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Taqsima B

L.N. 223 of 2004

MERCHANT SHIPPING ACT (CAP. 234)

Merchant Shipping (Shipping Organisations - Private Companies) Regulations, 2004

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L.N. 223 of 2004

IN exercise of the powers conferred by article 84Z of the Merchant Shipping Act, the Minister for Competitiveness and Communications has made the following regulations:–

Title and commencement.

1. (1) These regulations shall be called the Merchant Shipping (Shipping Organisations - Private Companies) Regulations, 2004.

(2) The Merchant Shipping (Shipping Organisations – Private Companies) Regulations, 2004 shall come into effect on the 1st May 2004 except as hereunder provided.

Shipping companies formed under the Commercial Partnerships Ordinance.Cap. 168.

(3) The regulations shall apply to shipping companies formed and registered under the Commercial Partnerships Ordinance with effect from the 1st August 2004:

Cap. 386.

Provided that should a shipping company elect to be governed by the Companies Act, it shall file a notice in accordance with the provisions of paragraph (4) of this regulation and these regulations shall not apply to such shipping companies.

(4) (a) Any shipping company which is registered and existing as of the 30th April, 2004 which elects to be governed by the Companies Act shall file a notice to that effect in terms of the Ninth Schedule to these regulations by not later than the 1st August, 2004.

(b) In such event, the company shall be bound to comply with the Companies Act within ninety days from the filing of the notice with the Registrar of Companies.

(c) In the event of the company failing to comply with the requirements of the Companies Act within the said time limit, the company shall be regulated by the Regulations with effect from the 1st August, 2004 and the filing of the notice shall have no effect.

PART I

PRELIMINARY PROVISIONS

Purpose.

Cap. 234

2. These regulations shall apply to any organisation formed as a private limited liability company and qualifying as a shipping organisation in terms of article 84Z of the Merchant Shipping Act unless it ceases to so qualify.

Interpretation..

3. (1) In these regulations, unless the context otherwise requires, the following expressions have the meaning hereby assigned to them -

"the Act" means the Merchant Shipping Act;

"annual accounts" means the individual accounts required by regulation 66 of these regulations;

"appointed day" means the date appointed by the Minister for the coming into force of these regulations;

"auditor" means a person who is an individual who holds a warrant to act as auditor issued under the Accountancy Profession Act or is a partnership of auditors duly registered under the said Act;

Cap. 281.

"body corporate" means any entity having a legal personality distinct from that of its members, and includes a foreign body corporate;

"certificate of registration", when used in relation to a company, means a certificate of registration issued under these regulations and the Companies Act and the words "registration", "registered" and their derivatives shall be construed accordingly;

"company" means a company formed and registered under Part III of these regulations;"court" means the Civil Court;

"debenture" includes debenture stock, bonds and any other debt securities of a company;

"director" includes any person occupying the position of director of a company by whatever name he may be called carrying out substantially the same functions in relation to the direction of the company as those carried out by a director;

"directors' report" in relation to a company, means the directors' report required by regulation 73 of these regulations;

"euro" refers to the currency unit of the participating states in the European Monetary Union;

"expert", except where otherwise specifically defined in these regulations, means an auditor whether Maltese or foreign and whether or not assisted by a specialist valuer;

"extraordinary resolution" has the meaning given to it by regulation 50 of these regulations;

"in writing" includes any electronic representation except in so far as relates to documents delivered to the Registrar for registration;

"liri" means Maltese liri;

"member" means a shareholder of a company;

"notice" shall mean a notice in writing of any kind;

"officer" in relation to a company, means a director but does not include an auditor;

"ordinary resolution" has the meaning given to it by regulation 50 of these regulations;

"parent company" is a company which –

(a) has a majority of the members' voting rights in another undertaking (subsidiary undertaking); or

(b) has the right to appoint or remove a majority of the members of the board of directors or persons entrusted with the administration of another undertaking (a subsidiary undertaking) and is at the same time a member of that undertaking; or

(c) has the right to exercise a dominant influence over an undertaking (a subsidiary undertaking) of which it is a member, pursuant to a contract entered into with that undertaking or to a provision in that undertaking's memorandum or articles of association; or

(d) is a member of an undertaking and controls alone pursuant to an agreement with other members of that undertaking (a subsidiary undertaking), a majority of members' voting rights in that undertaking; or

(e) holds a participating interest in another undertaking and actually exercises a dominant influence over the undertaking (a subsidiary undertaking) or manages the subsidiary undertaking on a unified basis together with it;

and the term "parent undertaking" shall be construed accordingly;

"participating interest" shall mean rights in the capital of other undertakings, whether or not represented by certificates, which, by creating a durable link with those undertakings, are intended to contribute to those undertakings' activities. The holding of twenty per cent of the capital of another undertaking shall be presumed to constitute a participating interest unless the contrary is shown. An interest in shares includes an interest which is convertible into an interest in shares and an option to acquire an interest in shares. Interests in shares held by subsidiary undertakings or held by third parties on behalf of the company or its subsidiary undertakings shall be deemed to be held by the company;

"private company" means a private company as defined in regulation 6 of these regulations;

"Registrar" means the person appointed as Registrar of Companies under the Companies Act;

"security" includes a share, debenture or any other similar instrument issued by a company;

"share" includes stock except where a distinction between stock and shares is express or implied;

"shareholder" means a person entered in the register of members of a company pursuant to regulation 38 of these regulations;

"true and fair view" in relation to accounts refers to the requirements of paragraph (3) of regulation 66 of these regulations.

(2) For the purposes of these regulations, where a document required to be delivered to the Registrar for registration is required to state the name and residence or address of a person, it shall be deemed to require further the official identification, by number or otherwise of such person, as may be applicable.

(3) Where a matter is not specifically dealt with under these regulations, reference shall be made to the provisions of the Companies Act on such matter.

PART II

GENERAL PROVISIONS

Legal personality.

4. A company to which these regulations apply has a legal personality distinct from that of its member or members, and such legal personality shall continue until the name of the company is struck off the register, whereupon the company ceases to exist.

Indication of particulars in business letters, etc.

5. (1) In all its business letters and order forms a company shall mention in legible characters its name, the fact that it is a limited liability company, its registered office and registration number.

(2) Where a company is being wound up, every letter, invoice or other document by or on behalf of the company, being a document on or in which the name of the company appears, shall in addition to the requirements of the preceding paragraph of this regulation, contain a statement that the company is being wound up and shall contain the names of the liquidators.

(3) If default is made in complying with the provisions of paragraphs (1) and (2) of this regulation every officer or liquidator, as the case may be, of the company who is in default shall be liable to a penalty.

PART III

FORMATION OF COMPANIES

Chapter I - Private Companies

Definition.

6. (1) A private company is a company which, besides fulfilling the requirements of these regulations for it to hold the status of a private company, is one which, by its memorandum or articles –

(a) restricts the right to transfer its shares; and

(b) limits the number of its members to fifty; and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

(2) A private company shall not -

(a) offer to the public, whether for cash or otherwise, any shares in or debentures of the company; or

(b) allot or agree to allot, whether for cash or otherwise, any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public; or

(c) have the power to issue share warrants to bearer.

(3) Where a private company contravenes the provisions of paragraph (2) of this regulation, every officer thereof who is in default shall be liable to a penalty.

Resolutions in writing.

7. Subject to the provisions of these regulations, a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at the general meetings shall be as valid and effective as if the same had been passed at a general meeting of the company duly convened and held.

Single member companies.

8. (1) Companies regulated by these regulations may be constituted by and have a single member notwithstanding any other provision of these regulations.

(2) A company may have a single member upon registration or it may become a single member company through the acquisition of all its shares by one person *inter vivos* or *causa mortis*, in which case it shall file a notice to that effect within fourteen days in terms of the Seventh Schedule to these regulations.

(3) The single member shall exercise the powers of the general meeting of the company and the decisions taken by him in this capacity shall be recorded as minutes of the general meeting and the provisions of these regulations regulating general meetings shall be construed accordingly. The decisions referred to in this paragraph shall be deemed to be resolutions of the company for the purposes of the application of the provisions of these regulations:

Provided that the provisions of this paragraph shall not prejudice the rights of the auditors of the company under the provisions of regulation 87 of these regulations and the directors of the company under the provisions of regulation 52 of these regulations, and the rights granted to persons as are, by the articles of the company, entitled to receive notices of, attend and be heard at general meetings of the company.

(4) When a single member of a company is also the sole director of the company all provisions of these regulations and any memorandum and articles of association relating to general meetings

shall be deemed to refer to the board of directors, and resolutions of the board of directors shall qualify as general meeting resolutions when the latter are required by law or the articles of the company.

(5) The single member shall record in writing all the agreements between him and the company as represented by him in a minute book kept by the company specifically for the purpose:

Provided that current operations concluded under normal conditions need not be recorded in such minute book.

(6) When a company ceases to be a single member company, it shall within fourteen days, deliver to the Registrar for registration a notice specifying the fact that it is no longer a single member company and the provisions of this regulation shall not apply to such company from the date it has ceased to be a single member company.

(7) All decisions taken by the single member as aforesaid shall be considered as extraordinary resolutions for the purposes of these regulations.

(8) If default is made in complying with the provisions of paragraphs (2) and (6) of this regulation every officer of the company who is in default shall be liable to a penalty.

Change of status of company.

9. (1) A private company may change its status to a public company in terms of the Companies Act whereupon the company shall no longer be regulated by these regulations but shall be subject to the provisions of the Companies Act.

(2) A public company may change its status to a private company in terms of these regulations whereupon it shall no longer be regulated by the Companies Act but shall be subject to the provisions of these regulations.

Chapter II —Formation of a Company

Definition.

10. A company is formed by means of a capital divided into shares held by two or more members unless it is a single member company. The liability of each member is limited to the amount, if any, unpaid on the shares respectively held by each of them.

How a company is constituted.

11. A company shall not be validly constituted under these regulations unless a memorandum of association is entered into and a certificate of registration is issued in respect thereof.

Contents of memorandum and share capital in any convertible currency.

12. (1) The memorandum of every company shall state:

(a) that it is a shipping company for the purposes of the Act ;

(b) that the company is a private company;

(c) the name and residence of each of the subscribers thereto;

(d) the name of the company;

(e) the registered office in Malta of the company;

(f) the objects of the company which shall be limited to one or more of the objects specified for shipping organisations by the Act;

(g) the amount of share capital with which the company proposes to be registered (hereinafter referred to as "the authorised capital"), the division thereof into shares of a fixed amount, the number of shares taken up by each of the subscribers and the amount paid up in respect of each share and, where the share capital is divided into different classes of shares, the rights attaching to the shares of each class;

(h) the number of the directors, the name and residence of the first directors and, where any of the directors is a body corporate, the name and registered or principal office of the body corporate;

(i) the manner in which the representation of the company is to be exercised, and the name of the first person or persons vested with such representation:

Provided that the company may appoint other persons in addition to the said named representatives to represent the company in a class or classes of cases by means of a clause in the memorandum or articles of association, by a resolution of the board of directors or by means of a power of attorney issued by such named representatives;

(j) the period, if any, fixed for the duration of the company.

(2) (a) The share capital of a company may be denominated in any currency which is a convertible currency within the

meaning assigned to it by the Central Bank of Malta Act, and, for the purposes of these regulations, the euro, shall be a convertible currency. Cap. 204.

(b) A company may by extraordinary resolution change the currency in which its share capital is expressed, and for this purpose the conversion rules set out in the provisions of the Eighth Schedule to these regulations shall apply in respect of any company regulated by these regulations.

(c) For the purposes of applying the provisions of these regulations relating to minimum share capital, share capital expressed in a currency other than liri shall be calculated on the basis of the liri equivalent at the date of –

(i) the registration of the memorandum, in the case of formation of a company; or

(ii) the registration of the extraordinary resolution, in the case referred to in subparagraph (b) of paragraph (2) of this regulation; or

(iii) the registration of the extraordinary resolution effecting a reduction of the issued share capital, in the case where a company reduces its issued share capital.

(3) Without prejudice to the provisions of regulation 24 of these regulations, a copy of the extraordinary resolution referred to in subparagraph (b) of paragraph (2) of this regulation shall be delivered to the Registrar for registration and shall not be effective until it is so registered.

(4) The exchange rate to be used shall be the average of the buying and selling rates prevailing at the date of registration referred to in paragraph (2) of this regulation, as the case may be.

13. (1) A company may be designated by any name, but such name shall end with the words “private limited company” or the word “limited” or its abbreviation “ltd.”. Name of company.

(2) A company shall not be registered by a name which -

(a) is the same as a name of another commercial partnership or so nearly similar as in the opinion of the Registrar it could create confusion; or

(b) is in the opinion of the Registrar offensive or otherwise undesirable; or

(c) has been reserved for registration for another commercial partnership by a notice in writing to the Registrar given not more than three months before the date of the second request:

Provided that the Registrar shall notify any refusal under this subparagraph without delay to the person requesting the registration:

Provided further that in applying subparagraph (b) of this paragraph, the Registrar shall have regard to the business or proposed business of the company, to the protection of the names of individuals who are not connected in any way with the company, and, in the case of a private company, to the names of the members.

Objects of company.

14. The principal objects of a company registered in terms of these regulations shall include one or more of the activities referred to in sub-article (1) to article 84Z of the Act and may not be simply stated to be any lawful purpose or trade in general and in the case of single member companies, there shall be an indication of the main activities of the company.

Minimum share capital.

15. (1) The authorised share capital of a company shall be not less than five hundred liri.

(2) Where the authorised share capital is equal to the minimum aforesaid, it shall be fully subscribed in the memorandum, and where it exceeds such minimum, at least that minimum shall be subscribed in the memorandum.

(3) At least twenty per cent of the nominal value of each share taken up shall be paid up on the formation of the company.

(4) The ordinary shares of a company shall not be redeemable, and every company shall at all times have ordinary shares.

Articles of Association.

16. (1) There may be registered with the memorandum, articles of association (hereinafter referred to as "articles"), which shall be signed by the subscribers to the memorandum and prescribing regulations for the company.

(2) If articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the model regulations contained in the First Schedule to these

regulations, such model regulations shall be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

Chapter III - Registration

Registration of memorandum and articles.

17. The memorandum and articles, if any, shall be delivered for registration to the Registrar who, being satisfied that all the requirements of regulations 11 to 16 and of regulation 53 of these regulations have been complied with, shall register them.

Duty of Registrar and effects of registration.

18. (1) On the registration of the memorandum and articles, if any, of a company, the Registrar shall certify under his hand that the company is registered as stated under these regulations, and the company shall come into existence and shall be authorised to commence business as from the date of registration which date shall be indicated in the certificate.

(2) A certificate of registration given in respect of a company is conclusive evidence that the requirements of these regulations in respect of registration and of matters precedent and incidental to it have been complied with and that the company is duly registered as a private company under these regulations.

Where certificate of registration is not issued.

19. (1) All persons carrying on business or entering into agreements in the name of or on behalf of a company in respect of which a certificate of registration has not been issued under these regulations and the Companies Act, in terms of these regulations shall, unless otherwise agreed, be personally and jointly and severally liable for their dealings with third parties entered into by them in the aforementioned capacity.

(2) Failing agreement to the contrary, the persons referred to in paragraph (1) of this regulation shall have, as against one another and in respect of the assets and liabilities arising out of the business carried on in the company's name or on its behalf, the rights and obligations of joint owners.

(3) Notwithstanding the provisions of paragraph (1) of this regulation, the dealings referred to in that paragraph shall, with respect to a third party who has dealt in good faith with persons purporting to act in the name of or on behalf of a company in respect of which a certificate of registration has not been issued with effect from the date on which the company shall come into existence, be treated as having been undertaken by the company; provided that in such an event the provisions of paragraph (1) of this regulation shall

not apply. The company shall be entitled to be indemnified by the persons who had acted in its name or on its behalf in respect of its liability under this paragraph towards the said third party.

