and the payment of any required fee, such registrar or officer shall make in his or her register all such alterations as are necessary by reason of the conversion of the company into a corporation: Provided that no transfer or stamp duties shall be payable in respect of such alterations in registers.

[Sub-s. (7) amended by s. 4 of Act 25 of 2005.]

(8) If the accounting officer mentioned in the founding statement of a converted corporation is not the person who or firm which has acted as auditor for the company, the appointment of that person or firm shall lapse upon the conversion into a corporation.

(9) If a corporation is converted into a company in accordance with the provisions of the Companies Act, the registration of the founding statement of the corporation shall be cancelled simultaneously with the registration of the memorandum and articles of association of the company in terms of that Act.

PART IV **MEMBERSHIP (ss 28-41)**

28 Number of members

A corporation may at its incorporation have one or more members, but at no time shall the number of members exceed ten.

29 Requirements for membership

Cases

(1) Subject to subsection (1A) or (2) (b) and (c), only natural persons may be members of a corporation and no juristic person or trustee of a trust *inter vivos* in that capacity shall directly or indirectly (whether through the instrumentality of a nominee or otherwise) hold a member's interest in a corporation.

[Sub-s. (1) substituted by s. 3 (1) of Act 64 of 1988 and by s. 2 of Act 25 of 2005.]

(1A) A natural or juristic person in the capacity of a trustee of a trust *inter vivos* may be a member of a corporation: Provided that-

- (a) no juristic person shall directly or indirectly be a beneficiary of that trust;
- (b) the member concerned shall, as between himself or herself and the corporation, personally have all the obligations and rights of a member;
- (c) the corporation shall not be obliged to observe or have any obligation in respect of any provision of or affecting the trust or any agreement between the trust and the member concerned of the corporation; and
- (d) if at any time the number of natural persons at that time entitled to receive any benefit from the trust shall, when added to the number of members of the corporation at that time, exceed 10, the provisions of, and exemption under, this subsection shall cease to apply and shall not again become applicable notwithstanding any diminution in the number of members or beneficiaries.

[Sub-s. (1A) inserted by s. 1 of Act 17 of 1990 and substituted by s. 2 of Act 25 of 2005.]

(2) The following persons shall qualify for membership of a corporation:

- (a) Any natural person entitled to a member's interest;
- (b) a natural or juristic person, *nomine officii*, who is a trustee of a testamentary trust entitled to a member's interest, provided that-
 - (i) no juristic person is a beneficiary of such trust; and
 - (ii) if the trustee is a juristic person, such juristic person is not directly or indirectly controlled by any beneficiary of the trust; and
- (c) a natural or juristic person, *nomine officii*, who, in the case of a member who is insolvent, deceased, mentally disordered or otherwise incapable or incompetent to manage his or her affairs, is a trustee of his or her insolvent estate or an administrator, executor or curator in respect of such member or is otherwise a person who is his or her duly appointed or authorized legal representative.

[Para. (c) amended by s. 4 of Act 25 of 2005.]

(3) (a) The membership of any person qualified therefor in terms of subsection (2)

shall commence on the date of the registration of a founding statement of the corporation containing the particulars required by section 12 in regard to such person and his or her member's interest.

[Para. (a) amended by s. 4 of Act 25 of 2005.]

(b) Where any person is to become a member of a registered corporation the existing member or members of the corporation shall ensure that the requirements of section 15 (1) regarding the lodging of an amended founding statement with the Registrar are complied with.

(c) A trustee of an insolvent estate, administrator, executor or curator, or other legal representative, referred to in subsection (2) (c), in respect of any member of a corporation, who is not obliged or who does not intend to transfer the interest of the member in the corporation in accordance with the provisions of this Act within 28 days of his or her assuming office to any other person, shall within that period, or any extended period allowed by the Registrar on application by him or her, request the existing member or members of the corporation to lodge with the Registrar in accordance with section 15 (1) an amended founding statement designating him or her, *nomine officii*, as representative of the member of the corporation in question.

[Para. (c) amended by s. 4 of Act 25 of 2005.]

(d) Where the corporation has no other member, any such representative himself or herself shall, in the circumstances contemplated in paragraph (c), act on behalf of the corporation in accordance with the provisions of section 15 (1), read with the said paragraph (c).

[Para. (d) amended by s. 4 of Act 25 of 2005.]

(e) The provisions of paragraphs (c) and (d) shall not affect the power of such representative, as from the date of his or her assuming office, and whether or not any such amended founding statement has been lodged, to represent the member concerned in all matters in which he or she himself or herself as a member could have acted, until the interest of that member in the corporation has in accordance with the provisions of this Act been transferred to any other qualified person.

[Para. (e) amended by s. 4 of Act 25 of 2005.]

(4) A corporation is not concerned with the execution of any trust in respect of any member's interest in the corporation.

30 Nature of member's interest

Cases

(1) The interest of any member in a corporation shall be a single interest expressed as a percentage and shall be moveable property which shall be transferable in the manner provided by this Act.

[Sub-s. (1) substituted by s. 9 of Act 26 of 1997.]

(2) Two or more persons shall not be joint holders of the same member's interest in a corporation.

31 Certificate of member's interest

Cases

Each member of a corporation shall be issued with a certificate, signed by or on behalf of every member of that corporation, and stating the current percentage of such member's interest in the corporation.

32 Representation of members

(1) A minor who is a member of a corporation, other than a minor whose guardian has lodged a written consent referred to in section 47 (1) (a) (ii), shall be represented in the corporation by his or her guardian.

[Sub-s. (1) amended by s. 4 of Act 25 of 2005.]

(2)

[Sub-s. (2) deleted by s. 11 of Act 22 of 2001.]

(3) A member subject to any other legal disability shall be represented in the corporation by his or her duly appointed or authorized legal representative referred to in paragraph (c) of subsection (2) of section 29.

[Sub-s. (3) amended by s. 4 of Act 25 of 2005.]

33 Acquisition of member's interest by new member

(1) A person becoming a member of a registered corporation shall acquire his or her member's interest required for membership-

- (a) from one or more of the existing members or his or her or their deceased or insolvent estates; or
- (b) pursuant to a contribution made by such person to the corporation, in which case the percentage of his or her member's interest is determined by agreement between him or her and the existing members, and the percentages of the interests of the existing members in the corporation shall be reduced in accordance with the provisions of section 38 (b).

[Sub-s. (1) amended by s. 4 of Act 25 of 2005.]

(2) The contribution referred to in subsection (1) (b) may consist of an amount of money, or of any property (whether corporeal or incorporeal) of a value agreed upon by the person concerned and the existing members.

34 Disposal of interest of insolvent member

(1) Notwithstanding any provision to the contrary in any association agreement or other agreement between members, a trustee of the insolvent estate of a member of a corporation may, in the discharge of his or her duties, sell that member's interest-

- (a) to the corporation, if there are one or more members other than the insolvent member;
- (b) to the members of the corporation other than the insolvent member, in proportion to their member's interests or as they may otherwise agree upon; or
- (c) subject to the provisions of subsection (2), to any other person who qualifies for membership of a corporation in terms of section 29.

[Sub-s. (1) amended by s. 4 of Act 25 of 2005.]

(2) If the corporation concerned has one or more members other than the insolvent, the following provisions shall apply to a sale in terms of subsection (1) (c) of the insolvent member's interest:

- (a) The trustee shall deliver to the corporation a written statement giving particulars of the name and address of the proposed purchaser, the purchase price and the time and manner of payment thereof;
- (b) for a period of 28 days after the receipt by the corporation of the written statement the corporation or the members, in such proportions as they may agree upon, shall have the right, exercisable by written notice to the trustee, to be substituted as purchasers of the whole, and not a part only, of

- the insolvent member's interest at the price and on the terms set out in the trustee's written statement; and
- (c) if the insolvent member's interest is not purchased in terms of paragraph (b), the sale referred to in the trustee's written statement shall become effective and be implemented.

34A Attachment and sale in execution of member's interest

Cases

The provisions of section 34 shall apply *mutatis mutandis* to any attachment and sale in execution of a member's interest in a corporation.

[S. 34A substituted by s. 10 of Act 26 of 1997.]

35 Disposal of interest of deceased member

Subject to any other arrangement in an association agreement, an executor of the estate of a member of a corporation who is deceased shall, in the performance of his or her duties-

- (a) cause the deceased member's interest in the corporation to be transferred to a person who qualifies for membership of a corporation in terms of section 29 and is entitled thereto as legatee or heir or under a redistribution agreement, if the remaining member or members of the corporation (if any) consent to the transfer of the member's interest to such person; or
- (b) if any consent referred to in paragraph (a) is not given within 28 days after it was requested by the executor, sell the deceased member's interest-
- (i) to the corporation, if there is any other member or members than the deceased member;
- (ii) to any other remaining member or members of the corporation in proportion to the interests of those members in the corporation or as they may otherwise agree upon; or
- (iii) to any other person who qualifies for membership of a corporation in terms of section 29, in which case the provisions of subsection (2) of section 34 shall *mutatis mutandis* apply in respect of any such sale.

[S. 35 amended by s. 4 of Act 25 of 2005.]

36 Cessation of membership by order of Court

Cases

(1) On application by any member of a corporation a Court may on any of the following grounds order that any member shall cease to be a member of the corporation:

- (a) Subject to the provisions of the association agreement (if any), that the member is permanently incapable, because of unsound mind or any other reason, of performing his or her part in the carrying on of the business of the corporation;
- [Para. (a) amended by s. 4 of Act 25 of 2005.]
- (b) that the member has been guilty of such conduct as taking into account the nature of the corporation's business, is likely to have a prejudicial effect on the carrying on of the business;
- (c) that the member so conducts himself or herself in matters relating to the corporation's business that it is not reasonably practicable for the other member or members to carry on the business of the corporation with him

or her; or

[Para. (c) amended by s. 4 of Act 25 of 2005.]

