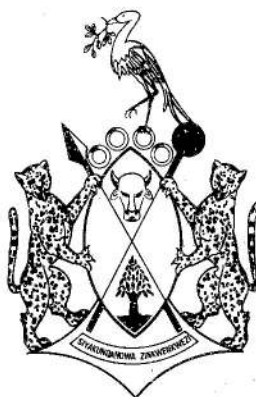


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**No. 153**

**DEPARTMENT OF FINANCE AND ECONOMIC DEVELOPMENT**

**GOVERNMENT NOTICE NO. 109**

**IT IS HEREBY NOTIFIED THAT THE PRESIDENT HAS  
ASSENTED TO THE FOLLOWING ACT WHICH IS HEREBY  
PUBLISHED FOR GENERAL INFORMATION:—**

**PRIVATE COMPANIES ACT, 1985**

**ACT NO. 36 of 1985**

# PRIVATE COMPANIES ACT, 1985

## BILL

To consolidate, revise and decriminalise the law relating to private companies.

(English text signed by the President. Assented to on 9 December 1985)

BE IT ENACTED by the National Assembly of the Republic of Ciskei as follows:—

### Definitions.

1. In this Act, unless inconsistent with the context —
  - "books or papers" and "books and papers" includes accounts, deeds, writings and other documents;
  - "Ciskei" means the Republic of Ciskei;
  - "company registration form" means the prescribed company registration form;
  - "court" means the General Division of the Supreme Court of Ciskei;
  - "director" includes any person occupying the position of director or alternate director of a company, by whatever name he may be called;
  - "legal representative" means any person duly authorized in writing by a shareholder or by a competent court to perform any act on such shareholder's behalf and, in the case of a deceased estate, includes a duly appointed executor;
  - "limited company" means a company having the liability of its shareholders limited as indicated in the company registration form;
  - "Minister" means the Minister of Finance and Economic Development;
  - "prescribed" means prescribed by regulation;
  - "private company" means a company incorporated, or deemed to be incorporated, under this Act;
  - "Registrar" means the Registrar of Companies appointed under the Companies Act, 1973 (Act 61 of 1973);
  - "register of shareholders" means the register referred to in section 12;
  - "regulation" means a regulation made under section 32;
  - "share" means a share in the share capital of a company.

### Formation of Private Company.

2. (1) Any person or group of persons may form a private company in accordance with this Act.  
(2) A private company may not invite public subscription for its shares.

### Requirements of a company registration form.

3. A company registration form shall provide for the following:—
  - (a) The name of the company, which shall include the words "Private Limited" as the last words in the case of a company with limited liability and "Private Unlimited" where the liability of the shareholders is not limited;
  - (b) (i) the address of the company's registered office in Ciskei;  
(ii) the business address of the company;  
(iii) the postal address of the company;
  - (c) the principal objects and business of the company;
  - (d) a statement indicating the limitation of liability of shareholders (if any);
  - (e) A signed undertaking from at least one person to subscribe for a minimum of one share in the capital of the company stating the full names and addresses of each subscriber and the number of shares subscribed for.

### Name of Company and change of name.

4. (1) A company may not be registered by a name identical to that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to confuse, except where the company in existence signifies its consent in such manner as the Registrar requires.  
(2) A company may not be registered by a name suggestive of blasphemy or indecency.  
(3) If a company, through inadvertence or otherwise, is registered in conflict with subsection (1) or subsection (2) the company may, in the circumstances described in subsection (1), with the consent of the Registrar, change its name, and shall, in the circumstances described in subsection (2) be obliged to change its name.  
(4) A company may use the abbreviation "Pvt Ltd" to indicate that it is a private limited company under this Act.  
(5) Any company may, by resolution and subject to the approval in writing of the Registrar, change its name.  
(6) Where a company changes its name, the Registrar shall record the change of name in the register and shall issue a certificate reflecting such change.

PRIVATE COMPANIES ACT, 1985

*Company  
Constitution.*

5. (1) Every company shall have a constitution setting out the manner in which its affairs shall be regulated and may submit for registration along with the company registration form, a constitution, failing which the constitution as set out in the Schedule shall apply.
- (2) A company may alter its constitution at any time by resolution.

*Registration  
of Company  
Registration  
Form and  
Constitution.*

6. (1) Application to register a private company shall be made by submitting to the Registrar in duplicate a duly completed company registration form signed by a director, together with the constitution (if any).
- (2) Upon payment to him of the prescribed fees the Registrar shall, if the company registration form is duly completed in accordance with the provisions of this Act, register it by filing the original of such form, and the Registrar shall return to the company the duplicate of the company registration form with the date of registration endorsed thereon.

*Alteration  
of content  
of company  
registration form.*

7. Subject to the provisions of section 16 a company may by resolution lodged with the Registrar alter the company registration form.

