



STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

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KANTOOR VAN DIE EERSTE MINISTER

OFFICE OF THE PRIME MINISTER

No. 1354.

4 Julie 1984

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 69 van 1984: Wet op Beslote Korporasies, 1984.

No. 1354.

4 July 1984

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 69 of 1984: Close Corporations Act, 1984.

WET

Om voorsiening te maak vir die oprigting, registrasie, inlywing, bestuur, beheer en likwidasie van beslote korporasies; en vir aangeleenthede wat daarmee in verband staan.

*(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 19 Junie 1984.)*

DAAR WORD BEPAAL deur die Staatspresident en die Volksraad van die Republiek van Suid-Afrika, soos volg:—

Woordomskrivings.

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—
 - (i) “beampte”, met betrekking tot— 5
 - (a) ’n korporasie, ’n bestuurder of sekretaris daarvan, ongeag of sodanige bestuurder of sekretaris ook ’n lid van die korporasie is;
 - (b) ’n maatskappy, ’n beampte soos omskryf in artikel 1 (1) van die Maatskappywet; (xv) 10
 - (ii) “deregistrasie”, met betrekking tot ’n korporasie, die kansellering van die registrasie van die korporasie se stigtingsverklaring; en het “deregistreer” ’n ooreenstemmende betekenis; (vii)
 - (iii) “direkteur”, met betrekking tot ’n maatskappy, ’n direkteur soos omskryf in artikel 1 (1) van die Maatskappywet; (viii) 15
 - (iv) “filiaal”, met betrekking tot ’n maatskappy, ’n filiaal soos omskryf in artikel 1 (1) van die Maatskappywet; (xxi) 20
 - (v) “hierdie Wet” ook die regulasies; (xxii)
 - (vi) “Hof”, met betrekking tot—
 - (a) ’n korporasie en ’n aangeleentheid in artikel 7 bedoel, ’n hof wat ingevolge daardie artikel jurisdiksie het; 25
 - (b) ’n aangeleentheid in artikel 50, 65 of 73 (1) bedoel, enige hof wat jurisdiksie ten opsigte daarvan het; en
 - (c) ’n misdryf kragtens hierdie Wet, enige hof wat jurisdiksie ten opsigte van die misdryf het; (vi) 30
 - (vii) “houermaatskappy”, met betrekking tot ’n maatskappy, ’n houermaatskappy soos omskryf in artikel 1 (1) van die Maatskappywet; (x)
 - (viii) “korporasie” ’n beslote korporasie in artikel 2 (1) bedoel wat geregistreer is kragtens Deel III van hierdie Wet; (v) 35
 - (ix) “ledebelang” of “belang”, met betrekking tot ’n lid van ’n korporasie, die belang van die lid in die korporasie weergegee ooreenkomstig artikel 12 (e) as ’n persentasie in die stigtingsverklaring van die korporasie; (xiii) 40

ACT

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

(English text signed by the State President.)
(Assented to 19 June 1984.)

BE IT ENACTED by the State President and the House of Assembly of the Republic of South Africa, as follows:—

1. In this Act, unless the context otherwise indicates—

Definitions.

- 5 (i) "accounting records", in relation to a corporation, includes accounts, deeds, writings and such other documents as may be prescribed; (xix)
- 10 (ii) "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; (xx)
- 15 (iii) "Companies Act" means the Companies Act, 1973 (Act No. 61 of 1973); (xii)
- (iv) "company" means a company as defined in section 1 (1) of the Companies Act; (xi)
- 20 (v) "corporation" means a close corporation referred to in section 2 (1) which has been registered under Part III of this Act; (viii)
- (vi) "Court", in relation to—
- 25 (a) any corporation and any matter referred to in section 7, means any court having jurisdiction in terms of that section;
- (b) any matter referred to in section 50, 65 or 73 (1), means any court having jurisdiction in respect thereof; and
- 30 (c) any offence under this Act, means any court having jurisdiction in respect of that offence; (vi)
- (vii) "deregistration", in relation to a corporation, means the cancellation of the registration of the corporation's founding statement; and "deregister" has a corresponding meaning; (ii)
- 35 (viii) "director", in relation to a company, means a director as defined in section 1 (1) of the Companies Act; (iii)
- (ix) "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 state-
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- (x) "lid", met betrekking tot 'n korporasie, 'n persoon wat vir lidmaatskap van 'n korporasie ingevolge artikel 29 kwalifiseer en in 'n stigtingsverklaring van die korporasie as 'n lid aangewys is, met inbegrip van, behoudens die bepalinge van hierdie Wet, 'n kurator, administrateur, eksekuteur of ander kurator, of ander regsvertegenwoordiger, bedoel in paragraaf (c) van subartikel (2) van artikel 29, ten opsigte van sodanige persoon wat insolvent, oorlede, geestesongesteld of andersins onbekwaam of onbevoeg is om sy sake te bestuur, 10 maar uitgesonderd sodanige persoon wat ingevolge hierdie Wet opgehou het om 'n lid te wees; (xii)
- (xi) "maatskappy" 'n maatskappy soos in artikel 1 (1) van die Maatskappywet omskryf; (iv)
- (xii) "Maatskappywet" die Maatskappywet, 1973 (Wet No. 15 61 van 1973); (iii)
- (xiii) "Meester" die Meester van die Hooggeregshof, en met betrekking tot—
 - (a) 'n korporasie ten opsigte waarvan daar by 'n Hof aansoek om 'n likwidasiebevel gedoen word, die 20 Meester wat regsbevoegdheid het in die regsgebied van die Hof waar aansoek gedoen word;
 - (b) 'n korporasie wat deur 'n Hof gelikwideer word, die Meester wat regsbevoegdheid het in die regsgebied van die Hof wat die likwidasiebevel uitgereik 25 het;
 - (c) 'n korporasie, behalwe 'n korporasie in paragraaf (a) of (b) genoem, die Meester wat regsbevoegdheid het in die gebied waarin die geregistreerde kantoor van daardie korporasie geleë is; (xi) 30
- (xiv) "Minister", met betrekking tot 'n aangeleentheid waarmee handel moet word in die kantoor van 'n Meester in verband met die likwidasie van 'n korporasie, die Minister van Justisie en, met betrekking tot 'n ander aangeleentheid, die Minister van Nywerheidswese, 35 Handel en Toerisme; (xiv)
- (xv) "registrasie", met betrekking tot—
 - (a) 'n korporasie, die registrasie van die stigtingsverklaring van die korporasie bedoel in artikel 12;
 - (b) die stigtingsverklaring of 'n gewysigde stigtings- 40 verklaring van 'n korporasie, die registrasie daarvan ingevolge artikel 13 of artikel 15 (1) of (2), na gelang van die geval;
 - (c) enige aangeleentheid in verband met 'n korporasie, of 'n lid daarvan, waarvan besonderhede ingevolge hierdie Wet in 'n stigtingsverklaring van die korporasie vermeld word, die vermelding van besonderhede daarvan in so 'n verklaring; en
 - (d) enige ander aangeleentheid in verband waarmee 'n plig of 'n bevoegdheid met betrekking tot die regi- 50 strasie daarvan ingevolge hierdie Wet aan die Registrateur opgelê of verleen word, die registrasie daarvan deur hom ooreenkomstig 'n toepaslike bepaling van hierdie Wet; en het "geregistreer" 'n ooreenstemmende betekenis; (xviii) 55
- (xvi) "Registrasiekantoor" die Registrasiekantoor vir Beslote Korporasies in artikel 3 bedoel; (xix)
- (xvii) "Registrateur" die Registrateur van Beslote Korporasies in artikel 4 bedoel; (xvii)
- (xviii) "regulasie" 'n regulasie kragtens hierdie Wet uitgevaardig; (xx) 60
- (xix) "rekeningkundige rekords", met betrekking tot 'n korporasie, ook rekeninge, aktes, geskrifte en die ander dokumente wat voorgeskryf is; (i)
- (xx) "samewerkingsooreenkoms", met betrekking tot 'n 65 korporasie of die lede daarvan, 'n samewerkingsooreenkoms wat deur die lede van die korporasie ingevolge artikel 44 aangegaan is, met inbegrip van so 'n ooreenkoms wat verander is of waarby 'n toevoeging gemaak is soos beoog in subartikel (3) van artikel 49,

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ment in respect of that corporation registered in terms of section 15 (1) or (2); (xxi)

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

(xi) "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; (xiii)

(xii) "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 affairs, but excluding any such person who has in terms of this Act ceased to be a member; (x)

(xiii) "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; (ix)

(xiv) "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 Industries, Commerce and Tourism; (xiv)

(xv) "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; (i)

(xvi) "prescribe" means prescribe by regulation; and "prescribed" has a corresponding meaning; (xxii)

(xvii) "Registrar" means the Registrar of Close Corporations referred to in section 4; (xvii)

(xviii) "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 in accordance with any applicable provision of

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of 'n ooreenkoms wat dit vervang soos in daardie sub-artikel beoog; (ii)

- (xxi) "stigtingsverklaring", met betrekking tot 'n korporasie, die stigtingsverklaring van die korporasie in artikel 12 bedoel wat ingevolge artikel 13 geregistreer is, en ook 'n gewysigde stigtingsverklaring met betrekking tot daardie korporasie wat ingevolge artikel 15 (1) of (2) geregistreer is; (ix)
- (xxii) "voorskryf" by regulasie voorskryf; en het "voorgeskryf" en "voorgeskrewe" 'n ooreenstemmende betekenis. (xvi)

DEEL I

OPRICHTING EN REGSPERSOONLIKHEID VAN
BESLOTE KORPORASIES

Oprigting en regspersoonlikheid van beslote korporasies.

2. (1) Een of meer persone, maar hoogstens tien, wat vir lidmaatskap van 'n beslote korporasie ingevolge hierdie Wet kwalifiseer, kan 'n beslote korporasie oprig en inlywing daarvan verkry deur te voldoen aan die vereistes van hierdie Wet ten opsigte van die registrasie van sy stigtingsverklaring bedoel in artikel 12.

(2) 'n Korporasie opgerig ooreenkomstig die bepalings van hierdie Wet is by registrasie ingevolge daardie bepalings 'n regspersoon en bly, behoudens die bepalings van hierdie Wet, as 'n regspersoon voortbestaan ondanks veranderinge in sy lidmaatskap totdat hy ingevolge hierdie Wet gederegistreer of ontbind word.

(3) Behoudens die bepalings van hierdie Wet is die lede van 'n korporasie nie bloot uit hoofde van hulle lidmaatskap vir die laste of verpligtinge van die korporasie aanspreeklik nie.

(4) 'n Korporasie is bekleed met die vermoë en bevoegdhede van 'n ten volle handelingsbevoegde natuurlike persoon vir sover 'n regspersoon oor sodanige vermoë kan beskik en sodanige bevoegdhede kan uitoefen.

DEEL II

ADMINISTRASIE VAN WET

Registrasiekantoor en register.

3. (1) Vir die registrasie van korporasies kragtens hierdie Wet is daar in Pretoria 'n kantoor wat die Registrasiekantoor vir Beslote Korporasies genoem word.

(2) Registers van name en registrasienommers en die ander aangeleenthede betreffende korporasies wat voorgeskryf is, word in die Registrasiekantoor gehou.

Registrateur.

4. (1) Die Minister stel, behoudens die wetsbepalings op die Staatsdiens, 'n Registrateur van Beslote Korporasies aan, wat—

- (a) die bevoegdhede uitoefen en die pligte verrig wat deur hierdie Wet aan die Registrateur toegewys is; en
- (b) onderworpe aan die voorskrifte van die Minister, verantwoordelik is vir die administrasie van die Registrasiekantoor.

(2) Die Minister kan insgelyks 'n Adjunk-registrateur en 'n Assistent-registrateur aanstel, wat, onderworpe aan die beheer van die Registrateur, enige bevoegdheid of plig wat ingevolge hierdie Wet aan die Registrateur verleen of opgedra word, kan uitoefen of verrig, en wanneer die Registrateur om die een of ander rede nie sy werksaamhede kan verrig nie, tree die Adjunk-registrateur in sy plek op.

(3) Die Registrateur kan aan 'n beamppte of werknemer in die Staatsdiens enige van die bevoegdhede deleger en enige van die pligte opdra wat aan hom deur hierdie Wet toegewys is.

Insae in en afskrifte van dokumente in Registrasiekantoor.

5. (1) Enige persoon kan teen betaling van die voorgeskrewe geld (insluitend 'n bykomende geld as 'n dokument nie persoonlik by die Registrasiekantoor afgehaal word nie)—

- (a) enige dokument deur die Registrateur gehou kragtens hierdie Wet ten opsigte van 'n korporasie insien; of

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- this Act; and "registered" has a corresponding meaning; (xv)
- (xix) "Registration Office" means the Close Corporations Registration Office referred to in section 3; (xvi)
- 5 (xx) "regulation" means any regulation made under this Act; (xviii)
- (xxi) "subsidiary", in relation to a company, means a subsidiary as defined in section 1 (1) of the Companies Act; (iv)
- 10 (xxii) "this Act" includes the regulations. (v)

PART 1

FORMATION AND JURISTIC PERSONALITY OF
CLOSE CORPORATIONS

2. (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. Formation and juristic personality of close corporations.
- (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.

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PART II

ADMINISTRATION OF ACT

3. (1) For the registration of corporations under this Act there shall be an office in Pretoria called the Close Corporations Registration Office. Registration Office and register.
- 35 (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. (1) The Minister shall, subject to the laws governing the public service, appoint a Registrar of Close Corporations, who shall— Registrar.
- 40 (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.
- 45 (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 functions the
- 50 Deputy Registrar shall act in his stead.
- (3) The Registrar may delegate any of the powers and entrust any of the duties assigned to him by this Act to any officer or employee in the public service.
5. (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)— Inspection and copies of documents in Registration Office.
- (a) inspect any document kept under this Act by the Registrar in respect of any corporation; or

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- (b) 'n sertifikaat van die Registrateur verkry aangaande die inhoud of 'n deel van die inhoud van so 'n dokument wat ter insae beskikbaar is; of
- (c) 'n afskrif van of uittreksel uit so 'n dokument verkry.
- (2) Indien die Registrateur oortuig is—
 - (a) dat sodanige insae, sertifikaat, afskrif of uittreksel aangevra word ten behoeve van 'n buitelandse regering wat by die Regering van die Republiek geakkrediteer is; en
 - (b) dat geen geld in die betrokke vreemde land betaalbaar is ten opsigte van 'n ooreenstemmende insae, sertifikaat, afskrif of uittreksel wat ten behoeve van die Regering van die Republiek aangevra word nie, is geen geld in subartikel (1) bedoel, betaalbaar nie.
- (3) Indien die Registrateur oortuig is dat sodanige insae, sertifikaat, afskrif of uittreksel aangevra word vir die doeleindes van navorsing deur of onder beheer van 'n inrigting vir hoër onderwys, kan hy sodanige insae toelaat of so 'n sertifikaat, afskrif of uittreksel verskaf sonder betaling van sodanige geld.

Betaling van gelde.

- 6. (1) Die betaling van enige geld, bykomende geld of ander bedrag betaalbaar aan die Registrateur ingevolge hierdie Wet word, behoudens die bepalinge van subartikel (3), gedoen—
 - (a) deur inkomsteseëls aan 'n betrokke dokument vas te plak, welke seëls deur 'n Ontvanger van Inkomste of die Registrateur gerojear kan word; of
 - (b) deur 'n seël op 'n betrokke dokument te stempel deur middel van 'n stempel deur die Kommissaris van Binnelandse Inkomste goedgekeur; of
 - (c) op die ander wyse wat die Registrateur bepaal.
- (2) Geen dokument, vorm, opgawe of kennisgewing ten opsigte waarvan enige geld betaalbaar is of enige betaling gedoen moet word ingevolge hierdie Wet, is volledig nie tensy bewys van betaling van die vereiste geld of ander bedrag by die Registrateur ingedien is.
- (3) By die toepassing van subartikel (1) is die beslissing van die Registrateur oor die wyse waarop in 'n bepaalde geval, of kategorie gevalle deur die Registrateur bepaal, enige geld, bykomende geld of ander bedrag ingevolge hierdie Wet betaal moet word, afdoende.
- (4) Gelde en ander bedrae ingevolge hierdie Wet aan die Registrateur betaalbaar, is skulde verskuldig aan die Staat en verhaalbaar deur die Minister in 'n bevoegde Hof.

Hof wat jurisdiksie ten opsigte van korporasies het.

- 7. By die toepassing van hierdie Wet is die hof wat in enige aangeleentheid, met inbegrip van likwidasië, ten opsigte van 'n korporasie, en in 'n aangeleentheid bedoel in artikel 36, 42 (3) (b), 49 (1) of 64 (1), jurisdiksie het, enige landdroshof binne wie se regsgebied die geregistreerde kantoor of belangrikste besigheidsplek van die korporasie geleë is of, met betrekking tot so 'n aangeleentheid ten opsigte waarvan so 'n hof in 'n bepaalde geval op grond van die een of ander bepaling van die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944), nie jurisdiksie het nie, enige provinsiale of plaaslike afdeling van die Hooggeregshof van Suid-Afrika binne wie se regsgebied so 'n kantoor of besigheidsplek geleë is.

Sekerheid vir koste in regsgedinge deur korporasies.

- 8. Wanneer 'n korporasie in 'n regsgeding 'n eiser of applikant is of 'n teeneis of teenaansoek instel, kan die betrokke hof te eniger tyd gedurende die verrigtinge indien dit blyk dat daar rede is om te glo dat die korporasie of, as dit gelikwider word, die likwidateur daarvan, nie in staat sal wees om die koste van die verweerder of respondent, of die verweerder of respondent in rekonvensie, as hy in sy verdediging slaag, te betaal nie, vereis dat sekerheid gestel word vir daardie koste, en kan hy alle verrigtinge opskort totdat die sekerheid gestel word.

Stuur van afskrifte van Hofbevele aan Registrateur en Meester.

- 9. Wanneer 'n Hof ingevolge hierdie Wet enige bevel gee met betrekking tot 'n korporasie, stuur die Griffier of klerk van die Hof onverwyld 'n afskrif van die bevel per gesertifiseerde pos aan die Registrateur en, indien so 'n bevel betrekking het op die likwidasië van 'n korporasie, ook 'n afskrif aan die Meester.

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- (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.
- 5 (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
- 10 (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) shall be payable.
- (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 may permit such inspection or furnish such certificate, copy or extract without payment of fees.
6. (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—
- 20 (a) by affixing revenue stamps to any document concerned, which stamps may be cancelled by a Receiver of Revenue or the Registrar; or
- 25 (b) by impressing a stamp on any document concerned by means of a die approved by the Commissioner for Inland Revenue; or
- (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 the Registrar.
- 30 (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, any fee, additional fee or other money is in terms of this Act to be paid, shall be final.
- (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
- 40 Minister in any competent court.
7. For the purposes of this Act the court having jurisdiction in any matter, including liquidation, in respect of any corporation, and any matter referred to in section 36, 42 (3) (b), 49 (1) or 64 (1), shall be any magistrate's court within whose area of jurisdiction the registered office or main place of business of the corporation is situate or, in relation to any such matter in respect of which such court has in any particular case on account of any provision of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), no jurisdiction, any provincial or local division of the Supreme Court of South Africa within whose area of jurisdiction any such office or place of business is situate.
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8. 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 is successful in his defence, require security to be given for those costs, and may stay all proceedings till the security is given.
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9. 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 certified 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.
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Payment of fees.

Court having jurisdiction in respect of corporations.

Security for costs in legal proceedings by corporations.

Transmission of copies of Court orders to Registrar and Master.

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Regulasies.