- (d) that circumstances have arisen which render it just and equitable that such member should cease to be a member of the corporation:

Provided that such application to a Court on any ground mentioned in paragraph (a) or (d) may also be made by a member in respect of whom the order shall apply.

(2) A Court granting an order in terms of subsection (1) may make such further orders as it deems fit in regard to-

- (a) the acquisition of the member's interest concerned by the corporation or by members other than the member concerned; or
- (b) the amounts (if any) to be paid in respect of the member's interest concerned or the claims against the corporation of that member, the manner and times of such payments and the persons to whom they shall be made; or
- (c) any other matter regarding the cessation of membership which the Court deems fit.

37 Other dispositions of members' interests

Every disposition by a member of a corporation of his or her interest, or a portion thereof, in the corporation, other than a disposition provided for in section 34, 35 or 36, whether to the corporation, any other member or any other person qualifying for membership in terms of section 29, shall be done-

- (a) in accordance with the association agreement (if any); or
- (b) with the consent of every other member of the corporation:

Provided that no member's interest shall be acquired by the corporation unless it has one or more other members.

[S. 37 amended by s. 4 of Act 25 of 2005.]

38 Maintenance of aggregate of members' interests

The aggregate of the members' interests in a corporation expressed as a percentage shall at all times be one hundred per cent, and for that purpose-

- (a) any transfer of the whole, or a portion, of a member's interest shall be effected by the cancellation or the reduction, as the case may be, of the interest of the member concerned and the allocation in the name of the transferee, if not already a member, of a member's interest of the percentage concerned, or the addition to the interest of an existing member of the percentage concerned;
- (b) when a person becomes a member of a registered corporation pursuant to a contribution made by him or her to the corporation, the percentage of his or her member's interest shall be agreed upon by him or her and the existing members, and the percentages of the interests of the existing members shall be reduced proportionally or as they may otherwise agree; and

[Para. (b) amended by s. 4 of Act 25 of 2005.]

- (c) any member's interest acquired by the corporation shall be added to the respective interests of the other members in proportion to their existing interests or as they may otherwise agree.

39 Payment by corporation for members' interests acquired

Cases

(1) Payment by a corporation in respect of its acquisition of a member's interest in the corporation shall be made only-

- (a) with the previously obtained written consent of every member of the corporation, other than the member whose interest is acquired, for the specific payment;
- (b) if, after such payment is made, the corporation's assets, fairly valued, exceed all its liabilities;
- (c) if the corporation is able to pay its debts as they become due in the ordinary course of its business; and
- (d) if such payment will in the particular circumstances not in fact render the corporation unable to pay its debts as they become due in the ordinary course of its business.

(2) For the purposes of subsection (1) 'payment' shall include the delivery or transfer of any property.

40 Financial assistance by corporation in respect of acquisition of members' interests

Cases

A corporation may give financial assistance (whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise) for the purpose of, or in connection with, any acquisition of a member's interest in that corporation by any person, only-

- (a) with the previously obtained written consent of every member of the corporation for the specific assistance;
- (b) if, after such assistance is given, the corporation's assets, fairly valued, exceed all its liabilities;
- (c) if the corporation is able to pay its debts as they become due in the ordinary course of its business; and
- (d) if such assistance will in the particular circumstances not in fact render the corporation unable to pay its debts as they become due in the ordinary course of its business.

41 Publication of names of members

(1) A corporation shall not issue or send to any person any business letter, whether in electronic or any other format, bearing a registered name of the corporation, unless the forenames (or the initials) and surname of every member thereof are stated thereon.

[Sub-s. (1) substituted by s. 12 of Act 22 of 2001.]

(2) Any corporation which contravenes any provision of subsection (1) shall be guilty of an offence.

PART V

INTERNAL RELATIONS (ss 42-52)

42 Fiduciary position of members

Cases

(1) Each member of a corporation shall stand in a fiduciary relationship to the corporation.

(2) Without prejudice to the generality of the expression 'fiduciary relationship', the provisions of subsection (1) imply that a member-

- (a) shall in relation to the corporation act honestly and in good faith, and in particular-
 - (i) shall exercise such powers as he or she may have to manage or represent the corporation in the interest and for the benefit of the corporation; and
[Sub-para. (i) amended by s. 4 of Act 25 of 2005.]
 - (ii) shall not act without or exceed the powers aforesaid; and
- (b) shall avoid any material conflict between his or her own interests and those of the corporation, and in particular-
 - (i) shall not derive any personal economic benefit to which he or she is not entitled by reason of his or her membership of or service to the corporation, from the corporation or from any other person in circumstances where that benefit is obtained in conflict with the interests of the corporation;
 - (ii) shall notify every other member, at the earliest opportunity practicable in the circumstances, of the nature and extent of any direct or indirect material interest which he or she may have in any contract of the corporation; and
 - (iii) shall not compete in any way with the corporation in its business activities.

[Para. (b) amended by s. 4 of Act 25 of 2005.]

(3) (a) A member of a corporation whose act or omission has breached any duty arising from his or her fiduciary relationship shall be liable to the corporation for-

- (i) any loss suffered as a result thereof by the corporation; or
- (ii) any economic benefit derived by the member by reason thereof.

[Para. (a) amended by s. 4 of Act 25 of 2005.]

(b) Where a member fails to comply with the provisions of subparagraph (ii) of paragraph (b) of subsection (2) and it becomes known to the corporation that the member has an interest referred to in that subparagraph in any contract of the corporation, the contract in question shall, at the option of the corporation, be voidable: Provided that where the corporation chooses not to be bound a Court may on application by any interested person, if the Court is of the opinion that in the circumstances it is fair to order that such contract shall nevertheless be binding on the parties, give an order to that effect, and may make any further order in respect thereof which it may deem fit.

(4) Except as regards his or her duty referred to in subsection (2) (a) (i), any particular conduct of a member shall not constitute a breach of a duty arising from his or her fiduciary relationship to the corporation, if such conduct was preceded or followed by the written approval of all the members where such members were or are cognisant of all the material facts.

[Sub-s. (4) amended by s. 4 of Act 25 of 2005.]

43 Liability of members for negligence

(1) A member of a corporation shall be liable to the corporation for loss caused by his or her failure in the carrying on of the business of the corporation to act with the degree of care and skill that may reasonably be expected from a person of his or her knowledge and experience.

[Sub-s. (1) amended by s. 4 of Act 25 of 2005.]

(2) Liability referred to in subsection (1) shall not be incurred if the relevant conduct was preceded or followed by the written approval of all the members where such members were or are cognisant of all the material facts.

44 Association agreements

Cases

(1) The members of a corporation having two or more members may at any time enter into a written association agreement signed by or on behalf of each member, which regulates-

- (a) any matter which in terms of this Act may be set out or agreed upon in an association agreement; and
- (b) any other matter relating to the internal relationship between the members, or the members and the corporation, in a manner not inconsistent with the provisions of this Act.

(2) A corporation shall keep any association agreement at the registered office of the corporation where any member may inspect it and may make extracts therefrom or copies thereof.

(3) Whether or not an association agreement exists, any other agreement, express or implied, between all the members of a corporation on any matter that may be regulated by an association agreement shall be valid, provided that such express or implied agreement-

- (a) is not inconsistent with any provision of an association agreement;
- (b) does not affect any person other than the corporation or a member who is a party to it; and
- (c) ceases to have any effect when any party to it ceases to be a member of the corporation.

(4) Subject to the provisions of this Act, an association agreement or an agreement referred to in subsection (3) shall bind the corporation to every member in his or her capacity as a member of that corporation and, in such capacity, every member to the corporation and to every other member.

[Sub-s. (4) amended by s. 4 of Act 25 of 2005.]

(5) A new member of a corporation shall be bound by an existing association agreement between the other members as if he or she has signed it as a party thereto.

[Sub-s. (5) amended by s. 4 of Act 25 of 2005.]

(6) Any amendment to, or the dissolution of, an association agreement shall be in writing and signed by or on behalf of each member, including a new member referred to in subsection (5).

45 No access to or constructive notice of association agreements

No person who is not a member of a corporation shall, except by virtue of a provision of this Act, be entitled to inspect any association agreement in respect of that corporation, and no person dealing with the corporation shall be deemed to have knowledge of any particular thereof merely because it is stated or referred to therein, whether or not the agreement is in accordance with section 44 (2) kept at the registered office of the corporation.

46 Variable rules regarding internal relations

The following rules in respect of internal relations in a corporation shall apply in so far as this Act or an association agreement in respect of the corporation does not

provide otherwise:

- (a) Every member shall be entitled to participate in the carrying on of the business of the corporation;
- (b) subject to the provision of section 47, members shall have equal rights in regard to the management of the business of the corporation and in regard to the power to represent the corporation in the carrying on of its business: Provided that the consent in writing of a member holding a member's interest of at least 75 per cent, or of members holding together at least that percentage of the members' interests, in the corporation, shall be required for-
 - (i) a change in the principal business carried on by the corporation;
 - (ii) a disposal of the whole, or substantially the whole, undertaking of the corporation;
 - (iii) a disposal of all, or the greater portion of, the assets of the corporation; and
 - (iv) any acquisition or disposal of immovable property by the corporation;
[Para. (b) amended by s. 8 of Act 38 of 1986.]
- (c) differences between members as to matters connected with a corporation's business shall be decided by majority vote at a meeting of members of the corporation;
- (d) at any meeting of members of a corporation each member shall have the number of votes that corresponds with the percentage of his or her interest in the corporation;
[Para. (d) amended by s. 4 of Act 25 of 2005.]
- (e) a corporation shall indemnify every member in respect of expenditure incurred or to be incurred by him or her-
 - (i) in the ordinary and proper conduct of the business of the corporation; and
 - (ii) in regard to anything done or to be done for the preservation of the business or property of the corporation; and
[Para. (e) amended by s. 4 of Act 25 of 2005.]
- (f) payments by a corporation to its members by reason only of their membership in terms of section 51 (1) shall be of such amounts and be effected at such times as the members may from time to time agree upon, and such payments shall be made to members in proportion to their respective interests in the corporation.