*Effect of  
registration.*

8. (1) Upon the registration of the company registration form the Registrar shall certify that the company is incorporated, and, in the case of a limited company, that the company is limited and the registrar shall issue a certificate of incorporation to this effect.
- (2) Any company registered in terms of this Act shall be a body corporate having perpetual succession.
- (3) A company which is registered but which does not propose to commence business immediately, shall be exempt from payment of company annual duty, provided that before such company commences business it shall give notice to the Registrar of its intention to do so and shall pay the company annual duty.

*Shareholders  
entitled to  
obtain copies  
of company  
registration  
form and  
constitution.*

9. A company shall at the request of a shareholder and on payment by him of such reasonable fee as the company may fix, furnish him with a copy of the company registration form and constitution of it may afford to any shareholder or his legal representative adequate facilities for making copies of such documents.

*Certificate  
of shares.*

10. A certificate by a director of the company, specifying the number of shares held by any member on its production shall be *prima facie* proof of the title of the shareholder to the shares.

*Registration  
of shareholders.*

11. (1) The subscribers to the company registration form of a company shall be deemed to have agreed to become shareholders of the company, and upon its registration shall be entered as shareholders in its register of shareholders.
- (2) Any other person who becomes a shareholder of the company shall have his name registered by the company in its register of shareholders.

*Register of  
shareholders.*

12. Every company shall keep a register of its shareholders and shall enter therein the following particulars:
  - (a) the names and addresses of the shareholders;
  - (b) the number of shares held by each shareholder;
  - (c) the date at which each person was entered in the register as a shareholder; and
  - (d) the date at which any person ceased to be a shareholder.

*Inspection of  
register of  
shareholders.*

13. (1) The Registrar shall be entitled to inspect the register of shareholders of a company during the normal trading hours of the company.
- (2) The register of shareholders, commencing from the date of the registration of the company, shall be kept at the registered office of the company, and shall be open to inspection by a shareholder or his legal representative during the normal trading hours of the company.
- (3) Any shareholder may require the company to furnish him with extracts from such register on payment of such reasonable sum as the company may fix or the company may afford to any shareholder or his legal representative adequate facilities for making such extracts.

PRIVATE COMPANIES ACT, 1985

*Register to be evidence.*

14. The register of shareholders shall on its mere production be *prima facie* proof of any matter contained therein.

*Resolution for reduction of capital.*

15. Subject to confirmation by the court, a company, if so authorised by its constitution, may by resolution reduce its share capital.

*Notice to creditors of intention to reduce share capital.*

16. (1) Any company intending to reduce its share capital shall give written notice to every creditor of such intention.  
(2) No application for an order confirming the minute of reduction shall be entertained by the court unless 30 days' notice has been given in terms of this section.  
(3) Such notice shall be deemed to have been duly given seven days after its dispatch by registered post to the creditor's known address, or upon its publication in a newspaper circulating in the district where the creditor has his principal place of business.

*Application to court for confirmation order.*

17. (1) Where a company has passed a resolution for reducing its share capital, it shall apply to the court for an order confirming the reduction.  
(2) Where a company applies to the court for a confirmation order in respect of a resolution to reduce its share capital, it shall lodge with the registrar of the court a list of all its creditors together with satisfactory proof of service of the notice referred to in section 16(1).

*Objections by creditors to a reduction in share capital.*

18. (1) Where a proposed reduction of share capital involves either the diminution of liability in respect of unpaid share capital or the payment of share capital to any shareholder, every creditor of the company who, on a date to be fixed by the court, is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction.  
(2) Where a creditor listed as provided in section 17(2), whose claim is not discharged, does not consent to the reduction, the court may dispense with the consent of that creditor upon the company's securing the payment of the debt in such manner as the court may direct.

*Order of court confirming reduction of share capital.*

19. The court may, if it is satisfied with respect to every creditor of the company who under this Act is entitled to object to the reduction of share capital, that either his consent to the reduction has been obtained or that his claim has been discharged or secured, make an order confirming the reduction on such terms and conditions as it thinks fit.

*Registration of order of court and minute of reduction.*

20. (1) Upon production to the Registrar of an order of the court confirming the reduction of the share capital of a company, he shall register the order in the manner prescribed by regulation.  
(2) The said order shall take effect on registration.  
(3) Notice of such registration shall be published in such manner as the court may direct.

*Reduction of share capital where a company has no creditors.*

21. Where a company intending to reduce its share capital has no creditors, it shall be lawful for it to reduce its share capital upon lodging with the Registrar a copy of the resolution together with a statement signed by every director of the company that the company has no creditors.

*First statutory meeting of company.*

22. (1) Every limited company shall, within three months after the date at which the company is entitled to commence business, hold a general meeting of the shareholders of the company which shall be called the statutory meeting.  
(2) The directors shall, at least 14 days before the day on which the statutory meeting is to be held, give notice to all shareholders of such meeting.

*Extraordinary general meeting.*

23. (1) Notwithstanding anything in the constitution of the company, the directors of a company shall, on a written request of the holders of not less than one-tenth of the issued shares of the company, forthwith proceed to convene an extraordinary general meeting of the company.  
(2) Such a request shall state the objects of the meeting and shall be signed by a shareholder and be delivered to the registered office of the company.