(4) When an agreement is entered into in the name of a company and it is expressly stated that the company is in formation, any such agreement shall be valid and binding on the parties thereto upon registration of the company and the preceding paragraphs of this regulation shall not apply.

Alterations and additions to memorandum and articles.

20. (1) A company may by extraordinary resolution alter or add to its memorandum or articles:

Provided that it shall be permissible for the members without prejudice to the company remaining a shipping organization to authorise, and subject such authorisation to restrictions as they deem fit, the board of directors to alter or add to the memorandum and articles clauses which

(a) amend the name of the company;

(b) amend the registered address;

(c) amend the articles of the company relating to internal administration provided the rights of the members are not affected; and

(d) amend the objects and powers of the company so as to facilitate the carrying on of the business of the company as a shipping organisation.

(2) It shall be the duty of the directors to deliver to the Registrar for registration a printed copy of any resolution as aforesaid within fourteen days after the date of the resolution, together with a revised and updated copy of the memorandum, and of the articles, if any, as amended by the said resolution and incorporating all the changes effected to date relating to the directors, the representation of the company or any transfer or transmission of shares or any allotment of shares. Any previous amended text of the memorandum and articles, if any, may be discarded by the Registrar when a subsequent amended text is delivered to him for registration:

Provided that in the event of a discrepancy between the text of any amended memorandum and articles, if any, and the text of the original memorandum and articles, if any, registered in accordance with the provisions of regulation 17 of these regulations,

the latter text together with resolutions registered in accordance with the provisions of paragraph (2) of this regulation shall prevail.

Notwithstanding the provisions of paragraph (2) of this regulation, where the alteration consists in a change in the registered office in Malta of the company, the directors shall send to the Registrar for registration a return of any change in the registered office, specifying the date of the change, together with the new registered office, within fourteen days from the happening thereof.

(3) Any alteration or addition to the memorandum or articles of a company shall not take effect vis-à-vis third parties, unless and until it is registered.

(4) If default is made in complying with the provisions of paragraph (2) of this regulation, every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

(5) The responsibility for ensuring that any proposed amendments to the articles of association, if any, of a company, are correct, complete and in full compliance with these regulations and any other applicable law shall lie with the directors of the company.

Change of name of company.

21. Where a company changes its name under the provisions of regulation 20 of these regulations, the Registrar shall enter the new name on the register in place of the former name and shall issue a certificate of registration altered to meet the circumstances of the case.

Alteration in memorandum or articles increasing liability to contribute to share capital not to bind existing members without consent.

22. Notwithstanding anything in the memorandum or articles of a company no member shall be bound by any alteration made in the memorandum or articles after the date on which he became a member if and so far as the alteration requires him to subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise pay money to, the company:

Provided that this regulation shall not apply in any case where the member agrees in writing, either before or after the alteration is made, to be bound thereby.

Authentication of documents.

23. (1) A document or proceeding requiring authentication by a company may be signed by a director, or other authorised officer of the company or other person authorised in writing.

(2) All documents supplied to the Registrar shall be authenticated in accordance with this regulation.

Chapter IV - Changes to a company's share capital

Reduction of issued share capital.

24. (1) Notwithstanding the provisions of paragraph (3) of regulation 20, where the alteration consists in the reduction of the issued share capital, any such reduction shall not take effect until three months from the date of the publication of the statement to this effect in the Gazette and in a daily newspaper showing the date at which the reduction was made and giving such details as are necessary to distinguish the company to which the statement relates:

Provided that if a creditor of the company whose debt existed prior to the publication of the statement mentioned in this paragraph objects thereto by writ of summons filed within the period of three months reckoned as aforesaid and shows good cause why it should not take effect, the court shall either uphold the objection or allow the reduction on sufficient security being given:

Provided further that a reduction in share capital shall be void to the extent that it reduces the capital to less than the minimum prescribed by regulation 15 of these regulations.

(2) The Registrar of Courts shall without delay cause a copy of any writ of summons filed under paragraph (1) of this regulation and of any judgment given thereon to be served on the Registrar for registration.

(3) The total or partial waiving of the unpaid part of the issued shares and the release of the holders of those shares from their obligation to pay up that unpaid part shall, notwithstanding anything contained in the memorandum or articles of a company, in all cases be considered as a reduction in share capital.

(4) Where there are different classes of shares the decision by the general meeting concerning a reduction in the issued share capital shall be subject to a separate vote for each class of shareholders whose rights are affected by the reduction, and for every separate vote taken the same majority shall be required as where the shares are not divided into different classes.

(5) An alteration consisting in the reduction of the issued share capital whose purpose is to offset losses incurred or to include sums of money in a reserve shall take effect immediately on the registration of the resolution concerning such a reduction and the

provisions of paragraph (1) of this regulation relating to the rights granted to creditors of the company shall not apply:

Provided that, following this operation, the amount of such reserve is not more than ten per cent of the reduced issued share capital:

Provided further that any such reserve shall be used only for offsetting losses incurred or for increasing the issued share capital by the capitalisation of such reserve.

(6) In the cases referred to in paragraph (5) of this regulation the amounts deriving from the reduction of the issued share capital may not be used for making payments or distributions to shareholders or to discharge shareholders from the obligation to pay calls on their shares:

Provided that if the provisions of paragraphs (1) and (2) of this regulation relating to the rights granted to the creditors of the company are followed for the purpose of reducing any sum of money contained in any such reserve, as is referred to in paragraph (5) of this regulation, the amounts deriving therefrom may be used for making payments or distributions to shareholders.

(7) The notice convening the general meeting at which the extraordinary resolution for the reduction of issued share capital is to be taken, shall, specify the purpose expressly and the way in which it is to be carried out.

Increase in issued share capital and director's authority to issue shares.

25. (1) Any increase in the issued share capital of a company shall be decided upon by an ordinary resolution of the company, unless the memorandum or articles require a higher percentage than that required for an ordinary resolution.

(2) The memorandum or articles of a company may permit the board of directors to issue shares up to the authorised share capital as may be specified in the same memorandum and articles.

(3) Where there are several classes of shares, if resolution of the general meeting is required, in terms of paragraph (1) of this regulation, it shall be subject to a separate vote for each class of shareholders whose rights are affected by that resolution and the provisions relating to the majority required for the resolution by virtue of paragraph (1) of this regulation shall apply for each class.

(4) A copy of any such ordinary or extraordinary resolution referred to in paragraphs (1) and (3) of this regulation shall be delivered to the Registrar for registration, within fourteen days after the date of the relative resolution, failing which every

officer of the company who is in default shall be liable to a penalty, and for every day during which the default continues, to a further penalty.

(5) The provisions of paragraphs (1) to (4) of this regulation shall apply to the issue of all securities which are convertible into shares or which carry the right to subscribe for shares, but not to the conversion of such securities, nor to the exercise of the right to subscribe.

(6) Where an increase in the issued share capital is not fully taken up, the issued share capital shall be increased by the amount of subscriptions received only if the conditions of the issue so provide.

(7) Whenever a company makes any allotment of its shares, the company shall, within one month thereafter, deliver to the Registrar in accordance with the provisions of the Seventh Schedule to these regulations for registration -

(a) a return of the allotments stating the number and the nominal amount of the share comprised in the allotment, the names and addresses of the allottees and the amount paid and that due, and payable, on each share, whether on account of the nominal value of the share or by way of premiums; and

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing or, where the contract is not reduced to writing, a document containing the particulars of the contract, constituting the title of the allottee to the allotment, together with any contract of sale, or for services rendered to other consideration in respect of which the allotment was made, and a return stating the number and nominal value of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

Chapter V - Maintenance of share capital and protection of class rights

Undertaking may not subscribe for or acquire shares in its parent company or provide financial assistance for the purchase of, or subscription for, its own or its parent company's shares.

26. It shall not be lawful for an undertaking -

(a) to subscribe for, hold, acquire or otherwise deal in shares in a company which is its parent company; or

(b) except after notice has been given in the prescribed form in accordance with the Seventh Schedule to these regulations, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, to give any financial assistance for the purpose of an acquisition or subscription made or to be made by any person of or for any shares in the company or its parent company.

Effect of a company's own shares as security.

27. The acceptance of a company's own shares by way of pledge or other form of security shall be treated as an acquisition by the company of such shares.

Forfeiture or surrender of shares.

28. Any share in a company may be forfeited from any shareholder in favour of the company and any shareholder may surrender any or all of his shares in a company in favour of that company if the shareholder fails to pay any call or instalment of a call on the day appointed for payment thereof and as long as provision to that effect is contained in the memorandum or articles of the company.

Conditions for payment of commissions, discounts, etc.

29. (1) It shall be lawful for a company to pay a commission or make a discount or allowance to any person in consideration for his subscribing or agreeing to subscribe, whether absolutely or conditionally for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company:

Provided that –

(a) authority therefor is given by the memorandum or articles; and

(b) the commission, discount or allowance does not exceed ten per cent of the price at which the shares are issued or the amount authorised by the memorandum or articles, whichever is the less; and

(c) the amount or rate per cent of the commission, discount or allowance and the number of shares which persons have agreed in consideration thereof to subscribe absolutely shall be disclosed in any circular or notice whereby the shares are privately offered; and

(d) in no event may the value of such shares be reduced to below their nominal value as a result of the payment of such commission, discount or allowance.

(2) If shares are issued in contravention of the provisions of this regulation the holder thereof shall be bound to pay the company an amount equal to the amount of the commission, discount or allowance given in excess of that permitted by this regulation, with annual interest at the rate of two percentage points over the Central Bank of Malta minimum discount rate.

Application of premium received on issue of shares.

30. (1) Where a company issues shares at a premium whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be immediately paid in full and transferred to an account, to be called "the share premium account", and the provisions of these regulations relating to the reduction of the issued share capital of a company shall, except as provided in this regulation, apply as if the share premium account were paid up share capital of the company.

(2) The share premium account may, notwithstanding anything contained in the foregoing paragraph, be applied by the company -

(a) in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares; or

(b) in writing off the preliminary expenses of the company or the expenses of or the commission paid or discount allowed on, any issue of shares or debentures of the company; or

(c) in providing for the premium payable on redemption of any redeemable preference shares or of any debentures of the company.

Redeemable preference shares.

31. (1) Where a company, duly authorised by its memorandum or articles, issues preference shares which are to be redeemed or are liable to be redeemed at the option of the company or the shareholder -

(a) no such shares shall be redeemed except out of the profits of the company which would otherwise be available for dividend or, in accordance with paragraph (4) of this regulation, out of the proceeds of a fresh issue of shares made for the purpose of the redemption;

(b) no such shares shall be issued unless the following conditions are satisfied as regards the terms and manner of redemption-

(i) the date on or by which, or dates between which, the shares are to be or may be redeemed must be specified in the company's memorandum or articles or, if the memorandum or articles so provide, fixed by the directors, and in the latter case the date or dates must be fixed before the shares are issued;

(ii) any other circumstances in which the shares are to be or may be redeemed must be specified in the company's memorandum or articles;

(iii) the amount payable on redemption must be specified in, or determined in accordance with, the company's memorandum or articles, and in the latter case the memorandum or articles must not provide for the amount to be determined by reference to any person's discretion or opinion; and

(iv) any other terms and conditions of redemption shall be specified in the company's memorandum or articles;

(c) no such shares shall be redeemed unless they are fully paid up and the terms of redemption shall require full payment on redemption;

(d) the premium, if any, payable on redemption shall have been provided for out of the profits of the company or out of the company's share premium account before the shares are redeemed;

(e) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of profits, which would otherwise have been available for distribution as dividend, be transferred to a reserve to be called "the capital redemption reserve", a sum equal to the nominal amount of the shares redeemed, and the provisions of these regulations relating to the reduction of the issued share capital of a company shall, except as provided in this regulation, apply as if the capital redemption reserve were paid up share capital of the company.

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

(3) Preference shares redeemed under this regulation shall be treated as cancelled on redemption, and the amount of the company's issued share capital shall be diminished by the nominal value of those shares accordingly:

Provided that a redemption of preference shares by a company shall not be taken as reducing the amount of the company's authorised share capital.

(4) Without prejudice to the provisions of paragraph (3) of this regulation, where a company is about to redeem preference shares, it shall have the power to issue shares up to the nominal value of the preference shares to be redeemed as if those preference shares had never been issued.

(5) A notice of the redemption of preference shares referred to in the preceding paragraphs of this regulation shall be delivered by the company to the Registrar for registration, within fourteen days after the date of redemption.

(6) If default is made in complying with the provisions of paragraph (5) of this regulation every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Rights of holders of special classes of shares and changes or variations thereof.

32. (1) If, in the case of a company the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorising the change of any shares in the company from one class into another or for the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class and of any other class affected thereby or the sanction of a resolution passed at a separate meeting of the holders of those shares and of the holders of any other shares affected thereby, and in pursuance of the said provision the shares are changed from one class into another or the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen per cent either of the issued shares of that class or of any other class affected thereby, being persons who did not consent to or vote in favour of the resolution for the change or variation, may by writ of summons filed within twenty-one days of the consent

or the resolution, demand that the change or variation shall not have effect.

(2) On any such demand the court, if it is satisfied, having regard to all circumstances of the case, that the change or variation would unfairly prejudice the holders of shares, the class of which is being changed or the rights of which are being varied, or the holders of any other class of shares affected thereby, shall disallow the change or variation.

(3) The Registrar of Courts shall without delay cause a copy of any writ of summons filed under paragraph (1) of this regulation and of any judgment given thereon to be served on the Registrar for registration, and the said writ of summons shall, on pain of nullity, include a demand to that effect.

(4) Paragraphs (2) and (4) of regulation 20 of these regulations shall apply in respect of any consent or resolution given or taken in terms of paragraph (1) of this regulation.

(5) Where no provision is made by the memorandum or articles for authorising the change or variation referred to in paragraph (1) of this regulation, no such change or variation may be made.

Chapter VI - Miscellaneous provisions about shares and debentures

Numbering of shares.

33. Each share in a company shall be distinguished by its appropriate number:

Provided that, if at any time all the issued shares in a company, or all the issued shares therein of a particular class, are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number so long as they remain fully paid up and rank *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

Transfer of shares or debentures.

34. (1) Notwithstanding any provisions contained in any other law, a transfer of shares in or debentures of a company may be made by private writing unless the memorandum and articles, if any, provide for another form.

(2) It shall not be lawful for a company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer or an authentic copy thereof has been delivered to the company.

Registration of transfer or transmission of shares or debentures.

35. (1) On the application of the transferor or of the transferee of any share in or debenture of a company, the company shall enter in its register of members or of debentures, as the case may be, the name and address of the transferee and where the application is made by the transferor the entry shall be made in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

(2) If a company refuses to register a transfer of shares or debentures, it shall, within two months after the date on which the transfer was lodged, send to the transferee notice of the refusal.

(3) The directors of a company shall be obliged to register the transfer of any shares in the company in favour of any person who has acquired those shares as a result of any court sanctioned sale thereof.

(4) On the application of the person to whom the right to any share in or debentures of a company has been transmitted *causa mortis*, the company shall register in its register of members or debentures, as the case may be, the name and address of such person.

(5) If a company refuses to register a transmission as is referred to in paragraph (4) of this regulation, it shall, within two months after the date on which the transmission is lodged, send to the person to whom the right to any shares or debentures of a company has been transmitted *causa mortis*, notice of the refusal.

(6) If default is made in complying with the provisions of paragraphs (2) or (5) of this regulation, every officer of the company who is in default, shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Issue of certificates.

36. (1) Every company shall, within two months after the allotment of any of its shares or debentures and within two months after the date on which a transfer of any such shares or debentures is registered with the company, and within one month from the date on which any such shares or debentures transmitted *causa mortis* have been registered in the name of the person entitled to be registered as the holder thereof, deliver the certificates of all shares, debentures or debenture stock allotted, transferred or transmitted *causa mortis* to the persons entitled thereto, unless the conditions of issue of the shares or debentures otherwise provide.