47 Disqualified persons regarding management of corporation

Cases

(1) Notwithstanding any other provision of this Act or in any association agreement or any other agreement to the contrary, the following persons shall be disqualified from taking part in the management of a corporation:

- (a) Any person under legal disability, except-
 - (i)
[Sub-para. (i) deleted by s. 13 of Act 22 of 2001.]
 - (ii) a minor who has attained at least the age of 18 years and whose

guardian has lodged with the corporation a written consent to the minor's participation in the management of the business of the corporation;

- (b) save under authority of a Court-
 - (i) an unrehabilitated insolvent;
 - (ii) any person removed from an office of trust on account of misconduct;
 - (iii) any person who has at any time been convicted of theft, fraud, forgery or uttering a forged document, perjury, any offence under the Prevention of Corruption Act, 1958 (Act 6 of 1958), the Corruption Act, 1992 (Act 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or any offence involving dishonesty or in connection with the formation or management of a company or a corporation, and has been sentenced therefor to imprisonment for at least six months without the option of a fine; and
- (c) any person who is subject to any order of a court under the Companies Act disqualifying him or her from being a director of a company.

[Sub-para. (iii) substituted by s. 36 (1) of Act 12 of 2004.]

[Para. (c) amended by s. 4 of Act 25 of 2005.]

[Sub-s. (1) amended by s. 11 (b) of Act 26 of 1997.]

(2) Any person disqualified under the provisions of subsection (1) (b) or (c) who directly or indirectly takes part in or is concerned with the management of any corporation, shall be guilty of an offence.

[Sub-s. (2) substituted by s. 11 (c) of Act 26 of 1997.]

[S. 47 amended by s. 11 (a) of Act 26 of 1997.]

48 Meetings of members

(1) Any member of a corporation may by notice to every other member and every other person entitled to attend a meeting of members, call a meeting of members for any purpose disclosed in the notice.

(2) Unless an association agreement provides otherwise-

- (a) a notice referred to in subsection (1) shall, as regards the date, time and venue of the meeting, fix a reasonable date and time, and a venue which is reasonably suitable for all persons entitled to attend the particular meeting;
- (b) three-fourths of the members present in person at the meeting, shall constitute a quorum; and
- (c) only members present in person at the meeting may vote at that meeting.

[Para. (c) added by s. 9 (c) of Act 38 of 1986.]

(2A) Unless an association agreement provides otherwise, a meeting at which a quorum is not present within half an hour after the time appointed for the meeting, shall be adjourned to a day not earlier than seven days and not later than 21 days after the date of that meeting, and if at such adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the members present in person shall constitute a quorum.

[Sub-s. (2A) inserted by s. 12 of Act 26 of 1997.]

(2B) Where a meeting has been adjourned as contemplated in subsection (2A), the member who adjourned the meeting shall, upon a date not more than three days after the adjournment, send a written notice to each member of the corporation stating-

- (a) the date, time and place to which the meeting has been adjourned;
- (b) the matters before the meeting when it was adjourned; and
- (c) the grounds for the adjournment.

[Sub-s. (2B) inserted by s. 12 of Act 26 of 1997.]

(3) (a) A corporation shall record a report of the proceedings at a meeting of its members within 14 days after the date on which the meeting was held in a minute book which shall be kept at the registered office of the corporation.

(b) A resolution in writing, signed by all the members and entered into the minute book, shall be as valid and effective as if it were passed at a meeting of the members duly convened and held.

49 Unfairly prejudicial conduct

Cases

(1) Any member of a corporation who alleges that any particular act or omission of the corporation or of one or more other members is unfairly prejudicial, unjust or inequitable to him or her, or to some members including him or her, or that the affairs of the corporation are being conducted in a manner unfairly prejudicial, unjust or inequitable to him or her, or to some members including him or her, may make an application to a Court for an order under this section.

[Sub-s. (1) amended by s. 4 of Act 25 of 2005.]

(2) If on any such application it appears to the Court that the particular act or omission is unfairly prejudicial, unjust or inequitable as contemplated in subsection (1), or that the corporation's affairs are being conducted as so contemplated, and if the Court considers it just and equitable, the Court may with a view to settling the dispute make such order as it thinks fit, whether for regulating the future conduct of the affairs of the corporation or for the purchase of the interest of any member of the corporation by other members thereof or by the corporation.

(3) When an order under this section makes any alteration or addition to the relevant founding statement or association agreement, or replaces any association agreement, the alteration or addition or replacement shall have effect as if it were duly made by agreement of the members concerned.

(4) A copy of an order made under this section which-

- (a) alters or adds to a founding statement shall within 28 days of the making thereof be lodged by the corporation with the Registrar for registration; or
- (b) alters or adds to or replaces any association agreement, shall be kept by the corporation at its registered office where any member of the corporation may inspect it.

(5) Any corporation which fails to comply with any provision of subsection (4) shall be guilty of an offence.

50 Proceedings against fellow-members on behalf of corporation

Cases

(1) Where a member or a former member of a corporation is liable to the corporation-

- (a) to make an initial contribution or any additional contribution contemplated

- in subsections (1) and (2) (a), respectively, of section 24; or
- (b) on account of-
 - (i) the breach of a duty arising from his or her fiduciary relationship to the corporation in terms of section 42; or
 - (ii) negligence in terms of section 43,

any other member of the corporation may institute proceedings in respect of any such liability on behalf of the corporation against such member or former member after notifying all other members of the corporation of his or her intention to do so.

[Sub-s. (1) amended by s. 4 of Act 25 of 2005.]

(2) After the institution of such proceedings by a member the leave of the Court concerned shall be required for a withdrawal of the proceedings or for any settlement of the claim, and the Court may in connection with such withdrawal or settlement make such orders as it may deem fit.

(3) If a Court in any particular case finds that the proceedings, if unsuccessful, have been instituted without *prima facie* grounds, it may order the member who has instituted them on behalf of the corporation, himself or herself to pay the costs of the corporation and of the defendant in question in such manner as the Court may determine.

[Sub-s. (3) amended by s. 4 of Act 25 of 2005.]

51 Payments by corporation to members

(1) Any payment by a corporation to any member by reason only of his or her membership, may be made only-

- (a) if, after such payment is made, the corporation's assets, fairly valued, exceed all its liabilities;
- (b) if the corporation is able to pay its debts as they become due in the ordinary course of its business; and
- (c) if such payment will in the particular circumstances not in fact render the corporation unable to pay its debts as they become due in the ordinary course of its business.

[Sub-s. (1) amended by s. 4 of Act 25 of 2005.]

(2) A member shall be liable to a corporation for any payment received contrary to any provision of subsection (1).

(3) For the purposes of this section-

- (a) without prejudice to the generality of the expression 'payment by a corporation to any member by reason only of his or her membership', that expression-
 - (i) shall include a distribution, or a repayment of any contribution, or part thereof, to a member;
 - (ii) shall exclude any payment to a member in his or her capacity as a creditor of the relevant corporation and, in particular, a payment as remuneration for services rendered as an employee or officer of the corporation, a repayment of a loan or of interest thereon or a payment of rental; and

[Para. (a) amended by s. 4 of Act 25 of 2005.]

- (b) 'payment' shall include the delivery or transfer of any property.

52 Prohibition of loans and furnishing of security to members and others by corporation

- (1) A corporation shall not, directly or indirectly, make a loan-
- (a) to any of its members;
 - (b) to any other corporation in which one or more of its members together hold more than a 50 per cent interest; or
 - (c) to any company or other juristic person (except a corporation) controlled by one or more members of the corporation,

and shall not provide any security to any person in connection with any obligation of any such member, or other corporation, company or other juristic person.

(2) The provisions of subsection (1) shall not apply in respect of the making of any particular loan or the provision of any particular security with the express previously obtained consent in writing of all the members of a corporation.

(3) Any member of a corporation who authorizes or permits or is a party to the making of any loan or the provision of any security contrary to any provision of this section-

- (a) shall be liable to indemnify the corporation and any other person who had no actual knowledge of the contravention against any loss directly resulting from the invalidity of such loan or security; and
- (b) shall be guilty of an offence.

(4) For the purposes of this section-

- (a) 'loan' includes-
 - (i) a loan of any property; and
 - (ii) any credit extended by a corporation where the debt concerned is not payable or is not being paid in accordance with normal business practice in respect of the payment of debts of the same kind;
- (b) one or more members of a corporation shall only be deemed to control a company or other juristic person as contemplated in subsection (1) (c), if the circumstances envisaged in section 226 (1A) (b) of the Companies Act in relation to a director or manager or his or her nominee, or directors or managers or their nominees, referred to in that section, and a company or body corporate, are present in respect of any such member or his or her nominee, or such members or their nominees, and any such company or other juristic person; and
[Para. (b) amended by s. 4 of Act 25 of 2005.]
- (c) 'security' includes a guarantee.