PRIVATE COMPANIES ACT, 1985

- (3) If an extraordinary or special resolution is to be proposed by one or more of the shareholders at a meeting to be convened under this section, the period of notice to be given of the meeting shall be as provided in the constitution of the company.
- (4) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary general meeting for the purpose of confirming the resolution and, if the directors do not convene such a meeting within seven days from the date of the passing of the first resolution, the shareholders, or a majority of them in value, may themselves convene the meeting.
- (5) Save as provided in subsection (4), any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

*Representation  
of company at  
meeting of  
other company  
of which it is  
a shareholder.*

24. A company which is a shareholder of another company may, by resolution of the directors, authorize any of its officers or any other person to act as its legal representative at any meeting of that other company, and the person so authorized shall be entitled to exercise the same powers on behalf of the company which he represents as an individual shareholder of the other company.

*Minutes of  
proceedings  
of meetings  
and directors.*

25. (1) Every company shall cause minutes to be kept of all the proceedings at general meetings of the company and at the meetings of its directors.
- (2) Any such minutes, if purporting to be signed by the chairman of the meeting at which the proceedings took place or by the chairman of the next succeeding meeting shall be *prima facie* proof of those meetings.
- (3) Until the contrary is proved, every general meeting of the company or meeting of directors in respect of proceedings whereof minutes have been so made shall be deemed to have been duly held and convened, and all proceedings thereat to have been duly held.

*Number of  
directors and  
liability of  
subscribers.*

26. (1) Every private company shall have at least one director.
- (2) Every subscriber to a company registration form shall, until directors are appointed, be deemed to be a director of the company and shall be liable for the performance or discharge of all the duties and obligations of a director.

*Limitation  
of time for  
issue of  
certificates.*

27. Every company shall, within two months after the allotment of any of its shares or within two months after the registration of the transfer of any such shares, as the case may be, complete and have ready for delivery the certificates of all the shares allotted or transferred, unless the conditions of issue of the shares otherwise provide.

*Appointment  
and remuneration  
of auditors.*

28. (1) Subject to the provisions of subsection (2) (a) of this section, every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next general meeting.
- (2) (a) Where all the shareholders of a Company have agreed in writing not to appoint an auditor and a copy of such agreement has been lodged with the Registrar, the company shall not be required to comply with the requirements of subsection (1).
- (b) Any shareholder may subsequently call for the appointment of an auditor by giving notice in writing to the company, and the directors of the company shall within 30 days of the receipt of such notice appoint an auditor to audit the affairs of the company commencing from the date of his appointment.
- (3) No director, manager, secretary or other officer of the company shall be capable of being appointed auditor of the company.
- (4) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of the intention to nominate that person to the office of auditor has been given by a shareholder to the company not less than fourteen days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the shareholders, in any manner allowed by the company's constitution, not less than seven days before the annual general meeting.



PRIVATE COMPANIES ACT, 1985

- (5) The first auditor or auditors of the company shall be appointed by the directors before the statutory meeting, and shall hold office until the statutory meeting.
- (6) The directors of a company may fill any casual vacancy in the office of auditor but, while any such vacancy continues, the surviving or continuing auditor or auditors shall act.
- (7) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting or to fill any casual vacancy may be fixed by the directors.

*Powers and  
duties of  
auditor.*

- 29. (1) Every auditor of a company shall have the right of access at all times to the books and accounts and vouchers of the company and shall be entitled to require from the directors and officers of the company such information and explanations as may be necessary for the performance of the duties of auditor.
- (2) The auditor shall make a report to the shareholders on the financial statements laid before the company in general meeting during his tenure of office and the report shall state that he has examined the annual financial statements of the company and certify that they are in accordance with its accounting records and have been properly prepared so as to fairly present the financial position of the company and the results of its operations for the year in question. The report shall further certify that the auditor has obtained all the information and explanations which he required for the purposes of his audit, and that proper accounting records adequate for the purposes of the audit have been kept by the company so far as appears from his examination of those records.
- (3) The financial statements shall be signed by at least two of the directors of the company or, if there is only one director, by that director, and the auditor's report shall be attached to the financial statements. Any shareholder shall be entitled to be furnished with a copy of the financial statements and auditors' report at a charge to be set by the company.

*Conversion.*

- 30. This Act shall apply to all private companies registered in Ciskei at the date of commencement of this Act unless they give notice within six months of such commencement of their intention to remain subject to the Companies Act, 1973.

*Winding-up.*

- 31. The provisions of the Companies Act, 1973 shall apply *mutatis mutandis* to the winding-up of a company under this Act.

*Powers of  
Registrar.*

- 32. The Registrar shall have the right to institute action for the recovery of any monies due to him in terms of this Act.

*Regulations.*

- 33. The Minister may make regulations —
  - (a) prescribing the forms to be used under this Act;
  - (b) prescribing, with the concurrence of the Treasury, the fees payable in terms of this Act; and
  - (c) generally such other regulations as he may deem necessary for the achievement of the aims and objects of this Act.