10. (1) Die Minister kan regulasies uitvaardig—
- (a) wat vir die bestuur en administrasie van die Registrasiekantoor voorsiening maak, en die praktyk en prosedure wat daarin gevolg moet word, voorskryf;
 - (b) wat die praktyk en prosedure voorskryf wat in die kantoor van die Meester in verband met die likwidasië van korporasies gevolg moet word;
 - (c) wat voorsiening maak vir die reproduksie van stukke met betrekking tot korporasies in die Registrasiekantoor of die kantoor van die Meester deur middel van mikrofilm, mikrokaart, miniatuur-fotografiese proses of 'n ander proses wat die Minister doelmatig ag;
 - (d) wat voorsiening maak vir die gebruik vir amptelike doeleindes en die toelaatbaarheid as getuienis in verrigtinge, hetsy in 'n geregshof of andersins, van 'n reproduksie beoog in paragraaf (c);
 - (e) wat voorsiening maak vir die hou en bewaring van stukke, of enige reproduksies daarvan beoog in paragraaf (c), in die Registrasiekantoor of die kantoor van die Meester, die verwydering uit daardie kantore van sodanige stukke of reproduksies en die bewaring daarvan op 'n ander plek, en wat die omstandighede voorskryf waaronder sodanige stukke of reproduksies vernietig kan word;
 - (f) wat voorskryf hoe stukke gehou mag word wat kragtens hierdie Wet deur 'n korporasie gehou moet word, en wat die omstandighede voorskryf waaronder sodanige stukke vernietig kan word;
 - (g) wat voorskryf watter prosedure gevolg moet word met betrekking tot enige aangeleentheid in verband met die likwidasië van korporasies;
 - (h) wat die vorm en die inhoud voorskryf van 'n opgawe, kennisgewing of dokument waarvoor deur hierdie Wet voorsiening gemaak word;
 - (i) wat voorskryf wanneer 'n verdere afskrif of afskrifte van dokumente ingedien te word kragtens hierdie Wet ingedien moet word, en of sodanige verdere afskrif of afskrifte in die vorm van 'n afskrif of afskrifte op 'n omskrewe wyse gesertifiseer of in duplikaat oorspronklike vorm moet wees;
 - (j) met die instemming van die Minister van Finansies, wat die aangeleentheid ten opsigte waarvan gelde betaalbaar is, die persone deur wie en aan wie die gelde betaalbaar is en die tarief van sodanige gelde voorskryf;
 - (k) wat 'n tabel van gelde, onderworpe aan taksasie deur die Meester, wat aan 'n likwidateur as besoldiging betaalbaar is, voorskryf;
 - (l) wat 'n tarief van besoldiging betaalbaar aan iemand wat namens 'n likwidateur 'n handeling betreffende die likwidasië van 'n korporasie verrig wat die likwidateur nie self hoef te verrig nie, voorskryf, en wat die heffing of verhaal van besoldiging teen 'n hoër tarief as die aldus voorgeskrewe tarief, verbied;
 - (m) wat voorsiening maak vir die aanstelling deur die Registrateur in vermelde omstandighede van 'n inspekteur om ondersoek in te stel na die sake van 'n korporasie, vir die bevoegdhede van 'n inspekteur by die hou van sodanige ondersoek, vir die verpligting van 'n lid, beampte, werknemer of rekenmeester van 'n korporasie om boeke en dokumente onder sy toesig of beheer beskikbaar te stel en die hulp te verleen wat 'n inspekteur in verband met so 'n ondersoek vereis; vir verslagdoening deur 'n inspekteur aan die Registrateur; vir beskikbaarstelling deur die Registrateur van so 'n verslag aan ander persone; vir die toelaatbaarheid van sodanige verslag as getuienis in regsverrigtinge; en vir betaling van die koste van, en in verband met, so 'n ondersoek;
 - (n) aangaande enige ander aangeleentheid wat kragtens hierdie Wet voorgeskryf moet of kan word; en

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10. (1) The Minister may make regulations—

Regulations.

- (a) providing for the conduct and administration of the Registration Office, and prescribing the practice and procedure to be observed therein;
- 5 (b) prescribing the practice and procedure to be observed in the office of the Master in connection with the winding-up of corporations;
- 10 (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 or any other process deemed suitable by the Minister;
- 15 (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);
- 20 (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;
- 25 (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;
- 30 (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;
- 35 (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;
- 40 (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;
- 45 (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;
- 50 (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 accountant of a corporation to make available books and documents in his custody or under his 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;
- 55 (n) as to any other matter required or permitted by this Act to be prescribed; and
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(o) in die algemeen, aangaande enige aangeleentheid wat hy nodig of dienstig ag om voor te skryf ten einde die oogmerke van hierdie Wet te verwesenlik.

(2) Regulasies kragtens subartikel (1) uitgevaardig, kan strawwe vir 'n oortreding daarvan of versuim om daaraan te voldoen, voorskryf wat 'n boete van R300 of gevangenisstraf vir 'n tydperk van ses maande of daardie boete sowel as daardie gevangenisstraf, nie te bowe gaan nie.

Werkzaamhede van vaste advieskomitee oor maatskappyereg, met betrekking tot korporasies.

11. (1) Die vaste advieskomitee oor maatskappyereg, aangesel ingevolge artikel 18 van die Maatskappywet, kan van tyd tot 10 tyd aanbevelings by die Minister doen aangaande wysigings van hierdie Wet wat vir dié advieskomitee raadsaam voorkom, en moet die Minister adviseer oor enige aangeleentheid met betrekking tot hierdie Wet wat deur die Minister na hom verwys word.

(2) Die vaste advieskomitee moet 'n vaste subkomitee aanstel 15 en in stand hou om die aangeleenthede in verband met korporasies wat deur hom na die subkomitee verwys word, te oorweeg en hom daaroor te adviseer.

(3) Die bepalinge van—

(a) die Maatskappywet en regulasies daarkragtens uitgevaardig met betrekking tot vaste subkomitees van die vaste advieskomitee, en die lede daarvan, is van toepassing ten opsigte van die vaste subkomitee in subartikel (2) bedoel asof daardie subkomitee kragtens subartikel (4) van artikel 18 van genoemde Wet aangestel is; 25 en

(b) subartikels (2) en (5) (vir sover dit betrekking het op die inroep van persone om die vaste advieskomitee by te staan) van genoemde artikel 18 is ten opsigte van die vaste advieskomitee van toepassing by die uitoefening 30 deur hom van 'n bevoegdheid ingevolge subartikel (1) van hierdie artikel aan hom verleen.

DEEL III

REGISTRASIE, DEREGISTRASIE EN OMSKEPPING

Stigtingsverklaring.

12. 'n Persoon wat ingevolge artikel 29 vir lidmaatskap kwalifiseer of, behoudens artikel 28, enige aantal sodanige persone wat 'n korporasie wil oprig, moet 'n stigtingsverklaring in die voorgeskrewe vorm in een van die amptelike tale van die Republiek opstel, wat deur of namens elkeen wat 'n lid van die korporasie sal word by sy registrasie, onderteken moet word en 40 wat, behoudens die bepalinge van hierdie Wet, die volgende besonderhede bevat:

(a) Die volle naam van die korporasie: Met dien verstande dat 'n letterlike vertaling van daardie naam in die ander amptelike taal van die Republiek, of 'n verkorte vorm 45 van daardie naam of sodanige vertaling daarvan, bykomend verstrek kan word;

(b) die vernaamste besigheid wat deur die korporasie gedryf staan te word;

(c) (i) 'n posadres vir die korporasie; en 50
(ii) die adres (wat nie die nommer van 'n posbus is nie) van die kantoor van die korporasie bedoel in artikel 25 (1);

(d) die volle name van elke lid en sy identiteitsnommer of, as hy nie so 'n nommer het nie, sy geboortedatum; 55

(e) die grootte, uitgedruk as 'n persentasie, van elke lid se belang in die korporasie;

(f) besonderhede van die bydrae van elke lid tot die korporasie ooreenkomstig artikel 24 (1), met inbegrip 60 van—

(i) enige bedrae geld; en

(ii) 'n beskrywing, en verklaring van die billike waarde, van enige eiendom (liggaamlik of onliggaamlik) of enige diens in artikel 24 (1) bedoel;

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(o) generally, as to any matter which he considers it necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

(2) Regulations made under subsection (1) may prescribe penalties for any contravention thereof or failure to comply therewith, not exceeding a fine of R300 or imprisonment for a period of six months or both such fine and such imprisonment.

11. (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.

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

(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

12. 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:

Founding statement.

- (a) The full name of the corporation: Provided that a literal translation of that name into the other official language of the Republic, or a shortened form of that name or such translation thereof, may in addition be given;
- (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 and his identity number or, if he has no such number, the date of his birth;
- (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);

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- (g) (i) die naam en posadres van 'n bevoegde persoon of firma wat skriftelik toegestem het tot sy aanstelling as rekeningkundige beampte van die korporasie; en
 (ii) die datum van die einde van die boekjaar van die korporasie.

Registrasie van stigtingsverklaring.

13. Indien 'n stigtingsverklaring bedoel in artikel 12 wat aan die vereistes van hierdie Wet voldoen, in duplikaat op die voorgeskrewe wyse by die Registrateur ingedien word, en indien die besigheid wat deur die korporasie gedryf staan te word wettig is, moet die Registrateur by betaling van die voorgeskrewe gelde 10 sodanige verklaring in sy registers registreer en kennis van die registrasie in die *Staatskoerant* gee.

Sertifikaat van inlywing.

14. (1) By die registrasie van so 'n stigtingsverklaring moet die Registrateur 'n registrasienommer aan die betrokke korporasie toeken en 'n sertifikaat onder sy hand op die verklaring endosseer dat die korporasie ingelyf is.

(2) 'n Sertifikaat van inlywing gegee deur die Registrateur ingevolge subartikel (1) of artikel 27 (4) (c) is by blote vertoon daarvan, by ontstentenis van bewys van bedrog of fout, afdoende bewys dat voldoen is aan al die vereistes van hierdie Wet 20 ten opsigte van registrasie van die betrokke korporasie en van aangeleenthede wat dit voorafgaan en daarmee in verband staan, en dat die betrokke korporasie behoorlik kragtens hierdie Wet ingelyf is.

Registrasie van gewysigde stigtingsverklaring.

15. (1) Indien 'n verandering gemaak word of plaasvind ten 25 opsigte van 'n aangeleentheid waarvan besonderhede in 'n stigtingsverklaring van 'n korporasie vermeld word ooreenkomstig paragraaf (b), (d), (e) of (f) van artikel 12, moet die betrokke korporasie, behoudens artikel 29 (3) (c) en (d), binne 28 dae na sodanige verandering by die Registrateur 'n gewysigde stigtingsverklaring, in duplikaat en in die voorgeskrewe vorm 30 te same met die voorgeskrewe gelde, vir registrasie in sy registers indien, onderteken deur of namens elke lid van die korporasie en deur elke persoon wat by sodanige registrasie 'n lid sal word, en wat besonderhede en die datum van die verandering bevat. 35

(2) Indien 'n verandering gemaak word of plaasvind ten opsigte van 'n aangeleentheid waarvan besonderhede aldus vermeld word ooreenkomstig paragraaf (a), (c) of (g) van artikel 12, moet 'n gewysigde stigtingsverklaring ooreenkomstig die vereistes van subartikel (1) by die Registrateur vir registrasie ingedien word, en sodanige verandering word slegs van krag 40 wanneer die verklaring in die betrokke registers aldus geregistreer is, of op 'n later datum in die verklaring genoem.

(3) (a) Indien 'n korporasie versuim om 'n gewysigde stigtingsverklaring ingevolge en ooreenkomstig die bepalings van subartikel (1) of (2), na gelang van die geval, in te dien, kan die Registrateur uit eie beweging of op aansoek van 'n lid of krediteur van die korporasie 'n aanmaning per gesertifiseerde pos aan die lede van die korporasie ooreenkomstig artikel 25 (2) (a) bestel om 50 die versuim binne 28 dae vanaf die datum van die aanmaning reg te stel.

(b) Indien die betrokke lede versuim om aan sodanige aanmaning te voldoen, kan die Registrateur daardie lede by skriftelike kennisgewing, aldus bestel aan die lede 55 per gesertifiseerde pos, gelas om die versuim binne 28 dae vanaf die datum van die kennisgewing reg te stel.

(c) Indien die betrokke lede versuim om aan so 'n lasgewing te voldoen, kan die Registrateur by verdere skriftelike kennisgewing aan die lede aldus bestel per 60 aangetekende pos, die lede, of enige van hulle, 'n boete oplê van hoogstens vyf rand per dag vanaf die datum waarop die aanmaning in paragraaf (a) bedoel, gestuur is.

(d) Wanneer die Registrateur 'n kennisgewing bedoel in 65 paragraaf (c) op die lede bestel het, kan hy minstens 21 dae na die datum van daardie kennisgewing 'n gewaar-

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- (g) (i) the name and postal address of a qualified person who or firm which has consented in writing to his or its appointment as accounting officer of the corporation; and
- 5 (ii) the date of the end of the financial year of the corporation.

13. If a founding statement referred to in section 12 complying with the requirements of this Act is lodged with the Registrar in duplicate 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 registers and shall give notice of the registration in the *Gazette*. Registration of founding statement.

14. (1) Upon the registration of such founding statement the Registrar shall assign a registration number to the corporation concerned and endorse under his hand on the statement a certificate that the corporation is incorporated. Certificate of incorporation.

(2) A certificate of incorporation given by the Registrar in terms of subsection (1) or section 27 (4) (c) 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.

15. (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 registers an amended founding statement, in duplicate in the prescribed form together with the prescribed fee, signed by or on behalf of every member of the corporation and by any person who will become a member on such registration, and which contains particulars and the date of the change. Registration of amended founding statement.

35 (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.

45 (3) (a) If a corporation fails to lodge an amended founding statement in terms of and in accordance with the provisions of subsection (1) or (2), as the case may be, the Registrar may on his 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 certified post to make good the default within 28 days of the date of the reminder.

50 (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 certified post, to make good the default within 28 days of the date of the notice.

55 (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.

60 (d) When the Registrar has served a notice referred to in paragraph (c) on the members, he may not less than 21 days after the date of that notice forward a certified

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merkte afskrif daarvan stuur aan die klerk van die landdroshof in wie se regsgebied die geregistreerde kantoor van die korporasie geleë is, wat dit moet aanteken, en daarop het so 'n kennisgewing die uitwerking van 'n siviele vonnis van daardie landdroshof teen elke sodanige lid vir die bedrag van die betrokke boete. 5

- (e) Op aansoek van een of meer van die betrokke lede kan die betrokke hof die boete verminder of intrek, of een of sommige van die lede vrystel van die uitwerking van die kennisgewing. 10

Hou van afskrifte van stigtingsverklarings deur korporasies.

16. (1) 'n Korporasie moet 'n afskrif van sy stigtingsverklaring en enige bewys van die registrasie daarvan by die geregistreerde kantoor van die korporasie hou.

(2) 'n Dokument in subartikel (1) bedoel, moet gedurende die besigheidsure van die korporasie beskikbaar wees vir insae deur enigiemand teen betaling aan die korporasie, in die geval van iemand wat nie 'n lid van die korporasie is nie, van een rand of die kleiner bedrag wat die korporasie bepaal. 15

(3) 'n Lid of beamppte van 'n korporasie wat aan iemand wat daarop geregtig is, toegang vir die doeleindes van 'n insae ingevolge subartikel (2) weier, is aan 'n misdryf skuldig. 20

Geen toegerekende kennis van besonderhede in stigtingsverklaring en ander dokumente.

17. Niemand word geag kennis te dra van enige besonderhede nie bloot omdat sodanige besonderhede vermeld, of na verwys word, in 'n stigtingsverklaring of ander dokument betreffende 'n korporasie wat deur die Registrateur geregistreer of by hom ingedien is, of wat ooreenkomstig die bepalings van hierdie Wet by die geregistreerde kantoor van 'n korporasie gehou word. 25

Betekenis van "naam" in artikels 19, 20 en 21.

18. By die toepassing van artikels 19, 20 en 21, tensy uit die samehang anders blyk, beteken "naam", met betrekking tot 'n korporasie, die volle naam van daardie korporasie of 'n letterlike vertaling van daardie naam in die ander amptelike taal van die Republiek, of 'n verkorte vorm van daardie naam of sodanige vertaling daarvan, bedoel in artikel 12 (a). 30

Onwenslike name.

19. (1) Die Registrateur kan weier om 'n stigtingsverklaring van 'n korporasie bedoel in artikel 12, of 'n gewysigde stigtingsverklaring wat betrekking het op 'n verandering van naam bedoel in artikel 15 (2), te registreer indien die naam of veranderde naam van die korporasie, na gelang van die geval, na die oordeel van die Registrateur onwenslik is. 35

(2) Die bepalings van subartikel (1) word nie so uitgelê dat dit 'n verpligting plaas op die Registrateur om die wenslikheid van 'n naam van 'n korporasie vermeld in elke stigtingsverklaring of gewysigde stigtingsverklaring wat vir registrasie ingedien word, te oorweeg nie. 40

Bevel om naam te verander.

20. (1) Indien dit binne 'n tydperk van een jaar na die registrasie van 'n stigtingsverklaring van 'n korporasie aan die Registrateur blyk dat 'n naam in die stigtingsverklaring vermeld onwenslik is, beveel hy die betrokke korporasie om sodanige naam te verander. 45

(2) 'n Belanghebbende persoon kan binne 'n tydperk van een jaar in subartikel (1) bedoel— 50

(a) by betaling van die voorgeskrewe geld skriftelik by die Registrateur aansoek doen om 'n bevel wat die korporasie gelas om sy naam op grond van onwenslikheid te verander; of 55

(b) by 'n Hof aansoek doen om 'n bevel wat die korporasie gelas om sy naam op grond van onwenslikheid te verander, en die Hof kan by so 'n aansoek die bevel gee wat hy goeddink.

(3) Die Registrateur kan, nadat aansoek gedoen is ingevolge paragraaf (a) van subartikel (2), die betrokke korporasie skriftelik beveel om sy naam te verander indien dit, na die oordeel van die Registrateur, onwenslik is of geword het. 60

(4) 'n Korporasie wat versuim om binne enige tydperk vermeld in 'n bevel kragtens subartikel (1) of (3) aan sodanige bevel te voldoen, is aan 'n misdryf skuldig. 65

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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.

- (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.

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

Keeping of copies of founding statements by corporations.

(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 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 which is kept at the registered office of a corporation in accordance with the provisions of this Act.

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

18. For the purposes of sections 19, 20 and 21 "name", in relation to a corporation, unless the context otherwise indicates, means the full name of that corporation, or a literal translation of that name into the other official language of the Republic, or a shortened form of that name or any such translation thereof, referred to in section 12 (a).

Meaning of "name" in sections 19, 20 and 21.

19. (1) The Registrar may refuse to register a founding statement of a corporation referred to in section 12, or an amended founding statement which relates to a change of name referred to in section 15 (2), if the name or changed name of the corporation, as the case may be, is in the opinion of the Registrar undesirable.

Undesirable names.

(2) The provisions of subsection (1) shall not be construed as imposing a duty on the Registrar to consider the desirability of a name of a corporation mentioned in each founding statement or amended founding statement lodged for registration.

20. (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 shall order the corporation concerned to change such name.

Order to change name.

(2) Any interested person may within a period of one year referred to in subsection (1)—

- (a) 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
- (b) apply to a Court for an order directing the corporation to change its name on the ground of undesirability, and the Court may on such application make such order as it deems fit.

(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.

(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.

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(5) Geen bepaling van hierdie Wet word uitgelê as sou dit die regte van iemand ingevolge die gemene reg om 'n geding teen 'n korporasie in te stel weens aanklamping van enige besigheid, goedere of dienste van 'n ander persoon, raak nie.

Uitwerking van verandering van naam.

21. (1) 'n Verandering ingevolge hierdie Wet van 'n naam van 'n korporasie raak nie enige reg of verpligting van die korporasie of enige regsgeding deur of teen die korporasie ingestel nie, en 'n regsgeding wat voor die verandering van naam deur of teen die korporasie voortgesit of ingestel kon word, kan, ondanks sodanige verandering van naam, na die verandering deur of teen die korporasie voortgesit of ingestel word, na gelang van die geval.

(2) By voorlegging deur 'n korporasie van 'n gesertifiseerde afskrif van 'n stigtingsverklaring wat 'n verandering van naam van daardie korporasie aandui aan 'n registrateur of ander beamppte belas met die instandhouding van 'n register kragtens 'n wet, en by nakoming van alle vereistes uit hoofde van so 'n wet, aangaande die vorm van aansoek (as daar is) en die betaling van enige vereiste geld, bring sodanige registrateur of beamppte in sy register al die wysigings aan wat nodig is as gevolg van die verandering van naam ten opsigte van die korporasie.

Formele vereistes aangaande name en registrasiennommers.