PART VI

EXTERNAL RELATIONS (ss 53-55)

53 Pre-incorporation contracts

Cases

(1) Any contract in writing entered into by a person professing to act as an agent or a trustee for a corporation not yet formed, may after its incorporation be ratified or adopted by such corporation as if the corporation had been duly incorporated at the time when the contract was entered into.

(2) The ratification or adoption by a corporation referred to in subsection (1) shall be in the form of a consent in writing of all the members of the corporation, given within a time specified in the contract or, if no time is specified, within a reasonable time after incorporation.

54 Power of members to bind corporation

Cases

(1) Subject to the provisions of this section, any member of a corporation shall in relation to a person who is not a member and is dealing with the corporation, be an agent of the corporation.

(2) Any act of a member shall bind a corporation whether or not such act is performed for the carrying on of the business of the corporation unless the member so acting has in fact no power to act for the corporation in the particular matter and the person with whom the member deals has, or ought reasonably to have, knowledge of the fact that the member has no such power.

[S. 54 amended by s. 10 of Act 38 of 1986 and substituted by s. 13 of Act 26 of 1997.]

55 Application of sections 37 and 226 of Companies Act, 1973

(1) If the relationship between any company and any corporation is such that the corporation, if it were a company, would be a holding company of such company, the provisions of section 37 of the Companies Act regarding-

- (a) the employment of funds of a company in a loan to; or
- (b) the provision of any security by a company to another person in connection with an obligation of,

its holding company, or a company which is a subsidiary of that holding company but is not a subsidiary of itself, shall *mutatis mutandis* apply in relation to any such employment of funds or provision of security by any such company in respect of any such corporation and in respect of any company which would be a subsidiary of the corporation were it a company, but which is not a subsidiary of the first-mentioned company.

(2) In the application in terms of subsection (1) of the provisions of subsection (3) (b) of the said section 37 of the Companies Act any reference therein to a director or officer, or a former director or officer, of a holding company, shall be construed as a reference to any member or officer, or former member or officer, of a corporation envisaged in subsection (1).

(3) If the relationship between any company and any corporation is as envisaged in subsection (1), the provisions of section 226 of the Companies Act regarding the making by a company of any loan to, or the provision of security by a company to another person in connection with any obligation of-

- (a) any director or manager of the company's holding company or of another company which is a subsidiary of its holding company; or
- (b) another company or another juristic person controlled by one or more directors or managers of the company's holding company or of a company which is a subsidiary of its holding company,

[Para. (b) substituted by s. 2 (a) of Act 17 of 1990.]

shall *mutatis mutandis* apply in relation to any such loan or provision of security by any such company in respect of-

- (i) any member or officer of any such corporation, or any director or officer of another company which would be a subsidiary of any such corporation were the corporation a company; and
- (ii) another company or another juristic person controlled by one or more members of any such corporation, or by one or more directors or managers

of a company which would be a subsidiary of the corporation were it a company.

[Sub-para. (iii) substituted by s. 2 (b) of Act 17 of 1990.]

(4) In the application in terms of subsection (3) of the provisions of subsection (5) of the said section 226 of the Companies Act any reference therein to any director or officer of a holding company, shall be construed as a reference to any member or officer of a corporation envisaged in subsection (1).

PART VII

ACCOUNTING AND DISCLOSURE (ss 56-62)

56 Accounting records

(1) A corporation shall keep in one of the official languages of the Republic such accounting records as are necessary fairly to present the state of affairs and business of the corporation, and to explain the transactions and financial position of the business of the corporation, including-

- (a) records showing its assets and liabilities, members' contributions, undrawn profits, revaluations of fixed assets and amounts of loans to and from members;
- (b) a register of fixed assets showing in respect thereof the respective dates of any acquisition and the cost thereof, depreciation (if any), and where any assets have been revalued, the date of the revaluation and the revalued amount thereof, the respective dates of any disposals and the consideration received in respect thereof: Provided that in the case of a corporation which has been converted from a company in terms of section 27, the existing fixed asset register of the company shall be deemed to be such a register in respect of the corporation, and such particulars therein shall be deemed to apply in respect of it;
[Para. (b) amended by s. 7 of Act 81 of 1992.]
- (c) records containing entries from day to day of all cash received and paid out, in sufficient detail to enable the nature of the transactions and, except in the case of cash sales, the names of the parties to the transactions to be identified;
- (d) records of all goods purchased and sold on credit, and services received and rendered on credit, in sufficient detail to enable the nature of those goods or services and the parties to the transactions to be identified;
- (e) statements of the annual stocktaking, and records to enable the value of stock at the end of the financial year to be determined; and
- (f) vouchers supporting entries in the accounting records.

(2) The accounting records relating to-

- (a) contributions by members;
- (b) loans to and from members; and
- (c) payments to members,

shall contain sufficient detail of individual transactions to enable the nature and purpose thereof to be clearly identified.

(3) The accounting records referred to in subsection (1) shall be kept in such a manner as to provide adequate precautions against falsification and to facilitate the discovery of any falsification.

(4) The accounting records shall be kept at the place or places of business or at the registered office of the corporation and shall, wherever kept, be open at all reasonable times for inspection by any member.

(5) (a) Any corporation which fails to comply with any provision of any of the preceding subsections of this section, and every member thereof who is a party to such failure or who fails to take all reasonable steps to secure compliance by the corporation with any such provision, shall be guilty of an offence.

(b) In any proceedings against any member of a corporation in respect of an offence consisting of a failure to take reasonable steps to secure compliance by a corporation with any provision referred to in paragraph (a), it shall be a defence if it is proved that the accused had reasonable grounds for believing and did believe that a competent and reliable person was charged with the duty of seeing that any such provision was complied with, and that such person was in a position to discharge that duty, and that the accused had no reason to believe that such person had in any way failed to discharge that duty.

57 Financial year of corporation

(1) (a) A corporation shall fix a date on which, in each year, its financial year will end.

(b) The financial year of a corporation shall be its annual accounting period.

(2) The date referred to in subsection (1) (a) may, subject to the provisions of section 15 (2), be changed by the corporation to any other date: Provided that the corporation may not change the date referred to in subsection (1) (a) more than once in any financial year.

[Sub-s. (2) amended by s. 3 (a) of Act 17 of 1990.]

(3) Subject to any increase or reduction of the duration of a financial year by reason of the provisions of subsection (4), the duration of each financial year of a corporation shall be 12 months ending on the date or other date referred to in subsection (1) (a) or (2).

(4) Notwithstanding the provisions of subsection (3)-

(a) the first financial year of a corporation shall commence on the date of its registration and shall end on the date referred to in subsection (1) (a) occurring not less than 3 nor more than 15 months after the date of registration: Provided that the first financial year of a corporation converted from a company in terms of section 27, shall end on the date on which the financial year of the company would have ended had it not been so converted; and

[Para. (a) amended by s. 11 of Act 38 of 1986.]

(b) in the case of a corporation which has in terms of subsection (2) changed the date referred to in subsection (1) (a), the financial year shall commence at the end of the previous financial year and shall end on the date as changed occurring not less than 3 or more than 18 months after the end of that previous financial year.

[Para. (b) substituted by s. 3 (b) of Act 17 of 1990.]

58 Annual financial statements

(1) The members of a corporation shall within nine months after the end of every financial year of the corporation cause annual financial statements in respect of that

financial year to be made out in one of the official languages of the Republic.

[Sub-s. (1) amended by s. 4 (a) of Act 64 of 1988.]

(2) The annual financial statements of a corporation-

- (a) shall consist of-
 - (i) a balance sheet and any notes thereon; and
 - (ii) an income statement or any similar financial statement where such form is appropriate, and any notes thereon;
- (b) shall in conformity with generally accepted accounting practice, appropriate to the business of the corporation, fairly present the state of affairs of the corporation as at the end of the financial year concerned, and the results of its operations for that year;
- (c) shall disclose separately the aggregate amounts, as at the end of the financial year, of contributions by members, undrawn profits, revaluations of fixed assets and amounts of loans to or from members, and the movements in these amounts during the year;
- (d) shall be in agreement with the accounting records, which shall be summarised in such a form that-
 - (i) compliance with the provisions of this subsection is made possible; and
 - (ii) an accounting officer is enabled to report to the corporation in terms of section 62 (1) (c) without it being necessary to refer to any subsidiary accounting records and vouchers supporting the entries in the accounting records:

Provided that nothing contained in this paragraph shall be construed as preventing an accounting officer, if he or she deems it necessary, from inspecting such subsidiary accounting records and vouchers; and

[Para. (d) added by s. 12 (1) (b) of Act 38 of 1986 and amended by s. 4 of Act 25 of 2005.]

- (e) shall contain the report of the accounting officer referred to in section 62 (1) (c).

[Para. (e) added by s. 12 (1) (b) of Act 38 of 1986.]

[Sub-s. (2) amended by s. 4 (a) of Act 64 of 1988.]

(3) The annual financial statements shall be approved and signed by or on behalf of a member holding a member's interest of at least 51%, or members together holding members' interests of at least 51%, in the corporation .

[Sub-s. (3) substituted by s. 4 (b) of Act 64 of 1988.]

(4) (a) Any member of a corporation who fails to take all reasonable steps to comply or to secure compliance with any provision of this section, shall be guilty of an offence.

(b) In any proceedings against any member of a corporation under paragraph (a) the defence referred to in section 56 (5) (b) shall be available to him or her.

[Para. (b) substituted by s. 12 (1) (c) of Act 38 of 1986 and amended by s. 4 of Act 25 of 2005.]

59 Appointment of accounting officers

(1) Every corporation shall appoint an accounting officer in accordance with the provisions of this Act.