*Penalties.*

- 34. Failure to comply with any requirement of this Act shall render a company liable to a penalty not exceeding R200,00 to be levied by the Registrar at his discretion.

*Short title  
and commencement.*

- 35. This Act shall be called the Private Companies Act, 1985 and shall come into operation on a date to be fixed by the President by proclamation in the *Gazette*.

## PRIVATE COMPANIES ACT, 1985

### COMPANY CONSTITUTION

#### INTERPRETATION

1. In these regulations, unless the context otherwise indicates, all terms used in these regulations shall bear the meaning assigned thereto in section 1 of the Private Companies Act, 1985 (hereinafter referred to as "the Act").

#### Restrictions

2. The directors shall have regard to the restrictions on the commencement of business imposed by section 8 (c) of the Act.
3. The company is a private company and, accordingly, may not offer its shares to the public.

#### Joint Ownership

4. Where two or more persons hold one or more shares of the company jointly they shall be treated as a single shareholder.

#### Shares and certificates of Shares

5. Subject to the restrictions, if any, of the Company Registration Form and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred, or other special rights, or subject to such restrictions (whether in regard to dividend, voting, return of share capital or otherwise) as the company may from time to time, determine, and the company may determine that any preference shares shall be issued on the condition that they are or are at the option of the company, liable to be redeemed.
6. Every person whose name is entered as a shareholder in the register of shareholders shall be entitled to one certificate for all the shares registered in his name, or to several certificates, each for a part of such shares. Every share certificate shall specify the number of shares in respect of which it is issued. Every original shareholder shall be entitled to one share certificate free of charge but for every subsequent certificate the directors may make such charge as they may from time to time think fit: Provided that if a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, and on such terms, if any, as to evidence and indemnity as the directors may think fit.
7. Share certificates shall be issued under the authority of the directors, in such manner and form as the directors from time to time prescribe. Shares shall be numbered in numerical progression beginning with the number one, and each share shall be distinguished by its appropriate number.
8. A certificate for shares registered in the names of two or more persons shall be delivered to the person first named in the register as a holder thereof, and delivery of a certificate for a share to that person shall be a sufficient delivery to all joint holders of that share.

#### Variation of Rights

9. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class or with the sanction of a resolution passed at a separate general meeting of the holder of the shares of that class.

#### Register of shareholders

10. (a) The company shall maintain at its registered office a register of shareholders of the company provided in section 12 of the Act. The register of shareholders shall be open to inspection as provided in section 13 of the Act.  
(b) The company may maintain a branch register, and the provisions of paragraph (a) shall *mutatis mutandis* apply to such register.

#### Transfer of Share

11. Shares may only be transferred with the consent of the directors. The Directors must, subject to these regulations, consent to the transfer of any shares if such transfer has been approved by the shareholders of the company in general meeting.

## PRIVATE COMPANIES ACT, 1985

### Instrument of Transfer

12. Subject to such of the restrictions as may be applicable, any shareholder may transfer all or any of his shares by instrument in writing in any usual or common form or any other form which the directors may approve, and the transferor shall be deemed to remain the holder of the shares until the name of the transferee is entered in the register of shareholders in respect thereof.
13. The directors may decline to recognise any instrument of transfer unless —
  - (a) The instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer; and
  - (b) the share transfer duty (if any) thereon has been paid.
14. Every instrument of transfer shall be left at the registered office of the Company accompanied by the certificate of the shares to be transferred and/or such other evidence as the company may require, to prove the title of the transferor or his right to transfer the shares.

### Authorities to sign Transfer Deeds

15. All authorities to sign transfer deeds granted by shareholders for the purpose of transferring shares, shall, as between the company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the company may allow the same to be acted upon until such time as express notice in writing of the revocation of such authorities shall have been given and lodged at the company's registered office. Notwithstanding the giving and lodging of such notices of revocation the company shall be entitled to give effect to any instrument signed under any such authority to sign, which was signed prior to the giving and lodging of such notice of revocation.

### Transmission Clause

16. Any person who submits proof of his appointment or capacity as the executor, administrator, trustee, curator or guardian in respect of the estate of a deceased shareholder of the company, or of a shareholder whose estate has been sequestrated, or of a shareholder who is otherwise under a disability, or as the liquidator of any body corporate which is a shareholder of the company, as the case may be, shall be entitled to have his name entered in the register of shareholders of the company *nomine officii* and shall, for all purposes, be a shareholder of the company.

This regulation is hereinafter referred to as the "transmission clause".