22. (1) Die afkorting BK of CC, in hoofletters, moet by die Afrikaanse of Engelse naam, na gelang van die geval, van 'n korporasie wat hy gebruik, gevoeg word.

(2) 'n Korporasie moet die registrasiennommer van die korporasie op alle voorgeskrewe dokumente en korrespondensie wat deur die korporasie na die Registrasiekantoor gestuur word, vermeld.

(3) Indien 'n korporasie gelikwideer word, moet die verklaring "In Likwidasie" vir die duur van sodanige likwidasie by die naam van die korporasie wat hy gebruik, gevoeg word.

Gebruik en publikasie van name.

23. (1) Elke korporasie—

(a) moet sy geregistreerde volle naam (of 'n geregistreerde letterlike vertaling daarvan in die ander amptelike taal van die Republiek) en registrasiennommer vertoon in maklik leesbare letters en in 'n opvallende posisie aan die buitekant van sy geregistreerde kantoor en elke kantoor of plek waar sy besigheid gedryf word;

(b) moet daardie naam (of sodanige vertaling daarvan) en registrasiennommer in leesbare letters laat verskyn in alle kennisgewings en ander amptelike publikasies, met inbegrip van advertensies, van die korporasie, en in alle wissels, promesses, endossemente, tjeks en bestellings vir geld, goedere of dienste wat heet geteken te wees deur of namens die korporasie, en in alle briewe, afleweringsbriewe, fakture, kwitansies en kredietbriewe van die korporasie; en

(c) gebruik 'n geregistreerde verkorte vorm van daardie naam slegs saam met daardie naam of sodanige letterlike vertaling daarvan.

(2) Indien 'n lid van, of iemand anders namens, 'n korporasie—

(a) sodanige kennisgewing of amptelike publikasie van die korporasie uitreik of die uitreiking daarvan magtig, of sodanige wissel, promesse, endossement, tjek of bestelling vir geld, goedere of dienste teken of magtig dat dit geteken word namens die korporasie; of

(b) sodanige brief, advertensie, afleweringsbrief, faktuur, kwitansie of kredietbrief van die korporasie uitreik of die uitreiking daarvan magtig,

sonder dat die naam van die korporasie, of sodanige geregistreerde letterlike vertaling daarvan, en sy registrasiennommer ooreenkomstig subartikel (1) (b) daarin vermeld word, is hy aan 'n misdryf skuldig, en is hy verder aanspreeklik teenoor die houer van die wissel, promesse, tjek of bestelling vir geld, goedere of dienste tot die bedrag daarvan, tensy die bedrag behoorlik deur die korporasie betaal word.

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(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.

- 5 21. (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
10 name may, notwithstanding such change of name, after the change be continued or commenced by or against the corporation, as the case may be.

Effect of change of name.

- (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 register all such alterations as are necessary by reason of the change of name in respect of the corporation.

22. (1) The abbreviation CC or BK, in capital letters, shall be subjoined to the English or Afrikaans name, as the case may be, of a corporation which it uses.

Formal requirements as to names and registration numbers.

- 25 (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" shall for the duration of such winding-up be subjoined to the name of the corporation which it uses.

23. (1) Every corporation—

Use and publication of names.

- (a) shall display its registered full name (or a registered literal translation thereof into the 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;
35 (b) shall have that name (or such translation thereof) and registration number mentioned in legible characters in all notices and other official publications, including advertisements, of the corporation, 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
40 (c) shall use a registered shortened form of that name only in conjunction with that name or such literal translation thereof.

- 50 (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
55 (b) issues or authorizes the issue of any such letter, advertisement, delivery note, invoice, receipt or letter of credit of the corporation,

- 60 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 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,
65 goods or services for the amount thereof, unless the amount is duly paid by the corporation.

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(3) 'n Korporasie wat versuim om te voldoen aan 'n bepaling van subartikel (1), is aan 'n misdryf skuldig.

Bydraes deur lede.

24. (1) Elke persoon wat 'n lid van 'n korporasie by sy registrasie staan te word, moet 'n aanvanklike bydrae tot die korporasie maak van geld, eiendom (liggaamlik of onliggaamlik), of van dienste gelewer in verband met en vir die doeleindes van die oprigting en inlywing van die korporasie, en besonderhede van sodanige bydrae moet in die stigtingsverklaring van die korporasie bedoel in artikel 12, soos deur paragraaf (f) van genoemde artikel vereis, vermeld word. 5 10

(2) Die bedrag of waarde van die lede se bydraes, of van die bydrae van een of meer lede, kan van tyd tot tyd by ooreenkoms tussen al die lede—

(a) verhoog word deur bykomende bydraes van geld of eiendom (liggaamlik of onliggaamlik) aan die korporasie deur bestaande lede of, ingevolge artikel 33 (1) (b), deur iemand wat 'n lid word van 'n geregistreerde korporasie; of 15

(b) verminder word, mits 'n vermindering by wyse van 'n terugbetaling aan 'n lid voldoen aan die bepalinge van artikel 51 (1). 20

(3) Besonderhede van 'n verhoging of vermindering van 'n lid se bydrae ingevolge subartikel (2) moet in 'n gewysigde stigtingsverklaring bedoel in artikel 15 (1) verstrekkend word.

(4) Geld of eiendom in subartikel (1) of (2) (a) bedoel, moet, ten einde eiendomsreg daarvan in die korporasie te vestig, aan die korporasie betaal, gelewer of oorgedra word, na gelang van die geval, binne 'n tydperk van 90 dae— 25

(a) na die datum van die registrasie van die korporasie, in die geval van 'n aanvanklike bydrae in subartikel (1) bedoel; of 30

(b) na die datum van die registrasie van 'n gewysigde stigtingsverklaring in verband met 'n bykomende bydrae in subartikel (2) (a) bedoel.

(5) 'n Onderneming deur 'n lid om 'n aanvanklike of 'n bykomende bydrae aan 'n korporasie te maak, is deur die korporasie in geregtelike verrigtinge afdwingbaar. 35

Posadres en geregistreerde kantoor.

25. (1) Elke korporasie moet in die Republiek 'n posadres en 'n kantoor hê waarheen, behoudens subartikel (2), alle mededelingen en kennisgewings aan die korporasie geadresseer kan word. 40

(2) Enige—

(a) kennisgewing, bevel, mededeling of ander dokument wat ingevolge hierdie Wet op 'n korporasie of 'n lid daarvan bestel moet of kan word, word geag bestel te wees indien dit afgelewer is by die geregistreerde kantoor, of per gesertifiseerde of aangetekende pos gestuur is na die geregistreerde kantoor of posadres, van die korporasie; en 45

(b) prosesstuk wat op 'n korporasie of 'n lid daarvan bestel moet word, word, behoudens toepaslike bepalinge ten opsigte van so 'n bestelling in enige wet, bestel deur dit aldus af te lewer of te stuur. 50

Deregistrasie.

26. (1) Indien die Registrateur redelike gronde het om te glo dat 'n korporasie nie besigheid dryf nie of nie in werking is nie, bestel hy aan die korporasie by sy posadres 'n brief per gesertifiseerde pos waarin die korporasie daarvan verwittig en in kennis gestel word dat indien hy nie binne 60 dae vanaf die datum van sy brief skriftelik in kennis gestel word dat die korporasie besigheid dryf of in werking is nie, die korporasie, tensy gegronde redes daarteen aangevoer word, gederegistreer sal word. 55 60

(2) Na verloop van die tydperk van 60 dae vermeld in 'n brief in subartikel (1) bedoel, of by ontvangs van die korporasie van 'n skriftelike verklaring onderteken deur of namens elke lid met die strekking dat die korporasie opgehou het om besigheid te dryf en geen bates of laste besit nie, kan die Registrateur, tensy gegronde redes daarteen deur die korporasie aangevoer is, die korporasie deregistreer. 65

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

24. (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.

Contributions by members.

(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).

25. (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).

35. (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. (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.

Postal address and registered office.

(2) Any—

45. (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 certified or registered post to the registered office or postal address, of the corporation; and

50. (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. (1) If the Registrar has reasonable cause to believe that a corporation is not carrying on business or is not in operation, he shall serve on the corporation at its postal address a letter by certified post in which the corporation is notified thereof and informed that if he is not within 60 days from the date of his 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.

Deregistration.

65. (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.

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(3) Waar 'n korporasie gederegistreer is, gee die Registrateur te dien effekte kennis in die *Staatskoerant*, en die datum van publikasie van daardie kennisgewing word geag die datum van deregistrasie te wees.

(4) Die deregistrasie van 'n korporasie raak nie enige aanspreeklikheid van 'n lid van die korporasie teenoor die korporasie of iemand anders nie, en sodanige aanspreeklikheid kan afdwing word asof die korporasie nie gederegistreer is nie.

(5) Indien 'n korporasie gederegistreer word terwyl hy uitstaande laste het, is die persone wat lede is van die korporasie ten tyde van deregistrasie, en alle ander voormalige lede, gesamentlik en afsonderlik aanspreeklik vir sodanige laste wat opge-loop is terwyl hulle lede van die korporasie was.

(6) Die Registrateur kan op aansoek van 'n belanghebbende persoon, indien hy oortuig is dat 'n korporasie ten tyde van sy deregistrasie besigheid gedryf het of in werking was, of dat dit andersins billik is dat die registrasie van die korporasie herstel word, bedoelde registrasie herstel.

(7) Die Registrateur moet van die herstel van die registrasie van 'n korporasie in die *Staatskoerant* kennis gee, en vanaf die datum van sodanige kennisgewing bestaan die korporasie voort en word hy geag vanaf die datum van deregistrasie voort te bestaan het asof hy nie gederegistreer is nie.

Omskepping van maatskappye in korporasies.

27. (1) 'n Maatskappy wat tien of minder lede het wat almal kwalifiseer vir lidmaatskap van 'n korporasie ingevolge artikel 29 van hierdie Wet, kan in 'n korporasie omgeskep word, mits elke lid van die maatskappy 'n lid van die korporasie word.

(2) Ten opsigte van 'n omskepping in subartikel (1) bedoel, moet daar by die Registrateur ingedien word—

(a) 'n aansoek om omskepping, in die voorgeskrewe vorm, onderteken deur al die lede van die maatskappy, wat 'n verklaring bevat dat by omskepping die bates van die korporasie, billik gewaardeer, sy laste sal oortref, en dat na omskepping die korporasie in staat sal wees om sy skulde soos hulle in die gewone loop van sy besigheid verskuldig raak, te betaal;

(b) 'n skriftelike verklaring deur die ouditeur van die maatskappy dat hy geen rede het om te glo dat 'n wesenlike onreëlmatigheid beoog in subartikel (3) van artikel 26 van die Wet op Openbare Rekenmeesters en Ouditers, 1951 (Wet No. 51 van 1951), ten opsigte van die maatskappy plaasgevind het of besig is om plaas te vind nie of, waar stappe ingevolge daardie subartikel gedoen is, dat daardie stappe en ander verrigtinge ingevolge daardie subartikel afgehandel is; en

(c) 'n stigtingsverklaring bedoel in artikel 12 ingedien ooreenkomstig artikel 13.

(3) Vir die doeleindes van die stigtingsverklaring bedoel in subartikel (2) (c)—

(a) moet daar, ten opsigte van die vereistes van artikel 12 (f), 'n verklaring van die totaal van die lede se bydraes wees, wat vir 'n bedrag moet wees wat nie groter is as die oorskot van die billike waarde van die bates wat deur die korporasie verkry staan te word oor die laste wat deur die korporasie opgeneem staan te word as gevolg van die omskepping nie: Met dien verstande dat die korporasie enige gedeelte van sodanige oorskot wat nie as lede se bydraes aangedui word nie, as bedrae wat onder sy lede verdeel kan word, kan behandel;

(b) hoef die ledebelange wat ingevolge artikel 12 (e) verklaar is nie noodwendig in verhouding te wees tot die aantal aandele in die maatskappy wat deur die onderskeie lede gehou was ten tyde van die omskepping nie.

(4) Indien aan die vereistes van subartikel (2) voldoen is, moet die Registrateur, tensy hy rede het om te glo dat die betrokke maatskappy versuim het om aan 'n vereiste van die Maatskappywet te voldoen—

(a) die stigtingsverklaring ooreenkomstig die bepaling van artikel 13 registreer;

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(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.

5 (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.

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

15 (6) The Registrar may on application by any interested person, if he 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.

20 (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 the corporation shall continue to exist and be deemed to have continued in existence as from the date of deregistration as if it were not deregistered.

25 27. (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.

Conversion of companies into corporations.

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

35 (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;

40 (b) a statement in writing by the auditor of the company that he 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 No. 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

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

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

55 (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;

60 (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.

65 (4) If the provisions of subsection (2) have been complied with, the Registrar shall, unless he has reason to believe that the company concerned has failed to comply with any requirement of the Companies Act—

(a) register the founding statement in accordance with the provisions of section 13.

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- (b) homself tevrede stel dat, gelyktydig met sodanige registrasie, die registrasie van die akte van oprigting en die statute van die betrokke maatskappy ooreenkomstig die Maatskappywet gekanselleer word;
- (c) op die stigtingsverklaring 'n sertifikaat van inlywing soos bedoel in artikel 14 (1) endosseer: Met dien verstande dat sodanige sertifikaat die feit dat die korporasie van 'n maatskappy omgeskep is en die naam van die voormalige maatskappy moet vermeld; en
- (d) kennis van die omskepping in die *Staatskoerant* gee. 10
- (5) (a) By die registrasie van 'n korporasie wat van 'n maatskappy omgeskep is, gaan alle bates, regte, laste en verpligtinge van die maatskappy oor op die korporasie.
- (b) 'n Regsgeding wat voor die registrasie deur of teen die maatskappy ingestel is, kan deur of teen die korporasie voortgesit word, en enigiets anders wat deur of ten opsigte van die maatskappy gedoen is, word geag deur of ten opsigte van die korporasie gedoen te wees.
- (c) Die omskepping van 'n maatskappy in 'n korporasie raak in besonder nie— 20
- (i) enige aanspreeklikheid van 'n direkteur of beampte van die maatskappy teenoor die maatskappy as gevolg van vertrouenskending of nalatigheid, of teenoor enigiemand anders uit hoofde van 'n bepaling van die Maatskappywet nie; of 25
- (ii) enige aanspreeklikheid van die maatskappy, of van enigiemand anders, as borg nie.
- (6) 'n Korporasie moet onverwyld na sy omskepping van 'n maatskappy, aan alle skuldeisers van die maatskappy ten tyde van die omskepping, en aan alle ander partye by kontrakte of geregte verrigtinge waarby die maatskappy ten tyde van die omskepping betrokke was, skriftelik van die omskepping kennis gee.
- (7) By voorlegging deur 'n korporasie wat van 'n maatskappy omgeskep is van 'n gesertifiseerde afskrif van sy stigtingsverklaring in subartikel (4) (a) bedoel, aan 'n registrateur of ander beampte belas met die instandhouding van 'n register kragtens 'n wet, en by nakoming van alle vereistes uit hoofde van so 'n wet aangaande die vorm van aansoek (as daar is) en die betaling van enige vereiste geld, bring sodanige registrateur of beampte in sy register al die wysigings aan wat nodig is as gevolg van die omskepping van die maatskappy in 'n korporasie: Met dien verstande dat geen here- of seëlregte betaalbaar is ten opsigte van sodanige wysigings in registers nie.
- (8) Indien die rekeningkundige beampte in die stigtingsverklaring van 'n omgeskepte korporasie vermeld nie dieselfde persoon of firma is wat as ouditeur van die maatskappy opgetree het nie, verval die aanstelling van daardie persoon of firma by die omskepping in 'n korporasie.
- (9) Indien 'n korporasie ooreenkomstig die bepalings van die Maatskappywet in 'n maatskappy omgeskep word, moet die registrasie van die stigtingsverklaring van die korporasie gelyktydig met die registrasie van die akte van oprigting en statute van die maatskappy ingevolge daardie Wet gekanselleer word.

DEEL IV

55

LIDMAATSKAP

Ledetal.

28. 'n Korporasie kan by sy inlywing een of meer lede hê, maar op geen tydstop mag die ledetal tien oorskry nie.

Vereistes vir lidmaatskap.

29. (1) Behoudens die bepalings van subartikel (2) (b) en (c) kan slegs natuurlike persone lede van 'n korporasie wees en mag geen regspersoon regstreeks of onregstreeks (hetsy deur bemiddeling van 'n genomineerde of andersins) 'n ledebelang in 'n korporasie hou nie.

(2) Die volgende persone kwalifiseer vir lidmaatskap van 'n korporasie:

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- (b) satisfy himself 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 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 of the former company; and
- (d) give notice in the *Gazette* of the conversion.
- (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.
- (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 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.
- (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

28. A corporation may at its incorporation have one or more members, but at no time shall the number of members exceed ten. Number of members.
29. (1) Subject to the provisions of subsection (2) (b) and (c), only natural persons may be members of a corporation and no juristic person shall directly or indirectly (whether through the instrumentality of a nominee or otherwise) hold a member's interest in a corporation. Requirements for membership.
- (2) The following persons shall qualify for membership of a corporation:

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- (a) 'n Natuurlike persoon wat geregtig is op 'n ledebelang;
- (b) 'n natuurlike persoon of 'n regspersoon, *nomine officii*, wat 'n trustee is van 'n testamentêre trust wat geregtig is op 'n ledebelang, mits—
- (i) geen regspersoon 'n bevoordeelde van sodanige trust is nie; en
 - (ii) indien die trustee 'n regspersoon is, sodanige regspersoon nie regstreeks of onregstreeks beheer word deur 'n bevoordeelde van die trust nie; en
- (c) 'n natuurlike persoon of 'n regspersoon, *nomine officii*, wat, in die geval van 'n lid wat insolvent, oorlede, geestesongesteld of andersins onbekwaam of onbevoeg is om sy sake te behartig, 'n kurator van sy insolvente boedel of 'n administrateur, eksekuteur of ander kurator ten opsigte van so 'n lid is of iemand is wat andersins sy behoorlik aangestelde of gemagtigde regsverteenvoordiger is.
- (3) (a) Die lidmaatskap van 'n persoon wat daarvoor kwalifiseer ingevolge subartikel (2) neem 'n aanvang op die datum van die registrasie van 'n stigtingsverklaring van die korporasie wat die besonderhede wat deur artikel 12 vereis word betreffende so 'n persoon en sy ledebelang bevat.
- (b) Waar iemand 'n lid staan te word van 'n geregistreerde korporasie moet die bestaande lid of lede van die korporasie toesien dat voldoen word aan die vereistes van artikel 15 (1) betreffende die indiening van 'n gewysigde stigtingsverklaring by die Registrateur.
- (c) 'n Kurator van 'n insolvente boedel, administrateur, eksekuteur of ander kurator, of ander regsverteenvoordiger, bedoel in subartikel (2) (c), ten opsigte van 'n lid van 'n korporasie, wat nie verplig is of wat nie beoog om die belang van die lid in die korporasie ooreenkomstig die bepalinge van hierdie Wet binne 28 dae na ampsaanvaarding deur hom aan iemand anders oor te dra nie, moet binne daardie tydperk of enige verlengde tydperk wat die Registrateur op sy aansoek toestaan, die bestaande lid of lede van die korporasie versoek om ooreenkomstig artikel 15 (1) 'n gewysigde stigtingsverklaring wat hom, *nomine officii*, as verteenwoordiger van die betrokke lid aanwys, by die Registrateur in te dien.
- (d) Waar die korporasie geen ander lid het nie, moet so 'n verteenwoordiger self, onder die omstandighede in paragraaf (c) beoog, namens die korporasie ooreenkomstig die bepalinge van artikel 15 (1), gelees met genoemde paragraaf (c), optree.
- (e) Die bepalinge van paragrafe (c) en (d) raak nie die bevoegdheid van so 'n verteenwoordiger om, vanaf sy ampsaanvaarding, en hetsy so 'n gewysigde stigtingsverklaring ingedien is al dan nie, die betrokke lid in alle aangeleenthede waarin hyself as lid sou kon optree, te verteenwoordig nie, totdat die belang van daardie lid in die korporasie ooreenkomstig die bepalinge van hierdie Wet aan 'n ander bevoegde persoon oorge- dra is.
- (4) 'n Korporasie is nie betrokke by die uitvoering van 'n trust in verband met 'n ledebelang in die korporasie nie.