(2) The expression "transfer" for the purposes of this regulation means a transfer on which the relevant duty, if any, has

been paid and is otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

(3) In the case of a transfer or of a transmission *causa mortis* of shares the company shall within fourteen days after the date on which a transfer of any such shares is registered with the company, and within one month from the date on which any such shares transmitted *causa mortis* have been registered in the name of the person entitled to be registered as the holder thereof, deliver to the Registrar for registration a notice of the transfer or the transmission *causa mortis* stating the names and addresses of the transferees or the names and addresses of the persons entitled to the shares transmitted *causa mortis*, as the case may be.

(4) If default is made in complying with any of the provisions of this regulation, every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Pledging of securities.

37. (1) Securities may, unless otherwise provided in the memorandum or articles of the company or under the conditions of issue of those securities, be pledged by their holder in favour of any person as security for any obligation. The pledge of securities shall be constituted by means of an instrument in writing entered into between the pledgor and the pledgee:

Provided that securities may not be pledged unless the memorandum or articles of the company specifically so provide; and in relation to transfers of shares by members of the company any restriction resulting from the memorandum or articles of the company shall, subject to the provisions of paragraph (10) of this regulation, be deemed not to apply to transfers by the pledgee in terms of paragraph (6) of this regulation or resulting from any judicial sale.

(2) Notice of the pledge shall be delivered by the pledgor or the pledgee to the Registrar for registration within fourteen days of the granting of the pledge. The company whose securities have been pledged, shall also be notified of the pledge in writing within the said period and the company shall record that fact in the register of holders of the respective securities.

(3) The pledge of securities shall be effective in relation to a third party only after the registration by the Registrar of the notice referred to in paragraph (2) of this regulation.

(4) Saving the provisions of paragraph (3) of this regulation, during the existence of a pledge of securities, any transfer or other assignment, made by the pledgor, whether by onerous or gratuitous title, of the pledged securities shall be null and void.

(5) Notwithstanding the provisions of paragraph (4) of this regulation, any transfer or other assignment of securities made with the consent of the pledgee shall be valid and the securities to be transferred shall continue to be subject to the pledge.

(6) Without prejudice to the right of the pledgee to apply for the judicial sale of the securities and notwithstanding the provisions of the Civil Code or of the memorandum or articles of the company, in the event of a default under the agreement of pledge and upon giving notice by judicial act to the pledgor and the company, the pledgee shall be entitled to:

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(a) dispose of the securities which are pledged in his favour; or

(b) appropriate and acquire the shares himself, in settlement of the debt due to him or of part thereof.

(7) For the purposes of paragraph (6) of this regulation the value of the securities may be established by agreement between the pledgor and the pledgee after notice of default has been given by the pledgee to the pledgor in terms of the said paragraph (6), and no prior agreement thereon shall be valid:

Provided that, in case of disagreement, the fair value for the sale or appropriation of the securities shall be determined by a certified public accountant or a certified public accountant and auditor appointed by the court on the application of the pledgee or in such other manner as the parties may agree in writing.

(8) For the purposes of paragraph (7) of this regulation, the fair value of the securities shall be that obtaining on the date of the notice referred to in paragraph (6) of this regulation.

(9) The pledgee shall, in selling the securities in accordance with the provisions of paragraph (6) of this regulation, be obliged to seek the best price being not less than their fair value as determined in accordance with paragraph (7) of this regulation. In the event that a buyer cannot be found for the securities at their fair value, the pledgee may apply to the court for the securities to be sold at less than their fair value as aforesaid subject to such conditions as the court may deem fit.

(10) The pledgee shall be obliged, prior to the exercise of the right granted by paragraph (6) of this regulation, to offer the shares to other shareholders of the company in accordance with any pre-emption rights relating to the transfer of shares as laid down in the memorandum or articles of that company, and, failing such pre-emption rights, to all the other shareholders of the company in proportion to their holdings. In either case the shareholders shall be entitled to purchase the shares at the price determined in accordance with paragraph (7) of this regulation. Such offer shall be kept open for at least ten working days.

(11) In the exercise of his rights under this regulation, the pledgee shall only sell or appropriate such number of securities as are needed to raise sufficient proceeds to repay the debt due. All remaining shares shall be released to the pledgor:

Provided that it shall be lawful for a pledgee to sell all the shares pledged in the event that it is not possible to achieve a fair price for the sale of only part of the pledged shares and any excess in the proceeds shall be released to the pledgor.

(12) It shall be lawful for the parties to an agreement of pledge of securities to agree on the person or persons who shall exercise all the rights belonging to the holder of securities including voting rights and the right to receive dividends and interest payments:

Provided that, should the agreement between the parties not make provision for such matters, all rights pertaining to a holder of securities shall, for the duration of the pledge, be exercised by the pledgor until such time as he defaults under the agreement of pledge or until the pledgee enforces his security; and in any such case, upon giving notice by a judicial act to the pledgor and the company, all the rights belonging to the pledgor shall immediately become exercisable by the pledgee:

Provided further that, unless the pledgor and the pledgee have otherwise agreed in the pledge agreement and notice thereof has been given to the company, dividends or interest payments due on securities which are pledged shall, during such time as the pledge is registered in the register of holders of the respective securities, be paid by the company to the pledgee who shall appropriate any such amounts received to the interest due on the debt secured by the pledge, and, if there is an excess, to the capital.

(13) Notice of termination of the pledge shall be delivered by the pledgor or the pledgee to the Registrar for

registration within fourteen days of the termination of the pledge. The company, securities in which have been pledged, shall also be notified in writing of the termination of the pledge within the said period and the company shall record that fact in the register of holders of the respective securities.

(14) In the event that the parties to a pledge agreement submit any dispute thereunder to arbitration all references in this regulation to the court shall be deemed to refer to the arbitration tribunal.

Register of members.

38. (1) Every company shall keep a register of its members and shall enter therein the following particulars -

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

(b) the date at which each person was entered in the register as a member; and

(c) the date at which any person ceased to be a member:

Provided that where the company has converted any of its shares into stock and has registered the conversion with the Registrar, the register shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified in subparagraph (a) of this paragraph.

(2) Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of these regulations, be treated as a single member; and, unless otherwise provided in the memorandum or articles, the name of only one of such persons shall be entered in the register of members. Such person shall be elected by the joint holders and shall for all intents and purposes be deemed in relation to the company to be the member of the company in respect of all the shares so held.

(3) The register of members shall be kept at the registered office of the company or at such other place as specified in the memorandum or articles and in such form as may be determined.

(4) If default is made in complying with any requirement of this regulation, every officer of the company who is in default

shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Register of debentures.

39. (1) Every company shall keep a register of debentures and shall enter therein the names and addresses of the registered holders and particulars of the debentures held by them respectively.

(2) The register of debentures shall be kept at the registered office of the company or at such other place as may be specified in the memorandum or articles and in such form as may be determined therein.

(3) Where two or more persons hold one or more debentures jointly, they shall for the purposes of these regulations be treated as a single debenture holder; and, unless otherwise provided in the memorandum or articles, the name of only one of such persons shall be entered in the register of debentures. Such person shall be elected by the joint holders and shall for all intents and purposes be deemed vis-à-vis the company to be the holder of all the debentures so held.

(4) If default is made in complying with any requirement of this regulation, every officer of the company who is in default shall be liable to a penalty and, for every day during which the default continues, to a further penalty.

Inspection of registers.

40. Except when duly closed in accordance with the provisions of regulation 41 of these regulations, and subject to such reasonable restrictions as the company in general meeting may impose -

(a) the register of members shall be open to the inspection of any member of the company without charge; and

(b) the register of debentures shall be open to the inspection of any person without charge.

Power to close registers.

41. (1) A company may, on giving notice to the members, close the register of members to inspection for any period or periods not exceeding in the whole thirty days in each year.

(2) The register of debentures may be closed to inspection in accordance with provisions contained in the memorandum or articles or in the debentures or, in the case of debenture stock, in the stock certificates, during such period or periods, not exceeding in the whole thirty days in any one year, as may be therein specified.

(3) The memorandum or articles may provide that, during such time as the register of members or the register of debentures is closed in accordance with the provisions of paragraphs (1) or (2) of this regulation, no new particulars may be entered therein.

Trustees and nominees.

42. Unless otherwise provided in its articles, a company formed and registered in Malta shall not recognise any nominee relationship or trust in respect of any security issued by it, and the company shall not recognise, even when having notice thereof, any interest or other right in such security, but shall only recognise the registered holder thereof.

Chapter VII - Meetings and Resolutions

Holding of annual general meeting.

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

Provided that so long as a company holds its first annual general meeting within eighteen months of its registration it need not hold it in the year of its registration or in the following year.

(2) Every general meeting other than an annual general meeting shall be an extraordinary general meeting.

(3) If default is made in complying with the provisions of paragraph (1) of this regulation, every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Convening of extraordinary general meeting on requisition.

44. (1) The directors of a company shall, on the requisition of a member or members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid up share capital of the company as at the date of the deposit carried the right of voting at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

(2) The requisition shall state the objects of the meeting and shall be signed by the requisitionist or requisitionists and deposited at the registered office of the company and may consist of several documents in like form each signed by the requisitionist, or if there is more than one requisitionist in any one document by all of them.

(3) If the directors do not within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionist or requisitionists may convene a meeting in the same manner, as nearly as possible, as that in which meetings are to be convened by the directors, but a meeting so convened shall not be held after the expiration of three months from the date of the deposit of the requisition.

(4) Any reasonable expense incurred by the requisitionist or requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionist or requisitionists by the company, and any sum so paid shall be due personally by the directors who were in default and may be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

Length of notice for calling general meetings.

45. A general meeting of a company shall be deemed not to have been duly convened unless at least fourteen days' notice has been given in writing, and any provision in the company's memorandum or articles shall be construed as requiring fourteen days' notice in writing in so far as it provides for the calling of a meeting of a company, other than an adjourned meeting, by a shorter notice:

Provided that a meeting of the company shall notwithstanding that it is called by a shorter notice, be deemed to have been duly convened if it is so agreed by all the members entitled to attend and vote thereat.

General provisions as to meetings and votes.

46. The following provisions shall have effect in so far as the articles of a company do not contain other provisions in that behalf -

(a) notice of any general meeting of a company shall be given to every member of the company and shall be served at the address specified in the register of members in the manner in which notices are required to be served by the First Schedule to these regulations;

(b) two members personally present shall be a quorum;

(c) any member elected by the members present at a meeting may be chairman thereof;

(d) every member shall have one vote in respect of each share or each lira or the equivalent of stock held by him unless otherwise provided in the terms of issue of such shares or stock;

(e) service of notice at the last known address of the shareholder as appears in the register of members shall be deemed to be an effective service of notice. It is the duty of the shareholders to inform the company of any change of address.

Powers of court to order meeting.

47. (1) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of the company may be called, or to conduct the meetings of that company in the manner prescribed by the articles or these regulations, the court may, either on its own motion or on the demand of either of the parties to the proceedings during the course of such proceedings or, in the absence of any proceedings, on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks fit, and where any such order is made, may give such ancillary or consequential directions as it thinks expedient, including a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) The provisions of paragraph (1) of this regulation shall also apply to the calling of meetings of the board of directors of a company, if the court considers that the circumstances justify such course of action.

Proxies.

48. (1) Notwithstanding anything contained in the memorandum or articles of a company, any member entitled to attend and vote at a meeting of the company or at a meeting of any class of members of the company shall be entitled to appoint another person, whether a member or not, as his proxy to attend and vote instead of him, and a proxy so appointed shall have the same right as the member to speak at the meeting and to demand a poll.

(2) The appointment of a proxy shall be in writing.

(3) In every notice calling a meeting of a company there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy and that a proxy need not also be a member. If default is made in complying with this paragraph, every officer of the company who is in default shall be liable to a penalty.

(4) A provision in a company's memorandum or articles shall be void in so far as it would have the effect of requiring an instrument appointing a proxy, or any other document necessary to show the validity of, or otherwise relating to, the appointment of a

proxy, to be received by the company or any other person more than forty-eight hours before a meeting or adjourned meeting for that appointment to be effective.

(5) A company shall not issue at its own expense to some only of the members entitled to be sent a notice of a meeting and to vote thereat by proxy, invitations to appoint as proxy a person or one of a number of persons specified in the invitations. If default is made in complying with this paragraph, every officer of the company who is in default shall be liable to a penalty:

Provided that an officer shall not be liable to a penalty by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxy, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(6) The provisions of this regulation shall apply to meetings of any class of members of a company as they apply to general meetings of the company.

Right to demand a poll.

49. (1) Any provision contained in the memorandum or articles of a company shall be void in so far as it would have the effect either -

(a) of excluding the right to demand a poll at a general meeting on any question other than the election of the chairman of the meeting or the adjournment of the meeting; or

(b) of making ineffective a demand for a poll on any such question which is made either -

(i) by not less than five members having the right to vote at the meeting; or

(ii) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or

(iii) by a member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

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

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

Extraordinary and ordinary resolutions.

50. (1) Unless otherwise provided in the memorandum, a resolution shall be an extraordinary resolution where it has been passed by more than fifty percent of the members having the right to attend and vote at any such meeting:

Provided that an extraordinary resolution shall be taken at a general meeting of which notice specifying the intention to propose the text of the resolution as an extraordinary resolution and the principal purpose thereof has been duly given.

(2) Unless otherwise provided in the memorandum or articles, an ordinary resolution shall be passed by a member or members having the right to attend and vote at a meeting holding in the aggregate more than fifty per cent of the voting rights attached to shares represented and entitled to vote at the meeting.

Chapter VIII - Management and Administration

Power of company to borrow money, hypothecate or charge its undertaking, etc.

51. (1) In this regulation:

"guarantee" shall mean the undertaking of any obligation by whatever name whereby the company agrees to perform an obligation in the event of failure to do so by any other person;

"corporate benefit" shall mean any financial, commercial, trading or reputational benefit to be derived by the company, its holding company, its subsidiaries or subsidiaries of its holding company, any related company or its subsidiaries, its trading partners or counterparts or its members but not only its officers.

(2) A company shall, unless otherwise provided in its memorandum or articles, have the power to borrow money and to guarantee the obligations of any third party and, for such purpose, to hypothecate or charge its undertaking, property and uncalled

capital or any part thereof including as security for its direct obligations or for those of third parties, and to issue debentures, debenture stock and other securities whether outright or as security for its direct liabilities or obligations or for those of any third party:

Provided that when the grant of a guarantee for the obligations of a third party by a company is made on a purely gratuitous basis, with no corporate benefit being derived therefrom by the company, unless the memorandum states otherwise, the issue of such guarantee shall require the consent of the members by extraordinary resolution:

Provided further that nothing in this regulation shall render invalid any guarantee granted by any company which was entered into prior to the coming into force of these regulations.

Directors.

52. (1) Every private company shall have at least one director, and where a private company has one director, all references in these regulations to two or more directors shall be construed as references to such one director.

(2) The business of a company shall be managed by the directors who may exercise all such powers of the company, including those specified in regulation 51 of these regulations.

(3) Notwithstanding anything contained in the memorandum and articles of association relating to the names in which the representation of the company is to be exercised, anything done by the board of directors of a company which exceeds the limits of their authority or by any director which is beyond his powers, shall be binding on the company unless that act exceeds the powers granted to the board of directors or to a director, as the case may be by virtue of these regulations.

(4) Any limitation on the powers of the board of directors or of any director of the company shall not be relied on as against third parties, independently of whether that limitation, published or not, arises from the memorandum or articles or from any resolution of the general meeting or from a decision of the board of directors of the company.