### Restriction on Transfer of Shares

17. The directors of the company shall consent to the transfer of any shares in the company:
  - (a) by virtue of regulation 16; or
  - (b) by virtue of inheritance; or
  - (c) by a shareholder to a family trust established for the benefit of the family of such shareholder, provided the then auditors of the company are satisfied that it is a *bona fide* family trust;
  - (d) if required to do so in terms of regulation 11;
  - (e) if shares are sold pursuant to regulation 18.
18. Except as set out in regulation 17 above, the following shall apply:
  - (a) Any shareholder shall be entitled to sell any or all of his shares in the company.
  - (b) Where a shareholder wishes to sell any of his shares in the company, he shall only be entitled to do so together with a *pro rata* portion of his claims, if any, against the company, which shall be determined according to the number of shares being offered for sale in relation to the total number of shares owned by such shareholder. Such shares and claims are hereinafter referred to as his "interest".
  - (c) No shareholder shall be entitled to dispose of all or part of his shares otherwise than as set out in these regulations.
  - (d) No shareholder shall be entitled to dispose of all or part of his shares if such disposal is in breach of any agreement existing between the shareholders of the company.

### Conversion of Shares into Stock

19. The company may by resolution convert all or any of its shares into stock, and reconvert such stock into any number of shares.
20. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations



## PRIVATE COMPANIES ACT, 1985

as the shares from which the stock arose might prior to conversion have been transferred, or as near thereto as circumstances permit, but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of such minimum, but the minimum shall not exceed the nominal amount, in the case of shares of par value, or the issue price in the case of shares of no par value, of the shares from which the stock arose.

21. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.
22. Such of the regulations of the company as are applicable to shares shall apply to stock, and the word "share" and "shareholder" therein shall include "stock" and "stockholder".

### Alteration of Company Regulation Form

23. The company may by resolution alter the provisions of the Company Registration Form, subject to the provisions of the Act.

### General Meetings

24. The company shall hold an annual general meeting within nine months after the expiration of the financial year of the company.
25. Subject to regulation 28 hereunder, general meetings shall be held at such time and place as the directors may from time to time determine, or at such time and place as are prescribed if the meetings are convened under section 23 of the Act.
26. An annual general meeting and a meeting called for the passing of a resolution shall be called by not less than twenty-one clear days notice in writing and any other general meeting shall be called by not less than fourteen clear days notice in writing. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of the meeting and shall be given in the manner set out in the regulations contained hereunder, to such persons as are, under these regulations or in terms of the Act entitled to receive such notices from the company; provided that a meeting of the company shall, notwithstanding the fact that it is called by shorter notice than that specified in this regulation, be deemed to have been duly called if it is so agreed by a majority in number of the shareholders having a right to attend and vote at the meeting, being a majority holding not less than ninety-five per cent of the total voting rights of all the shareholders.

### Business at General Meetings

27. The annual general meeting shall deal with and dispose of all matters prescribed by the Act, including the consideration of the annual financial statements, the election of directors and the appointment of an auditor, and any further matters set out in the notice convening such meeting.
28. General meetings shall only deal with those matters set out in the notice convening the meeting.
29. In the event of all shareholders being present at a general meeting personally or by way of a proxy, such meeting may, notwithstanding regulation 28 above, deal with any matter within its competence.
30. No business shall be transacted at any general meeting unless a quorum of shareholders is present at the time when the meeting proceeds to business.

### Quorum at General Meetings

31. A quorum for all general meetings shall be not less than seventy-five per centum of the total number of shareholders, present personally or by way of a proxy, holding not less than fifty per centum of the total voting rights. If the company has one shareholder, that shareholder shall be a quorum.
32. If within half an hour after the time appointed for the meeting a quorum is not present, the meeting, if convened upon a requisition of shareholders, shall be dissolved; in any other case it shall stand adjourned by the Chairman to a day to be determined by him but not earlier than twelve days and not later than twenty-five days after the date of the meeting, and if at such adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the shareholders present in person or by proxy shall be a quorum.
33. Where a meeting has been adjourned as aforesaid, the company shall through its secretary or through any director, upon a date not later than three days after the adjournment, send a written notice to each shareholder of the company stating —
  - (a) the date, time and place to which the meeting has been adjourned;
  - (b) the matters on the agenda; and
  - (c) the grounds for the adjournment.

## PRIVATE COMPANIES ACT, 1985

### CHAIRMAN AT GENERAL MEETINGS

34. The Chairman, if any, of the Board of directors shall preside as chairman at every general meeting of the company.
35. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, or if he is unwilling to act as chairman, the shareholders present shall elect one of their numbers to be chairman.

### ADJOURNMENT OF GENERAL MEETINGS

36. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.

### Resolutions of General Meetings

37. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the Chairman or shareholders referred to in section 23 of the Act, and unless a poll is so demanded, a declaration by the Chairman that a resolution has, on a show of hands been carried or carried unanimously or by a particular majority or negatived, and an entry to that effect in the book containing the Minutes of the proceedings of the company, shall be conclusive evidence of such fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.
38. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded.
39. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall *not* be entitled to a second or casting vote.
40. A poll, demanded on the election of a chairman or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.

### Inspection of Minutes

41. The minutes kept in terms of section 25 of the Act of every general meeting of the company may be inspected and copied by shareholders.