Aard van ledebelang.

30. (1) Die belang van 'n lid in 'n korporasie is 'n enkele belang wat as 'n persentasie uitgedruk word.

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(2) Twee of meer persone mag nie gesamentlike houe van dieselfde ledebelang in 'n korporasie wees nie.

Sertifikaat van ledebelang.

31. Aan elke lid van 'n korporasie word 'n sertifikaat, onderteken deur of namens elke lid van daardie korporasie, en wat die heersende persentasie van sodanige lid se belang in die korporasie vermeld, uitgereik.

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Verteenwoordiging van lede.

32. (1) 'n Minderjarige wat 'n lid van 'n korporasie is, behalwe 'n minderjarige wie se voog 'n skriftelike toestemming in artikel

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- (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—
 5 (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
 10 case of a member who is insolvent, deceased, mentally disordered or otherwise incapable or incompetent to manage his affairs, is a trustee of his insolvent estate or an administrator, executor or curator in respect of such member or is otherwise a person who is his duly
 15 appointed or authorized legal representative.
- (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
 20 in regard to such person and his member's interest.
 (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
 25 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 assuming office to any other person, shall within that period, or any extended
 30 period allowed by the Registrar on application by him, 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, *nomine officii*, as representative of the
 35 member of the corporation in question.
 (d) Where the corporation has no other member, any such representative himself shall, in the circumstances contemplated in paragraph (c), act on behalf of the corporation in accordance with the provisions of section 15
 40 (1), read with the said paragraph (c).
 (e) The provisions of paragraphs (c) and (d) shall not affect the power of such representative, as from the date of his 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
 45 himself 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.
- 50 (4) A corporation is not concerned with the execution of any trust in respect of any member's interest in the corporation.

30. (1) The interest of any member in a corporation shall be a single interest expressed as a percentage.

Nature of member's interest.

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

31. 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.

Certificate of member's interest.

65 32. (1) A minor who is a member of a corporation, other than a minor whose guardian has lodged a written consent referred to

Representation of members.

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47 (1) (a) (ii) bedoel, ingedien het, word deur sy voog in die korporasie verteenwoordig.

(2) 'n Getroude vrou, ongeag of sy onderworpe is aan die maritale mag van haar eggenoot of nie, het geen verteenwoordiging of bystand nodig om as 'n lid van 'n korporasie op te tree nie. 5

(3) 'n Lid onderworpe aan enige ander handelingsonbevoegdheid word in die korporasie verteenwoordig deur sy behoorlik aangestelde of gemagtigde regsverteenvoerder bedoel in paragraaf (c) van subartikel (2) van artikel 29. 10

Verkryging van ledebelang deur nuwe lid.

33. (1) Iemand wat 'n lid van 'n geregistreerde korporasie word, verkry sy ledebelang vereis vir lidmaatskap—

- (a) van een of meer van die bestaande lede of sy of hulle bestorwe of insolvente boedels; of
- (b) uit hoofde van 'n bydrae tot die korporasie deur so iemand gemaak, in welke geval die persentasie van sy ledebelang bepaal word deur ooreenkoms tussen hom en die bestaande lede, en die persentasies van die bestaande lede se belange in die korporasie ooreenkomstig die bepalinge van artikel 38 (b) verminder word. 15 20

(2) Die bydrae in subartikel (1) (b) bedoel, kan bestaan uit 'n bedrag geld of uit eiendom (liggaamlik of onliggaamlik) van 'n waarde waaroor die betrokke persoon en die bestaande lede ooreengekom het. 25

Beskikking oor belang van insolvente lid.

34. (1) Ondanks 'n andersluidende bepaling in 'n samewerkingsooreenkoms of ander ooreenkoms tussen lede, kan 'n kurator van die insolvente boedel van 'n lid van 'n korporasie, by die uitvoering van sy pligte, daardie lid se belang verkoop—

- (a) aan die korporasie, as daar een of meer ander lede as die insolvente lid is; 30
- (b) aan die ander lede van die korporasie behalwe die insolvente lid, in verhouding tot hul ledebelange of soos hulle andersins ooreenkom; of
- (c) behoudens die bepalinge van subartikel (2), aan enige ander persoon wat vir lidmaatskap van 'n korporasie ingevolge artikel 29 kwalifiseer. 35

(2) Indien die betrokke korporasie een of meer lede behalwe die insolvente lid het, is die volgende bepalinge op 'n verkoping ingevolge subartikel (1) (c) van die insolvente lid se belang van toepassing: 40

- (a) Die kurator moet aan die korporasie 'n skriftelike verklaring lewer waarin besonderhede verstrekkend word van die naam en adres van die voornemende koper, die koopprijs en die tyd en wyse van betaling daarvan; 45
- (b) vir 'n tydperk van 28 dae na ontvangs deur die korporasie van die skriftelike verklaring het die korporasie of die lede, in sodanige verhoudings as waarop hulle ooreenkom, die reg, uitoefenbaar deur skriftelike kennisgewing aan die kurator, om as kopers van die geheel, en nie van slegs 'n gedeelte nie, van die insolvente lid se belang vervang te word teen die prys en op die voorwaardes uiteengesit in die kurator se skriftelike verklaring; en 50
- (c) indien die insolvente lid se belang nie ingevolge paragraaf (b) gekoop word nie, word die koop in die kurator se skriftelike verklaring vermeld, van krag en uitvoer. 55

Beskikking oor belang van oorlede lid.

35. Behoudens enige ander reëling in 'n samewerkingsooreenkoms, moet 'n eksekuteur van die boedel van 'n lid van 'n korporasie wat oorlede is, in die uitvoering van sy pligte—

- (a) die oorlede lid se belang in die korporasie laat oordra aan 'n persoon wat vir lidmaatskap van 'n korporasie ingevolge artikel 29 kwalifiseer en daarop geregtig is as legataris of erfgenaam of kragtens 'n herdistribusie-ooreenkoms, indien die oorblywende lid of lede van die korporasie (as daar is) toestem tot die oordrag van die lid se belang aan sodanige persoon; of 65

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in section 47 (1) (a) (ii), shall be represented in the corporation by his guardian.

(2) A married woman, whether subject to the marital power of her husband or not, shall require no representation or assistance to act as a member of a corporation.

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

10 33. (1) A person becoming a member of a registered corporation shall acquire his member's interest required for membership—

Acquisition of member's interest by new member.

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

(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. (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 duties, sell that member's interest—

Disposal of interest of insolvent member.

- 30 (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 members' interests or as they may otherwise agree upon; or
- 35 (c) subject to the provisions of subsection (2), to any other person who qualifies for membership of a corporation in terms of section 29.

(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;
- 45 (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
- 50 (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
- 55 be implemented.

35. 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 duties—

Disposal of interest of deceased member.

- (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
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- (b) indien 'n toestemming in die voorbehoudsbepaling by paragraaf (a) bedoel nie binne 28 dae nadat dit deur die eksekuteur aangevra is, verleen word nie, die oorlede lid se belang verkoop—
- (i) aan die korporasie, as daar een of meer ander lede 5
as die oorlede lid is;
 - (ii) aan 'n ander oorblywende lid of lede van die korporasie in verhouding tot daardie lede se belange in die korporasie of soos hulle andersins ooreenkom; of 10
 - (iii) aan 'n ander persoon wat vir lidmaatskap van 'n korporasie ingevolge artikel 29 kwalifiseer, in welke geval die bepalings van subartikel (2) van artikel 34 *mutatis mutandis* ten opsigte van sodanige verkoping van toepassing is. 15

Beëindiging van
lidmaatskap deur
Hofbevel.

36. (1) Op aansoek van 'n lid van 'n korporasie kan 'n Hof op een of meer van die volgende gronde beveel dat enige lid ophou om 'n lid van die korporasie te wees:

- (a) Behoudens die bepalings van die samewerkingsooreenkoms (as daar is), dat die lid blywend onbekwaam is, as 20
gevolg van kranksinnigheid of om 'n ander rede, om sy deel by te dra tot die dryf van die besigheid van die korporasie;
- (b) dat die lid hom skuldig gemaak het aan optrede wat, met inagneming van die aard van die besigheid van die 25
korporasie, waarskynlik 'n nadelige uitwerking op die dryf van die besigheid sal hê;
- (c) dat die lid homself op so 'n wyse met betrekking tot die besigheid van die korporasie gedra dat dit nie vir die 30
ander lid of lede redelikerwys moontlik is om die besigheid van die korporasie saam met hom te dryf nie; of
- (d) dat omstandighede ontstaan het wat dit reg en billik maak dat sodanige lid behoort op te hou om 'n lid van die korporasie te wees:

Met dien verstande dat so 'n aansoek by 'n Hof op 'n grond in 35
paragraaf (a) of (d) genoem, ook gemaak kan word deur 'n lid met betrekking tot wie die bevel van toepassing sal wees.

(2) 'n Hof wat 'n bevel ingevolge subartikel (1) maak, kan die verdere bevel wat hy goeddink, maak in verband met—

- (a) die verkryging van die betrokke ledebelang deur die 40
korporasie of deur ander lede as die betrokke lid;
- (b) die bedrae (as daar is) wat betaal moet word ten opsigte van die betrokke ledebelang of die eise teen die korporasie van daardie lid, die wyse en tye van sodanige betalings en die persone aan wie dit gemaak moet 45
word; of
- (c) enige ander aangeleentheid betreffende die beëindiging van lidmaatskap wat die Hof goeddink.

Ander beskikkings
oor ledebelange.

37. Elke beskikking deur 'n lid van 'n korporasie oor sy belang, of 'n deel daarvan, in die korporasie, uitgesonderd 'n be- 50
skikking waarvoor artikel 34, 35 of 36 voorsiening maak, hetsy aan die korporasie, 'n ander lid of iemand anders wat vir lidmaatskap ingevolge artikel 29 kwalifiseer, word gedoen—

- (a) ooreenkomstig die samewerkingsooreenkoms (as daar 55
is); of
- (b) met die instemming van elke ander lid van die korporasie:

Met dien verstande dat geen ledebelang deur die korporasie verkry word tensy hy een of meer ander lede het nie.

Handhawing van
totaal van lede-
belange.

38. Die totaal van die ledebelange in 'n korporasie uitgedruk 60
as 'n persentasie moet te alle tye eenhonderd persent wees, en vir daardie doel—

- (a) word 'n oordrag van die geheel, of 'n deel, van 'n ledebelang teweeggebring deur die kansellering of vermindering, na gelang van die geval, van die belang van 65
die betrokke lid en die toekenning in die naam van die oordragontvanger, indien nie alreeds 'n lid nie, van 'n

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- (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.

36. (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:

Cessation of membership by order of Court.

- (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 part in the carrying on of the business of the corporation;
- (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 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
- (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. Every disposition by a member of a corporation of his 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—

Other dispositions of members' interests.

- (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.

38. 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—

Maintenance of aggregate of members' interests.

- (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 in-

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ledebelang vir die betrokke persentasie, of die byvoeging by die belang van 'n bestaande lid van die betrokke persentasie;

- (b) wanneer 'n persoon 'n lid van 'n geregistreerde korporasie word kragtens 'n bydrae deur hom tot die korporasie gemaak, word oor die persentasie van sy ledebelang deur hom en die bestaande lede ooreengekom, en word die persentasies van die belange van die bestaande lede proporsioneel verminder of soos hulle andersins mag ooreenkom; en 10
- (c) word 'n ledebelang wat deur die korporasie verkry is by die onderskeie belange van die ander lede gevoeg in verhouding tot hulle bestaande belange of soos hulle andersins ooreenkom. 10

Betaling deur korporasie vir ledebelange verkry.

39. (1) 'n Betaling deur 'n korporasie ten opsigte van sy verkryging van 'n ledebelang in die korporasie word slegs gedoen— 15

- (a) met die vooraf verkreeë skriftelike instemming van elke lid van die korporasie, behalwe die lid wie se belang verkry is, vir die besondere betaling;
- (b) indien, na sodanige betaling gedoen is, die korporasie se bates, billik gewaardeer, al sy laste oorskry; 20
- (c) indien die korporasie in staat is om sy skulde te betaal soos hulle in die gewone loop van sy besigheid verskuldig raak; en
- (d) indien sodanige betaling in die besondere omstandighede in werklikheid nie sal veroorsaak dat die korporasie nie in staat is om sy skulde te betaal soos hulle in die gewone loop van sy besigheid verskuldig raak nie. 25

(2) By die toepassing van subartikel (1) beteken "betaling" ook die lewering of oordrag van eiendom. 30

Geldelike bystand deur korporasie ten opsigte van verkryging van ledebelange.

40. 'n Korporasie mag geldelike bystand (hetsy regstreeks of onregstreeks of by wyse van 'n lening, waarborg, die stelling van sekerheid of andersins) vir die doeleindes van, of in verband met, enige verkryging van 'n ledebelang in daardie korporasie deur enige persoon, slegs verleen— 35

- (a) met die vooraf verkreeë skriftelike instemming van elke lid van die korporasie vir die besondere bystand;
- (b) indien, na sodanige bystand verleen is, die korporasie se bates, billik gewaardeer, al sy laste oorskry;
- (c) indien die korporasie in staat is om sy skulde te betaal soos hulle in die gewone loop van sy besigheid verskuldig raak; en 40
- (d) indien sodanige bystand in die besondere omstandighede in werklikheid nie sal veroorsaak dat die korporasie nie in staat is om sy skulde te betaal soos wat hulle in die gewone loop van sy besigheid verskuldig raak nie. 45

Publikasie van name van lede.

41. (1) 'n Korporasie stuur nie 'n besigheidsbrief met 'n geregistreerde naam van die korporasie daarop aan iemand nie, tensy elke lid se voorname (of die voorletters daarvan) en van daarop aangegee word nie. 50

(2) 'n Korporasie wat 'n bepaling van subartikel (1) oortree, is aan 'n misdryf skuldig.

DEEL V

INTERNE VERHOUDINGS

55

Vertrouensposisie van lede.

42. (1) Elke lid van 'n korporasie staan in 'n vertrouensverhouding tot die korporasie.

(2) Sonder om afbreuk te doen aan die algemeenheid van die uitdrukking "vertrouensverhouding", impliseer die bepalings van subartikel (1) dat 'n lid— 60

- (a) met betrekking tot die korporasie eerlik en te goeder trou moet optree, en in die besonder—

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terest of the percentage concerned, or the addition to the interest of an existing member of the percentage concerned;

5 (b) when a person becomes a member of a registered corporation pursuant to a contribution made by him to the corporation, the percentage of his member's interest shall be agreed upon by him 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

10 (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.

15 39. (1) Payment by a corporation in respect of its acquisition of a member's interest in the corporation shall be made only— Payment by corporation for members' interests acquired.

(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;

20 (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

25 (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.

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

35 (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

40 (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.

45 41. (1) A corporation shall not send to any person any business letter bearing a registered name of the corporation, unless the forenames (or the initials thereof) and surname of every member thereof is stated thereon. Publication of names of members.

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

50

PART V

INTERNAL RELATIONS

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

55 (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—

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- (i) die bevoegdheidde waaroor hy beskik om die korporasie te bestuur of te verteenwoordig, in die belang en tot voordeel van die korporasie moet uitoefen; en
- (ii) nie sonder die voormelde bevoegdheidde moet optree of dit moet oorskry nie; en
- (b) 'n wesenlike botsing tussen sy eie belange en dié van die korporasie moet vermy, en in die besonder—
 - (i) nie persoonlike ekonomiese voordeel waarop hy nie uit hoofde van sy lidmaatskap van of dienste aan die korporasie geregtig is nie, van die korporasie of iemand anders moet verkry nie onder omstandighede waar daardie voordeel strydig met die belange van die korporasie verkry word;
 - (ii) elke ander lid, by die onder die omstandighede vroegste moontlike geleentheid, van die aard en omvang van enige regstreekse of onregstreekse wesenlike belang wat hy in enige kontrak van die korporasie het, in kennis moet stel; en
 - (iii) op geen wyse met die korporasie in sy besigheids-aktiwiteite mag meeding nie.
- (3) (a) 'n Lid van 'n korporasie wie se handeling of versuim 'n verpligting voortvloeiend uit sy vertrouensverhouding verbreek het, is teenoor die korporasie aanspreeklik vir—
 - (i) enige verlies deur die korporasie as gevolg daarvan gely; of
 - (ii) enige ekonomiese voordeel deur die lid as gevolg daarvan verkry.
- (b) Waar 'n lid versuim om aan die bepalings van subparagraaf (ii) van paragraaf (b) van subartikel (2) te voldoen en dit aan die korporasie bekend word dat die lid 'n belang in daardie subparagraaf bedoel in 'n kontrak van die korporasie het, is die betrokke kontrak, na die korporasie se keuse, vernietigbaar: Met dien verstande dat waar die korporasie verkies om nie gebonde te wees nie 'n Hof op aansoek van 'n belanghebbende persoon, indien die Hof van oordeel is dat dit onder die omstandighede billik is om te beveel dat sodanige kontrak desondanks op die partye bindend is, 'n bevel te dien effekte kan gee, en enige verdere bevel ten opsigte daarvan kan gee wat hy goeddink.
- (4) Behalwe met betrekking tot sy verpligting in subartikel (2) (a) (i) bedoel, maak 'n bepaalde optrede van 'n lid nie 'n pligversuim wat uit sy vertrouensverhouding teenoor die korporasie voortspruit, uit nie, indien sodanige optrede voorafgegaan of gevolg is deur die skriftelike goedkeuring van al die lede waar sodanige lede bewus was of is van al die wesenlike feite.

Aanspreeklikheid van lede weens nalatigheid.

43. (1) 'n Lid van 'n korporasie is teenoor die korporasie aanspreeklik vir enige verlies wat veroorsaak word deur sy versuim by die dryf van die besigheid van die korporasie om met die mate van sorgsaamheid en vaardigheid te handel wat redelikerwys van 'n persoon met sy kennis en ondervinding verwag kan word.

(2) Aanspreeklikheid in subartikel (1) bedoel, word nie opgedoen nie indien die betrokke optrede voorafgegaan of gevolg is deur die skriftelike goedkeuring van al die lede waar sodanige lede bewus was of is van al die wesenlike feite.

Samewerkingsooreenkomste.

44. (1) Die lede van 'n korporasie wat twee of meer lede het, kan te eniger tyd 'n skriftelike samewerkingsooreenkoms aangaan, onderteken deur of namens elke lid, wat—

- (a) enige aangeleentheid wat ingevolge hierdie Wet in 'n samewerkingsooreenkoms uiteengesit of oor ooreengekomen kan word; en
- (b) enige ander aangeleentheid in verband met die interne verhouding tussen die lede, of die lede en die korporasie, op 'n wyse wat nie met die bepalings van hierdie Wet onbestaanbaar is nie,

reël.

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- (i) shall exercise such powers as he may have to manage or represent the corporation in the interest and for the benefit of the corporation; and
- (ii) shall not act without or exceed the powers aforesaid; and
- 5 (b) shall avoid any material conflict between his own interests and those of the corporation, and in particular—
- (i) shall not derive any personal economic benefit to which he is not entitled by reason of his 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;
- 10 (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 may have in any contract of the corporation; and
- 15 (iii) shall not compete in any way with the corporation in its business activities.
- 20 (3) (a) A member of a corporation whose act or omission has breached any duty arising from his fiduciary relationship shall be liable to the corporation for—
- (i) any loss suffered as a result thereof by the corporation; or
- 25 (ii) any economic benefit derived by the member by reason thereof.
- (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.
- 30 (4) Except as regards his 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 fiduciary relationship to the corporation, if such conduct was preceded or followed by the
- 35 written approval of all the members where such members were or are cognisant of all the material facts.
- 40
- 45

43. (1) A member of a corporation shall be liable to the corporation for loss caused by his 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 knowledge and experience.

Liability of members for negligence.

50 (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

55 cognisant of all the material facts.

44. (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—

Association agreements.

- 60 (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.

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(2) 'n Korporasie moet 'n samewerkingsooreenkoms by die geregistreerde kantoor van die korporasie hou waar enige lid dit mag inspekteer en uittreksels daaruit of afskrifte daarvan mag maak.