(2) The appointment of the first accounting officer of a corporation referred to in section 12 (g) (i) shall take effect on the date of the registration of the corporation.

(3) If a vacancy occurs in the office of an accounting officer, whether as a result of a removal, resignation or otherwise, the corporation shall within 28 days appoint another accounting officer and comply with the provisions of subsection (2) of section 15: Provided that the provisions of subsection (3) of the said section 15 shall apply where the said subsection (2) of that section has not so been complied with, whether or not an appointment of such other accounting officer has been made.

[Sub-s. (3) amended by s. 14 (a) of Act 26 of 1997.]

(4) A corporation shall inform its accounting officer in writing of his or her removal from office.

[Sub-s. (4) amended by s. 4 of Act 25 of 2005.]

(5) (a) An accounting officer shall on resignation or removal from office forthwith inform every member of the corporation thereof in writing, and shall send a copy of the letter to the last known address of the registered office of the corporation and shall in addition forthwith by registered post inform the Registrar-

- (i) that he or she has resigned or been removed from office;
- (ii) of the date of his or her resignation or removal from office;
- (iii) of the date up to which he or she performed his or her duties; and
- (iv) whether, at the time of the resignation or removal from office of the accounting officer, that officer was aware of any matters in the financial affairs of the corporation which are in contravention of the provisions of this Act: Provided that an accounting officer who was aware of any such matter shall submit the full particulars thereof in writing to the Registrar.

[Sub-para. (iv) substituted by s. 14 (b) of Act 26 of 1997.]

[Para. (a) substituted by s. 8 of Act 81 of 1992 and amended by s. 14 of Act 22 of 2001.]

(b) If an accounting officer who has been removed from office is of the opinion that he or she was removed for improper reasons, he or she shall forthwith by registered post inform the Registrar thereof, and shall send a copy of the letter to every member.

[Para. (b) amended by s. 14 of Act 22 of 2001.]

[Sub-s. (5) amended by s. 4 of Act 25 of 2005.]

60 Qualifications of accounting officers

(1) No person shall be appointed as or hold the office of an accounting officer of a corporation, unless he or she is a member of a recognized profession which-

- (a) as a condition for membership, requires its members to have passed examinations in accounting and related fields of study which in the opinion of the Minister would qualify such members to perform the duties of an accounting officer under this Act;
- (b) has the power to exclude from membership those persons found guilty of negligence in the performance of their duties or of conduct which is discreditable to their profession; and
- (c) has been named in a notice referred to in subsection (2).

[Sub-s. (1) amended by s. 9 (a) of Act 81 of 1992 and by s. 4 of Act 25 of 2005.]

(2) The Minister may from time to time publish by notice in the *Gazette* the names of those professions whose members are qualified to perform the duties of an accounting officer in terms of this Act.

(3) A member or employee of a corporation, and a firm whose partner or employee is a member or employee of a corporation, shall not qualify for appointment as an accounting officer of such corporation unless all the members consent in writing to such appointment.

(4) (a) A corporation may appoint as its accounting officer-

- (i) any person who is a member of a recognised profession listed in a notice referred to in subsection (2);
- (ii) a firm as defined in section 1 of the Public Accountants' and Auditors' Act, 1991 (Act 80 of 1991);
- (iii) any other firm, if each partner in the firm is qualified to be so appointed; or
- (iv) any other corporation, if each member of such corporation is qualified to be so appointed.

(b) The liability of a partner in respect of debts and liabilities incurred by a firm contemplated in paragraph (a) (iii) during the partner's period as a partner and the liability of a member in respect of debts and liabilities incurred by a corporation contemplated in paragraph (a) (iv) during the member's period as a member may not be excluded by operation of law or in any other way.

(c) For the purposes of paragraph (b), 'debts and liabilities incurred' means debts and liabilities incurred by the firm or corporation, as the case may be, in connection with the performance by the firm or corporation, as the case may be, of its duties in terms of section 62.

[Sub-s. (4) substituted by s. 9 (b) of Act 81 of 1992 and by s. 3 of Act 25 of 2005.]

61 Right of access and remuneration of accounting officers

(1) An accounting officer of a corporation shall at all times have a right of access to the accounting records and all the books and documents of the corporation, and to require from members such information and explanations as he or she considers necessary for the performance of his or her duties as an accounting officer.

[Sub-s. (1) amended by s. 4 of Act 25 of 2005.]

(2) The remuneration of an accounting officer shall be determined by agreement with the corporation.

62 Duties of accounting officers

(1) The accounting officer of a corporation shall, not later than three months after completion of the annual financial statements-

- (a) subject to the provisions of section 58 (2) (d), determine whether the annual financial statements are in agreement with the accounting records of the corporation;

[Para. (a) substituted by s. 13 (1) (a) of Act 38 of 1986.]

- (b) review the appropriateness of the accounting policies represented to the accounting officer as having been applied in the preparation of the annual financial statements; and

[Para. (b) substituted by s. 13 (1) (a) of Act 38 of 1986 and by s. 4 (a) of Act 17 of 1990.]

- (c) report in respect of paragraphs (a) and (b) to the corporation.

(2) (a) If during the performance of his or her duties an accounting officer becomes aware of any contravention of a provision of this Act, he or she shall describe the nature of such contravention in his or her report.

(b) Where an accounting officer is a member or employee of a corporation, or is a firm of which a partner or employee is a member or employee of the corporation, his or her report shall state that fact.

[Sub-s. (2) amended by s. 4 of Act 25 of 2005.]

(3) If an accounting officer of a corporation-

- (a) at any time knows, or has reason to believe, that the corporation is not carrying on business or is not in operation and has no intention of resuming operations in the foreseeable future; or
- (b) during the performance of his or her duties finds-
 - (i) that any change, during a relevant financial year, in respect of any particulars mentioned in the relevant founding statement has not been registered;
 - (ii) that the annual financial statements indicate that as at the end of the financial year concerned the corporation's liabilities exceed its assets; or
 - (iii) that the annual financial statements incorrectly indicate that as at the end of the financial year concerned the assets of the corporation exceed its liabilities, or has reason to believe that such an incorrect indication is given,

[Sub-para. (iii) added by s. 13 (1) (d) of Act 38 of 1986.]

he or she shall forthwith by registered post report accordingly to the Registrar.

[Sub-s. (3) amended by s. 14 of Act 22 of 2001 and by s. 4 of Act 25 of 2005.]

(4) If an accounting officer of a corporation has in accordance with subparagraph (ii) or (iii) of paragraph (b) of subsection (3) reported to the Registrar that the annual financial statements of the corporation concerned indicate that as at the end of the financial year concerned the corporation's liabilities exceed its assets or that the annual financial statements incorrectly indicate that as at the end of the financial year concerned the assets of the corporation exceed its liabilities, or that he or she has reason to believe that such an incorrect indication is given, and he or she finds that any subsequent financial statements of the corporation concerned indicate that the situation has changed or has been rectified and that the assets concerned then exceed the liabilities or that they no longer incorrectly indicate that the assets exceed the liabilities or that he or she no longer has reason to believe that such an incorrect indication is given, as the case may be, he or she may report to the Registrar accordingly.

[Sub-s. (4) added by s. 4 (b) of Act 17 of 1990 and amended by s. 4 of Act 25 of 2005.]

PART VIII

LIABILITY OF MEMBERS AND OTHERS FOR DEBTS OF CLOSE CORPORATION (ss 63-65)

63 Joint liability for debts of corporation

Cases

Notwithstanding anything to the contrary contained in any provision of this Act, the following persons shall in the following circumstances together with a corporation be jointly and severally liable for the specified debts of the corporation:

- (a) Where the name of the corporation is in any way used without the abbreviation as required by section 22 (1), any member of the corporation who is responsible for, or who authorized or knowingly permits the

omission of such abbreviation, shall be so liable to any person who enters into any transaction with the corporation from which a debt accrues for the corporation while that person, in consequence of such omission, is not aware that the person is dealing with a corporation;

[Para. (a) substituted by s. 15 (a) of Act 26 of 1997.]

- (b) where any member fails to pay money or to deliver or transfer property to the corporation as required by section 24 (4), that member shall be so liable for every debt of the corporation incurred from the date of registration of the founding statement in which particulars of the contribution concerned are stated to the date of the actual payment, delivery or transfer of such money or property;

[Para. (b) substituted by s. 15 (b) of Act 26 of 1997.]

- (c)

[Para. (c) deleted by s. 15 (c) of Act 26 of 1997.]

- (d) where a juristic person or a trustee of a trust *inter vivos* in that capacity purports to hold, whether directly or indirectly, a member's interest in the corporation in contravention of any provision of section 29, such juristic person or trustee of a trust *inter vivos* and any nominee referred to in that section shall, notwithstanding the invalidity of the holding of such interest, be so liable for every debt of the corporation incurred during the time the contravention continues;

[Para. (d) substituted by s. 5 (1) of Act 64 of 1988.]

- (e) where the corporation makes a payment in respect of the acquisition of a member's interest in contravention of any provision of section 39, every person who is a member at the time of such payment and who is aware of the making of such payment, including a member or a former member who receives or who received such payment, shall be so liable for every debt of the corporation incurred prior to the making of such payment unless, in the case of a member who is so aware, he or she proves that he or she took all reasonable steps to prevent the payment;

[Para. (e) amended by s. 4 of Act 25 of 2005.]

- (f) where the corporation gives financial assistance for the purpose of or in connection with any acquisition of a member's interest in contravention of any provision of section 40, every person who is a member at the time of the giving of such assistance and who is aware of the giving of such assistance, and the person who receives such assistance, shall be so liable for every debt of the corporation incurred prior to the giving of such assistance unless, in the case of a member who is so aware, he or she proves that he or she took all reasonable steps to prevent the payment;

[Para. (f) amended by s. 4 of Act 25 of 2005.]