(5) Where an act of the company falls outside the company's objects, the company shall not be bound if it proves that, when the act was done, the third party knew that it was outside the company's objects or the third party could not in view of the circumstances have been unaware thereof:

Provided that the publication of the memorandum and articles of the company shall not in itself be sufficient to prove that the third party knew, or could not have been unaware, that the act was outside the company's objects.

(6) When a vacancy arises in the board of directors the vacancy can be filled by a general meeting or equivalent resolution or in its absence a board of directors' resolution. In the absence of either one any member may apply to the court to appoint a director until the next annual general meeting.

(7) A person appointed by the court in accordance with the provisions of paragraph (6) of this regulation shall hold office until the next annual general meeting although he shall be eligible for re-election.

(8) The provisions of paragraph (6) of this regulation shall furthermore be without prejudice to the provisions of paragraphs (1) to (5) of regulation 54 and of sub-subparagraph (iv) of subparagraph (b) of paragraph (2) of regulation 99 of these regulations and to the right of the company to fill any such vacancy in general meeting.

Appointment of directors.

53. (1) Where a director is by the memorandum required to hold a specified share qualification, he shall either sign the memorandum for a number of shares not less than his qualification or sign and deliver to the Registrar for registration an undertaking in writing to take from the company and pay for his qualification shares:

Provided that he shall vacate his office if he fails to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the memorandum or articles, or if at any time thereafter he ceases to hold his qualification; and he shall be incapable of being re-appointed director of the company until he has obtained his qualification.

(2) Unless otherwise provided in the memorandum or articles of a company, a director of a company other than the first directors shall be appointed by ordinary resolution of the company in general meeting.

(3) Where the holders of a particular class of shares have the right to appoint one or more directors, in terms of the memorandum and articles of the company, such appointment shall be made by a member or members holding in the aggregate more

than fifty per cent in nominal value of the shares represented and entitled to vote at the meeting of the holders of the shares of that class.

Removal of directors and casual vacancies.

54. (1) A company may remove a director before the expiration of his period of office by a resolution taken at a general meeting of the company and passed by a member or members having the right to attend and vote, holding in the aggregate shares entitling the holder or holders thereof to more than fifty per cent of the voting rights attached to shares represented and entitled to vote at the meeting.

(2) The provisions of paragraph (1) of this regulation shall apply notwithstanding anything in the company's memorandum or articles or in any agreement between it and the director.

(3) On receipt of a notice of an intended resolution to remove a director under this regulation the company shall forthwith send a copy thereof to the director concerned and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.

(4) A vacancy created by the removal of a director under this regulation, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

(5) Nothing in this regulation shall be taken as:

(a) depriving a person removed hereunder of compensation or damages payable to him in respect of the termination of his appointment as director or of any other appointment terminating with the termination of his appointment as director; or

(b) derogating from any power to remove a director which may exist apart from this regulation.

(6) (a) Unless otherwise provided in the memorandum or articles of a company, a casual vacancy may be filled by the continuing director or directors, and without prejudice to the aforesaid powers of the directors, it may be filled by the company in general meeting.

(b) A person appointed by the directors to fill a casual vacancy shall hold office until the next following annual general meeting and shall be eligible for re-election, but shall not be

taken into account in determining the directors who are to retire by rotation at that meeting.

(c) A person appointed to fill a casual vacancy by the company in general meeting shall be treated for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed director.

Representation of the company.

55. (1) Where for any reason the representation of a company ceases to be vested in any person or persons, the company shall appoint another person or persons to exercise such function. The appointment shall be made by ordinary resolution taken at a general meeting notice of which shall be issued within fourteen days from the date when the vacancy occurs.

(2) The company may by ordinary resolution replace any person or persons vested with the representation of the company.

(3) Where and for as long as, the representation of the company cannot be exercised in accordance with the memorandum of the company, any director shall represent the company in judicial proceedings against it.

Disqualification for appointment as director.

56. (1) A person shall not be qualified for appointment or to hold office as director of a company if -

(a) he is interdicted or incapacitated or is an undischarged bankrupt;

(b) he has been convicted of any of the crimes affecting public trust or of theft or of fraud or of knowingly receiving property obtained by theft or fraud;

(c) he is a minor who has not been emancipated to trade;

(d) he is subject to a disqualification order under article 320 of the Companies Act or equivalent legislation overseas.

(2) Notwithstanding the provisions of these regulations or of the memorandum and articles of a company relating to the formalities of the appointment of a director or other officer and to his qualification, any irregularity concerning the appointment of a director or other officer of a company raised after the completion of the publication of his appointment shall not be relied upon by the

company as against third parties unless the company proves that such parties were aware of the irregularity at the relevant time.

(3) Third parties who were not aware of the irregularities referred to in paragraph (2) of this regulation at the relevant time may rely on that irregularity as against the company.

Directors competing with company.

57. (1) Unless authorised in the memorandum or articles of a company a director may not, in competition with the company and without the approval in writing of all the members of the company given at a general meeting, carry on business on his own account nor may he be a partner with unlimited liability in another partnership which is in competition with that company.

(2) Where a director acts in violation of the prohibition contained in this regulation, the company may, at its option, either take action for damages and interest against him or demand payment of any profits made by him in contravention of this regulation.

(3) The provisions of this regulation shall be without prejudice to any other remedy which a company may have against a director for breach of duty.

Prohibition of loans, etc. to directors.

58. It shall not be lawful for a company -

(a) to make a loan to any person who is its director or a director of its parent company, or to enter into any guarantee or provide any security in connection with a loan made to such a person as aforesaid by any other person:

Provided that nothing in this paragraph shall apply either -

(i) to anything done, with the approval of the company given at a general meeting, to provide any such person as aforesaid with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company; or

(ii) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business;

(b) to make to any director of the company any payment by way of compensation for loss of office, or as consideration

for or in connection with his retirement from office, without particulars with respect to the proposed payment, including the amount thereof, being disclosed to members of the company and the proposal being approved by the company in general meeting.

Duty of director to disclose interest in a contract with company.

59. (1) It shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in his personal capacity in a contract or proposed contract with the company to declare the nature of his interest to the other directors either at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or, if the director was not at the date of that meeting interested in the contract or proposed contract, at the next meeting of the directors held after he became so interested.

(2) Any director who fails to comply with the provisions of this regulation shall be liable to a penalty.

Return as to changes among directors and in representation of company.

60. (1) Every company shall send to the Registrar for registration a return of any change among its directors or representative, specifying the date of the change together with the name and residence of any new director, within fourteen days from the happening thereof in terms of the Seventh Schedule to these regulations:

Provided that the Registrar may, before registering the return, take such steps and require such information as he may deem necessary to ascertain the correctness of the return and to determine whether the provisions of these regulations have been complied with.

(2) If default is made in complying with the provisions of paragraph (1) of this regulation, every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Joint and several liability of directors for breach of duty.

61. (1) The personal liability of the directors in damages for any breach of duty shall be joint and several:

Provided that where a particular duty has been entrusted to one or more of the directors, only such director or directors shall be liable in damages.

(2) A director shall not be liable for the acts of his co-directors if he proves either -

(a) that he did not know of the breach of duty before or at the time of its occurrence and that on becoming aware of it

after its occurrence he signified forthwith to the co-directors his dissent in writing; or

(b) that, knowing that the co-directors intended to commit a breach of duty, he took all reasonable steps to prevent it.

Provisions as to liability of officers and auditors.

62. Any provision, whether contained in the memorandum or articles of a company or in any contract with a company or otherwise for exempting any officer of the company or any person engaged by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would in the absence thereof have been attached to him in respect of negligence, default or breach of duty or otherwise of which he may be guilty in relation to the company shall be void:

Provided that a company may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings in which judgment is given in his favour or in which he is acquitted.

Minutes of proceedings.

63. (1) Every company shall cause minutes of all proceedings of general meetings and all proceedings at meetings of its directors to be entered in books kept for that purpose.

(2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were held, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) The books containing the minutes of proceedings of any general meeting of a company shall be kept at the registered office of the company, or at such other place, including a place outside Malta, as may be specified in the memorandum or articles, and shall, during business hours, subject to such reasonable restrictions as the company may by its articles or in general meeting impose, be open to the inspection of any member of the company without charge.

(4) If a company fails to comply with the requirements of paragraphs (1) or (3) of this regulation, every officer of the company who is in default shall be liable to a penalty.

Chapter IX - Accounts, Audit and Annual Return

Keeping of accounting records. Cap. 13.

64. (1) In lieu of the requirements of articles 13 to 18 of the Commercial Code a company shall be required to keep proper accounting records with respect to -

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(b) the assets and liabilities of the company;

(c) all sales and purchases of goods and services by the company.

(2) For the purposes of paragraph (1) of this regulation, proper accounting records shall be deemed to have been kept with respect to the matters aforesaid if such records are sufficient to show and explain the company's transactions and are such as to -

(a) disclose with reasonable accuracy, at any time, the financial position of the company at that time; and

(b) enable the directors to ensure that any balance sheet and profit and loss account prepared under this Chapter comply with the requirements of these regulations.

(3) The accounting records shall be kept at the registered office of the company or at such other place as the directors think fit, and shall be at all times open to inspection by the officers of the company.

(4) A parent company which has a subsidiary undertaking, in relation to which the above requirements do not apply, shall take reasonable steps to secure that the subsidiary undertaking keeps such accounting records as to enable the directors of the parent company to ensure that any balance sheet and profit and loss account prepared complies with the requirements of these regulations.

(5) Notwithstanding the provisions of article 26 of the Commercial Code, the accounting records of the company shall be kept for a period of ten years.

Accounting periods.

65. (1) A company's accounting periods shall be of not more than one year except the first accounting period which may be of not less than 6 months and not more than eighteen months from the date of registration.

(2) Accounting periods shall be from and to such dates as are determined by the directors from time to time during an accounting period.

(3) In the case specified in paragraph (2) of this regulation, the company shall within fourteen days file a note with the Registrar for registration in terms of the Seventh Schedule to these regulations.

General provisions as to content and form of individual accounts.

66. (1) The directors of every company shall prepare for each accounting period individual accounts comprising the balance sheet as at the last day of the accounting period to which they refer, the profit and loss account for that period, and the notes to the accounts. These documents shall constitute a composite whole.

(2) The individual accounts shall be drawn up clearly and in accordance with the provisions of these regulations.

(3) The individual accounts shall give a true and fair view of the company's assets, liabilities, financial position and profit or loss.

(4) The individual accounts shall comply with the requirements of the Second Schedule to these regulations as to the form and content of the balance sheet and profit and loss account and as to additional information to be provided by way of notes to the accounts.

(5) Where the application of the provisions of these regulations would not be sufficient to give a true and fair view within the meaning of paragraph (3) of this regulation, additional information shall be given.

(6) Where in exceptional cases the application of a provision of these regulations is incompatible with the obligation for the individual accounts to give a true and fair view, that provision shall be departed from in order to give a true and fair view. Any such departure shall be disclosed in the notes to the accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit or loss.

Duty to prepare consolidated accounts.

67. (1) If at the end of an accounting period a company is a parent company the directors shall, as well as preparing the individual accounts for that company, also prepare consolidated accounts.

(2) A parent company and all of its subsidiary undertakings shall be undertakings to be consolidated regardless of where the registered offices or principal offices of such subsidiary undertakings are situated.

(3) A subsidiary undertaking may be excluded from consolidation if its inclusion is not material for the purpose of giving a true and fair view; but two or more subsidiary undertakings may be excluded only if their inclusion is not material when taken together.

(4) A subsidiary undertaking may be excluded from consolidation where -

(a) severe long-term restrictions substantially hinder the exercise of the rights of the parent company over the assets or management of that undertaking; or

(b) the information necessary for the purposes of its inclusion in the consolidated accounts cannot be obtained without disproportionate expense or undue delay; or

(c) the interest of the parent company is held exclusively with a view to subsequent resale and the undertaking has not previously been included in consolidated accounts prepared by the parent company.

The reference in paragraph (a) to the rights of the parent company and the reference in paragraph (c) to the interest of the parent company are, respectively, to rights and interests held by or attributed to the company for the purposes of regulation 3 of these regulations, in the absence of which it would not be the parent company.

(5) Where the activities of one or more subsidiary undertakings are so different from those of other undertakings to be included in the consolidation that their inclusion would be incompatible with the obligation to give a true and fair view, those undertakings shall be excluded from consolidation. This paragraph shall not apply merely because some of the undertakings are industrial, some commercial and some provide services, or because they carry on industrial or commercial activities involving different products or because they provide different services.

(6) Where all the subsidiary undertakings of a parent company fall within the above exclusions, no consolidated accounts shall be required.

(7) Where the undertaking excluded from the consolidation pursuant to paragraph (5) of this regulation is an undertaking not established in Malta its individual accounts shall be attached to the consolidated accounts of the parent company

translated into English or Maltese, where the original is not in one of these languages.

(8) The requirements specified in paragraphs (1) to (7) of this regulation shall be subject to the following qualifications -

(a) an undertaking is not required to prepare for the purposes of this regulation accounts which would not otherwise be prepared, and if no accounts satisfying the said requirements are prepared, none need be attached;

(b) a document need not be appended if it would not otherwise be required to be published, or made available for public inspection, anywhere in the world, but in that case the reason for not attaching it shall be stated in the notes to the accounts of the company;

(c) where an undertaking and all its subsidiary undertakings are excluded from consolidation in accordance with paragraph (6) of this regulation, the accounts of such of the subsidiary undertakings of that undertaking as are included in its consolidated accounts need not be attached.

Form and content of consolidated accounts.

68. (1) Consolidated accounts shall comprise the consolidated balance sheet as at the last day of the accounting period to which these refer, the consolidated profit and loss account for that period, and the notes to the consolidated accounts. These documents shall constitute a composite whole.

(2) The consolidated accounts shall be drawn up clearly and in accordance with the provisions of these regulations.

(3) Consolidated accounts shall give a true and fair view of the assets, liabilities, financial position and profit or loss of the undertakings included therein taken as a whole.

(4) Where the application of the provisions of these regulations would not be sufficient to give a true and fair view within the meaning of paragraph (3) of this regulation, additional information shall be given.

(5) Where in exceptional cases the application of a provision of these regulations is incompatible with the obligation for the consolidated accounts to give a true and fair view, that provision shall be departed from in order to give a true and fair view. Any such departure shall be disclosed in the notes to the consolidated

accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit and loss.

(6) Consolidated accounts shall comply with the provisions of the Third Schedule to these regulations as to the form and content of the consolidated balance sheet and consolidated profit and loss account and as to additional information to be provided by way of notes to the consolidated accounts.

Consolidated accounts –size exemption.

69. (1) A parent company shall be exempt from the requirements to prepare consolidated accounts if as at its balance sheet date the undertakings to be consolidated do not together, on the basis of their latest individual accounts, exceed the limits of two of the three criteria laid down in paragraph (2) hereof.

(2) Companies which on their balance sheet dates do not exceed the limits of two of the three following criteria:-

– balance sheet total: six million Maltese liri

– net turnover: twelve million Maltese liri

– average number of employees during the accounting period: two hundred and fifty.

Exemption for parent companies included in accounts of larger groups.

70. (1) A parent company shall be exempt from the requirement to prepare consolidated accounts if it is itself a subsidiary company in the following cases -

(a) where the said parent company is a wholly-owned subsidiary company of an immediate parent company formed and registered under the law of Malta; or

(b) where ninety per cent or more in nominal value of the shares in the said parent company are held by a parent company and notice requesting the preparation of consolidated accounts has not been served on the first mentioned company by shareholders holding in the aggregate the remaining percentage in nominal value of all the shares thereof. Such notice shall not be valid unless it is served not later than six months after the commencement of the accounting period to which it relates.