(3) Ongeag of 'n samewerkingsooreenkoms bestaan, is 'n ander ooreenkoms, uitdruklik of stilswyend, tussen al die lede van 'n korporasie oor 'n aangeleentheid wat deur 'n samewerkingsooreenkoms gereël kan word, geldig, mits sodanige uitdruklike of stilswyende ooreenkoms—

(a) nie onbestaanbaar is nie met 'n bepaling van 'n same- 10 werkingsooreenkoms;

(b) geen ander persoon as die korporasie of 'n lid wat 'n party daarby is, raak nie; en

(c) ophou om van krag te wees wanneer 'n party daarby ophou om 'n lid van die korporasie te wees. 15

(4) Behoudens die bepalings van hierdie Wet bind 'n samewerkingsooreenkoms of 'n ooreenkoms in subartikel (3) bedoel 'n korporasie tot elke lid in sy hoedanigheid van lid van daardie korporasie en, in sodanige hoedanigheid, elke lid tot die korporasie en tot elke ander lid. 20

(5) 'n Nuwe lid van 'n korporasie word deur 'n bestaande samewerkingsooreenkoms tussen die ander lede gebind asof hy dit as 'n party daarby onderteken het.

(6) 'n Wysiging, of die ontbinding, van 'n samewerkingsooreenkoms moet skriftelik en deur of namens elke lid, met inbe- 25 grip van 'n nuwe lid in subartikel (5) bedoel, onderteken word.

Geen toegang tot of toegerekende kennis van samewerkingsooreenkoms.

45. Geen persoon wat nie 'n lid van 'n korporasie is nie is, behalwe uit hoofde van 'n bepaling van hierdie Wet, geregtig om 'n samewerkingsooreenkoms ten opsigte van daardie korporasie in te sien nie, en geen persoon wat met die korporasie sake doen, 30 word geag kennis te dra van enige besonderheid daarvan bloot omdat dit daarin vermeld of na verwys word nie, hetsy die ooreenkoms ooreenkomstig artikel 44 (2) by die geregistreerde kantoor van die korporasie gehou word al dan nie.

Veranderbare reëls betreffende interne verhoudings.

46. Die volgende reëls is ten opsigte van interne verhoudings in 35 'n korporasie van toepassing vir sover hierdie Wet of 'n samewerkingsooreenkoms ten opsigte van die korporasie nie anders bepaal nie:

(a) Elke lid is geregtig om deel te neem aan die dryf van die besigheid van die korporasie; 40

(b) behoudens die bepalings van artikel 47 het lede gelyke regte met betrekking tot die bestuur van die besigheid van die korporasie en met betrekking tot die bevoegdheid om die korporasie te verteenwoordig by die dryf van sy besigheid: Met dien verstande dat die skriftelike 45 toestemming van 75 persent van die lede vereis word vir—

(i) 'n verandering van die vernaamste besigheid wat deur die korporasie gedryf word;

(ii) 'n beskikking oor die hele, of wesenlik die hele, onderneming van die korporasie; 50

(iii) 'n beskikking oor al, of die grootste gedeelte van, die bates van die korporasie; en

(iv) enige verkryging of vervreemding van onroerende eiendom deur die korporasie;

(c) verskille tussen lede oor aangeleenthede in verband 55 met 'n korporasie se besigheid word deur 'n meerderheid van stemme op 'n vergadering van lede van die korporasie beslis;

(d) op 'n vergadering van lede van 'n korporasie het elke lid die aantal stemme wat ooreenstem met die persen- 60 tasie van sy belang in die korporasie;

(e) 'n korporasie vergoed elke lid ten opsigte van uitgawes deur hom aangegaan of aangegaan te word—

(i) by die gewone en behoorlike dryf van die besig- 65 heid van die korporasie; en

(ii) met betrekking tot enigiets wat gedoen is of gedoen staan te word vir die bewaring van die besigheid of eiendom van die korporasie; en

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(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 capacity as a member of that corporation and, in such capacity, every member to the corporation and to every other member.

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

(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 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.

No access to or constructive notice of association agreements.

46. 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:

Variable rules regarding internal relations.

- (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 75 per cent of the members 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;
- (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 interest in the corporation;
- (e) a corporation shall indemnify every member in respect of expenditure incurred or to be incurred by him—
 - (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

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- (f) betalings deur 'n korporasie aan sy lede slegs uit hoofde van hulle lidmaatskap ingevolge artikel 51 (1) moet vir die bedrae wees en geskied op die tye waarvoor die lede van tyd tot tyd ooreenkom, en sodanige betalings word aan die lede gedoen in verhouding tot hulle onderskeie belange in die korporasie. 5

Onbevoegde lede
betreffende bestuur
van besigheid van
korporasie.

47. (1) Ondanks 'n andersluidende bepaling van hierdie Wet of van 'n samewerkingsooreenkoms of 'n ander ooreenkoms tussen lede, is die volgende persone, as hulle lede is, onbevoeg om deel te neem aan die bestuur van die besigheid van 'n korporasie: 10

- (a) Iemand wat handelingsonbevoeg is, behalwe—
(i) 'n getroude vrou, ongeag of sy aan haar eggenoot se maritale mag onderworpe is al dan nie; en
(ii) 'n minderjarige wat minstens die ouderdom van 18 jaar bereik het en wie se voog skriftelike toestemming tot die minderjarige se deelname aan die bestuur van die besigheid van die korporasie by die korporasie ingedien het;
(b) behalwe met magtiging van 'n Hof— 20
(i) 'n ongerehabiliteerde insolvent;
(ii) iemand wat uit 'n vertrouensposisie ontslaan is weens wangedrag;
(iii) iemand wat te eniger tyd skuldig bevind is aan diefstal, bedrog, vervalsing of uitgifte van 'n vervalste dokument, meened, 'n misdryf kragtens die Wet op die Voorkoming van Korrupsie, 1958 (Wet No. 6 van 1958), of 'n misdryf waarby oneerlikheid betrokke is of in verband met die oprigting of bestuur van 'n maatskappy of 'n korporasie, en daarvoor veroordeel is tot gevangenisstraf van minstens ses maande sonder die keuse van 'n boete; en
(c) iemand wat onderworpe is aan 'n hofbevel kragtens die Maatskappywet wat hom onbevoeg maak om 'n direkteur van 'n maatskappy te wees. 35

(2) Iemand wat kragtens die bepalings van subartikel (1) (b) of (c) onbevoeg is, en wat regstreeks of onregstreeks deelneem aan of betrokke is by die bestuur van die besigheid van 'n korporasie, is aan 'n misdryf skuldig.

Vergaderings van
lede.

48. (1) 'n Lid van 'n korporasie kan by kennisgewing aan elke ander lid en elke ander persoon wat geregtig is om 'n vergadering van lede by te woon, 'n vergadering van lede belê vir 'n doel wat in die kennisgewing bekend gemaak word. 40

(2) Tensy 'n samewerkingsooreenkoms anders bepaal—

- (a) moet 'n kennisgewing in subartikel (1) bedoel, wat betref die datum, tyd en plek van die vergadering, 'n redelike datum en tyd, en 'n plek wat redelikerwys geskik is vir alle persone wat geregtig is om die bepaalde vergadering by te woon, vasstel; en
(b) maak drie-kwart van die lede wat persoonlik op die vergadering teenwoordig is, 'n kworum uit.
(3) (a) 'n Korporasie moet 'n verslag van die verrigtinge op 'n vergadering van sy lede binne 14 dae na die datum waarop die vergadering gehou is in 'n notuleboek aanteken wat by die geregistreerde kantoor van die korporasie gehou moet word. 55
(b) 'n Skriftelike besluit deur al die lede onderteken en in die notuleboek ingeskryf, is so geldig en effektief asof dit op 'n vergadering van lede wat behoorlik belê en gehou is, geneem is. 60

Onredelik benadelende optrede.

49. (1) 'n Lid van 'n korporasie wat beweer dat 'n besondere handeling of versuim van die korporasie of van een of meer ander lede onredelik benadelend, onregverdig of onbillik teenoor hom, of teenoor sommige lede wat hom insluit, is, of dat die sake van die korporasie gedryf word op 'n wyse wat teenoor 65

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- (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. (1) Notwithstanding any other provision of this Act or in any association agreement or any other agreement between members to the contrary, the following persons shall, if they are 10 members, be disqualified from taking part in the management of the business of a corporation:

Disqualified members regarding management of business of corporation.

- (a) Any person under legal disability, except—
- (i) a married woman, whether subject to the marital power of her husband or not; and
 - (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 No. 6 of 1958), 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 from being a director of a company.
- (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 the business of any corporation, shall be guilty of an offence.

48. (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.

Meetings of members.

- (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; and
 - (b) three-fourths of the members present in person at the meeting, shall constitute a quorum.
- (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. (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 to some members including him, or that the affairs of the corporation are being conducted in a manner unfairly prejudicial

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hom, of teenoor sommige lede wat hom insluit, onredelik benadelend, onregverdig of onbillik is, kan by 'n Hof aansoek doen om 'n bevel kragtens hierdie artikel.

(2) Indien dit vir die Hof by so 'n aansoek blyk dat die besondere handeling of versuim onredelik benadelend, onregverdig of onbillik is soos in subartikel (1) beoog, of dat die korporasie se sake gedryf word soos aldus beoog, en indien die Hof dit reg en billik ag, kan die Hof ten einde die geskil te besleg die bevel gee wat hy goedvind, hetsy ter reëling van die toekomstige dryf van die sake van die korporasie of vir die aankoop van die belang van enige lid van die korporasie deur ander lede daarvan of deur die korporasie.

(3) Wanneer 'n bevel kragtens hierdie artikel die betrokke stigtingsverklaring of 'n samewerkingsooreenkoms verander of iets daaraan toevoeg, of 'n samewerkingsooreenkoms vervang, is die verandering of toevoeging of vervanging van krag asof dit behoorlik deur ooreenkoms tussen die betrokke lede gemaak is.

(4) 'n Afskrif van 'n bevel gegee kragtens hierdie artikel wat—

(a) 'n stigtingsverklaring verander of iets daaraan toevoeg, moet binne 28 dae nadat dit gegee is deur die korporasie by die Registrateur vir registrasie ingedien word; of

(b) 'n samewerkingsooreenkoms verander of iets daaraan toevoeg of dit vervang, moet deur die betrokke korporasie by sy geregistreerde kantoor gehou word waar enige lid van die korporasie dit mag insien.

(5) 'n Korporasie wat versuim om aan 'n bepaling van subartikel (4) te voldoen, is aan 'n misdryf skuldig.

Gedinge teen medelede ten behoewe van korporasie.

50. (1) Waar 'n lid of 'n voormalige lid van 'n korporasie teenoor die korporasie aanspreeklik is—

(a) om 'n aanvanklike bydrae of 'n bykomende bydrae beoog in onderskeidelik subartikels (1) en (2) (a) van artikel 24 te maak; of

(b) op grond van—

(i) die verbreking van 'n verpligting voortvloeiend uit sy vertrouensverhouding tot die korporasie ingevolge artikel 42; of

(ii) 'n versuim ingevolge artikel 43,

kan 'n ander lid van die korporasie namens die korporasie geregtelike stappe ten opsigte van sodanige aanspreeklikheid teen sodanige lid of voormalige lid instel nadat hy aan al die ander lede van die korporasie kennis gegee het van sy voorneme om dit te doen.

(2) Na die instel van sodanige geregtelike stappe deur 'n lid word die magtiging van die betrokke Hof vereis vir 'n terugtrekking van die geregtelike stappe of vir 'n skikking van die betrokke eis, en kan die Hof in verband met so 'n terugtrekking of skikking die bevel gee wat hy goeddink.

(3) Indien 'n Hof in 'n bepaalde geval bevind dat die geregtelike stappe, indien onsuksesvol, sonder *prima facie*-gronde ingestel is, kan hy die lid wat dit namens 'n korporasie ingestel het, gelas om persoonlik die koste van die korporasie en van die betrokke verweerder te betaal op die wyse wat die Hof bepaal.

Betalings deur korporasie aan lede.

51. (1) 'n Betaling deur 'n korporasie aan 'n lid slegs uit hoofde van sy lidmaatskap, mag slegs gedoen word—

(a) indien, na sodanige betaling gedoen is, die korporasie se bates, billik gewaardeer, al sy laste oorskry;

(b) indien die korporasie in staat is om sy skulde te betaal soos hulle in die gewone loop van sy besigheid verskuldig raak; en

(c) indien sodanige betaling in die besondere omstandighede in werklikheid nie sal veroorsaak dat die korporasie nie in staat is om sy skulde te betaal soos hulle in die gewone loop van sy besigheid verskuldig raak nie.

(2) 'n Lid is teenoor 'n korporasie aanspreeklik vir 'n betaling wat strydig met 'n bepaling van subartikel (1) ontvang is.

(3) By die toepassing van hierdie artikel—

(a) sonder om afbreuk te doen aan die algemeenheid van die uitdrukking "betaling deur 'n korporasie aan 'n lid slegs uit hoofde van sy lidmaatskap", beteken daardie uitdrukking—

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dicial, unjust or inequitable to him, or to some members including him, may make an application to a Court for an order under this section.

(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. (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 subsection (1) and (2) (a), respectively, of section 24; or

(b) on account of—

(i) the breach of a duty arising from his 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 intention to do so.

(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 to pay the costs of the corporation and of the defendant in question in such manner as the Court may determine.

Proceedings against fellow-members on behalf of corporation.

51. (1) Any payment by a corporation to any member by reason only of his 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.

(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 membership", that expression—

Payments by corporation to members.

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Verbod op lenings
en verskaffing van
sekuriteit aan lede
en andere deur kor-
porasie.

- (i) ook 'n distribusie, of 'n terugbetaling van 'n by-
drae, of 'n gedeelte daarvan, aan 'n lid;
- (ii) nie ook 'n betaling aan 'n lid in sy hoedanigheid van
krediteur van die betrokke korporasie en, in die
besonder, nie 'n betaling as besoldiging vir dienste
gelewer as 'n werknemer of 'n beampte van die
korporasie, 'n terugbetaling van 'n lening of rente
daarop of 'n betaling van huurgeld nie; en
- (b) beteken "betaling" ook die lewering of oordrag van
eiendom.

52. (1) 'n Korporasie verstrek nie, regstreeks of onregstreeks,
'n lening—

- (a) aan enige van sy lede nie;
- (b) aan 'n ander korporasie waarin een of meer van sy lede
gesamentlik 'n belang van meer as 50 persent het nie; 15
of
- (c) aan 'n maatskappy of ander regspersoon (behalwe 'n
korporasie) wat deur een of meer van die lede van die
korporasie beheer word nie,

en verskaf nie enige sekuriteit aan iemand in verband met 'n 20
verplichting van so 'n lid, of ander korporasie, maatskappy of an-
der regspersoon nie.

(2) Die bepalinge van subartikel (1) is nie van toepassing nie
ten opsigte van die verstrekking van 'n bepaalde lening of die
verskaffing van 'n bepaalde sekuriteit met die uitdruklike, 25
skriftelike en vooraf verkreeë goedkeuring van al die lede van 'n
korporasie.

(3) 'n Lid van 'n korporasie wat die verstrekking van 'n lening
of die verskaffing van 'n sekuriteit strydig met 'n bepaling van
hierdie artikel magtig of toelaat of 'n party daarby is— 30

- (a) is aanspreeklik om die korporasie en enige ander per-
soon wat geen werklike kennis van die oortreding ge-
had het nie skadeloos te stel teen verlies wat regstreeks
ontstaan uit die ongeldigheid van die lening of sekuri-
teit; en 35
- (b) is aan 'n misdryf skuldig.

(4) By die toepassing van hierdie artikel—

- (a) beteken "lening" ook—
 - (i) 'n lening van enige eiendom; en
 - (ii) krediet wat deur 'n korporasie verleen is waar die 40
betrokke skuld nie ooreenkomstig normale besig-
heidspraktyk ten opsigte van die betaling van die-
selfde soort skuld betaalbaar is of betaal word nie;
- (b) word een of meer lede van 'n korporasie slegs geag 'n
maatskappy of ander regspersoon te beheer soos beoog 45
in subartikel (1) (c), indien die omstandighede beoog in
artikel 226 (1A) (b) van die Maatskappywet met be-
trekking tot 'n direkteur of bestuurder of sy genomi-
neerde, of direkteure of bestuurders of hulle genomi-
neerdes, in daardie artikel bedoel, en 'n maatskappy of 50
regspersoon, ten opsigte van so 'n lid of sy genomi-
neerde, of sodanige lede of hul genomineerdes, en so
'n maatskappy of ander regspersoon, aanwesig is; en
- (c) beteken "sekuriteit" ook 'n waarborg.

DEEL VI

EKSTERNE VERHOUDINGS

Voorinlywingskon-
trakte.

53. (1) 'n Skriftelike kontrak wat aangegaan is deur iemand
wat verklaar dat hy as agent of trustee optree van 'n korporasie
wat opgerig staan te word, kan na die korporasie se inlywing deur
die korporasie bekragtig of aangeneem word asof die korporasie 60
behoorlik ingelyf was ten tyde van die aangaan van die kontrak.

(2) Die bekragtiging of aanname deur 'n korporasie in subarti-
kel (1) bedoel, moet in die vorm van 'n skriftelike toestemming
van al die lede van die korporasie wees, gegee binne 'n tyd wat
in die kontrak aangedui word of, indien geen tyd aangedui word 65
nie, binne 'n redelike tyd na inlywing.

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

52. (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 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 nominee, or such members or their nominees, and any such company or other juristic person; and
- (c) "security" includes a guarantee.

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

PART VI

EXTERNAL RELATIONS

53. (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.

Pre-incorporation contracts.

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Bevoegdheid van lede om korporasie te bind.

54. (1) Behoudens die bepalings van hierdie artikel is elke lid van 'n korporasie ten opsigte van iemand wat nie 'n lid is nie en met die korporasie sake doen, 'n verteenwoordiger van die korporasie vir die doeleindes van die besigheid van die korporasie wat in sy stigtingsverklaring vermeld word of wat werklik deur hom gedryf word.

(2) 'n Handeling van 'n lid bind 'n korporasie, indien—

(a) sodanige handeling uitdruklik of stilswyend deur die korporasie gemagtig is, of later deur hom bekragtig word; of 10

(b) sodanige handeling verrig word vir die dryf, op die gewone wyse, van besigheid van die aard in die stigtingsverklaring van die korporasie vermeld of werklik deur die korporasie ten tyde van die verrigting van die handeling gedryf, tensy die lid wat so handel in werklikheid geen bevoegdheid het om namens die korporasie in die besondere aangeleentheid te handel nie en die persoon met wie hy sake doen kennis dra, of redelikerwys behoort te dra, van die feit dat die lid geen sodanige bevoegdheid het nie. 20

(3) Waar 'n handeling van 'n lid van 'n korporasie vir 'n doel verrig word wat oënskynlik nie verband hou met die gewone loop van die besigheid van 'n korporasie in sy stigtingsverklaring vermeld of werklik deur hom ten tyde van die verrigting van die handeling gedryf nie, is die korporasie nie deur so 'n handeling gebind nie, tensy dit in werklikheid deur die korporasie gemagtig is of bekragtig word soos beoog in subartikel (2) (a). 25

(4) Waar 'n samewerkingsooreenkoms die bevoegdheid van 'n lid om 'n korporasie te verteenwoordig, beperk, of waar 'n lid kragtens artikel 47 onbevoeg is om aan die bestuur van die besigheid van 'n korporasie deel te neem, is geen handeling in stryd met die beperking of verrig deur so 'n onbevoegde persoon ten opsigte van 'n persoon wat kennis dra, of redelikerwys behoort te dra, van sodanige beperking of onbevoegdheid, vir die korporasie bindend nie. 35

(5) Waar die skriftelike toestemming van alle lede van 'n korporasie in 'n besondere geval ingevolge die voorbehoudsbepaling by artikel 46 (b) vereis word, is geen handeling in stryd met sodanige vereiste ten opsigte van 'n persoon wat kennis dra, of redelikerwys behoort te dra, van die feit dat die besondere handeling aldus in stryd met sodanige vereiste verrig word, vir 'n korporasie bindend nie. 40

Toepassing van artikels 37 en 226 van Maatskappywet, 1973.