- (g) where a person takes part in the management of the business of the corporation while disqualified from doing so in terms of section 47 (1) (b) or (c), that person shall be so liable for every debt of the corporation which it incurs as a result of his or her participation in the management of the corporation; and

[Para. (g) amended by s. 4 of Act 25 of 2005.]

- (h) where the office of accounting officer of the corporation is vacant for a period of six months, any person who at any time during that period was a member and aware of the vacancy, and who at the expiration of that period is still a member, shall be so liable for every debt of the corporation incurred during such existence of the vacancy and for every such debt thereafter incurred while the vacancy continues and he or she still is a member.

[Para. (h) amended by s. 4 of Act 25 of 2005.]

64 Liability for reckless or fraudulent carrying-on of business of corporation

Cases

(1) If it at any time appears that any business of a corporation was or is being carried on recklessly, with gross negligence or with intent to defraud any person or for any fraudulent purpose, a Court may on the application of the Master, or any creditor, member or liquidator of the corporation, declare that any person who was knowingly a party to the carrying on of the business in any such manner, shall be personally liable for all or any of such debts or other liabilities of the corporation as the Court may direct, and the Court may give such further orders as it considers proper for the purpose of giving effect to the declaration and enforcing that liability.

(2) Without prejudice to any other criminal liability incurred where any business of a corporation is carried on in any manner contemplated in subsection (1), every person who is knowingly a party to the carrying on of the business in any such manner, shall be guilty of an offence.

65 Powers of Court in case of abuse of separate juristic personality of corporation

Cases

Whenever a Court on application by an interested person, or in any proceedings in which a corporation is involved, finds that the incorporation of, or any act by or on behalf of, or any use of, that corporation, constitutes a gross abuse of the juristic personality of the corporation as a separate entity, the Court may declare that the corporation is to be deemed not to be a juristic person in respect of such rights, obligations or liabilities of the corporation, or of such member or members thereof, or of such other person or persons, as are specified in the declaration, and the Court may give such further order or orders as it may deem fit in order to give effect to such declaration.

PART IX

WINDING-UP (ss 66-81)

66 Application of Companies Act, 1973

Cases

(1) The provisions of the Companies Act which relate to the winding-up of a company, including the regulations made thereunder, (except sections 311, 312, 313, 337, 338, 344, 345, 346 (2), 347 (3), 349, 364, 365 (2), 367 to 370, inclusive, 377, 387, 389, 390, 395 to 399, inclusive, 400 (1) (b), 401, 402, 417, 418, 419 (4), 421, 423 and 424), shall apply *mutatis mutandis* and in so far as they can be applied to the liquidation of a corporation in respect of any matter not specifically provided for in this Part or in any other provision of this Act.

[Sub-s. (1) substituted by s. 16 of Act 26 of 1997.]

(2) For the purposes of subsection (1)-

- (a) any reference in a relevant provision of the Companies Act, and in any provision of the Insolvency Act, 1936 (Act 24 of 1936), made applicable by any such provision-
- (i) to a company, shall be construed as a reference to a corporation;
 - (ii) to a share in a company, shall be construed as a reference to a member's interest in a corporation;
 - (iii) to a member, director, shareholder or contributory of a company, shall be construed as a reference to a member of a corporation;
 - (iv) to an auditor of a company, shall be construed as a reference to an accounting officer of a corporation;
 - (v) to an officer or a secretary of a company, shall be construed as a reference to a manager or a secretary who is an officer of a corporation;
 - (vi) to a registered office of a company, shall be construed as a reference to a registered office of a corporation;
 - (vii) to a memorandum or articles of association of a company, shall be construed as a reference to a founding statement and an association agreement of a corporation, respectively;
 - (viii) to the Registrar of Companies, shall be construed as a reference to the Registrar;
 - (ix) to the Companies Act or the regulations made thereunder, or to any provision thereof, shall be construed as including a reference to this Act or the regulations made thereunder, or to any corresponding provision thereof, as the case may be;
 - (x) to an insolvent estate, shall be construed as a reference to a corporation;
 - (xi) to a provisional liquidator of a company, or to a liquidator of a company or a trustee of an insolvent estate, shall be construed as a reference to a provisional liquidator and to a liquidator of a corporation, respectively;
 - (xii) to a sheriff of a province, shall be construed as including a reference to a messenger of a magistrate's court;
 - (xiii) to a Registrar of a Court, shall be construed as including a reference to a clerk of a magistrate's court;
 - (xiv) to a Court, shall be construed as a reference to a Court having jurisdiction under this Act; and
 - (xv) to a Master, shall be construed as a reference to a Master having jurisdiction under this Act;
- (b) a reference to a special resolution-
- (i) referred to in sections 340 (2), 350 (1), 351 (1), 352, 356 (2), 357 (3) and (4), 359 (1), 362 (1) and 363 (1) of the Companies Act, shall be construed as a reference to a written resolution for the voluntary winding-up of a corporation in terms of section 67 of this Act; and
 - (ii) referred to in section 422 (1) (b) of the Companies Act, shall be construed as a reference to a written resolution signed by or on behalf of all the members of a corporation; and

- (c) it shall be deemed that the following paragraph has been substituted for paragraph (b) of section 358 of the Companies Act:
- (b) where any other action or proceeding is being or about to be instituted against the company in any court in the Republic, apply to such court for an order restraining further proceedings in the action or proceeding.'

67 Voluntary winding-up

(1) A corporation may be wound up voluntarily if all its members so resolve at a meeting of members called for the purpose of considering the winding-up of the corporation, and sign a written resolution that the corporation be wound up voluntarily by members or creditors, as the case may be.

(2) A copy of the written resolution, in duplicate in the prescribed form, shall be lodged within 28 days after the date of the passing of the resolution, together with the prescribed fee, with the Registrar, who shall register such resolution if it complies with the provisions of subsection (1).

(3) If such copy of the written resolution is not so registered by the Registrar within 90 days from the date of the passing of the resolution, the resolution shall lapse and be void.

(4) A resolution in terms of this section shall not take effect until it has been registered by the Registrar.

68 Liquidation by Court

Cases

A corporation may be wound up by a Court, if-

- (a) members having more than one half of the total number of votes of members, have so resolved at a meeting of members called for the purpose of considering the winding-up of the corporation, and have signed a written resolution that the corporation be wound up by a Court;
- (b) the corporation has not commenced its business within a year from its registration, or has suspended its business for a whole year;
- (c) the corporation is unable to pay its debts; or
- (d) it appears on application to the Court that it is just and equitable that the corporation be wound up.

69 Circumstances under which corporation deemed unable to pay debts

Cases

(1) For the purposes of section 68 (c) a corporation shall be deemed to be unable to pay its debts, if-

- (a) a creditor, by cession or otherwise, to whom the corporation is indebted in a sum of not less than two hundred rand then due has served on the corporation, by delivering it at its registered office, a demand requiring the corporation to pay the sum so due, and the corporation has for 21 days thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or
- (b) any process issued on a judgment, decree or order of any court in favour of a creditor of the corporation is returned by a sheriff, or a messenger of a magistrate's court, with an endorsement that he or she has not found sufficient disposable property to satisfy the judgment, decree or order, or

that any disposable property found did not upon sale satisfy such process;
or

[Para. (b) amended by s. 4 of Act 25 of 2005.]

(c) it is proved to the satisfaction of the Court that the corporation is unable to pay its debts.

(2) In determining for the purposes of subsection (1) whether a corporation is unable to pay its debts, the Court shall also take into account the contingent and prospective liabilities of the corporation.

70 Repayments by members

(1) Subject to the provisions of this section, no member of a corporation shall in the winding-up of the corporation be liable for the repayment of any payment made by the corporation to him or her by reason only of his or her membership, if such payment complies with the requirements of section 51 (1).

[Sub-s. (1) amended by s. 4 of Act 25 of 2005.]

(2) In the winding-up of a corporation unable to pay its debts, any such payment made to a member by reason only of his or her membership within a period of two years before the commencement of the winding-up of the corporation, shall be repaid to the corporation by the member, unless such member can prove that-

- (a) after such payment was made, the corporation's assets, fairly valued, exceeded all its liabilities; and
- (b) such payment was made while the corporation was able to pay its debts as they became due in the ordinary course of its business; and
- (c) such payment, in the particular circumstances, did not in fact render the corporation unable to pay its debts as they became due in the ordinary course of its business.

[Sub-s. (2) amended by s. 4 of Act 25 of 2005.]

(3) A person who has ceased to be a member of the corporation concerned within the said period of two years, shall also be liable for any repayment provided for in subsection (2) if, and to the extent that, repayments by present members, together with all other available assets, are insufficient for paying all the debts of the corporation.

(4) A certificate given by the Master as to the amount payable by any member or former member in terms of subsection (2) or (3) to the corporation, may be forwarded by the liquidator to the clerk of the magistrate's court in whose area of jurisdiction the registered office of the corporation is situated, who shall record it, and thereupon such notice shall have the effect of a civil judgment of that magistrate's court against the member or former member concerned.

(5) The court in question may, on application by a member or former member referred to in subsection (3), make any order that it deems fit in regard to any certificate referred to in subsection (4).

71 Repayment of salary or remuneration by members

(1) If a corporation being wound up is unable to pay its debts, and-

- (a) any direct or indirect payment of a salary or other remuneration was made by the corporation within a period of two years before the commencement of its winding-up to a member in his or her capacity as an officer or employee of the corporation; and
- (b) such payment was, in the opinion of the Master, not *bona fide* or

reasonable in the circumstances,
the Master shall direct that such payment, or such part thereof as he or she may determine, be repaid by such member to the corporation.