### Votes of shareholders

42. Subject to any rights or restrictions for the time being attaching to any class or classes of shares, on a show of hands every shareholder present in person or by proxy, and if a shareholder is a body corporate, its representative, shall have one vote, and on a poll every shareholder present in person or by proxy shall be entitled to exercise the voting rights set out in this Constitution.
43. In the case of joint holders the vote of the person whose name appears first in the register of shareholders and who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.
44. Any person entitled under the transmission clause to any shares, shall be entitled to vote at any general meeting in respect thereof in the same manner as if he was the registered holder of those shares; provided that not later than the commencement of the meeting at which he proposes to vote he shall submit to the company proof that he is such executor, administrator, trustee, curator or guardian (as the case may be) and that he is entitled under the transmission clause to transfer of those shares, unless the directors have previously admitted his right to vote in respect of those shares. Co-holders under the transmission clause shall, for the purpose of this regulation, be deemed to be joint holders of their shares.
45. On a poll, and by a show of hands votes may be given either personally or by proxy.
46. In the event of any shareholder being a body corporate, any officer or agent of such body corporate who is duly authorised by the body corporate may vote on behalf of the body corporate. The authority of such officer shall be established by delivery to the company of a certified resolution from the body corporate, which resolution shall remain in force until the company is served with notice of withdrawal.

### Proxies

47. The instrument appointing a proxy shall be in writing under the hands of the appointer or of his agent duly authorised in writing, or, if the appointer is a body corporate, under the hand of an officer or agent authorised by the body corporate.

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48. A proxy need not be a shareholder of the company.
49. The instrument appointing a proxy to vote at a meeting of the company shall be deemed also to confer authority to demand or join in demanding a poll, and for the purposes of this Constitution, a demand by a person as proxy for a shareholder shall be the same as a demand by the shareholder.
50. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed shall be submitted to the company by not later than the commencement of the meeting at which the person named in the instrument proposes to vote, and in default of complying therewith the instrument of proxy shall not be treated as valid.
- No instrument appointing a proxy shall be valid after the expiration of six months from the date when it was signed, unless so specifically stated in the proxy itself, and no proxy shall be used at an adjourned meeting which could not have been used at the original meeting.
52. The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit:

"..... Private Limited

I, ..... of .....

being a shareholder of .....

Private Limited, hereby appoint .....

of .....

or failing him .....

..... of .....

or failing him .....

..... of .....

as my proxy to vote for me and on my behalf at the annual general meeting or general meeting (as the case may be) of the company to be held on the ..... day of ..... and at any adjournment thereof, as follows:

Abstain/In favour of/Against

Resolution to abstain .....

Resolution in favour of .....

Resolution against .....

(Indicate instruction to proxy by way of a cross in space provided above). Unless otherwise instructed, my proxy may vote as he thinks fit.

Signed this, ..... day of .....

Signature

(Note: A shareholder entitled to attend and vote is entitled to appoint a proxy to attend, speak and on a poll vote in his stead, and such proxy need not also be a shareholder of the company).

Powers of Attorney

53. The holder of a general or special power of attorney given by a shareholder shall be entitled to attend and take part in meetings and to vote, if duly authorised under that power of attorney to do so. The provisions of these regulations relating to instruments appointing a proxy shall *mutatis mutandis* apply to any such power of attorney.

Qualifying Shares

54. It shall not be necessary for a director to hold any shares in the company.

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### Remuneration of Directors

55. The remuneration of the directors shall from time to time be determined by the directors.
56. The directors shall be paid all their travelling and other expenses properly and necessarily expended by them on and about the business of the company, and if any director be called upon to perform extra services or to make any special exertions in going or residing abroad, or otherwise, for any of the purposes of the company, the company may remunerate that director either by a fixed sum or by a percentage of profits or otherwise as may be determined, and such remuneration may be either in addition to, or in substitution for, the remuneration determined under regulation 55.
57. A director may hold any office or place of profit in the company in conjunction with his directorship save that of auditor, and may be appointed thereto upon such terms as to remuneration, tenure of office or otherwise as may be arranged by the directors.

### Alternate Directors

58. Each director shall have the power to nominate any person to act as alternate director in his place during his absence or inability to act as such provided that the appointment of an alternate director shall be approved by the board, and on such appointment being made, the alternate director shall, in all respects, be subject to the terms, qualifications and conditions existing with reference to the other directors of the company.
59. The alternate directors, whilst acting in the stead of the director who nominated them, shall exercise and discharge all the powers, duties and functions of the directors they represent.
60. The appointment of an alternate director shall lapse, and the alternate director shall cease to hold office, whenever the director who nominated him ceases to be a director or gives notice to the company that the alternate director representing him has ceased to do so, and in the event of his own disqualification or resignation.

### Powers and Duties of Directors

61. The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not by the Act or by these regulations required to be exercised by the company in general meeting, but subject to these regulations, to the provisions of the Act, and to such regulations, not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting, provided that no regulation prescribed by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.
62. No director shall be entitled to bind the company as surety in any manner whatsoever, unless specifically authorised thereto by a resolution of the directors.