55. (1) Indien die verhouding tussen 'n maatskappy en 'n korporasie sodanig is dat die korporasie, indien dit 'n maatskappy was, 'n houermaatskappy van die maatskappy sou wees, is die bepalings van artikel 37 van die Maatskappywet betreffende— 45

(a) die aanwending van fondse van 'n maatskappy vir 'n lening aan; of

(b) die voorsiening van sekuriteit deur 'n maatskappy aan iemand anders in verband met 'n verpligting van, sy houermaatskappy, of 'n maatskappy wat 'n filiaal van daardie houermaatskappy is maar nie 'n filiaal van homself is nie, *mutatis mutandis* van toepassing met betrekking tot sodanige aanwending van fondse of voorsiening van sekuriteit deur so 'n maatskappy ten opsigte van so 'n korporasie en ten opsigte van 'n maatskappy wat 'n filiaal van die korporasie sou wees indien die korporasie 'n maatskappy was, maar wat nie 'n filiaal van eersbedoelde maatskappy is nie. 50

(2) By die toepassing ingevolge subartikel (1) van die bepalings van subartikel (3) (b) van genoemde artikel 37 van die Maatskappywet word 'n verwysing daarin na 'n direkteur of beampte, of 'n voormalige direkteur of beampte, van 'n houermaatskappy, uitgêel as 'n verwysing na 'n lid of 'n beampte, of 'n voormalige lid of beampte, van 'n korporasie beoog in subartikel (1). 65

(3) Indien die verhouding tussen 'n maatskappy en 'n korporasie is soos beoog in subartikel (1), is die bepalings van artikel 226 van die Maatskappywet betreffende die maak deur 'n maatskappy van 'n lening aan, of die voorsiening van sekuriteit deur

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54. (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 for the purposes of the business of the corporation stated in its founding statement or actually being carried on by it.

Power of members to bind corporation.

(2) Any act of a member shall bind a corporation, if—

- (a) such act is expressly or impliedly authorized by the corporation, or is subsequently ratified by it; or
- (b) such act is performed for the carrying on, in the usual way, of business of the kind stated in a founding statement of the corporation or actually being carried on by the corporation at the time of the performance of the act, unless the member so acting has in fact no power to act for the corporation in the particular matter and the person with whom he deals has, or ought reasonably to have, knowledge of the fact that the member has no such power.

(3) Where any act of a member of a corporation is performed for a purpose apparently not connected with the ordinary course of the business of the corporation stated in its founding statement or actually being carried on by it at the time of the performance of the act, the corporation shall not be bound by such act, unless it has in fact been authorized or is ratified as contemplated in subsection (2) (a) by the corporation.

(4) Where any association agreement restricts the power of any member to represent a corporation, or where any member is disqualified under section 47 from participating in the management of the business of a corporation, no act in contravention of the restriction or performed by such disqualified person shall be binding on the corporation with respect to any person who has, or ought reasonably to have, knowledge of such restriction or disqualification.

(5) Where the consent in writing of all members of a corporation is in any particular case required in terms of the proviso to section 46 (b), no act in contravention of such requirement shall be binding on the corporation with respect to any person who has, or ought reasonably to have, knowledge of the fact that the particular act is performed in contravention of such requirement.

55. (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—

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

- (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

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'n maatskappy aan 'n ander persoon in verband met 'n verpligting van—

- (a) 'n direkteur of bestuurder van die maatskappy se houermaatskappy of van 'n ander maatskappy wat 'n filiaal van sy houermaatskappy is; of 5
- (b) 'n ander maatskappy beheer deur een of meer direkteure of bestuurders van die maatskappy se houermaatskappy of van 'n maatskappy wat 'n filiaal van sy houermaatskappy is,

mutatis mutandis van toepassing met betrekking tot sodanige lening of voorsiening van sekuriteit deur so 'n maatskappy ten opsigte van—

- (i) 'n lid of beampte van so 'n korporasie, of 'n direkteur of beampte van 'n ander maatskappy wat 'n filiaal van so 'n korporasie sou wees indien die korporasie 'n maatskappy was; en 15
- (ii) 'n ander maatskappy beheer deur een of meer lede van so 'n korporasie, of deur een of meer direkteure of bestuurders van 'n maatskappy wat 'n filiaal van die korporasie sou wees indien die korporasie 'n maatskappy 20 was.

(4) By die toepassing ingevolge subartikel (3) van die bepaling van subartikel (5) van genoemde artikel 226 van die Maatskappywet word 'n verwysing daarin na 'n direkteur of beampte van 'n houermaatskappy uitgelê as 'n verwysing na 'n lid of beampte van 'n korporasie in subartikel (1) beoog. 25

DEEL VII

VERANTWOORDING EN OPENBAARMAKING

Rekeningkundige rekords.

56. (1) 'n Korporasie moet in een van die amptelike tale van die Republiek die rekeningkundige rekords hou wat nodig is om 30 die toestand van die sake en besigheid van die korporasie redelik weer te gee, en om die transaksies en geldelike toestand van die korporasie te verduidelik, met inbegrip van—

- (a) rekords wat sy bates en laste, ledebydraes, onuitgekeerde winste, herwaardering van vaste bates en be- 35 drae van lenings aan en deur lede, aantoon;
- (b) 'n register van vaste bates wat die onderskeie datums van die verkryging en die koste daarvan, depresiasie (as daar is), die onderskeie datums van vervreemdings daarvan en die vergoeding ten opsigte daarvan ont- 40 vang, aantoon: Met dien verstande dat in die geval van 'n korporasie wat ingevolge artikel 27 van 'n maatskappy omgeskep is, die bestaande register van vaste bates van die maatskappy geag word so 'n register ten opsigte van die korporasie, en sodanige besonderhede 45 daarin geag word ten opsigte van hom van toepassing, te wees;
- (c) rekords wat daaglikse inskrywings bevat van alle kontant ontvang en uitbetaal, in voldoende besonderhede om die aard van die transaksies en, behalwe in die ge- 50 val van kontantverkope, die name van die partye by die transaksies te kan identifiseer;
- (d) rekords van alle goedere teen krediet aangekoop of verkoop, en dienste teen krediet ontvang of gelewer, in voldoende besonderhede om die aard van daardie goe- 55 dere of dienste en die partye by die transaksies te kan identifiseer;
- (e) state van die jaarlikse voorraadopname, en rekords om die waarde van die voorraad by die einde van die boekjaar te kan bepaal; en 60
- (f) bewysstukke wat die inskrywings in die rekeningkundige rekords staaf.

(2) Die rekeningkundige rekords in verband met—

- (a) bydraes van lede;
- (b) lenings aan en deur lede; en 65
- (c) betalings aan lede,

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of any loan to, or the provision of security by a company to another person in connection with any obligation of—

- 5 (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 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,
- 10 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
- 15 (ii) another company 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.
- (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).
- 20

PART VII

25

ACCOUNTING AND DISCLOSURE

56. (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—
- Accounting records.
- 30 (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 the respective dates of acquisition and the cost thereof, depreciation (if any),
- 35 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
- 40 register in respect of the corporation, and such particulars therein shall be deemed to apply in respect of it;
- (c) records containing entries from day to day of all cash received and paid out, in sufficient detail to enable the
- 45 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
- 50 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
- 55 (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,

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moet voldoende besonderhede van individuele transaksies bevat om die aard en doel daarvan duidelik te kan identifiseer.

(3) Die rekeningkundige rekords in subartikel (1) bedoel, moet op sodanige wyse gehou word dat voldoende voorsorg getref is om teen vervalsing te waak en om die ontdekking van enige vervalsing te vergemaklik.

(4) Die rekeningkundige rekords moet by die besigheidsplek of -plekke of by die geregistreerde kantoor van die korporasie gehou word en moet, waar ook al gehou, te alle redelike tye beskikbaar wees vir insae deur enige lid. 10

(5) (a) 'n Korporasie wat versuim om aan 'n bepaling van enige van die voorgaande subartikels van hierdie artikel te voldoen, en elke lid daarvan wat deel het aan sodanige versuim of wat versuim om alle redelike stappe te doen om nakoming van so 'n bepaling deur die korporasie te verseker, is aan 'n misdryf skuldig. 15

(b) In enige geregtelike stappe teen 'n lid van 'n korporasie ten opsigte van 'n misdryf wat bestaan uit 'n versuim om redelike stappe te doen om nakoming van 'n bepaling bedoel in paragraaf (a) deur die korporasie te verseker, is dit 'n verweer as daar bewys word dat die beskuldigde redelike gronde gehad het om te glo en geglo het dat 'n bevoegde en betroubare persoon die plig opgedra was om toe te sien dat aan sodanige bepaling voldoen word, en dat sodanige persoon in staat was om daardie plig na te kom, en dat die beskuldigde geen rede gehad het om te glo dat sodanige persoon op enige wyse versuim het om daardie plig na te kom nie. 20 25

Boekjaar van korporasie.

57. (1) (a) 'n Korporasie moet 'n datum waarop sy boekjaar elke jaar eindig, vasstel. 30

(b) Die boekjaar van 'n korporasie is sy jaarlikse rekeningpligtige tydperk.

(2) Die datum in subartikel (1) (a) bedoel, kan, behoudens die bepalinge van artikel 15 (2), deur die korporasie na 'n ander datum verander word. 35

(3) Behoudens 'n verlenging of vermindering van die duur van 'n boekjaar uit hoofde van die bepalinge van subartikel (4), is die duur van elke boekjaar van 'n korporasie 12 maande eindigende op die datum of ander datum in subartikel (1) (a) of (2) bedoel. 40

(4) Ondanks die bepalinge van subartikel (3)—

(a) neem die eerste boekjaar van 'n korporasie op die datum van sy registrasie 'n aanvang en eindig dit op die datum in subartikel (1) (a) bedoel, wat nie minder as 3 en nie meer as 15 maande na die datum van registrasie moet wees nie; en 45

(b) in die geval van 'n korporasie wat ingevolge subartikel (2) die datum in subartikel (1) (a) bedoel, verander het, begin die boekjaar wat volg op die een wat lopend is ten tyde van die registrasie van die vereiste gewysigde stigtingsverklaring ingevolge artikel 15 (2), aan die einde van daardie lopende boekjaar en eindig dit op die datum soos verander, wat nie minder as 3 en nie meer as 15 maande na die einde van daardie lopende boekjaar moet wees nie. 50 55

Finansiële jaarstate.

58. (1) Die lede van 'n korporasie moet binne nege maande na die einde van elke boekjaar van die korporasie finansiële jaarstate ten opsigte van daardie boekjaar in een van die amptelike tale van die Republiek laat opstel.

(2) Die finansiële jaarstate van 'n korporasie— 60

(a) moet bestaan uit—

(i) 'n balansstaat en enige aantekeninge daarop; en

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

(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; and

(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 following that current at the time of the registration of the required amended founding statement in terms of section 15 (2), shall commence at the end of that current financial year and shall end on the date as changed occurring not less than 3 nor more than 15 months after the end of that current financial year.

58. (1) The members of a corporation shall within nine months after the end of every financial year of the corporation cause financial statements in respect of that financial year to be made out in one of the official languages of the Republic.

(2) The financial statements of a corporation—

(a) shall consist of—

(i) a balance sheet and any notes thereon; and

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- (ii) 'n inkomstestaaf of 'n soortgelyke finansiële staat waar sodanige vorm gepas is, en enige aantekening daarop;
- (b) moet ooreenkomstig algemeen aanvaarde rekeningkundige praktyk, geskik vir die besigheid van die korporasie, die toestand van die sake van die korporasie soos aan die einde van die betrokke boekjaar, en die resultate van sy bedrywighede vir daardie jaar, redelik weergee; en
- (c) moet die totale bedrae, soos teen die einde van die 10 boekjaar, van bydraes deur lede, onuitgekeerde winste, herwaarderings van vaste bates en bedrae van lenings aan of deur lede afsonderlik, en die bewegings in hierdie bedrae gedurende die jaar, aantoon.
- (3) Die finansiële jaarstate moet deur of namens elke lid van 15 die korporasie goedgekeur en onderteken word.
- (4) (a) 'n Lid van 'n korporasie wat versuim om alle redelike stappe te doen om aan 'n bepaling van hierdie artikel te voldoen of om voldoening daaraan te verseker, is aan 'n misdryf skuldig. 20
- (b) In enige geregtelike stappe teen 'n lid van 'n korporasie kragtens paragraaf (a) is die verweer in artikel 56 (6) (b) bedoel vir hom beskikbaar.

Aanstelling van rekeningkundige beamptes.

- 59. (1) Elke korporasie stel 'n rekeningkundige beampte ooreenkomstig die bepalings van hierdie Wet aan. 25
- (2) Die aanstelling van die eerste rekeningkundige beampte van 'n korporasie bedoel in artikel 12 (g) (i), neem 'n aanvang op die datum van die registrasie van die korporasie.
- (3) Indien 'n vakature in die amp van 'n rekeningkundige beampte ontstaan, hetsy as gevolg van ontslag, bedanking of andersins, moet die korporasie binne 14 dae 'n ander rekeningkundige beampte aanstel en aan die bepalings van subartikel (2) van artikel 15 voldoen: Met dien verstande dat die bepalings van subartikel (3) van genoemde artikel 15 van toepassing is waar nie aldus aan genoemde subartikel (2) van daardie artikel voldoen is nie, ongeag of 'n aanstelling van sodanige ander rekeningkundige beampte gedoen is of nie. 30
- (4) 'n Korporasie moet sy rekeningkundige beampte skriftelik in kennis stel van sy ontslag uit sy amp.
- (5) (a) 'n Rekeningkundige beampte moet by sy bedanking of ontslag elke lid van die korporasie onverwyld skriftelik daarvan in kennis stel, en 'n afskrif van die brief na die jongste bekende adres van die geregistreerde kantoor van die korporasie stuur. 40
- (b) Indien 'n rekeningkundige beampte wat uit sy amp ontslaan is van oordeel is dat hy om onbehoorlike redes ontslaan is, verwittig hy die Registrateur onverwyld per gesertifiseerde pos daarvan, en stuur hy 'n afskrif van die brief aan elke lid. 45

Kwalifikasies van rekeningkundige beamptes.

- 60. (1) Niemand kwalifiseer vir aanstelling as rekeningkundige beampte van 'n korporasie nie, tensy hy 'n lid is van 'n erkende professie wat—
- (a) as 'n voorwaarde vir lidmaatskap, vereis dat sy lede in eksamens in rekeningkunde en aanverwante studiegebiede wat na die oordeel van die Minister sodanige lede bevoeg maak om die pligte van 'n rekeningkundige beampte kragtens hierdie Wet uit te voer, geslaag het; 55
- (b) die mag het om diegene wat skuldig gevind is aan nalatigheid in die uitvoering van hulle pligte of aan gedrag wat hul professie tot oneer strek, van lidmaatskap uit te sluit; en 60
- (c) vermeld word in 'n kennisgewing in subartikel (2) bedoel.
- (2) Die Minister kan van tyd tot tyd by kennisgewing in die Staatskoerant die name van daardie professies waarvan die lede 65

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- (ii) an income statement or any similar financial statement where such form is appropriate, and any notes thereon;
- 5 (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; and
- 10 (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.
- (3) The annual financial statements shall be approved and
15 signed by or on behalf of every member of the corporation.
- (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.
- 20 (b) In any proceedings against any member of a corporation under paragraph (a) the defence referred to in section 56 (b) shall be available to him.

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

- 25 (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 removal, resignation or otherwise, the corporation shall within 14 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
30 such other accounting officer has been made.

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

- 40 (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.

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

60. (1) No person shall be qualified for appointment as an accounting officer of a corporation, unless he is a member of a recognized profession which— Qualifications of accounting officers.

- 50 (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;

55 (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

60 (c) has been named in a notice referred to in subsection (2).

(2) The Minister may from time to time publish by notice in the *Gazette* the names of those professions whose members are

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kwalifiseer om die pligte van rekeningkundige beampte ingevolge hierdie Wet uit te voer, afkondig.

(3) 'n Lid of werknemer van 'n korporasie, en 'n firma waarvan 'n vennoot of werknemer 'n lid of werknemer van 'n korporasie is, kwalifiseer nie vir aanstelling as rekeningkundige beampte van daardie korporasie nie tensy al die lede skriftelik tot sodanige aanstelling toestem.

(4) 'n Firma kan as rekeningkundige beampte van 'n korporasie aangestel word, mits elke lid van die firma kwalifiseer om aldus aangestel te word.

Reg op toegang en vergoeding van rekeningkundige beamptes.

61. (1) 'n Rekeningkundige beampte van 'n korporasie is te alle tye geregtig op toegang tot die rekeningkundige rekords en alle boeke en dokumente van die korporasie, en om die inligting en verduidelikings wat hy nodig ag vir die uitvoering van sy pligte as rekeningkundige beampte van die lede te vereis.

(2) Die vergoeding van 'n rekeningkundige beampte word deur ooreenkoms met die korporasie bepaal.

Pligte van rekeningkundige beamptes.

62. (1) Die rekeningkundige beampte van 'n korporasie moet, nie later nie as 3 maande na voltooiing van die finansiële jaarstate—

- (a) bepaal of die finansiële jaarstate in ooreenstemming met die rekeningkundige rekords van die korporasie is;
- (b) die beginsels vir voorbereiding van die finansiële jaarstate bepaal; en
- (c) aan die korporasie ten opsigte van paragrawe (a) en (b) verslag doen.

(2) (a) Indien 'n rekeningkundige beampte tydens die uitvoering van sy pligte bewus raak van 'n oortreding van 'n bepaling van hierdie Wet, moet hy die aard van sodanige oortreding in sy verslag beskryf.

(b) Waar 'n rekeningkundige beampte 'n lid of werknemer van 'n korporasie is, of 'n firma is waarvan 'n vennoot of werknemer 'n lid of werknemer van die korporasie is, moet sy verslag daardie feit vermeld.

(3) Indien 'n rekeningkundige beampte van 'n korporasie—

- (a) te eniger tyd weet, of rede het om te glo, dat die korporasie nie besigheid dryf of nie in werking is nie en geen voorneme het om in die afsienbare toekoms sy werksaamhede te hervat nie; of
- (b) tydens die uitvoering van sy pligte vind—
 - (i) dat 'n verandering, gedurende 'n betrokke boekjaar, ten opsigte van enige besonderhede in die betrokke stigtingsverklaring vermeld, nie geregistreer is nie; of
 - (ii) dat die finansiële jaarstate aantoon dat aan die einde van die betrokke boekjaar die korporasie se laste sy bates oorskry,

doen hy onverwylt dienooreenkomstig per gesertifiseerde pos verslag aan die Registrateur.

DEEL VIII

50

AANSPEEKLIKHEID VAN LEDE EN ANDERE VIR SKULDE VAN BESLOTE KORPORASIE

Gesamentlike aanspreeklikheid vir skulde van korporasie.

63. Ondanks 'n andersluidende bepaling van hierdie Wet is die volgende persone in die volgende omstandighede saam met 'n korporasie gesamentlik en afsonderlik aanspreeklik vir die vermelde skulde van die korporasie:

- (a) Waar die naam van die korporasie op enige wyse sonder die afkorting BK of CC, soos deur artikel 22 (1) vereis, gebruik word, is 'n lid van die korporasie wat verantwoordelik is vir die weglating van sodanige afkorting, of dit gemagtig het of wetend toelaat, aldus aanspreeklik teenoor iemand wat 'n transaksie met die korporasie aangaan waaruit 'n skuld vir die korporasie ontstaan terwyl hy, as gevolg van sodanige weglating, nie daarvan bewus is dat hy met 'n korporasie sake doen nie;

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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 firm may be appointed as an accounting officer of a corporation, provided that each partner in the firm is qualified to be so appointed.

61. (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 considers necessary for the performance of his duties as an accounting officer.

Right of access and remuneration of accounting officers.

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

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

Duties of accounting officers.

(a) determine whether the annual financial statements are in agreement with the accounting records of the corporation;

(b) determine the principles of preparation of the annual financial statements; and

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

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

(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 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; or

(ii) that the annual financial statements indicate that as at the end of the financial year concerned the corporation's liabilities exceed its assets,

he shall forthwith by certified post report accordingly to the Registrar.

PART VIII

LIABILITY OF MEMBERS AND OTHERS FOR DEBTS OF CLOSE CORPORATION

63. 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:

Joint liability for debts of corporation.