(2) The exemption referred to in paragraph (1) of this regulation shall be conditional upon compliance with all of the following requirements-

(a) that in the case of a parent company which is itself a subsidiary company of a parent company formed and registered under the law of Malta, such company is included in consolidated accounts for a larger group drawn up to the same date, or to an earlier date in the same accounting period, by a parent company formed and registered under the law of Malta;

(b) that in the case of a parent company which is itself a subsidiary company of a parent undertaking not established under the law of Malta, the exempted undertaking is included in consolidated accounts for a larger group drawn up to the same date, or to an earlier date in the same accounting period, provided such consolidated accounts and the directors' report thereon are drawn up in a manner equivalent to that prescribed by these regulations and have been audited by one or more persons authorised to audit accounts under the national law governing the undertaking which drew them up;

(c) that the said parent company discloses in its individual accounts that it is exempt from the obligation to prepare and deliver consolidated accounts;

(d) that the said parent company states in its individual accounts the name of the parent undertaking which draws up the consolidated accounts referred to in subparagraph (a) or (b) of this paragraph;

(e) that the said parent company delivers to the Registrar within the period allowed for delivering its individual accounts, copies of the consolidated accounts referred to in subparagraph (a) or (b) of this paragraph, and of the parent undertaking's directors' report or its equivalent, together with the auditors' report on those consolidated accounts; and

(f) that if any document comprised in accounts and reports delivered in accordance with subparagraph (e) is in a language other than Maltese or English, there is annexed to the copy of that document a translation of it into Maltese or English, certified to be a correct translation in such manner as may be prescribed.

(3) Shares held by directors of a company for the purpose of complying with any share qualification requirement shall be disregarded in determining for the purposes of subparagraph (a) of paragraph (1) of this regulation whether the company is a wholly-owned subsidiary company.

(4) For the purposes of subparagraph (b) of paragraph (1) of this regulation shares held by a wholly-owned subsidiary undertaking of the parent undertaking, or held on behalf of the parent company or a wholly-owned subsidiary undertaking, shall be attributed to the parent company.

Disclosure required in notes to the accounts.

71. (1) Where the company is not required to prepare consolidated accounts, the information specified in Part III of the Second Schedule to these regulations shall be given in notes to the individual accounts; and where the company is required to prepare consolidated accounts, the information by way of notes to the consolidated accounts specified in the Third Schedule to these regulations shall be given.

(2) If the directors of the company are of the opinion that the number of undertakings in respect of which the company is required to disclose information under any provision of the Second and Third Schedules to these regulations is such that compliance with that provision would result in information of excessive length being given, the information need only be given in respect of -

(a) the companies whose results or financial position, in the opinion of the directors, principally affected the figures shown in the company's annual accounts; and

(b) companies excluded from consolidation under paragraphs (3) or (4) of regulation 67 of these regulations.

(3) In any case where the provisions of paragraph (2) of this regulation are applied -

(a) there shall be included in the notes to the company's annual accounts a statement that the information given relates only to such companies as are mentioned in that paragraph; and

(b) the full information, whether disclosed in the notes to the accounts or the notes to the consolidated accounts or not, shall be annexed to the company's next annual return.

For the purpose of this paragraph the "next annual return" means the return next delivered to the Registrar after the annual accounts referred to in this regulation have been approved under regulation 73 of these regulations.

Approval and signing of annual accounts.

72. (1) A company's annual accounts shall be approved by the board of directors and the balance sheet shall be signed and dated on behalf of the board by two directors of the company.

(2) Every copy of the balance sheet which is laid before the company in general meeting, or which is otherwise circulated, published or issued, shall state the name of the director or directors who signed the balance sheet on behalf of the board.

(3) The copy of the company's balance sheet which is delivered to the Registrar shall be signed on behalf of the board by the same directors who signed the balance sheet pursuant to paragraph (1) of this regulation.

(4) If a copy of the accounts -

(a) is laid before the company, or otherwise circulated, published or issued, without having been signed as required by this regulation or without the required statement of the signatory's name being included; or

(b) is delivered to the Registrar without being signed as required by this regulation,

every officer of the company who is in default shall be liable to a penalty.

Contents of the directors' report.

73. (1) For each accounting period the directors shall prepare a report, hereinafter referred to as "the directors' report".

(2) The directors' report shall state the names of the persons who, at any time during the accounting period, were directors of the company, and the principal activities of the company and its subsidiaries in the course of the year and any significant change in those activities in the year.

(3) The directors' report shall furthermore comply with the Fourth Schedule to these regulations as regards the disclosure of the matters mentioned therein.

(4) In the case of default in complying with the provisions of this regulation, every person who was a director of the company immediately before the end of the period for laying accounts for the relevant accounting period shall be liable to a penalty. In proceedings against a person under this paragraph, it shall be a defence for him to prove that he took all reasonable steps for securing compliance with the requirements of this regulation.

Approval and signing of directors' report.

74. (1) The directors' report shall be approved by the board of directors and signed and dated on behalf of the board by a director of the company.

(2) Every copy of the directors' report which is laid before the company in general meeting, or which is otherwise circulated, published or issued, shall state the name of the person who signed it on behalf of the board.

(3) The copy of the directors' report which is delivered to the Registrar shall be signed and dated on behalf of the board by a director of the company.

(4) If a copy of the directors' report -

(a) is laid before the company, or otherwise circulated, published or issued, without the report having been signed as required by this regulation or without the required statement of the signatory's name being included; or

(b) is delivered to the Registrar without being signed as required by this regulation,

every officer of the company who is in default shall be liable to a penalty.

Auditor's report.

75. (1) A company's auditors shall make a report to the company's members on all annual accounts of the company of which copies are to be laid before the company in general meeting during their tenure of office.

(2) The auditors' report shall state whether in the auditors' opinion the annual accounts have been properly prepared in accordance with these regulations, and in particular whether a true and fair view is given -

(a) in the case of an individual balance sheet, of the state of affairs of the company as at the end of the accounting period;

(b) in the case of an individual profit and loss account, of the profit or loss of the company for the accounting period;

(c) in the case of consolidated accounts, of the state of affairs as at the end of the accounting period, and the profit or loss for the accounting period, of the undertakings included in the consolidation as a whole, so far as concerns members of the company.

(3) The auditors shall consider whether the information given in the directors' report for the accounting period for which the annual accounts are prepared is consistent with those accounts; and if they are of the opinion that it is not they shall state that fact in their report.

(4) The auditors' report shall state the names of the auditors and shall be signed and dated by them.

(5) Every copy of the auditors' report which is laid before the company in general meeting, or which is otherwise circulated, published or issued, shall state the names of the auditors.

(6) The copy of the auditors' report which is delivered to the Registrar shall state the names of the auditors and be signed by them.

(7) If a copy of the auditors' report -

(a) is laid before the company, or otherwise circulated, published or issued, without the required statement of the auditors' names; or

(b) is delivered to the Registrar without the required statement of the auditors' names or without being signed as required by this regulation,

every officer of the company who is in default shall be liable to a penalty.

(8) References in this regulation to signature by the auditors are, where the office of auditor is held by a partnership, to the signature of an individual partner or partners signing on behalf of the partnership and authorised to sign on its behalf.

(9) A company's auditors shall, in preparing their report, carry out such investigations as will enable them to form an opinion as to –

(a) whether proper accounting records have been kept by the company and proper returns adequate for their audit have been received from branches not visited by them, and

(b) whether the company's individual accounts are in agreement with the accounting records and returns.

(10) If the auditors are of the opinion that proper accounting records have not been kept, or that proper returns adequate for their audit have not been received from branches not visited by them, or if the company's individual accounts are not in agreement with the accounting records and returns, the auditors shall state that fact in their report.

(11) If the auditors are unable to obtain all the information and explanations which, to the best of their knowledge and belief, are necessary for the purpose of their audit, they shall state that fact in their report.

(12) If the requirements of paragraph (*o*) of article 31 of the Second Schedule to these regulations are not complied with in the annual accounts, the auditors shall include in their report, so far as they are reasonably able to do so, a statement giving the required particulars.

Persons to whom a copy of the accounts of a company are to be sent.

76. (1) In the case of every company, a copy of the annual accounts of a company for the accounting period shall, not less than fourteen days before the date of the meeting at which they are to be laid in accordance with the provisions of regulation 77 of these regulations, be sent to each of the following persons -

(a) every member of the company; and

(b) all other persons who are entitled to receive notice of general meetings.

(2) Notwithstanding the provisions of paragraph (1) of this regulation, copies of the annual accounts shall, unless otherwise provided in the memorandum or articles, not be required to be sent to a debenture holder who is not entitled to receive notices of general meetings.

(3) If copies of the annual accounts are sent less than fourteen days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to attend the meeting who received them late.

(4) If default is made in complying with paragraph (1) of this regulation, the company and every officer who is in default shall be liable to a penalty.

(5) Any member of the company and any holder of the company's debentures, whether or not such holder is entitled to have

sent to him copies of the company's annual accounts, shall be entitled to be furnished, on demand and without charge, with a copy of the last annual accounts laid before the company in general meeting.

(6) If, when a person makes a demand for a document with which he is entitled by this regulation to be furnished, every officer of the company who defaults in complying with the demand within seven days after its making, shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

(7) For the purposes of this regulation, reference to the term "annual accounts" shall include the directors' report as specified in regulation 73 of these regulations and the auditors' report as specified in regulation 75 of these regulations.

Directors to lay accounts before the general meeting.

77. In respect of each accounting period of a company the directors shall lay before the company in general meeting copies of the annual accounts of the company for that period. There shall be annexed to the annual accounts, the auditors' report as specified in regulation 75 of these regulations and the directors' report as specified in regulation 73 of these regulations.

Period for laying of accounts.

78. (1) The period allowed for laying before the company in general meeting of a company's annual accounts for an accounting period shall be as provided in this regulation.

(2) Subject to the following paragraphs of this regulation, the period allowed shall be ten months after the end of the relevant accounting reference period.

(3) If a company carries on business, or has interests, outside Malta and in respect of an accounting period, the directors, before the end of the period allowed by paragraph (2) of this regulation, give to the Registrar notice in the prescribed form -

(a) stating that the company so carries on business or has such interests; and

(b) claiming an extension of the period so allowed by a further three months,

the period allowed in relation to that accounting period shall be so extended unless the Registrar notified his disapproval in writing to the company.

(4) Where a company's first accounting period is a period of more than twelve months from the date of its registration, the

period otherwise allowed for laying before the company in general meeting of annual accounts shall be reduced by the number of days by which the relevant accounting period is longer than twelve months. However, the period allowed shall not by this provision be reduced to less than three months after the end of that accounting period.

(5) Where a company's relevant accounting period has been shortened due to a change in the accounting reference date, the period allowed for laying and delivering accounts shall be -

(a) the period allowed in accordance with paragraphs (2) to (4) of this regulation; or

(b) the period of three months beginning with the date of a notice given to the Registrar when notice has been given to change the accounting dates,

whichever of those periods last expires.

Copies of accounts to be provided to Registrar.

79. (1) The company directors shall deliver to the Registrar for registration a copy of the company's annual accounts laid before the company in general meeting in accordance with regulation 77 of these regulations together with a copy of the auditors' report thereon, and the directors' report accompanying the annual accounts within forty-two days from the end of the period for laying accounts prescribed by regulation 78 of these regulations.

(2) Where, in accordance with regulation 81 of these regulations, a company qualifies to draw up abridged accounts relating to an accounting period, the directors of the company may deliver to the Registrar abridged accounts in respect of that accounting period and such delivery shall satisfy the company's obligation under paragraph (1) of this regulation:

Provided that where the company which qualifies to draw up abridged accounts is an exempt company, it may deliver to the Registrar its abridged balance sheet and relevant balance sheet notes but without the profit and loss account and the directors' report.

(3) Where a company, which is a parent company, prepares consolidated accounts in accordance with the provisions of these regulations it need not include a copy of its profit and loss account with the accounts to be delivered to the Registrar as prescribed in paragraph (1) of this regulation where the following conditions are fulfilled -

(a) the application of this exemption is disclosed in the notes to the accounts of the parent company and in the notes to the consolidated accounts; and

(b) the profit or loss of the parent company, determined in accordance with the provisions of these regulations, shall be shown separately either on the face of the parent company's balance sheet or in the notes to the accounts of the parent company.

(4) Where the directors of a company propose to take advantage of the exemptions conferred by paragraph (2), the auditors shall have the duty to provide the directors with a special auditors' report stating whether in their opinion the company is entitled to those exemptions as claimed in the directors' statements and whether the documents to be proposed to be delivered in accordance with this article are properly prepared:

Provided that the special auditors' report shall not be required where the annual accounts of the company, in respect of which the auditors' report referred to in regulation 75 has been made, are to be published as drawn up.

(5) In the case of default in complying with the provisions of this regulation, or where the accounts delivered to the Registrar do not comply with the provisions of these regulations, every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty. In proceedings under this paragraph it shall not be a defence to prove that the document or documents in question were not in fact prepared as required by these regulations.

Annual return.

80. (1) Every company shall upon each anniversary of its registration, make a return in the form set out in the Fifth Schedule to these regulations showing the matters therein specified and made up to the date of such anniversary:

Provided that -

(a) where a company was, immediately before the 1st January 2004, in default with respect to the delivery of one or more annual returns, this regulation shall not affect the obligation of the company to make such a return or returns or the payment of any penalty arising from such a default;

(b) where a company has converted any of its shares into stock and registered the conversion as provided in regulation 20 of these regulations, the list of past and present members

shown in Part 3 of the Fifth Schedule to these regulations, shall state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares required by that part.

(2) The annual return, duly completed, shall be signed by at least one director of the company and forwarded to the Registrar for registration within forty-two days after the date to which it is made up.

(3) If default is made in complying with the provisions of this regulation, every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Exemptions for small companies.

81. (1) Companies which on their balance sheet dates do not exceed the limits of two of three of the following criteria –

– balance sheet total: one million five hundred thousand Maltese liri;-

– net turnover: three million Maltese liri;-

– average number of employees during the accounting period: fifty;

shall be exempted from the provisions of Chapter X of Part III of these regulations, and from the requirement imposed by regulation 75 of these regulations and such companies may, for all purposes of these regulations, draw up abridged balance sheets and abridged layouts of profit and loss account as specified in paragraph (2) of this regulation and abridged notes to the accounts as specified in paragraph (3) of this regulation.

(2) For the purposes of this regulation, the word "abridged" -

(a) when used therein in relation to a balance sheet shall mean an abbreviated version of the balance sheet, showing only those items to which a letter or Roman number is assigned in the balance sheet formats shown under Part I of the Second Schedule to these regulations, immediately following paragraph 13, under the heading "Balance Sheet Formats", but such version shall, in all other respects, correspond to the full balance sheet;

(b) when used therein in relation to profit and loss account layouts shall mean the full profit and loss account with the

exception that the following items can be combined as one item under the heading “gross profit or loss” -

(i) items 1, 2, 3 and 6 in Format 1;

(ii) items 1 to 5 in Format 2;

(iii) items A.1, B.1 and B.2 in Format 3; and

(iv) items A.1, A.2 and B.1 to B.4 in Format 4.

The formats herein stated are those shown in Part I of the Second Schedule to these regulations, immediately following paragraph 13, under the heading “Profit and Loss Account Formats”.

(3) Companies referred to in paragraph (1) of this regulation may draw up abridged notes to the accounts omitting the disclosures prescribed by sub-paragraphs (d) and (g) to (o) of paragraph 31 of Part III of the Second Schedule to these regulations. The notes to the accounts shall however disclose the information specified in sub-paragraph (j) of the said paragraph 31 in total for all the items concerned.

(4) Where on its balance sheet date other than its first balance sheet date, a company exceeds or ceases to exceed the limits of two of the three criteria indicated in paragraph (1) of this regulation, that fact shall affect the application of the derogation provided for in that paragraph only if it occurs in two consecutive accounting periods.