### Borrowing Powers

63. The directors may exercise all the powers of the company to borrow money and to mortgage or bind its undertaking and property or any part thereof, and to issue debentures and other securities, whether outright or as security for any debt, liability or obligation of the company or of any third party. The directors shall not be restricted as to the amount which they may borrow, and they may without the prior sanction of the company in general meeting borrow any sum or sums irrespective of the amount of the issued share capital or of the stated capital at the time or times of borrowing.

### Managing Director

64. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term and at such remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another) as they may think fit and may revoke such appointment subject to the terms of any agreement entered into in any particular case.
65. The directors may from time to time entrust to or confer upon a managing director or manager, for the time being, such of the powers and authorities vested in them as they may think fit, and may confer such powers and authorities for such time and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as they may think expedient, and they may confer such powers and authorities either collaterally or to the exclusion of, or in substitution for, all or any of the powers and authorities of the directors and they may from time to time revoke or vary all or any of such powers or authorities.

### Minutes and Registers

66. The directors shall in terms of section 25 of the Act, cause minutes to be kept:
  - (a) of names of persons present at every meeting of the company and of the directors; and



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(b) of all proceedings at all meetings of the company and of the directors.

Such minutes may be signed by the chairman of the meeting at which the proceedings took place or by the chairman of the next succeeding meeting.

67. The company shall keep a register of directors and officers and a register of interests of directors and officers in contracts entered into by the company.

### Disqualifications

68. The office of director shall be vacated if the director —

- (a) ceases to be a director or becomes prohibited from being a director by virtue of any provision of these regulations or of any Act; or
- (b) resigns his office by notice in writing to the company and to the registrar; or
- (c) is directly or indirectly interested in any contract or proposed contract with the company and fails to declare his interest and the nature thereof in the manner required by this Constitution.

### Appointment of Directors

- 69. The company in general meeting may from time to time determine the number of directors, their terms of office and their retirement.
- 70. An annual general meeting or other general meeting of the company may fill any vacancy occurring on the board of directors and a retiring director shall be eligible for re-election.
- 71. Unless the company in general meeting otherwise decides a director shall continue as a director until he resigns or otherwise ceases to be a director.
- 72. Unless the company in general meeting otherwise decides a casual vacancy occurring on the board of directors may be filled by the directors provided that the appointment of director in terms hereof shall be confirmed at the next annual general meeting.

### Additional Directors

- 73. The directors shall have power at any time, and from time to time, to appoint a person as an additional director, but that the total number of directors shall not at any time exceed the number fixed by the shareholders in general meeting and such additional director shall retire from office at the next annual general meeting and shall then be eligible for re-election.

### Meetings of Directors

- 74. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they deem fit. Questions arising at any meeting shall be decided by a majority of votes. In the event of any equality of votes, the chairman shall not have a second or casting vote.
- 75. A director may, and the secretary on the requisition of a director shall, at any time convene a meeting of the directors.
- 76. Reasonable notice shall be given of all meetings of directors to all the directors. Except for meetings convened for the consideration of urgent business, reasonable notice shall not be less than 7 days, to be given *mutatis mutandis* in accordance with regulation 26.
- 77. A director shall be entitled to vote in respect of any contract or proposed contract with the company in which he is interested, or any matter arising therefrom, provided only that he discloses such interest.

### Quorum at Directors Meetings

- 78. The quorum necessary for the transaction of the business of directors shall be as may from time to time be determined by the directors, but shall not be less than half of the number of directors in office at the time of the meeting. The term "directors" shall include alternate directors.

### Resolutions of Directors

- 79. A resolution in writing, signed by all of the directors or their alternates for the time being in Ciskei and being not less than sufficient to form a quorum shall be as valid and effective as if it had been passed at a meeting of the directors duly called and constituted; provided that where a director is not so present in Ciskei but has an alternate who is present, then such resolution must also be signed by such alternate.
- 80. All powers to sue and defend, as well as all powers to give and accept transfer of any immovable property, as well as all bonds, claims, contracts, bills of exchange, promissory notes, cheques and other documents or instruments requiring the company's

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signature shall be signed in such manner as the Board of Directors may from time to time decide.

81. All resolutions passed at meetings, copies of resolutions or minutes which may have to be filed with the Registrar of Deeds, Receiver of Revenue, or with any other Public Officer or Official, or which may be required for any other purpose whatsoever, shall be certified in such manner as the Board of Directors may from time to time decide.

### Proceedings of the Directors

The Directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to this Constitution as the necessary quorum of Directors, the Directors may act for the purpose of increasing the number of Directors to that number, or of convening a general meeting of the Company, but for no other purpose.

83. The Directors may elect a chairman of their meeting and determine the period for which he is to hold office, but if no such chairman is elected, or if at any meeting the chairman is not present within ten minutes after the time appointed for holding the same, the Directors present may elect one of their number to be chairman of the meeting.
84. All acts done in good faith by any meeting of the directors or a committee of Directors or by any person acting as a Director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid or that they are or any of them were disqualified, be as valid as if every such person had been duly appointed and were qualified to be a Director.