[Sub-s. (1) amended by s. 4 of Act 25 of 2005.]

(2) A person who has within a period of two years referred to in subsection (1) (a) ceased to be a member of a corporation referred to in that subsection may, under the circumstances referred to therein, be directed by the Master to make a repayment provided for in subsection (1), if, and to the extent that, any such repayments by present members are, together with all other available assets, insufficient for paying all the debts of the corporation.

(3) The provisions of subsections (4) and (5) of section 70 shall *mutatis mutandis* apply in respect of any repayment to a corporation in terms of subsection (1) or (2).

72 Composition

Cases

(1) Any person, in this section referred to as 'the offeror', may at any time after the commencement of the liquidation of a corporation which is unable to pay its debts, submit to the liquidator a written offer of composition.

(2) If the liquidator is of the opinion that the creditors will probably accept the offer of composition, the liquidator shall send by registered post or deliver to every known creditor as well as the Master, a copy of the offer referred to in subsection (1) with the liquidator's report thereon, and an explanation of the effect of the composition.

(3) If the liquidator is of the opinion that there is no likelihood that the creditors will accept the composition or that he or she has insufficient information at his or her disposal to make a recommendation, the liquidator shall inform the offeror in writing that the offer is unacceptable and that he or she does not propose to send a copy thereof to the creditors and the Master.

(4) The offeror may, within 30 days from the date on which the liquidator advised that offeror of the rejection of the offer, submit representations in writing to the Master who, after having allowed the liquidator 14 days to comment in writing, shall consider the representations and comment and may thereafter direct the liquidator to send by registered post or deliver a copy of the offer to every known creditor of the corporation together with the liquidator's report thereon, and an explanation of the effect of the composition.

(5) Whenever the liquidator posts or delivers to the creditors and the Master an offer of composition in terms of the provisions of this section, he or she shall simultaneously give notice to the creditors of the meeting at which the offer and any other matter mentioned in the notice, are to be considered.

(6) An offer of composition may be considered at a general meeting of creditors of the corporation in terms of this Act, provided that notice was given to creditors and the Master not less than 10 days and not more than 28 days before the date of such a meeting.

(7) An offer of composition which has been accepted by creditors whose votes amount to not less than two-thirds in value and two-thirds in number, calculated in accordance with the provisions of section 52 of the Insolvency Act, 1936 (Act 24 of 1936), of the votes of all the creditors who proved claims against the corporation, shall be binding upon every person who had notice of and was entitled to vote at that meeting,

whether or not that person was present or represented at the meeting, as if that person were a party to the composition: Provided that-

- (a) no offer may be so accepted if it contains any condition whereby any creditor would obtain any benefit to which that creditor would not have been entitled upon the distribution of the estate in the ordinary way;
- (b) payment under the composition has been made or security for such payment has been given as specified in the offer of composition; and
- (c) the right of any secured or preferent creditor shall not be prejudiced thereby, except insofar as that creditor has expressly and in writing waived the preference.

(8) A composition shall not affect the liability of a surety of the corporation.

(9) Any money to be paid and anything to be done for the benefit of creditors in pursuance of a composition shall be paid and done through the liquidator: Provided that any creditor who has failed to prove a claim before the liquidator has made a final distribution amongst those creditors who have proved their claims, shall be entitled to prove a claim and share in such final distribution up to the amount to which that creditor may have been entitled to under the composition: Provided further, that no claim shall be proved against the corporation after the expiration of six months as from the date of the meeting at which the composition was accepted, except with leave of the Court or Master and on payment of such sum to cover the costs or any part thereof, occasioned by the late proof of the claim, as the Court or Master may direct.

(10) When a composition has been entered into between a corporation and its creditors, the liquidator shall, in terms of this Act, frame an account and plan of distribution of all the assets which are or will become available for creditors under the composition.

(11) If an accepted offer of composition so provides, the offeror may apply to the Court for the setting aside of the winding-up of the corporation and the Court may make such an order provided that the offeror has, not less than three weeks before making the application, given notice by advertisement in the *Gazette*, of the intention to make the application and has served a copy of the application on the Master, the Registrar and the liquidator.

(12) The application for the setting aside of the liquidation of the corporation may be opposed by any creditor or other interested person on the following grounds:

- (a) That the composition approved under this section unfairly prejudices the interests of a creditor of the corporation;
- (b) that there has been some material irregularity at or in the relation to the meetings held for the consideration of the composition;
- (c) that insufficient or materially inaccurate information on the composition was disclosed; or
- (d) any other grounds that the Court may deem sufficient.

[S. 72 substituted by s. 17 of Act 26 of 1997.]

73 Repayments, payments of damages and restoration of property by members and others

(1) Where in the course of the winding-up of a corporation it appears that any person who has taken part in the formation of the corporation, or any former or present member, officer or accounting officer of the corporation has misapplied or retained or

become liable or accountable for any money or property of the corporation, or has been guilty of any breach of trust in relation to the corporation, a Court may, on the application of the Master or of the liquidator or of any creditor or member of the corporation, inquire into the conduct of such person, member, officer or accounting officer and may order him or her to repay or restore the money or property, or any part thereof, with interest at such rate as the Court considers just, or to contribute such sum to the assets of the corporation by way of compensation or damages in respect of the misapplication, retention or breach of trust, as the Court considers just.

[Sub-s. (1) amended by s. 4 of Act 25 of 2005.]

(2) The provisions of subsection (1) shall apply in respect of any person, member, officer or accounting officer referred to therein, notwithstanding the fact that such person may also be criminally responsible in respect of any conduct contemplated therein.

74 Appointment of liquidator

(1) For the purposes of conducting the proceedings in a winding-up of a corporation, the Master shall, in accordance with policy determined by the Minister, appoint a suitable natural person as liquidator.

[Sub-s. (1) substituted by s. 21 of Act 16 of 2003.]

(2) The Master shall make an appointment as soon as is practicable after a provisional winding-up order has been made, or a copy of a resolution for a voluntary winding-up has been registered in terms of section 67 (2).

(3) When the Master in the case of a voluntary winding-up by members makes an appointment, he or she shall take into consideration any further resolution at a meeting of members nominating a person as liquidator.

[Sub-s. (3) amended by s. 4 of Act 25 of 2005.]

(4) In the case of a creditors' voluntary winding-up and a winding-up by the Court, the Master shall, subject to the provisions of section 76, if a person is nominated as co-liquidator at the first meeting of creditors, appoint such person as co-liquidator as soon as he or she has given security to the satisfaction of the Master for the proper performance of his or her duties.

[Sub-s. (4) amended by s. 4 of Act 25 of 2005.]

75 Vacancies in office of liquidators

(1) When a vacancy occurs in the office of a liquidator of a corporation, the Master may-

- (a) where the vacancy occurs in the office of a liquidator nominated by members or creditors, direct any remaining liquidator to convene a meeting of creditors or members, as the case may be, to nominate a liquidator to fill the vacancy;
 - (b) in a case other than a case contemplated in paragraph (a), if he or she is of opinion that any remaining liquidator will be able to complete the winding-up, dispense with the appointment of a liquidator to fill the vacancy, and direct the remaining liquidator to complete the winding-up;
- or

[Para. (b) amended by s. 4 of Act 25 of 2005.]

- (c) in any other case, appoint a liquidator to fill the vacancy.

(2) The provisions of the Companies Act relating to the nomination or appointment of a liquidator, as applied by section 66 of this Act, and of this Act, shall

apply to the nomination or appointment of a liquidator to fill a vacancy in the office of liquidator.

76 Refusal by Master to appoint nominated person as liquidator

(1) If a person who has been nominated as liquidator by any meeting of creditors or of members of a corporation was not properly nominated, or is disqualified from being nominated or appointed as liquidator pursuant to section 372 or 373 of the Companies Act, as applied by section 66 of this Act, or has failed to give within a period of 21 days as from the date upon which he or she was notified that the Master had accepted his or her nomination or within such further period as the Master may allow, the security mentioned in section 375 (1) of the Companies Act, as so applied, or, if in the opinion of the Master the person nominated as liquidator should not be appointed as liquidator of the corporation concerned, the Master shall give notice in writing to the person so nominated that he or she declines to accept his or her nomination or to appoint him or her as liquidator, and shall in such notice state his or her reasons for declining to accept his or her nomination or to appoint him or her: Provided that if the Master declines to accept the nomination for appointment as liquidator because he or she is of the opinion that the person nominated should not be appointed as liquidator, it shall be sufficient if the Master states in that notice, as such reason, that he or she is of the opinion that the person nominated should not be appointed as liquidator of the corporation concerned.

[Sub-s. (1) amended by s. 14 of Act 38 of 1986 and by s. 4 of Act 25 of 2005.]

(2) (a) When the Master has so declined to accept the nomination of any person or to appoint him or her as liquidator, or when the Minister has under section 371 (3) of the Companies Act, as applied by section 66 of this Act, set aside the appointment of a liquidator, the Master shall convene a meeting of creditors or members, as the case may be, of the corporation concerned for the purpose of nominating another person for appointment as liquidator.

[Para. (a) amended by s. 4 of Act 25 of 2005.]

(b) In the notice convening any said meeting the Master shall state that he or she has declined to accept the nomination for appointment as liquidator of the person previously nominated, or to appoint the person so nominated and, subject to the proviso to subsection (1), the reasons therefor, or that the appointment of the person previously appointed as liquidator has so been set aside by the Minister, as the case may be, and that the meetings are convened for the purpose of nominating another person for appointment as liquidator.