(a) Where the name of the corporation is in any way used without the abbreviation CC or BK 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 he, in consequence of such omission, is not aware that he is dealing with a corporation;

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- (b) waar 'n lid versuim om geld te betaal of eiendom te lewer of oor te dra aan die korporasie soos deur artikel 24 (4) vereis, is hy aldus aanspreeklik vir elke skuld van die korporasie opgeloopt vanaf sy registrasie tot die datum van werklike betaling, lewering of oordrag van sodanige geld of eiendom; 5
- (c) waar die aantal lede van die korporasie die maksimum in artikel 28 vermeld vir 'n tydperk van ses maande oorskry, is elke sodanige lid aldus aanspreeklik vir elke skuld van die korporasie opgeloopt terwyl die aantal lede aldus sodanige maksimum oorskry het of aanhou om dit te oorskry; 10
- (d) waar 'n regspersoon, hetsy regstreeks of onregstreeks, heet 'n ledebelang in die korporasie strydig met 'n bepaling van artikel 29 te hou, is sodanige regspersoon en 'n genomineerde in daardie artikel bedoel, ondanks die ongeldigheid van die hou van so 'n belang, aldus aanspreeklik vir elke skuld van die korporasie opgeloopt gedurende die tydperk waarvoor die oortreding voortduur; 15 20
- (e) waar die korporasie in stryd met 'n bepaling van artikel 39 'n betaling maak ten opsigte van die verkryging van 'n ledebelang, is elke persoon wat 'n lid is ten tyde van sodanige betaling en wat bewus is van die maak van sodanige betaling, met inbegrip van 'n lid of 'n voormalige lid wat sodanige betaling ontvang of ontvang het, aldus aanspreeklik vir elke skuld van die korporasie opgeloopt voor die maak van sodanige betaling tensy, in die geval van 'n lid wat aldus bewus is, hy bewys dat hy alle redelike stappe gedoen het om die betaling te verhoed; 25 30
- (f) waar die korporasie geldelike bystand vir die doeleindes van of in verband met die verkryging van 'n ledebelang in stryd met 'n bepaling van artikel 40 verleen, is elke persoon wat 'n lid is ten tyde van sodanige bystandsverlening en wat bewus is van sodanige bystandsverlening, en die persoon wat sodanige bystand ontvang, aldus aanspreeklik vir elke skuld van die korporasie opgeloopt voor die verlening van sodanige bystand tensy, in die geval van 'n lid wat aldus bewus is, hy bewys dat hy alle redelike stappe gedoen het om die bystandsverlening te verhoed; 35 40
- (g) waar iemand aan die bestuur van die besigheid van die korporasie deelneem terwyl hy ingevolge artikel 47 (1) (b) of (c) onbevoeg is om dit te doen, is daardie persoon aldus aanspreeklik vir elke skuld van die korporasie wat die korporasie oploopt as gevolg van sy deelname aan die bestuur van die korporasie; en 45
- (h) waar die amp van rekeningkundige beampte van die korporasie vir 'n tydperk van ses maande vakant is, is iemand wat te eniger tyd gedurende daardie tydperk 'n lid was en van die vakature bewus was, en wat by verstryking van daardie tydperk nog 'n lid is, aldus aanspreeklik vir elke skuld van die korporasie opgeloopt tydens sodanige bestaan van die vakature en vir elke sodanige skuld daarna opgeloopt terwyl die vakature voortduur en hy nog 'n lid is. 55

Aanspreeklikheid vir roekelose of bedrieglike dryf van besigheid van korporasie.

64. (1) Indien dit te eniger tyd blyk dat enige besigheid van 'n korporasie roekeloos, met growwe nalatigheid of met die opset om iemand te bedrieg of vir 'n bedrieglike doel gedryf was of word, kan 'n Hof op aansoek van die Meester, of 'n skuldeiser, lid of likwidateur van die korporasie, verklaar dat iemand wat wetend 'n party tot die dryf van die besigheid op enige sodanige wyse was of is, persoonlik aanspreeklik is vir al of enige van die skulde of verpligtinge van die korporasie wat die Hof gelas, en die Hof kan die verdere bevele gee wat hy goeie dink ten einde aan die verklaring gevolg te gee en daardie aanspreeklikheid af te dwing. 60 65

(2) Sonder om af te doen aan enige ander strafregtelike aanspreeklikheid opgedoen waar besigheid van 'n korporasie op

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- (b) where any member fails to pay money or to deliver or transfer property to the corporation as required by section 24 (4), he shall be so liable for every debt of the corporation incurred from its registration to the date of the actual payment, delivery or transfer of such money or property;
- (c) where the number of members of a corporation exceeds the maximum specified in section 28 for a period of six months, every such member shall be so liable for every debt of the corporation incurred while the number of members so exceeded or continues to exceed such maximum;
- (d) where a juristic person 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 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;
- (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 proves that he took all reasonable steps to prevent the payment;
- (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 proves that he took all reasonable steps to prevent the payment;
- (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 participation in the management of the corporation; and
- (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 still is a member.

64. (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

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

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enige wyse in subartikel (1) beoog, gedryf word, is elkeen wat wetend 'n party is by die dryf van die besigheid op so 'n wyse, aan 'n misdryf skuldig.

Bevoegdhede van Hof in geval van misbruik van afsonderlike regspersoonlikheid van korporasie.

65. Wanneer 'n Hof op aansoek van 'n belanghebbende persoon, of in enige verrigtinge waarby 'n korporasie betrokke is, bevind dat die inlywing van, of enige handeling van of namens, of enige gebruik van, daardie korporasie, 'n growwe misbruik van die regspersoonlikheid van die korporasie as 'n afsonderlike entiteit uitmaak, kan die Hof verklaar dat die korporasie geag moet word nie 'n regspersoon te wees nie ten opsigte van dié 10 regte, verpligtinge of laste van die korporasie, of van dié lid of lede daarvan, of van dié ander persoon of persone, in die verklaring vermeld, en kan die Hof die verdere bevel of bevele gee wat hy goeiedink ten einde aan so 'n verklaring gevolg te gee.

DEEL IX

15

LIKWIDASIE

Toepassing van Maatskappywet, 1973.

66. (1) Die bepalings van die Maatskappywet wat betrekking het op die likwidasië van 'n maatskappy, met inbegrip van die regulasies daarkragtens uitgevaardig (behalwe artikels 337, 338, 344, 345, 346 (2), 347 (3), 349, 364, 365 (2), 367 tot en met 370, 377, 387, 389, 390, 395 tot en met 399, 400 (1) (b), 401, 402, 417, 418, 419 (4), 421, 423 en 424), is *mutatis mutandis* en vir sover hulle toegepas kan word met betrekking tot die likwidasië van 'n korporasie van toepassing ten opsigte van enige aangeleentheid waarvoor nie uitdruklik in hierdie Deel of in 'n ander 25 bepaling van hierdie Wet voorsiening gemaak word nie.

(2) By die toepassing van subartikel (1)—

(a) word 'n verwysing in 'n betrokke bepaling van die Maatskappywet, en in enige bepaling van die Insolvensiewet, 1936 (Wet No. 24 van 1936), wat deur sodanige 30 bepaling van toepassing gemaak word—

- (i) na 'n maatskappy, uitgelê as 'n verwysing na 'n korporasie;
- (ii) na 'n aandeel in 'n maatskappy, uitgelê as 'n verwysing na 'n ledebelang in 'n korporasie; 35
- (iii) na 'n lid, direkteur, aandeelhouer of kontribuant van 'n maatskappy, uitgelê as 'n verwysing na 'n lid van 'n korporasie;
- (iv) na 'n ouditeur van 'n maatskappy, uitgelê as 'n verwysing na 'n rekeningkundige beampte van 'n 40 korporasie;
- (v) na 'n beampte of 'n sekretaris van 'n maatskappy, uitgelê as 'n verwysing na 'n bestuurder of 'n sekretaris wat 'n beampte is van 'n korporasie;
- (vi) na 'n geregistreerde kantoor van 'n maatskappy, 45 uitgelê as 'n verwysing na 'n geregistreerde kantoor van 'n korporasie;
- (vii) na 'n akte of statute van 'n maatskappy, uitgelê as 'n verwysing na onderskeidelik 'n stigtingsverklaring en 'n samewerkingsooreenkoms van 'n korpo- 50 rasie;
- (viii) na die Registrateur van Maatskappye, uitgelê as 'n verwysing na die Registrateur;
- (ix) na die Maatskappywet of die regulasies daarkragtens uitgevaardig, of na enige bepaling daarvan, 55 uitgelê as 'n verwysing ook na hierdie Wet of die regulasies daarkragtens uitgevaardig, of na enige ooreenstemmende bepaling daarvan, na gelang van die geval;
- (x) na 'n insolvente boedel, uitgelê as 'n verwysing na 60 'n korporasie;
- (xi) na 'n voorlopige likwidateur van 'n maatskappy, of na 'n likwidateur van 'n maatskappy of 'n kurator van 'n insolvente boedel, uitgelê as 'n verwysing na onderskeidelik 'n voorlopige likwidateur en 'n 65 likwidateur van 'n korporasie;

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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.

- 5 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.

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

15

PART IX

WINDING-UP

66. (1) The provisions of the Companies Act which relate to the winding-up of a company, including the regulations made thereunder, (except sections 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.

Application of Companies Act, 1973.

- (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 No. 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;

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- (xii) na 'n balju van 'n provinsie, uitgelê as 'n verwysing ook na 'n geregsbode van 'n landdroshof;
- (xiii) na 'n Griffier van 'n Hof, uitgelê as 'n verwysing ook na 'n klerk van 'n landdroshof;
- (xiv) na 'n Hof, uitgelê as 'n verwysing na 'n Hof wat 5 kragtens hierdie Wet jurisdiksie het; en
- (xv) na 'n Meester, uitgelê as 'n verwysing na 'n Meester wat kragtens hierdie Wet jurisdiksie het;
- (b) word 'n verwysing na 'n spesiale besluit—
 - (i) in artikels 340 (2), 350 (1), 351 (1), 352, 356 (2), 10 357 (3) en (4), 359 (1), 362 (1) en 363 (1) van die Maatskappywet bedoel, uitgelê as 'n verwysing na 'n skriftelike besluit vir die vrywillige likwidasië van 'n korporasie ingevolge artikel 67 van hierdie Wet; en 15
 - (ii) in artikel 422 (1) (b) van die Maatskappywet bedoel, uitgelê as 'n verwysing na 'n skriftelike besluit onderteken deur of namens al die lede van 'n korporasie; en
- (c) word daar geag dat paragraaf (b) van artikel 358 van die 20 Maatskappywet deur die volgende paragraaf vervang is:
 - “(b) wanneer 'n ander aksie of geding teen die maatskappy in 'n hof in die Republiek ingestel word of ingestel gaan word, aansoek doen by daardie hof 25 om 'n bevel wat verdere verrigtinge in die aksie of geding belet.”.

Vrywillige likwidasië.

67. (1) 'n Korporasie kan vrywillig gelikwedeer word indien al sy lede op 'n vergadering van lede wat vir die doeleindes van die oorweging van die likwidasië van die korporasie belê is, aldus 30 besluit, en 'n skriftelike besluit dat die korporasie vrywillig deur lede of skuldeisers, na gelang van die geval, gelikwedeer moet word, onderteken.

(2) 'n Afskrif van die skriftelike besluit, in tweevoud en in die voorgeskrewe vorm, moet binne 28 dae na die datum waarop die 35 besluit geneem is, tesame met die voorgeskrewe geld, by die Registrateur ingedien word, wat sodanige besluit moet registreer indien dit aan die bepalings van subartikel (1) voldoen.

(3) Indien sodanige afskrif van die skriftelike besluit nie binne 90 dae na die datum waarop die besluit geneem is deur die 40 Registrateur geregistreer word nie, verval die besluit en is dit nietig.

(4) 'n Besluit ingevolge hierdie artikel het geen regsrag nie alvorens dit deur die Registrateur geregistreer is.

Likwidasië deur Hof.

68. 'n Korporasie kan deur 'n Hof gelikwedeer word, indien— 45

- (a) lede wat meer as een helfte van die totale aantal stemme van lede het, op 'n vergadering van lede wat belê is vir die doeleindes van oorweging van die likwidasië van die korporasie, aldus besluit het en 'n skriftelike besluit dat die korporasie deur 'n Hof gelikwedeer 50 moet word, onderteken het;
- (b) die korporasie nie binne 'n jaar na sy registrasie met besigheid begin het nie, of vir 'n hele jaar sy besigheid gestaak het;
- (c) die korporasie nie sy skulde kan betaal nie; of 55
- (d) die Hof op aansoek van oordeel is dat dit reg en billik is dat die korporasie gelikwedeer word.

Omstandighede waaronder korporasie geag word nie skulde te kan betaal nie.

69. (1) By die toepassing van artikel 68 (c) word 'n korporasie geag nie sy skulde te kan betaal nie, indien—

- (a) 'n skuldeiser, by sessie of andersins, aan wie die korpo- 60 rasie 'n reeds opeisbare bedrag van nie minder nie as tweehonderd rand verskuldig is 'n aanmaning waarin die korporasie aangesê word om die bedrag aldus opeisbaar te betaal, aan die korporasie bestel het deur dit by sy geregistreerde kantoor af te lewer, en die korporasie 65 vir 21 dae daarna nagelaat het om die bedrag te betaal of tot die redelike bevrediging van die skuldeiser daar-

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- (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.”

30 **67. (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. Voluntary winding-up.

35 **(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).

40 **(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.

45 **68.** 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.

Liquidation by Court.

60 **69. (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

Circumstances under which corporation deemed unable to pay debts.

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voor sekerheid te stel of ten opsigte daarvan 'n akkoord aan te gaan; of

- (b) 'n balju, of 'n geregsbode van 'n landdroshof, in sy relaas op 'n prosesstuk of ander bevelskrif uitgereik ingevolge 'n vonnis of bevel van 'n hof ten gunste van 'n skuldeiser van die korporasie, verklaar dat hy onvoldoende vervreembare goed gevind het om te voldoen aan die vonnis of bevel, of dat die gevonde vervreembare goed by verkoping onvoldoende was om te voldoen aan sodanige prosesstuk; of
- (c) tot bevrediging van die Hof bewys word dat die korporasie nie sy skulde kan betaal nie.

(2) By die vasstelling vir die doeleindes van subartikel (1) of 'n korporasie sy skulde nie kan betaal nie, neem die Hof ook die voorwaardelike en verwagte verpligtinge van die korporasie in aanmerking.

Terugbetalings deur lede.

70. (1) Behoudens die bepalings van hierdie artikel is geen lid van 'n korporasie by die likwidasië van die korporasie aanspreeklik nie vir 'n terugbetaling van 'n betaling wat deur die korporasie aan hom slegs uit hoofde van sy lidmaatskap gemaak is, indien sodanige betaling voldoen aan die bepalings van artikel 51 (1).

(2) By die likwidasië van 'n korporasie wat nie sy skulde kan betaal nie, moet so 'n betaling wat aan 'n lid slegs uit hoofde van sy lidmaatskap binne 'n tydperk van twee jaar voor die aanvang van die likwidasië van die korporasie gemaak is, deur die lid aan die korporasie terugbetaal word, tensy so 'n lid kan bewys dat—

- (a) na sodanige betaling gedoen was, die korporasie se bates, billik gewaardeer, al sy laste oorskry het; en
- (b) sodanige betaling gedoen was terwyl die korporasie in staat was om sy skulde te betaal soos hulle in die gewone loop van sy besigheid verskuldig geraak het; en
- (c) sodanige betaling, in die besondere omstandighede, in werklikheid nie veroorsaak het dat die korporasie nie in staat was om sy skulde te betaal soos hulle in die gewone loop van sy besigheid verskuldig geraak het nie.

(3) Iemand wat opgehou het om 'n lid van die betrokke korporasie binne die bedoelde tydperk van twee jaar te wees, is ook aanspreeklik vir 'n terugbetaling waarvoor in subartikel (2) voorsiening gemaak word indien, en vir sover, terugbetalings deur huidige lede, tesame met alle ander beskikbare bates, onvoldoende is om al die skulde van die korporasie te betaal.

(4) 'n Sertifikaat deur die Meester uitgereik aangaande die bedrag wat deur 'n lid of voormalige lid ingevolge subartikel (2) of (3) aan die korporasie betaalbaar is, kan deur die likwidateur aan die klerk van die landdroshof in wie se regsgebied die geregistreerde kantoor van die korporasie geleë is, gestuur word, wat dit moet aanteken, en daarop het so 'n kennisgewing die uitwerking van 'n siviele vonnis van daardie landdroshof teen die betrokke lid of voormalige lid.

(5) Die betrokke hof kan, op aansoek van 'n lid of 'n voormalige lid in subartikel (3) bedoel, enige bevel wat hy goedgevind betreffende 'n sertifikaat in subartikel (4) bedoel, gee.

Terugbetaling van salaris of vergoeding deur lede.

71. (1) Indien 'n korporasie wat gelikwideer word, nie sy skulde kan betaal nie, en—

- (a) 'n regstreekse of onregstreekse betaling van 'n salaris of ander vergoeding deur die korporasie binne 'n tydperk van twee jaar voor die aanvang van sy likwidasië aan 'n lid in sy hoedanigheid van beampte of werknemer van die korporasie gemaak is; en
- (b) sodanige betaling, volgens die oordeel van die Meester, nie *bona fide* of onder die omstandighede redelik was nie,

gelas die Meester dat die betaling, of so 'n gedeelte daarvan as wat hy bepaal, deur so 'n lid aan die korporasie terugbetaal word.

(2) Iemand wat binne 'n tydperk van twee jaar bedoel in subartikel (1) (a) opgehou het om 'n lid van 'n korporasie bedoel in daardie subartikel te wees, kan, onder die omstandighede daarin

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sum or to secure or compound for it to the reasonable satisfaction of the creditor; or

- 5 (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 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
- 10 (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.

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70. (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 by reason only of his membership, if such payment complies with the requirements of section 51 (1).

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Repayments
by members.

(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 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—

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- (a) after such payment was made, the corporation's assets, fairly valued, exceeded all its liabilities; and
- 30 (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.

35 (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.

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(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.

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(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).

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

Repayment of salary or remuneration by members.

- 55 (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 capacity as an officer or employee of the corporation; and

60 (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 may determine, be repaid by such member to the corporation.

65 (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 refer-

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bedoel, deur die Meester gelas word om 'n terugbetaling te doen waarvoor in subartikel (1) voorsiening gemaak word, indien, en vir sover, sodanige terugbetalings deur huidige lede, tesame met alle ander beskikbare bates, onvoldoende is om al die korporasie se skulde te betaal.

(3) Die bepalings van subartikels (4) en (5) van artikel 70 is *mutatis mutandis* van toepassing ten opsigte van 'n terugbetaling aan 'n korporasie ingevolge subartikel (1) of (2).

Akkoord.

72. (1) By die likwidasië van 'n korporasie wat nie sy skulde kan betaal nie, kan die lede van die korporasie te eniger tyd na die eerste vergadering van skuldeisers skriftelik 'n akkoord, onderteken deur die lede wat meer as 50 persent van ledebelaë in die korporasie hou, aan die likwidateur aanbied.

(2) (a) Die bepalings van artikels 119, 120, 123 en 124 (1) en (5) van die Insolvensiewet, 1936 (Wet No. 24 van 1936), is *mutatis mutandis* van toepassing ten opsigte van die prosedure en gevolge van so 'n akkoord, en die likwidateur se funksies daarkragtens.

(b) By die toepassing van paragraaf (a) word 'n verwysing in 'n bepaling daarin bedoel—

- (i) na 'n insolvent of 'n insolvente boedel, uitgelê as 'n verwysing na die betrokke korporasie;
- (ii) na 'n kurator, uitgelê as 'n verwysing na die likwidateur van die betrokke korporasie; en
- (iii) na die rehabilitasie van 'n insolvent, uitgelê as 'n verwysing na die tersydestelling van die likwidasië van die betrokke korporasie.

Terugbetalings, betalings van skadevergoeding en teruggawe van eiendom deur lede en andere.