### Committee of Directors

85. The Directors may delegate any of their powers to committees consisting of such shareholder or shareholders of their body as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any rules that may be imposed on it by the Directors.
86. A committee may meet and adjourn as it thinks fit. Questions arising at any meeting shall be determined by a majority of votes of the shareholders present, and in the event of an equality of votes the chairman shall not have a second or casting vote.

### Dividends and Reserves

87. The Company in general meeting may declare dividends.
88. The directors may from time to time pay to the shareholders such interim dividends as appear to the Directors to be justified by the profits of the company.
89. No dividend shall be paid otherwise than out of profits nor shall any dividend bear interest against the Company.
90. Any meeting declaring a dividend may resolve that such dividend be paid in cash and/or wholly or in part by the distribution of specific assets.
91. Subject to Regulation 86, the Directors may, before recommending any dividend, set aside out of the profits of the Company such sums as they think fit as a reserve or reserves, which shall, at the discretion of the Directors, be applicable for any purpose to which the profits of the company may be properly applied and pending such application may be employed in the business of the Company as the Directors may from time to time think fit. The Directors may also without placing the same to reserve carry forward any profits which they may think prudent not to distribute.
92. Notice of any dividend that may have been declared shall be given in the manner hereinafter provided to the persons entitled to share therein.
93. Every dividend in respect of shares may be paid by cheque or otherwise as the Directors may from time to time determine, and shall either be sent by post to the shareholder entitled thereto at the address stated in the shareholders' register, or be given to him personally, and the endorsement on the cheque of the person whose name appears in the shareholders' register as the shareholder, or his duly authorised agent, or the deposit of such cheque in any bank account, shall be a good discharge to the Company in respect thereof. Any one of two more joint holders may give effectual receipts for all dividends or other monies payable in respect of the shares held by them as joint holders.

### Accounting Records

94. The Directors shall cause such accounting records as are prescribed by section 28 of the Act to be kept.
95. The accounting records shall be kept at the registered office of the Company or at such other place or places as the Directors think fit, and shall be open to inspection by the Directors at all times.
96. The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Company or any of them shall be open to inspection by shareholders not being Directors, and no shareholder (not being a Director) shall have any right of inspecting any accounting records or document of the Company except as conferred by the Act or authorized by the Directors or by the Company in general meeting.

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Annual Financial Statements

97. The Directors shall from time to time, in accordance with section 29 (3) of the Act, cause to be prepared and laid before the Company in general meeting annual financial statements.
98. A copy of any annual financial statements which are to be laid before the Company in annual general meeting shall not less than twenty-one days before the date of the meeting be sent to every shareholder of the company; provided that this regulation shall not require a copy of those documents to be sent to any person of whose address the Company is not aware or to more than one of the joint holders of any shares.

Audit

99. An auditor for the Company shall be appointed in accordance with section 28 of the Act, unless a certificate substantially in the form prescribed in the Annexure to these regulations has been submitted to the Registrar.

Notices

100. A notice shall be given by the Company to any shareholder personally, or by sending it by post to his address as stated in the shareholders' register. If such address is not in Ciskei, notice shall also be given to any address within Ciskei supplied by him to the Company for the giving of notices to him. In the event of any shareholder being a registered Company, a copy of the notice shall also be transmitted in the manner set out above to the registered address of such Company.
101. Whenever a notice is to be given personally or sent by post, the notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder named first in the shareholders' register in respect of the shares.
102. Any notice by post shall be dispatched by prepaid registered mail (and if the address to which it is dispatched is outside Ciskei, by airmail) and shall be deemed to have been received seven days after the date of dispatch. In proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

Winding-up

103. If the Company be wound up, the assets remaining after payment of the debts and liabilities of the Company and the costs of the liquidation shall be applied as follows:—
- (a) To repay to the shareholders the amounts paid up on the shares respectively held by each of them, and
  - (b) The balance (if any) shall be distributed among the shareholders in proportion to the number of shares respectively held by each of them.
104. In a winding-up, the whole or any part of the assets of the Company, including any shares or securities of other companies, may, with the sanction of a resolution of the Company, be paid to the shareholders of the Company *in specie*, or may, with the same sanction, be vested in trustees for the benefit of such shareholders, and the liquidation of the Company may be closed and the Company dissolved.

ANNEXURE

**CERTIFICATE OF SHAREHOLDERS AGREEMENT TO DISPENSE WITH AUDITOR**

I, the undersigned, being a director of the ..... Company  
Private (Ltd), hereby give notice that all the shareholders in the abovementioned company have agreed, in terms of section .....  
of the Act, that an auditor shall not be appointed for the company.

.....  
Director

.....  
Date

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**DEPARTMENT OF FINANCE AND ECONOMIC DEVELOPMENT**

**GOVERNMENT NOTICE NO. 109**

**PRIVATE COMPANIES ACT, 1985  
ACT NO. 36 OF 1985**