(5) The balance sheet total referred to in this regulation shall consist of the assets in A to E in the layout in Format 1 of the Balance Sheet Formats contained in Part 1 of the Second Schedule to these regulations, immediately following paragraph 13, or those in A to E in the layout in Format 2 of the Balance Sheet Formats contained in the said Part of the same Schedule.

(6) A parent company shall not be treated as qualifying as a small company in relation to an accounting period unless the group of which it is parent qualifies as a small group. A group qualifies as a small group in relation to an accounting period if it does not exceed the limits of two of the three following criteria:-

– aggregate balance sheet total: four million Maltese liri-

– aggregate turnover: eight million five hundred thousand Maltese liri

– aggregate number of employees: two hundred and fifty

Provided that the provisions of this regulation shall not apply to a parent company which is exempted from the requirement to prepare consolidated accounts in accordance with regulation 70 of these regulations.

(7) The provisions of paragraph (4) shall apply to parent companies as though the reference to company were a reference to parent company.

(8) The aggregate figures shall be ascertained by aggregating the relevant figures determined in accordance with paragraphs (1) and (6) of this regulation. In relation to the aggregate figures for turnover and balance sheet total, "net" means with the set-offs and other adjustments required for the preparation of consolidated accounts.

(9) The figures for each subsidiary undertaking shall be those included in its accounts for the relevant accounting period, that is -

(a) if its accounting period ends with that of the parent company, that accounting period; and

(b) if not, its accounting period ending last before the end of the accounting period of the parent company.

If such figures cannot be obtained without disproportionate expense or undue delay, the latest available figures shall be taken.

Accounts in any convertible currency.

82. (1) A company shall draw up its annual accounts in the same currency as that of its share capital.

(2) Where the accounts of a company are drawn up in a currency other than liri, there shall be stated on the balance sheet of the company the exchange rate between the currency used and liri on the balance sheet date and such rate shall be the average of the buying and selling rates prevailing on such date.

(3) For the purposes of applying any provision of these regulations which sets a threshold by reference to an amount in liri in the annual accounts of a company, such amount as stated in a foreign currency in the company's annual accounts shall be converted into liri by using the exchange rate referred to in paragraph (2) of this regulation.

(4) Annual accounts shall be published in the currency in which they are drawn up. They may also be published in both the

currency in which they are drawn up and in euro. The conversion into euro shall be made by using the exchange rate between the currency used and the euro on the balance sheet date, and such rate shall be the official closing middle rate issued by the Central Bank of Malta. This rate shall be disclosed in the notes to the accounts.

Chapter X - Auditors

Appointment of auditors.

83. (1) A company shall, at each general meeting at which the annual accounts are laid, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next general meeting at which the accounts are laid. The company may appoint joint auditors and reference in these regulations to auditor or auditors shall be deemed to include references to single or joint auditors as the case may be.

(2) The first auditors of the company may be appointed by the directors at any time before the first general meeting of the company at which the annual accounts are laid, and the auditors so appointed shall hold office until the conclusion of that meeting.

(3) If the directors fail to exercise their powers under paragraph (2), the powers may be exercised by the company in general meeting.

(4) If no auditors are appointed or re-appointed as required by the foregoing paragraphs of this regulation, the court on an application made by any of the directors or by any member of the company or by the Registrar may appoint a person to fill the vacancy.

(5) In the case specified in paragraph (4), the company shall within two weeks of the general meeting at which an auditor or auditors should have been appointed by virtue of paragraph (1), give notice to the Registrar that his power to apply to the court has become exercisable.

(6) If a company fails to give the notice required by paragraph (5), every officer of the company who is in default shall be liable to a penalty.

Filling of casual vacancies.

84. (1) The directors shall at any time before the general meeting of the company at which the annual accounts are laid fill a casual vacancy in the office of auditor:

Provided that the company in general meeting may fill such a casual vacancy itself.

(2) While such a vacancy continues, any surviving or continuing auditor or auditors may continue to act.

(3) Where it is proposed -

(a) to appoint an auditor to fill a casual vacancy in the office of auditor by resolution of the general meeting; or

(b) to re-appoint by resolution of the general meeting a retiring auditor who was appointed by the directors to fill a casual vacancy, as auditor, or to appoint a new auditor instead of that auditor,

notice specifying in terms of the proposed resolution shall be given forthwith to the person proposed to be appointed and, if the casual vacancy was caused by the resignation of an auditor, to the auditor who resigned.

(4) Any director who fails to comply with the provisions of paragraph (1) shall be liable to the same penalty as that provided for in paragraph (6) of regulation 83.

Disqualification from appointment as auditor.

85. A person shall be disqualified from appointment as auditor or from holding the office of auditor of a company if -

(a) in the case of an individual, he has at any time during the previous three years been –

(i) an officer or employee of the company; or

(ii) a partner, employer or employee of an officer of the company; or

(iii) a partner or employee of an employee of the company; or

(iv) related by consanguinity or affinity in the direct line, or up to the third degree, in the collateral line, to any officer of the company.

Right to information.

86. (1) The auditors of a company shall have a right of access at all times to the company's accounting records, accounts and vouchers, and shall be entitled to require from the company's officers such information and explanations as they think necessary for the performance of their duties as auditors.

(2) An officer of a company who knowingly or recklessly makes to the company's auditors a statement, whether written or oral which -

(a) conveys or purports to convey any information or explanations which the auditors require, or are entitled to require, as auditors of the company; and

(b) is misleading, false or deceptive in a material particular;

shall be guilty of an offence and liable on conviction to a fine (*multa*) of not more than two thousand liri or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(3) A subsidiary undertaking which is registered in Malta, and the auditors of such an undertaking, shall give to the auditors of any parent company of the subsidiary undertaking such information and explanations as they may reasonably require for the purposes of their duties as auditors of that company. If a subsidiary undertaking fails to comply with the provisions of this paragraph, every officer thereof who is in default shall be liable to a penalty; and if an auditor fails without reasonable cause to comply with this paragraph he shall be liable to a penalty.

(4) A parent company having a subsidiary undertaking which is not registered in Malta shall, if required by its auditors to do so, take all such steps as are reasonably open to it to obtain from the subsidiary undertaking such information and explanations as they may reasonably require for the purposes of their duties as auditors of that company. If a parent company fails to comply with the provisions of this paragraph, every officer of the company who is in default shall be liable to a penalty.

Right to attend company meetings.

87. A company's auditors shall be entitled–

(a) to receive all notices of, and other communications relating to, any general meeting which a member of the company is entitled to receive;

(b) to attend any general meeting of the company; and

(c) to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

Remuneration of auditors.

88. (1) The remuneration of auditors appointed by the company in general meeting shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine. The remuneration of auditors appointed by the directors or the court shall be fixed by the directors or the court as the case may be.

(2) There shall be stated in the notes to the accounts the amount of the remuneration of the company's auditors in their capacity as such; and where consolidated accounts are prepared, the notes to the consolidated accounts shall state the total remuneration paid to the auditors of the parent company in respect of all undertakings included in the consolidation, and also the total remuneration paid to all other auditors in respect of such undertakings.

(3) For the purposes of this article'"remuneration" includes sums paid in respect of expenses.

(4) The provisions of this regulation shall apply in relation to benefits in kind as to payments in cash, and in relation to any such benefit references to its amount are to its estimated money value. The nature of any such benefit shall also be disclosed.

Removal of auditors.

89. (1) Notwithstanding anything in a company's memorandum or articles or in any other agreement, the company may at any time remove an auditor from office in the same manner as that specified in paragraph (1) of regulation 54.

(2) Where a resolution removing an auditor is passed at a general meeting of a company, the company shall within fourteen days give notice thereof to the Registrar for registration. If a company fails to give the notice required by this paragraph, every officer of the company who is in default shall be liable to a penalty.

(3) Nothing in this regulation shall be taken as depriving a person removed under its provisions of compensation for damages payable to him in respect of the termination of his appointment as auditor or of any appointment terminating with that of auditor.

(4) An auditor of a company who has been removed shall have, notwithstanding his removal, the rights conferred by regulation 87 in relation to any general meeting of the company -

(a) at which his term of office would otherwise have expired; or

(b) at which it is proposed to fill the vacancy caused by his removal.

In such a case the references in that regulation to matters concerning the auditor as auditor shall be construed as references to matters concerning him as a former auditor.

Rights of auditors who are removed and not appointed.

90. (1) Notice specifying the text of and reasons for a proposed resolution of a general meeting of a company whereby it is intended to –

(a) remove an auditor before the expiration of his term of office; or

(b) appoint as auditor a person other than a retiring auditor;

shall be sent forthwith by the company to the person proposed to be removed, to the person proposed to be appointed and to the retiring auditor, as the case may be.

(2) The auditor proposed to be removed or, as the case may be, the retiring auditor may make with respect to the intended resolution representations in writing to the company not exceeding a reasonable length and request their notification to members of the company.

(3) The company shall, unless the representations are received by it too late for it to do so -

(a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.

(4) If a copy of any such representations is not sent out as required because it was received too late or because of the company's default, the auditor may, without prejudice to his right to be heard orally, require that the representations be read out at the meeting.

Resignation of auditor.

91. (1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's registered office and he shall so resign if he ceases to be qualified as an auditor or if he fails to satisfy the conditions of qualification

provided in regulation 86. The notice shall not be effective unless it is accompanied by the statement required by regulation 93.

(2) An effective notice of resignation shall operate to bring the auditor's term of office to an end as of the date on which the notice is deposited or on such later date as may be specified in it.

(3) The company shall within fourteen days of the deposit of a notice of resignation send a copy of the notice to the Registrar for registration. If default is made in complying with this paragraph, every officer of the company who is in default shall be liable to a penalty.

Rights of resigning auditor.

92. (1) The provisions of this regulation shall apply where an auditor's notice of resignation is accompanied by a statement of circumstances which he considers should be brought to the attention of members or creditors of the company.

(2) The resigning auditor may deposit with the notice a signed requisition calling on the directors of the company forthwith duly to convene an extraordinary general meeting of the company for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.

(3) The resigning auditor may request the company to circulate to its members -

(a) before the meeting convened on his requisition; or

(b) before any general meeting at which his term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by his resignation;

a statement in writing of the circumstances connected with his resignation as referred to in paragraph (1).

(4) The company shall, unless the statement is received too late for it to comply -

(a) in any notice of the meeting given to members of the company, state the fact of the statement having been made; and

(b) send a copy of the statement to every member of the company to whom notice of the meting is or has been sent.

(5) If the directors do not within twenty-one days from the date of the deposit of a requisition under this regulation proceed duly to convene a meeting for a day not more than twenty-eight days after the date on which the notice convening the meeting is given, every director who failed to take all reasonable steps to secure that a meeting was convened as mentioned in paragraph (2) shall be liable to a penalty.

(6) If a copy of the statement is not sent out as required because it was received too late or because of the company's default, the auditor may, without prejudice to his right to be heard orally, require that the statement be read out at the meeting.

(7) An auditor who has not resigned has, notwithstanding his resignation, the rights conferred by regulation 87 in relation to any such general meeting of the company as is mentioned in sub-paragraphs (a) or (b) of paragraph (3), and, in such a case, the references in that regulation to matters concerning the auditor as auditor shall be construed as references to matters concerning him as a former auditor.

Statement by person ceasing to hold office as auditor.

93. (1) Where an auditor ceases for any reason to hold office, he shall deposit at the company's registered office a statement of any circumstances connected with his ceasing to hold office which he considers should be brought to the attention of the members or creditors of the company or, if he considers that there are no such circumstances, a statement that there are none.

(2) In the case of resignation, the statement shall be deposited along with the notice of resignation; in the case of failure to seek re-appointment, the statement shall be deposited not less than fourteen days before the general meeting at which auditors are to be reappointed; in any other case, the statement shall be deposited not later than the end of the period of fourteen days beginning with the date on which the auditor ceases to hold office.

(3) Where the statement is of circumstances which the auditor requests to be brought to the attention of the members or creditors of the company, the company shall within fourteen days of the deposit of the statement either -

(a) send a copy of it to every person who under regulation 76 is entitled to be sent copies of the annual accounts; or

(b) submit an application to the court for an order that there are grounds of sufficient gravity to warrant that the statement should not be circulated.

(4) Where the company submits an application to the court, the court shall notify the auditor of the application and shall hear both parties before making a decision on the company's application.

(5) Unless the auditor receives notice of such an application before the end of the period of twenty-one days beginning with the day on which he deposited the statement, he shall within a further seven days send a copy of the statement to the Registrar.

(6) If the court is satisfied that the auditor is using the statement to secure needless publicity for defamatory matter -

(a) it shall direct that copies of the statement need not be sent out; and

(b) it may further order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application;

and the company shall within fourteen days of the court's decision send to the persons mentioned in sub-paragraph (a) of paragraph (3) a statement setting out the effect of the order.

(7) If the court is not so satisfied, the company shall within fourteen days of the court's decision -

(a) send copies of the statement to the persons mentioned in sub-paragraph (a) of paragraph (3); and

(b) notify the auditor of the court's decision,

and the auditor shall within seven days of receiving such notice send a copy of the statement to the Registrar.

Failure to comply with regulation 93.

94. (1) If a person ceasing to hold office as auditor fails without just cause to comply with the provisions of regulation 93 he shall be liable to a penalty.

(2) In proceedings for a default under paragraph (1) it shall be a defence for the person against whom action is taken to show that he took all reasonable steps and exercised all due diligence to avoid that default.

(3) If a company makes default in complying with the provisions of regulation 93, every officer of the company who is in default shall be liable to a penalty.

Chapter XI - Distribution of Profits and Assets

95. (1) A company shall not make a distribution except out of profits available for the purpose. Certain distributions prohibited.

(2) For the purposes of this Chapter, "distribution" means every description of distribution of a company's assets to its members, whether in cash or otherwise, except distribution by way of -

(a) an issue of shares as fully or partly paid bonus shares;

(b) the redemption or purchase of any of the company's own shares out of capital, including the proceeds of any fresh issue of shares, or out of undistributable reserves;

(c) the reduction of the issued share capital by extinguishing or reducing the liability of any of the members on any of the company's shares in respect of issued share capital not paid up, or by paying off paid up issued share capital; and

(d) a distribution of assets to members of the company on its winding up.

(3) For the purposes of this Chapter, a company's profits available for distribution shall be its accumulated, realised profits, so far as not previously utilised by distribution or capitalisation, less its accumulated, realised losses, so far as not previously written off in a reduction or reorganisation of issued share capital duly made.

(4) A company shall not apply an unrealised profit in paying up debentures, or any amounts unpaid on its issued share capital.

96. (1) When a distribution made by a company to any of its members is made in contravention of the preceding provision such members shall be bound to repay such sums to the company on a demand in writing of the company or any interested person: Consequence of unlawful distribution.

Provided that nothing in this paragraph shall prohibit a company from distributing interim dividends:

Provided further that a decision to do so is based on a reasonable expectation that the amount distributed will form part of the distributable assets of the company at the end of the accounting period.

(2) The provisions of this regulation shall apply without prejudice to any obligation imposed apart from this regulation on a member of a company to repay a distribution unlawfully made to him.

Saving for other restraints on distribution.

97. The provisions of this chapter shall be without prejudice to any other provision of law, or any provision of the company's memorandum or articles, restricting the sums out of which, or the cases in which, a distribution may be made.

PART IV

DEFUNCT COMPANIES

Defunct Companies.

98. (1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or is in operation.

(2) If the Registrar receives an answer to the effect that the company is not carrying on business or is not in operation, or does not within one month of sending the letter receive an answer thereto, he may send to the company by post and publish a notice in the Gazette and in a daily newspaper circulating wholly or mainly in Malta that, at the expiration of three months from the date of the last publication of the said notice, the company's name shall, unless cause is previously shown to the contrary or the Registrar is satisfied that there are sufficient grounds not to proceed with the striking off, be struck off the register; and the assets of the company shall devolve upon the Government of Malta.