73. (1) Waar dit tydens die likwidasië van 'n korporasie blyk dat iemand wat deelgeneem het aan die oprigting van die korporasie, of 'n voormalige of huidige lid, beamppte of rekeningkundige beamppte van die korporasie geld of eiendom van die korporasie wanaangewend of weerhou het, of daarvoor aanspreeklik of verantwoordelik geword het, of hom skuldig gemaak het aan vertroueskending met betrekking tot die korporasie, kan 'n Hof, op aansoek van die Meester of van die likwidateur of van 'n skuldeiser of lid van die korporasie, ondersoek instel na die gedrag van sodanige persoon, lid, beamppte of rekeningkundige beamppte en hom beveel om die geld of eiendom, of 'n deel daarvan, met rente teen die koers wat die Hof billik ag, terug te betaal of terug te gee, of om die som wat die Hof billik ag, by te dra tot die bates van die korporasie as vergoeding of skadevergoeding ten opsigte van die wanaanwending, weerhouding of vertroueskending.

(2) Die bepalings van subartikel (1) is van toepassing ten opsigte van 'n persoon, lid, beamppte of rekeningkundige beamppte daarin bedoel, ondanks die feit dat so iemand ook strafregtelik ten opsigte van enige optrede daarin beoog, aanspreeklik is.

Aanstelling van likwidateur.

74. (1) Vir die doel van die voer van die verrigtinge by 'n likwidasië van 'n korporasie, stel die Meester 'n geskikte natuurlike persoon aan as likwidateur.

(2) Die Meester doen 'n aanstelling so gou doenlik nadat 'n voorlopige likwidasiëbevel gegee is, of 'n afskrif van 'n besluit vir 'n vrywillige likwidasië ingevolge artikel 67 (2) geregistreer is.

(3) Wanneer die Meester in die geval van 'n vrywillige likwidasië deur lede 'n aanstelling doen, moet hy enige verdere besluit op 'n vergadering van lede wat iemand as likwidateur benoem, in ag neem.

(4) In die geval van 'n vrywillige likwidasië deur skuldeisers en 'n likwidasië deur die Hof, stel die Meester, behoudens die bepalings van artikel 76, indien iemand op die eerste vergadering van skuldeisers as mede-likwidateur benoem word, sodanige persoon as mede-likwidateur aan sodra hy sekerheid tot bevrediging van die Meester gestel het vir die behoorlike uitvoering van sy pligte.

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red 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. (1) In the winding-up of a corporation unable to pay its debts, the members of the corporation may at any time after the first meeting of creditors submit to the liquidator a written offer of composition, signed by the members holding more than 50 per cent of members' interests in the corporation. Composition.

(2) (a) The provisions of sections 119, 120, 123 and 124(1) and (5) of the Insolvency Act, 1936 (Act No. 24 of 1936), shall *mutatis mutandis* apply in respect of the procedure and effect of any such composition, and the liquidator's functions thereunder.

(b) For the purposes of paragraph (a), any reference in any provision referred to therein—

- (i) to an insolvent or insolvent estate, shall be construed as a reference to the corporation concerned;
- (ii) to a trustee, shall be construed as a reference to the liquidator of the corporation concerned; and
- (iii) to the rehabilitation of an insolvent, shall be construed as a reference to the setting aside of the winding-up of the corporation concerned.

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

(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. (1) For the purposes of conducting the proceedings in a winding-up of a corporation, the Master shall appoint a suitable natural person as liquidator. Appointment of liquidator.

(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 shall take into consideration any further resolution at a meeting of members nominating a person as liquidator.

(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 has given security to the satisfaction of the Master for the proper performance of his duties.

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Vakatures in amp
van likwida-teurs.

75. (1) Wanneer 'n vakature in die amp van likwida-teur van 'n korporasie ontstaan, kan die Meester—

- (a) waar die vakature in die amp van 'n likwida-teur be-noem deur lede of skuldeisers bestaan, 'n oorblywende likwida-teur gelas om 'n vergadering van skuldeisers of lede, na gelang van die geval, te belê om 'n likwida-teur om die vakature te vul, te nomineer; 5
- (b) in 'n ander geval as 'n geval beoog in paragraaf (a), in-dien hy van oordeel is dat 'n oorblywende likwida-teur in staat is om die likwidasi-e te voltooi, afsien van die aanstelling van 'n likwida-teur om die vakature te vul, en die oorblywende likwida-teur gelas om die likwidasi-e te voltooi; of 10
- (c) in enige ander geval, 'n likwida-teur aanstel om die va-kature te vul. 15

(2) Die bepalings wat betrekking het op die benoeming of aanstelling van 'n likwida-teur van die Maatskappywet, soos toe-gepas deur artikel 66 van hierdie Wet, en van hierdie Wet, is van toepassing op die benoeming of aanstelling van 'n likwida-teur om 'n vakature in die amp van likwida-teur te vul. 20

Weiering deur
Meester om be-
noemde persoon as
likwida-teur aan te
stel.

76. (1) Indien iemand wat deur 'n vergadering van skuldeisers of van lede van 'n korporasie as likwida-teur benoem is, nie behoorlik benoem is nie, of onbevoeg is om as likwida-teur benoem of aan-gestel te word uit hoofde van artikel 372 of 373 van die Maat-skappywet, soos toegepas deur artikel 66 van hierdie Wet, of 25 versuim het om binne 'n tydperk van sewe dae vanaf die datum waarop hy in kennis gestel is dat die Meester sy benoeming aan-vaar het of binne die verdere tydperk wat die Meester toelaat, die sekerheid vermeld in artikel 375 (1) van die Maatskappywet, soos aldus toegepas, te stel, of indien na die oordeel van die Meester die persoon benoem as likwida-teur nie as likwida-teur van die betrokke korporasie aangestel behoort te word nie, gee die Meester aan die persoon aldus benoem skriftelik kennis dat hy weier om sy benoeming te aanvaar of om hom aan te stel, en meld hy in sodanige kennisgewing sy redes vir weiering om die 35 nominasie te aanvaar of hom aan te stel: Met dien verstande dat indien dié Meester weier om die benoeming vir aanstelling as likwida-teur te aanvaar omdat hy van oordeel is dat die benoem-de persoon nie as likwida-teur aangestel behoort te word nie, dit voldoende is indien die Meester in daardie kennisgewing, as so 'n rede, verklaar dat hy van oordeel is dat die benoemde per- 40 soon nie as likwida-teur van die betrokke korporasie aangestel behoort te word nie.

- (2) (a) Wanneer die Meester aldus geweier het om die be-noeming van 'n persoon te aanvaar of om hom aan te stel as likwida-teur, of wanneer die Minister die aanstel-ling van 'n likwida-teur kragtens artikel 371 (3) van die Maatskappywet, soos toegepas deur artikel 66 van hier-die Wet, tersyde gestel het, belê die Meester 'n verga-dering van skuldeisers of van lede, na gelang van die ge- 50 val, van die betrokke korporasie ten einde 'n ander persoon te benoem vir aanstelling as likwida-teur.
- (b) In die kennisgewing waardeur 'n bedoelde vergadering belê word, verklaar die Meester dat hy geweier het om die benoeming van die vroeër benoemde persoon vir 55 aanstelling as likwida-teur te aanvaar, of om die per-soon aldus benoem, aan te stel en, behoudens die voor-behoudsbepaling by subartikel (1), die redes daarvoor, of dat die aanstelling van die vroeër aangestelde per-soon as likwida-teur aldus deur die Minister tersyde ge- 60 stel is, na gelang van die geval, en dat die vergadering belê word met die doel om 'n ander persoon te benoem vir aanstelling as likwida-teur.
- (c) Die Meester pos 'n afskrif van sodanige kennisgewing aan elke skuldeiser wie se eis teen die korporasie 65 vroeër bewys en toegelaat is.
- (d) 'n Vergadering in paragraaf (a) bedoel, word geag 'n voortsetting te wees van die betrokke eerste vergade-

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

Vacancies in office of liquidators.

- 5 (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;
- 10 (b) in a case other than a case contemplated in paragraph (a), if he 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
- 15 (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. (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 seven days as from the date upon which he was notified that the Master had accepted his 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 declines to accept his nomination or to appoint him as liquidator, and shall in such notice state his reasons for declining to accept his nomination or to appoint him: Provided that if the Master declines to accept the nomination for appointment as liquidator because he 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 is of the opinion that the person nominated should not be appointed as liquidator of the corporation concerned.

Refusal by Master to appoint nominated person as liquidator.

(2) (a) When the Master has so declined to accept the nomination of any person or to appoint him 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.

(b) In the notice convening any said meeting the Master shall state that he 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.

(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 meet-

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ring van skuldeisers of van lede, of van enige sodanige vergadering in artikel 75 bedoel, na gelang van die geval.

(3) Indien die Meester weer om 'n rede in subartikel (1) vermeld aldus weier om die benoeming vir aanstelling as likwidateur deur 'n vergadering bedoel in subartikel (2) te aanvaar, of om die persoon aldus benoem, aan te stel—

(a) tree hy op ooreenkomstig die bepalings van subartikel (1); en

(b) indien die persoon aldus as enigste likwidateur benoem of indien al die persone aldus benoem, nie deur hom aangestel is nie, stel hy 'n ander persoon of persone wat nie onbevoeg is om likwidateur van die betrokke korporasie te wees nie, as likwidateur of likwidateurs van daardie korporasie aan.

Bedanking en afwesigheid van likwidateur.

77. (1) Op versoek van 'n likwidateur kan die Meester hom van sy amp onthef op die voorwaardes wat die Meester goeddink.

(2) 'n Likwidateur mag nie vir 'n tydperk van langer as 60 dae uit die Republiek afwesig wees nie, tensy—

(a) die Meester aan hom voor sy vertrek uit die Republiek skriftelik verlof verleen het om aldus afwesig te wees; en

(b) hy voldoen aan die voorwaardes wat die Meester wenslik ag om op te lê.

(3) Elke likwidateur wat deur die Meester uit sy amp onthef word, of wat verlof verleen word om vir 'n tydperk van langer as 60 dae uit die Republiek afwesig te wees, moet in die *Staatskoerant* daarvan kennis gee.

Eerste vergadering van skuldeisers en lede.

78. (1) 'n Likwidateur moet so spoedig moontlik en, behalwe met die toestemming van die Meester, nie later nie as een maand nadat 'n finale likwidasiëbevel deur 'n Hof gegee is of 'n besluit vir 'n vrywillige likwidasie deur skuldeisers geregistreer is—

(a) 'n vergadering van skuldeisers van die korporasie belê met die doel om—

(i) die uiteensetting aangaande die toestand van die sake van die korporasie wat by die Meester ingedien is, te oorweeg;

(ii) eise teen die korporasie te bewys;

(iii) te besluit of 'n mede-likwidateur aangestel moet word en, indien wel, iemand te nomineer vir aanstelling; en

(iv) by 'n likwidasie deur 'n Hof of 'n vrywillige likwidasie deur skuldeisers, opdragte of magtiging ten opsigte van enige aangeleentheid betreffende die likwidasie te ontvang of te verkry; en

(b) 'n vergadering van lede van die korporasie belê met die doel om—

(i) die bedoelde uiteensetting aangaande die toestand van die sake van die korporasie te oorweeg, tensy die vergadering van lede by die neem van 'n besluit vir die vrywillige likwidasie van die korporasie reeds bedoelde uiteensetting oorweeg het; en

(ii) opdragte of magtiging ten opsigte van enige aangeleentheid betreffende die likwidasie te ontvang of te verkry.

(2) (a) Die wetsbepalings met betrekking tot insolvensie ten opsigte van die stem, die wyse van stem en die stem deur 'n agent op vergaderings van skuldeisers, is *mutatis mutandis* van toepassing ten opsigte van 'n vergadering in hierdie artikel bedoel: Met dien verstande dat in 'n likwidasie deur die Hof 'n lid of voormalige lid van 'n korporasie geen stemreg het nie ten opsigte van die benoeming van 'n likwidateur op grond van sy leningsrekening by die korporasie of eise vir agterstallige salaris, reiskoste of toelaes wat deur die korporasie verskuldig is, of eise wat die lid of voormalige lid ten behoewe van die korporasie betaal het.

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ing 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 shall act in accordance with the provisions of subsection (1); and
- (b) if the person so nominated as sole liquidator has not or if all the persons so nominated have not been appointed by him, he shall appoint as liquidator or liquidators of the corporation concerned any other person or persons not disqualified from being liquidator of that corporation.

77. (1) At the request of a liquidator the Master may relieve him of his office upon such conditions as the Master may think fit. Resignation and absence of liquidator.

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

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

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

78. (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— First meeting of creditors and members.

(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 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.

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- (b) Die bepalings van paragraaf (a) is *mutatis mutandis* van toepassing ten opsigte van iemand aan wie 'n reg in daardie paragraaf beoog, gesedeer is.

Verslag aan skuldeisers en lede.

79. Behalwe in die geval van 'n vrywillige likwidasië deur lede, moet 'n likwidateur so spoedig doenlik en, behalwe met toestemming van die Meester, nie later nie as drie maande na die datum van sy aanstelling, 'n verslag aan 'n algemene vergadering van skuldeisers en lede van die betrokke korporasie voorlê aangaande die volgende aangeleenthede:

- (a) Die beraamde bedrae van die korporasie se bates en laste; 10
- (b) indien die korporasie misluk het, die redes vir die mislukking;
- (c) of hy 'n verslag kragtens artikel 400 (2) van die Maatskappywet, soos toegepas deur artikel 66 van hierdie Wet, aan die Meester voorgelê het of voornemens is om dit te doen, al dan nie; 15
- (d) of 'n lid of voormalige lid aanspreeklik blyk te wees, al dan nie—
 - (i) teenoor die korporasie op grond van vertroueskending of nalatigheid; 20
 - (ii) om terugbetalings aan die korporasie te maak ingevolge artikel 70 (2) of (3) of artikel 71 (1) of (2);
 - (iii) teenoor of 'n skuldeiser van die korporasie of die korporasie self, na gelang van die geval, uit hoofde van 'n bepaling van Deel VIII van hierdie Wet; 25
- (e) gedinge deur of teen die korporasie wat op die datum van aanvang van die likwidasië aanhangig was, of wat ingestel was of ingestel kan word;
- (f) of verdere ondersoek met betrekking tot enige aangeleentheid in verband met die oprigting of mislukking van die korporasie of die dryf van sy besigheid na sy oordeel wenslik is, al dan nie; 30
- (g) of die korporasie die rekeningkundige rekords deur artikel 56 voorgeskryf, gehou het, al dan nie, en, indien nie, in watter opsigte nie aan die vereistes van daardie artikel voldoen is nie; 35
- (h) die vordering en vooruitsigte ten opsigte van die likwidasië; en
- (i) enige ander aangeleentheid wat hy goedgevind, of in verband waarmee hy die opdragte van die skuldeisers verlang. 40

Terugbetalings deur lede of voormalige lede.

80. Die likwidateur van 'n korporasie wat nie sy skulde kan betaal nie—

- (a) moet bepaal of lede of voormalige lede van die korporasie aanspreeklik is om ingevolge artikel 70 (2) of (3) terugbetalings te doen; 45
- (b) moet bepaal of omstandighede dit regverdig dat die Meester genader word vir 'n lasgewing dat lede of voormalige lede van die korporasie terugbetalings ingevolge artikel 71 (1) of (2) doen; 50
- (c) kan, indien nodig, sodanige terugbetalings afdwing; en
- (d) kan, in geval van die dood van so 'n lid of voormalige lid wat aanspreeklik is of gelas is om 'n terugbetaling te doen, of van die insolvensie van sy boedel, die verskuldigde bedrag van die betrokke boedel eis. 55

Pligte van likwidateur betreffende aanspreeklikheid van lede teenoor skuldeisers of korporasie.

81. (1) Die likwidateur van 'n korporasie wat nie sy skulde kan betaal nie moet, op grond van die feite wat gereedlik tot sy beskikking is, bepaal of daar rede is om te glo dat 'n lid of voormalige lid van die korporasie, of 'n ander persoon, uit hoofde van 'n bepaling van Deel VIII van hierdie Wet teenoor 'n skuldeiser van die korporasie of teenoor die korporasie self, na gelang van die geval, enige aanspreeklikheid opgedoen het. 60

(2) Indien 'n likwidateur vind dat daar sodanige rede is ten opsigte van 'n skuldeiser wat sy eis bewys het, stel hy sodanige skuldeiser dienooreenkomstig skriftelik in kennis, en indien die skuldeiser die bedrag van sy eis, of 'n gedeelte daarvan, van so 65

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- (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. 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 appointment, submit to a general meeting of creditors and members of the corporation concerned a report as to the following matters:

Report to creditors and members.

- 10 (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 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;
- 15 (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;
 - 20 (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;
- 25 (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 opinion desirable in regard to any matter relating to the formation or failure of the corporation or the conduct of its business;
- 30 (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;
- 35 (h) the progress and prospects in respect of the winding-up; and
- (i) any other matter which he may consider fit, or in connection with which he may require the directions of the creditors.
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80. The liquidator of a corporation unable to pay its debts—

Repayments by members or former members.

- (a) shall ascertain whether members or former members of the corporation are liable in terms of section 70 (2) or (3) to make repayments;
- 45 (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);
- 50 (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 estate, claim the amount due from the estate concerned.

55 81. (1) The liquidator of a corporation unable to pay its debts shall ascertain whether, on the facts reasonably available to him, 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.

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

(2) If the liquidator finds that there is such reason in respect of any creditor who has proved a claim, he shall in writing inform such creditor accordingly, and if the creditor recovers the amount of his claim or part thereof from such member or former mem-

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'n lid of voormalige lid, of so 'n ander persoon, invorder, neem die likwidateur sodanige invordering in aanmerking by die bepaling van die dividend aan daardie skuldeiser betaalbaar.

(3) In besonder moet die likwidateur bepaal of 'n aansoek by die Hof ingevolge artikel 64 (1) geregverdig en raadsaam is. 5

DEEL X

STRAWWE EN ALGEMEEN

Strawwe.

82. (1) 'n Korporasie of 'n lid of beampte van 'n korporasie of 'n ander persoon wat skuldig bevind is aan 'n misdryf ingevolge hierdie Wet is strafbaar, in die geval van 'n misdryf ge- 10
noem—

- (a) in artikel 52, 56 of 64, met 'n boete van hoogstens R2 000 of met gevangenisstraf vir 'n tydperk van hoogstens twee jaar, of met daardie boete sowel as daardie gevangenisstraf; 15
- (b) in artikel 58, met 'n boete van hoogstens R1 000 of met gevangenisstraf vir 'n tydperk van hoogstens een jaar, of met daardie boete sowel as daardie gevangenisstraf;
- (c) in artikel 20, 23 of 47, met 'n boete van hoogstens R500 of met gevangenisstraf vir 'n tydperk van hoogstens ses 20
maande, of met daardie boete sowel as daardie gevangenisstraf; en
- (d) in artikel 16, 41 of 49, met 'n boete van hoogstens R100 of met gevangenisstraf vir 'n tydperk van hoogstens drie maande, of met daardie boete sowel as daardie ge- 25
vangenisstraf.

(2) Die Hof wat sodanige korporasie, lid, beampte of persoon skuldig bevind weens 'n versuim om 'n handeling te verrig wat hy kragtens hierdie Wet vereis word om te verrig, kan benewens 'n straf wat die Hof oplaê, daardie korporasie, lid, beampte of 30
persoon beveel om bedoelde handeling te verrig binne die tydperk wat die Hof vasstel.

(3) Iemand wat, ten opsigte van 'n misdryf ingevolge 'n bepaling van die Maatskappywet, of van die Insolvensiewet, 1936 (Wet No. 24 van 1936), wat deur 'n bepaling van hierdie Wet 35
van toepassing gemaak word, skuldig bevind is aan so 'n misdryf ingevolge so 'n bepaling soos aldus toegepas, is strafbaar met die strawwe wat ten opsigte van so 'n misdryf opgelê word deur 'n toepaslike bepaling van genoemde Maatskappywet of Insolvensiewet, na gelang van die geval. 40

Kort titel en inwerking-treding.

83. Hierdie Wet heet die Wet op Beslote Korporasies, 1984, en tree in werking op 'n datum deur die Staatspresident by proklamasie in die *Staatskoerant* bepaal.

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ber, or from such other person, the liquidator shall take such recovery into account in determining the dividend payable to that creditor.

(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

82. (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, 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
- (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 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.

(3) Any person who, in respect of any offence under any provision of the Companies Act, or of the Insolvency Act, 1936 (Act No. 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. 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*.

Penalties.

Short title and commencement.