[Para. (b) amended by s. 4 of Act 25 of 2005.]

(c) The Master shall post a copy of such notice to every creditor whose claim against the company was previously proved and admitted.

(d) Any meeting referred to in paragraph (a) shall be deemed to be a continuation of the relevant first meeting of creditors or of members, or of any such meeting referred to in section 75, as the case may be.

(3) If the Master again so declines for any reason mentioned in subsection (1) to accept the nomination for appointment as liquidator by any meeting referred to in subsection (2), or to appoint a person so nominated-

(a) he or she shall act in accordance with the provisions of subsection (1); and

[Para. (a) amended by s. 4 of Act 25 of 2005.]

(b) if the person so nominated as sole liquidator has not or if all the persons so

nominated have not been appointed by him or her, he or she shall, in accordance with policy determined by the Minister, appoint as liquidator or liquidators of the corporation concerned any other person or persons not disqualified from being liquidator of that corporation.

[Para. (b) substituted by s. 22 of Act 16 of 2003.]

77 Resignation and absence of liquidator

(1) At the request of a liquidator the Master may relieve him or her of his or her office upon such conditions as the Master may think fit.

(2) A liquidator shall not be absent from the Republic for a period exceeding 60 days, unless-

- (a) the Master has before his or her departure from the Republic granted him or her permission in writing to be absent; and
- (b) he or she complies with such conditions as the Master may think fit to impose.

(3) Every liquidator who is relieved of his or her office by the Master, or who is permitted to absent himself or herself for a period exceeding 60 days from the Republic, shall give notice thereof in the *Gazette*.

[S. 77 amended by s. 4 of Act 25 of 2005.]

78 First meeting of creditors and members

Cases

(1) A liquidator shall as soon as may be and, except with the consent of the Master, not later than one month after a final winding-up order has been made by a Court or a resolution of a creditors' voluntary winding-up has been registered-

- (a) summon a meeting of the creditors of the corporation for the purpose of-
 - (i) considering the statement as to the affairs of the corporation lodged with the Master;
 - (ii) the proving of claims against the corporation;
 - (iii) deciding whether a co-liquidator should be appointed and, if so, nominating a person for appointment; and
 - (iv) receiving or obtaining, in a winding-up by the Court or a creditors' voluntary winding-up, directions or authorization in respect of any matter regarding the liquidation; and
- (b) summon a meeting of members of the corporation for the purpose of-
 - (i) considering the said statement as to the affairs of the corporation, unless the meeting of members when passing a resolution for the voluntary winding-up of the corporation has already considered the said statement; and
 - (ii) receiving or obtaining directions or authorization in respect of any matter regarding the liquidation.

(2) (a) The provisions of the law relating to insolvency in respect of voting, the manner of voting and voting by an agent at meetings of creditors, shall apply *mutatis mutandis* in respect of any meeting referred to in this section: Provided that in a winding-up by the Court a member or former member of a corporation shall have no voting right in respect of the nomination of a liquidator based on his or her loan account with the corporation or claims for arrear salary, travelling expenses or allowances due by the corporation, or claims paid by such member or former member on behalf of the

corporation.

[Para. (a) amended by s. 4 of Act 25 of 2005.]

(b) The provisions of paragraph (a) shall *mutatis mutandis* apply in respect of a person to whom a right contemplated in that paragraph has been ceded.

79 Report to creditors and members

Except in the case of a members' voluntary winding-up, a liquidator shall, as soon as practicable and, except with the consent of the Master, not later than three months after the date of his or her appointment, submit to a general meeting of creditors and members of the corporation concerned a report as to the following matters:

- (a) The estimated amounts of the corporation's assets and liabilities;
- (b) if the corporation has failed, the causes of the failure;
- (c) whether or not he or she has submitted or intends to submit to the Master a report under section 400 (2) of the Companies Act, as applied by section 66 of this Act;
- (d) whether or not any member or former member appears to be liable-
 - (i) to the corporation on the ground of breach of trust or negligence;
 - (ii) to make repayments to the corporation in terms of section 70 (2) or (3) or section 71 (1) or (2);
 - (iii) to either a creditor of the corporation or the corporation itself, as the case may be, by virtue of any provision of Part VIII of this Act;
- (e) any legal proceedings by or against the corporation which may have been pending at the date of the commencement of the winding-up, or which may have been or may be instituted;
- (f) whether or not further enquiry is in his or her opinion desirable in regard to any matter relating to the formation or failure of the corporation or the conduct of its business;
- (g) whether or not the corporation has kept the accounting records required by section 56 and, if not, in what respects the requirements of that section have not been complied with;
- (h) the progress and prospects in respect of the winding-up; and
- (i) any other matter which he or she may consider fit, or in connection with which he or she may require the directions of the creditors.

[S. 79 amended by s. 4 of Act 25 of 2005.]

80 Repayments by members or former members

The liquidator of a corporation unable to pay its debts-

- (a) shall ascertain whether members or former members of the corporation are liable in terms of section 70 (2) or (3) to make repayments;
- (b) shall ascertain whether circumstances justify an approach to the Master for a direction that members or former members of the corporation make repayments in terms of section 71 (1) or (2);
- (c) may, if necessary, enforce such repayments; and
- (d) may, in the event of the death of such member or former member liable for or directed to make a repayment, or of the insolvency of his or her estate, claim the amount due from the estate concerned.

[Para. (d) amended by s. 4 of Act 25 of 2005.]

81 Duties of liquidator regarding liability of members to creditors or corporation

(1) The liquidator of a corporation unable to pay its debts shall ascertain whether, on the facts reasonably available to him or her, there is reason to believe that any member or former member of the corporation, or any other person, has by virtue of any provision of Part VIII of this Act incurred any liability to a creditor of the corporation or to the corporation itself, as the case may be.

[Sub-s. (1) amended by s. 4 of Act 25 of 2005.]

(2) If the liquidator finds that there is such reason in respect of any creditor who has proved a claim, he or she shall in writing inform such creditor accordingly, and if the creditor recovers the amount of his or her claim or part thereof from such member or former member, or from such other person, the liquidator shall take such recovery into account in determining the dividend payable to that creditor.

[Sub-s. (2) amended by s. 4 of Act 25 of 2005.]

(3) In particular the liquidator shall determine whether an application to the Court in terms of section 64 (1) is justified and advisable.

PART X **PENALTIES AND GENERAL (ss 82-83)**

82 Penalties

(1) Any corporation or a member or officer of a corporation or any other person convicted of any offence in terms of this Act, shall be liable to be sentenced, in the case of an offence referred to-

- (a) in section 52, 56 or 64, to a fine not exceeding R2 000 or imprisonment for a period not exceeding two years, or to both such fine and such imprisonment;
- (b) in section 58, to a fine not exceeding R1 000 or imprisonment for a period not exceeding one year, or to both such fine and such imprisonment;
- (c) in section 20, 22, 22A, 23 or 47, to a fine not exceeding R500 or imprisonment for a period not exceeding six months, or to both such fine and such imprisonment; and

[Para. (c) substituted by s. 10 of Act 81 of 1992 and by s. 18 of Act 26 of 1997.]

- (d) in section 16, 41 or 49, to a fine not exceeding R100 or imprisonment for a period not exceeding three months, or to both such fine and such imprisonment.

(2) The Court convicting any such corporation, member, officer or person for failure to perform any act required to be performed by it or him or her under this Act, may, in addition to any penalty which the Court imposes, order such corporation, member, officer or person to perform such act within such period as the Court may determine.

[Sub-s. (2) amended by s. 4 of Act 25 of 2005.]

(3) Any person who, in respect of any offence under any provision of the Companies Act, or of the Insolvency Act, 1936 (Act 24 of 1936), which is made applicable by any provision of this Act, is convicted of any such offence under any such provision as so applied, shall be liable to be sentenced to the penalties which are imposed in respect of any such offence by any applicable provision of the said Companies Act or Insolvency Act, as the case may be.

83 Short title and commencement

This Act shall be called the Close Corporations Act, 1984, and shall come into

operation on a date fixed by the State President by proclamation in the *Gazette*.

PENDLEX: Close Corporations Act 69 of 1984 after amendment by the Corporate Laws Amendment Act 39 of 2002

Section 6 (1) (a) and (b) - deleted

Section 15A - Annual return

(1) In order to assist the Registrar to determine whether the information required to be disclosed in terms of this Act by a corporation has been disclosed and is still valid, every corporation shall not later than the end of the month following upon the month within which the anniversary of the date of its incorporation occurs, on payment of the prescribed fee, lodge with the Registrar a return in the prescribed form.

(2) A copy of the annual return contemplated in subsection (1) shall be kept at the registered office of the corporation, and the provisions of section 16 relating to the inspection of the founding statement and proof of its registration shall apply *mutatis mutandis* to the annual return by a corporation.

(3) Any corporation which has failed to lodge a return required by subsection (1) within the period prescribed therein, may thereafter lodge such return, subject to the payment to the Registrar of the prescribed additional fee in respect of each such failure: Provided that the Registrar may, upon good cause shown, waive payment of the fee concerned.

Section 26 (1)

If a corporation has failed, for a period of more than six months, to lodge an annual return in compliance with section 15A or if the Registrar has reasonable cause to believe that a corporation is not carrying on business or is not in operation, the Registrar shall serve on the corporation at its postal address a letter by registered post in which the corporation is notified thereof and informed that if the Registrar is not within 60 days from the date of the letter informed in writing that the corporation is carrying on business or is in operation, the corporation will, unless good cause is shown to the contrary, be deregistered.