(3) If, in any case where a company is being wound up voluntarily, the Registrar has reasonable cause to believe either that no liquidator is acting or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator in terms of regulation 131 of these regulations are overdue by six months or more, the Registrar may publish in the Gazette and in a daily newspaper circulating wholly or mainly in Malta, a notice that at the expiration of three months from the date of the last publication of the said notice, the winding up of the company shall, unless cause is previously shown to the contrary, be deemed to be concluded and consequently that the company's name be struck off the register. The Registrar shall also cause a copy of the said notice to be sent by post to the company and to the liquidator, if any. At the expiration of the aforesaid period of three months the winding up of the company shall, unless cause is previously shown to the contrary, be

deemed to be concluded and the Registrar shall strike the name of the company off the register and the company's assets shall devolve upon the Government of Malta.

(4) If any member or creditor of the company, or any other person who appears to the court to have an interest feels aggrieved by the fact that the name of the company has been struck off the register by virtue of this regulation, the court on an application made by the member or creditor or such other person before the expiration of five years from the publication of the notice of the striking off provided for in paragraphs (2) and (3) of this regulation may, if satisfied that it is proper that the name be restored to the register, order that such name be restored to the register, and upon an official copy of the order being delivered by the Registrar of Courts to the Registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by its order give such directions and make such provisions as seem fit for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off. The Registrar shall forthwith proceed to publish a notice in the Gazette and in a daily newspaper circulating wholly or mainly in Malta that the name of the company has been restored to the register.

(5) A notice to be sent under this regulation to a liquidator may be addressed to the liquidator at his last known place of business or address, and a letter or notice to be sent under this regulation to a company may be addressed to the company at its registered office.

(6) Notwithstanding that the name of the company has been struck off the register in terms of the preceding provisions of this regulation, the liability, if any, of every director or other officer of the company and of every member of the company shall continue and may be enforced as if the name of the company had not been struck off the register.

PART V

DISSOLUTION AND CONSEQUENTIAL WINDING UP OF COMPANIES

Causes of dissolution and consequential winding up.

99. (1) Unless otherwise stated in these regulations, a company shall be dissolved and consequently wound up voluntarily in the following cases -

(a) the company has by resolution resolved that the company be dissolved and consequently wound up by the court;

(b) the company has by resolution resolved that the company be dissolved and consequently wound up voluntarily.

For the purposes of this paragraph a resolution of the company shall be either a resolution supported by the majority of the directors or an extraordinary resolution taken at a general meeting of the shareholders as may be required in terms of the memorandum and articles of association of the company.

(2) In addition to the modes of dissolution referred to in paragraph (1) of this regulation -

(a) a company may be dissolved and wound up by the Court when the company is unable to pay its debts; and

(b) a company shall be dissolved by the court in the following cases -

(i) when the period fixed for its duration expires;

(ii) if the undertaking forming its object is completed or cannot be completed;

(iii) if the share capital is reduced below the statutory minimum;

(iv) if no director is in office;

(v) if in the opinion of the court, there exist grounds of sufficient gravity to warrant dissolution;

(vi) in such other cases for which provision is made in the memorandum and articles.

(3) In the cases of dissolution falling within subparagraph (b) of paragraph (2) of this regulation, the court shall, at its discretion, determine whether the company shall be wound up by the court or, if it is satisfied that there is sufficient support for the process to be carried out by the majority of the members, voluntarily.

(4) For the purposes of subparagraph (a) of paragraph (2) of this regulation, a company shall be deemed to be unable to pay its debts -

(a) if a debt due by the company has remained unsatisfied in whole or in part after twenty four weeks from the obtaining of a final judgement against the company;

(b) if it is proved to the satisfaction of the court that the company is unable to pay its debts, account being taken also of contingent and prospective liabilities of the company.

(5) For the purposes of this Part, a company shall be wound up by the Court if it is wound up in accordance with the provisions of Sub-Part I of this Part; and a company shall be wound up voluntarily if it is wound up in accordance with the provisions of Sub-Part II of this Part.

(6) Nothing in this Part shall prejudice the rights of any creditor under the Act to enforce his claim directly against a ship.

(7) In addition to the modes of dissolution and winding up above referred to the court may dissolve a company and deem it to be wound up in the case specified in regulation 101.

SUB-PART I - WINDING UP BY THE COURT

Chapter I - General provisions

Dissolution and winding up application.

100. An application to the court (hereinafter referred to as the "winding up application") for the winding up of a company shall be made by means of an application which may be made either by the company or by any of its members or directors, or by any creditor having a debt due and unpaid in excess of ten thousand Maltese liri or by all or any of them together or separately.

Powers of the court.

101. (1) On the hearing of the winding up application, the court may either dismiss the application or make an order acceding thereto (hereinafter referred to as a "winding up order") and such other orders, including provisional orders, and adjourn the hearing conditionally or otherwise as it thinks fit; but no winding up order shall be made before the application has been served on such persons as the court in the circumstances, and upon information given by the applicant, deems it appropriate to call upon to make their submissions.

(2) Where the sole asset of the company is a ship subject to a registered mortgage or other maritime claims and the outstanding sums due under the mortgage or such maritime claims exceed the value of the ship, the court shall not order the winding up of the

company until it is satisfied that there are excess funds deriving to the company in Malta in relation to which a winding up order may usefully be made.

(3) In the event contemplated in the preceding paragraph, the court shall await the outcome of any enforcement proceedings by the mortgagee or maritime claimants, whether in Malta or overseas and whether private or public, by the mortgagee in terms of article 42 of the Act, or by any maritime claimant enjoying a right of preference in terms of article 37C of the Act, after which it shall determine the issue.

(4) Should it result to the court that there are no excess proceeds of sale or that there have been ranking of creditor proceedings over the proceeds of sale of the ship, the result of which is final and binding on all creditors, and there is no business of the company which needs to be wound up, it shall not order the winding up of the company but shall instead declare the company dissolved and wound up. The court shall order that upon the filing with the Registrar of authenticated evidence of the sale of the ship or the closure of ranking of creditors, which evidence shall be filed at the registry for public notice, the company shall immediately and without further procedures, be struck off the register. In such event any residual rights of the company shall be vested in the shareholders of the company by operation of law or be dealt with as may be determined by the court at its discretion.

(5) Should it result that there are any funds in Malta deriving to the company from proceedings contemplated in the preceding paragraph, the court may order the winding up of the company in accordance with these regulations.

(6) If the winding up application is presented by members of the company on the basis that there are grounds of sufficient gravity to warrant the dissolution and winding up of the company, the court, if it is of the opinion that such grounds exist but that the applicants are entitled to some other remedy, including the liquidation of only their shares, apart from the dissolution and winding up of the company, shall only make a winding up order so long as the applicants are not acting unreasonably in seeking to have the company dissolved and wound up instead of pursuing that other remedy. On the demand of any interested party, the court shall have all the necessary powers to provide such remedy, as it considers reasonable in the circumstances to ensure that the company is in a position to carry on its business.

Power to stay proceedings against company.

102. At any time after the filing of a winding up application, and before a winding up order has been made, the company, or any creditor, may apply to the court for a stay of judicial proceedings pending against the company, and the court may stay those proceedings accordingly on such terms as it thinks fit:

Provided that no proceedings instituted by a holder of a registered mortgage or a privileged creditor over a ship owned by a company shall be stayed.

Dispositions of property etc., after date of deemed dissolution.

103. In a winding up by the court,

(a) any disposition of the property of the company other than a ship by a mortgagee, and

(b) any transfer of shares other than shares which have been pledged, or

(c) any transaction involving the closing out of a netting provision in terms of the Set-off and Netting on Insolvency Act, Cap. 459.

made after the date of its deemed dissolution, shall be void, unless the court otherwise orders.

Warrants not to be carried into effect against company.

104. When a company is being wound up by the court, any act or warrant, whether precautionary or executive, other than a warrant of prohibitory injunction or any impediment of departure or warrant of seizure of a ship by a holder of a registered mortgage or a privileged creditor, issued or carried into effect against the company after the date of its deemed dissolution, shall be void, unless authorised by a court with specific reference to the company being in a state of dissolution.

Deemed date of dissolution.

105. (1) Where, before the filing of a winding up application, an extraordinary resolution had been passed by the company for it to be dissolved and consequently wound up voluntarily, the company shall be deemed to have been dissolved at the time of the passing of the resolution, and unless the court, upon proof of fraud or mistake thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case the company shall be deemed to have been dissolved at the time of the filing of the winding up application.

Consequences of a winding up order.

106. (1) On the making of a winding up order, or on the dismissal of a winding up application, a copy thereof shall forthwith

be forwarded by the Registrar of Courts to the Registrar for registration.

(2) Where a winding up order has been made or a provisional administrator has been appointed in accordance with the provisions of regulation 107 of these regulations, no action or proceeding, other than any action instituted by a holder of a registered mortgage or a privileged creditor, shall be proceeded with or commenced against the company or its property except by the leave of the court and subject to such terms as the court may impose.

Chapter II - Liquidators in a winding up by the court

Appointment and powers of provisional administrator

107. (1) The court may appoint a provisional administrator at any time after the presentation of a winding up application.

(2) The provisional administrator shall carry out such functions and shall have such powers as the court may confer on him by the order appointing him.

(3) The provisional administrator holds office until such time as the winding up order is made or the winding up application is dismissed unless before such time he resigns or he is removed by the court upon good cause being shown.

(4) The court shall appoint a liquidator on making up a winding up order and the liquidator shall not resume office until he has notified the acceptance of his appointment to the Registrar in accordance with the Seventh Schedule to these regulations.

General provisions as to liquidators.

108. (1) A liquidator appointed by the court may resign or, on sufficient cause being shown, be removed by the court.

(2) More than one person may be appointed to exercise the function of liquidator of a company, and the remuneration of each liquidator so appointed shall be determined on such basis as the court may direct.

(3) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

(4) If more than one liquidator is appointed by the court, the court shall declare whether any act which is by these regulations required or authorised to be done by the liquidator is to be done by all or any one or more of the persons so appointed.

(5) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

Custody and control of company's property.

109. Where a company is being wound up by the court, the liquidator or the provisional administrator, as the case may be, shall take into his custody or under his control all the property and all rights to which he has reasonable cause to believe the company to be entitled:

Provided that nothing herein shall entitle a liquidator or provisional administrator to dispossess:

(a) a mortgagee in possession of a ship subject to a registered mortgage in his favour; or

(b) the holder of a possessory lien in terms of the Act,

or to do any other act which will in any manner hinder or obstruct the exercise of rights of the holder of the registered mortgage including the right to take possession of the ship in accordance with the Act.

Powers of liquidator.

110. (1) The liquidator in a winding up by the court shall have the power, with the sanction either of the court or of any liquidation committee -

(a) to bring or to defend any action or other legal proceeding in the name and on behalf of the company;

(b) to carry on the business of the company so far as may be necessary for the beneficial winding up thereof;

(c) to pay creditors according to their ranking at law;

(d) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or which may be due in damages against the company or whereby the company may be rendered liable, and to refer any such matter to arbitration;

(e) to represent the company in all matters and to do all such things as may be necessary for winding up the affairs of the company and distributing its assets.

(2) The liquidator in a winding up by the court shall, in particular, have the power -

(a) unless the company is prohibited from selling any ship under the terms of any registered mortgage or any court order, to sell the movable and immovable property, including any right, of the company by public auction or private agreement with power to transfer the whole or any part thereof;

(b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents;

(c) to raise on the security of the assets of the company any money requisite;

(d) to appoint a mandatory to act for him in his capacity as liquidator for particular purposes;

(e) to do all such acts as may have been undertaken by the company towards any holder of a registered mortgage, and to consult with such mortgagee as may be necessary, in relation to any ship owned by the company and subject to a mortgage:

Provided that nothing in this regulation shall permit the liquidator to impede or obstruct the exercise of rights by the mortgagee in terms of the Act or the terms of the mortgage.

(3) The exercise by the liquidator in a winding up by the court of the powers conferred by this regulation shall be subject to the control of the court, and any interested person may apply to the court with respect to any exercise or proposed exercise of any of those powers.

Exercise and control of liquidator's powers.

111. (1) Subject to the provisions of these regulations, the liquidator of a company which is being wound up by the court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directives that might be given by resolution of the creditors at any general meeting of the creditors as well as to directives given by the general meeting of the shareholders but in case of conflict precedence shall be given to the directives of the creditors and in case of disagreement among the creditors precedence shall be given to the directives of the holders of a registered mortgage.

(2) The liquidator may summon general meetings of the creditors or the officers and the members of the company for the purpose of ascertaining their wishes, and it shall be his duty to

summon meetings at such times as the creditors or the officers or the members of the company, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors.

(3) The liquidator may apply to the court for directions in relation to any particular matter arising under the winding up.

(4) Should the liquidator, after investigating the affairs and situation of the company establish that the company is the owner of a sole ship which ship has either been sold, by a mortgagee privately or through a judicial sale, or is in the process of being sold through enforcement proceedings by a holder of a registered mortgage or a privileged creditor and that it is unlikely that there will be excess of funds for distribution to other creditors or the shareholders, the liquidator shall inform the court of the situation and provide the court with his opinion as to whether continuation of the liquidation will serve any purpose and the provisions of regulations 101 and 125 of these regulations shall apply.

(5) Subject to the provisions of these regulations, the liquidator shall use his own discretion in the management of the assets of the company.

(6) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court and the court may confirm, reverse or modify the act or decision complained of, and make such order on the matter as it thinks just.

(7) A liquidator who has acted in accordance with the direction of the court or in accordance with specialist advice shall not be liable for any effects of his actions. Nor shall a liquidator be liable for any loss or expense incurred by him in carrying out his duties except where he has acted fraudulently or negligently or in breach of law or of the directions of the court.

Books to be kept by liquidator.

112. Every liquidator of a company which is being wound up by the court shall keep proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed.

Payments of liquidator into bank.

113. (1) Upon his appointment the liquidator shall notify the Registrar of any bank account which the liquidator shall use for the purposes of receiving and making payments on behalf of the company. The liquidator shall not be entitled to receive and make payments until he has made such notification.

(2) A liquidator of a company which is being wound up by the court shall not pay any sums received by him as liquidator into an account or accounts other than an account or accounts which have been notified to the Registrar.

(3) In the event that any proceeds from the sale of a ship are received by the liquidator, the rights of preference of a holder of a registered mortgage and of a privileged creditor shall continue to apply over the sale proceeds in substitution of the ship in accordance with the Act.

(4) It shall not be lawful to issue precautionary or executive warrants over any accounts opened by the liquidator in accordance with this regulation.

Audit of liquidator's accounts.

114. (1) Every liquidator of a company which is being wound up by the court shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Registrar, and to such other place as the Registrar may direct, an account of his receipts and payments as liquidator.

(2) The account shall be in a proper form, shall be made in duplicate, and shall be duly certified by the liquidator.

(3) The Registrar may, at the company's expense, cause the account to be audited, and for the purpose of the audit the liquidator shall furnish the auditor appointed by the Registrar with such vouchers and information as the auditor may require and the auditor may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be delivered to the Registrar for registration and the other copy shall be delivered to the court for filing, and each copy shall be open to inspection of any person on payment of the prescribed fee.

Control over liquidators.

115. (1) If an application is made to the court by any creditor complaining on the conduct of a liquidator of a company the court shall inquire into the matter and take such action thereon as it may think expedient.

(2) The Registrar may at any time require any liquidator of a company which is being wound up by the court to answer any inquiry in relation to any winding up in which he is engaged, and the Registrar may, if he thinks fit, apply to the court to examine the liquidator or any other person on oath concerning the winding up.

(3) The Registrar may also direct an investigation to be made of the books and vouchers of the liquidator.

Release of liquidator from his appointment.

116. (1) When the liquidator of a company which is being wound up by the court has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, or has resigned, or has been removed from office, the Registrar shall, on the liquidator's application to be released, cause a report to be prepared on the liquidator's accounts at the company's expense. On being satisfied that the liquidator has complied with all the requirements laid down by the Registrar and, after taking into consideration the report and any objection which may be raised by any creditor or person interested against the release of the liquidator, the Registrar shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the court made by the liquidator.

(2) Where the release of a liquidator is withheld, the court may, on the application of any creditor or person interested, make such order as it thinks fit, holding the liquidator responsible for the consequences of any act or default which he may have made contrary to his duty.

(3) An order of the Registrar releasing the liquidator shall discharge him from all liability in respect of anything which he did or which he failed to do in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but the court may, on the application of any creditor or person interested, revoke such order on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where a liquidator has not previously resigned or been removed, the release shall operate as a termination of his appointment.

(5) The Registrar shall, upon granting or withholding the release referred to in this regulation, register it accordingly.

Chapter III - General powers of the court in a winding up by the court

Power to stay winding up.

117. (1) The court may at any time after a winding up order, on the application either of the liquidator or any creditor, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the

proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

(2) On an application under this regulation the court may, before making an order, require the liquidator to furnish to the court a report with respect to any facts or matters which are in its opinion relevant to the application.

(3) A copy of every order made under this regulation shall forthwith be forwarded by the Registrar of Courts to the Registrar for registration.

Delivery of property to liquidator.

118. The court may, at any time after making a winding up order, require any person who holds any money, property or books and papers in his hands to which the company is prima facie entitled, to pay, deliver, convey, transfer or otherwise hand over such money, property, books or papers to the liquidator forthwith or within such time as the court directs.

Provided that no such order may be issued in relation to any property under the control of a holder of a registered mortgage or a pledge.

Appointment of Special Manager.

119. (1) The liquidator may, if satisfied that the business of the company, or the interests of the creditors generally, require the appointment of a special manager of the estate or business of the company or any ship belonging to the company other than himself, apply to the court, and the court may, on such application, appoint a special manager of the said estate or business or ship to act during such time as the court may direct, with such powers as may be entrusted to him by the court.

(2) The special manager shall give such security and account in such manner as the court directs.

(3) The special manager shall receive such remuneration as may be fixed by the court.

Fixing of time for proofs of debt.

120. The court may fix a time or times within which creditors are to prove their debts or claims or are to be excluded from the benefit of any distribution made before those debts are proved.

Inspection of books of company.

121. The court may, at any time after making a winding up order, make such order for inspection of books and papers of the company by creditors as the court thinks fit, and any books and papers in the

possession of the company may be inspected by creditors in accordance with that order.

Payments of costs of winding up out of assets.

122. (1) The court may, subject to and without prejudice to the rights of priority of all maritime privileges and mortgages and without prejudice to any rights of possession over a ship or any proceeds of sale, insurance or otherwise as stated in the Act, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the dissolution and winding up in such order of priority as the court thinks fit.

(2) In so doing the court shall have regard to the following general order of priority -

(a) expenses properly chargeable or incurred by the liquidator in preserving, realising or collecting any of the assets of the company;

(b) the cost of any security provided by a liquidator or special manager;

(c) the costs of the applicant, and of any person appearing on the application whose costs are allowed by the court;

(d) the remuneration of the special manager, if any;

(e) any amount payable to a person employed or authorised to assist in the preparation of a statement of affairs or of account;

(f) any allowance made by order of the court, towards costs on an application for release from the obligation to submit a statement of affairs, or for an extension of time for submitting such a statement;

(g) any necessary disbursements by the liquidator in the course of his administration;

(h) the remuneration of any person employed by the liquidator to perform any services for the company, as required or authorised by the provisions of these regulations;

(i) the remuneration of the liquidator;

(j) the amount of any income tax on chargeable gains accruing on realisation of any asset of the company.

Summoning of persons suspected of having property of company, etc.

123. (1) The court may, at any time after the making of a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, and any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

(2) The court may examine any person referred to in paragraph (1) of this regulation on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require such person to produce any books and papers in his custody or power relating to the company, but when he claims any right over books or papers produced by him, the production shall be without prejudice to the right claimed by him, and the court shall have jurisdiction in the winding up to determine all questions relating to that right.

(4) If any person so summoned refuses to come before the court at the time appointed, not having a lawful impediment which is made known to the court at or before the time of the sitting and allowed by it, the court may order his arrest in order to be brought before the court for examination.

(5) These provisions shall not apply to the holders of a registered mortgage of a ship who may be in possession of property of a company in terms of such mortgage and related agreements.

Liquidator may exercise certain powers of court.

124. The powers conferred and the duties imposed on the court by these regulations in respect of the following matters -

(a) the holding and conduct of meetings to ascertain the wishes of creditors;

(b) the payment, delivery, conveyance, surrender or transfer of money, property books or papers to the liquidator;

(c) the making of calls;

(d) the fixing of a time within which debts and claims must be proved;

may, subject to the provisions of this regulation or any other provision of these regulations, be exercised or performed by the liquidator, subject to the control of the court.

Striking of name of the company off the register.

125. (1) When the affairs of the company have been completely wound up, or the circumstances specified in regulation 111 (4) of these regulations the court, if the liquidator makes an application in that behalf, shall make an order that the name of the company be struck off the register under such conditions as to publicity and notifications as it deems fit.

(2) A copy of the order shall within fourteen days from the date thereof be forwarded by the Registrar of the Courts to the Registrar who shall comply therewith.

SUB-PART II - VOLUNTARY WINDING UP

Chapter I - General provisions

Appointment, remuneration and removal of liquidators.

126. (1) The liquidators shall be appointed, and may be removed from office, by an extraordinary resolution taken at a general meeting or where so provided by the memorandum or articles of the company, at a meeting by the board of directors of the company:

Provided that if a resolution submitted for the appointment of a person as a liquidator fails to obtain the required majority at a general meeting of the company or the general meeting cannot take place due to lack of a quorum, the directors may appoint a liquidator themselves:

Provided further that a liquidator, appointed by the directors, may be removed from office by order of the court on demand by application made by members of the company holding in the aggregate not less than one tenth of the paid up share capital of the company, if the court is satisfied that there exist sufficient grounds to warrant his removal. In such an event, the court shall itself appoint a liquidator.

(2) The remuneration of the liquidator shall be fixed by the company in general meeting or where appropriate in a meeting of the board of directors, subject nevertheless to the right of the liquidator to demand that it be fixed or varied by the court.

(3) All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all claims

other than those with preference over a ship in terms of the Act unless with the prior written consent of the relevant creditor.

Notice by liquidator of his appointment.

127. The liquidator shall, within fourteen days after his appointment, deliver to the Registrar for registration and publication a notice of his appointment.

Default in complying with regulations 126, 127 and 152.

128. If default is made in complying with any of the requirements of regulations 126, 127 and 152 of these regulations, every director or liquidator, as the case may be, who is in default shall be liable to a penalty, and for every day during which the default continues, to a further penalty.

Powers of directors to cease. Summoning of meetings.

129. (1) When a company has been dissolved, until such time as a liquidator is appointed, the directors shall have the power to perform such acts only as are of ordinary administration.

(2) On the appointment of a liquidator all the powers of the directors shall cease without prejudice to the right of the directors to act in accordance with the provisions of this Sub-Part in so far as authorised by the memorandum and articles.

(3) After the appointment of a liquidator a general meeting or a meeting of the board of directors may be convened by the liquidator or liquidators in office, or, if the office is vacant, by any member of the company or any director of the company, in the manner provided by these regulations or by the articles.

Application of rules on ranking.

130. (1) Where the assets of a company are insufficient to meet its liabilities the liquidator may make calls on all or any of the members for payment of any unpaid share capital of the company which he considers necessary to satisfy the debts and liabilities of the company, and the costs and the charges and expenses of winding up, and for the adjustment of the rights of the members among themselves; and in making a call the liquidator may take into consideration that some of the members may partly or wholly fail to pay the call.

(2) The liquidator may, on production of a list identified by him of the names of the members liable in payment of any calls and of the amounts due by each of them, apply to the court for the enforcement of any such calls by any of the means mentioned in paragraph (a), (b), and (d) of article 273 of the Code of Organisation and Civil Procedure.

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(3) Where a call is made under the provisions of this regulation, the person from whom a sum is due shall pay interest thereon from the day appointed for payment to the sum of actual payment at the rate of six per cent per annum.

Statement by liquidator in respect of pending winding up.

131. (1) In the event of the winding up continuing for more than twelve months, the liquidator shall unless the previous general meeting has resolved otherwise, summon a general meeting of the company at the end of the first period of twelve months from the commencement of the winding up, and of each succeeding period of twelve months, or at the first convenient date within three months from the end of the period of twelve months, or within a longer term as the Registrar may allow, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding twelve months, including a summary of receipts and expenditure.

(2) If the liquidator fails to comply with the provisions of paragraph (1) of this regulation he shall be liable to a penalty.

Final meetings and scheme of distribution.

132. (1) As soon as the affairs of the company are wound up the liquidator shall make an account of the winding up and of the receipts and payments and shall draw up a scheme of distribution indicating the amount due in respect of each share from the assets of the company.

(2) Unless otherwise provided in the memorandum or articles of association or as otherwise resolved by the members, the liquidator shall cause the account to be audited by one or more auditors appointed by the company in general meeting, and shall as soon as the amount is audited, call a general meeting of the company for the purpose of laying before it the account, the scheme of the distribution and the auditors report and giving any explanation thereof.

(3) Within one week after approval by members, the liquidator shall send to the Registrar for registration a notice of completion of liquidation in terms of the Seventh Schedule to these regulations.

(4) If the liquidator fails to comply with the requirements of paragraph (3) of this regulation, he shall be liable to a penalty, and for every day for which the default continues, to a further penalty.

Member disagreeing with scheme of distribution.

133. Any member not agreeing to the scheme of distribution may contest the same by application within one month of the approval thereof by the general meeting.

Disposal of books and records of company.

134. The liquidator shall, together with the aforesaid notice, deliver the books and other documents of the company to the Registrar, who shall keep them for a period of five years from the date at which the name of the company was struck off the register.

Date of dissolution in a voluntary winding up.

135. When a company is dissolved in accordance with the provisions of subparagraph (b) of paragraph (1) of regulation 99 of these regulations, the date of dissolution shall be the date of the passing of the resolution for the dissolution or the date of the court order for dissolution and consequential winding up or such later date as may be specified in the said resolution or court order:

Provided that where the court has ordered that the company be wound up voluntarily by virtue of the provisions of subparagraph (b) of paragraph (1) of regulation 99 of these regulations, the company shall be deemed to have been dissolved at the time of the filing of the winding up application.

Chapter II - Provisions applicable to a members' voluntary winding up

Provisions applicable to a members' voluntary winding up.

136. The provisions contained in the following regulations shall apply in relation to a members' voluntary winding up.

Vacancy in office of liquidator.

137. (1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company shall by extraordinary resolution fill the vacancy or if such power has been vested in the directors by the directors.

(2) For the purposes of paragraph (1) of this regulation, a general meeting shall be convened by any member, or, if there were more than one liquidator, by the continuing liquidator or liquidators and notice of the meeting shall be given within fourteen days of the occurrence of the vacancy referred to in paragraph (1) of this regulation.

(3) The general meeting shall be held in the manner provided by these regulations or by the memorandum and articles, or in such manner as may, on the application of any member or by the continuing liquidator, be determined by the court.

(4) If for any cause whatsoever a liquidator is not appointed in the manner specified by paragraph (1) of this regulation or if a vacancy occurs in the office of liquidator appointed by the court, any member or the continuing liquidator or liquidators may, at any time thereafter, apply to the court for the appointment of a liquidator, and the appointment shall be made by the court.

(5) The above shall not apply where the liquidator establishes that there are no assets for distribution due to the sale of the company's ship by judicial sale or the ranking of creditors by a court pursuant thereto. In such a case the liquidator shall notify the members of the facts and file a notice of dissolution and winding up without procedures in terms of the Seventh Schedule to these regulations and on receipt thereof the Registrar shall proceed with paragraph (3) hereof.

Striking off of company.

138. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make an account of the winding up, showing how the winding up has been conducted and how the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) Within seven days after the meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this paragraph the liquidator shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

(3) On receiving the account together with the auditors' report if any and the return, the Registrar shall forthwith register them and on the expiration of three months from a notice published in the Gazette, proceed to strike the name of the company off the register.

(4) If the liquidator fails to call a general meeting of the company as required by this regulation, he shall be liable to a penalty.

Duty of liquidator in case of insolvency.

139. In the case that the company is insolvent the liquidator may make a request and the court may, if at least 75% of the creditors agree, order that the winding up continues under the control of the creditors and the general direction of the court.

Chapter III - Provisions applicable to a creditors' voluntary winding up

Provisions applicable to creditors' voluntary winding up.

140. (1) The following provisions shall apply in relation to a creditors' voluntary winding up, which shall take place when

(a) it does not reasonably appear to the directors of the company that there exist sufficient assets of the company to pay all its liabilities;

(b) the company has assets which may be usefully liquidated and proceeds distributed for the benefit of the creditors; and

(c) the majority of creditors appear willing to pursue a creditors' voluntary winding up procedure.

(2) This procedure shall not apply when the sole asset of the company is a ship which has been arrested by creditors or is subject to judicial sale proceedings in relation to debts which appear to the directors to exceed the value of the ship. In such an event the obligation of the directors shall be limited to sending a notice in writing as specified in the Seventh Schedule to these regulations to the Registrar of the state of affairs relating to the ship for public notice, a copy of which shall be sent to the creditors.

Meeting of creditors.

141. (1) Except in the case stated in regulation 140, the directors of the company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the general meeting of the company at which the resolution for dissolution and consequential voluntary winding up is to be proposed and shall cause the notice of the said meeting of the creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.

(2) The directors of the company shall -

(a) cause a full statement of the position of the company's affairs, together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of the creditors to be held as aforesaid; and

(b) appoint one of their number to preside at the said meeting.

(3) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(4) If the meeting of the company at which the resolution for dissolution and consequential voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at a meeting of the creditors held in pursuance of paragraph (1) of this regulation shall have effect as if it had been passed immediately after the passing of the resolution for dissolution and consequential winding up.

(5) If default is made by the directors, or the director, as the case may be, in complying with any of the provisions of this regulation, every director who is in default shall be liable to a penalty.

Appointment and removal of liquidator.

142. (1) The creditors and the company at their respective meetings may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company. The nomination by the company of a person to be liquidator shall be made by an extraordinary resolution. If the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator.

(2) Where no person is nominated to act as liquidator by either the creditors or the company, an application to the court for the appointment of a liquidator shall be made by any director of the company within fourteen days from the date for which the meeting of the creditors referred to in regulation 141 of these regulations was summoned or at which the resolution passed at such meeting shall have come into effect in accordance with paragraph (4) of the said regulation 141, according to the case.

(3) The provisions of regulation 127 shall apply to the appointment of a liquidator under this regulation.

(4) If default is made by the directors in complying with the provisions of paragraph (2) of this regulation, every director who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

Liquidation Committee.

143. (1) The creditors at the meeting to be held in pursuance of regulation 136 of these regulations, or at any subsequent meeting may, if they think fit, appoint not more than five representatives of the creditors to a liquidation committee:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the liquidation committee, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under the provisions of this paragraph the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to the provisions of paragraph (1) of this regulation or as may be otherwise prescribed, the section on the constitution and proceedings of the liquidation committee other than paragraphs (1) to (4) thereof, shall apply with respect to a liquidation committee appointed under this regulation as they apply with respect to a liquidation committee appointed in a winding up by the court.

Remuneration of liquidator.

144. The liquidation committee or, if there is no such committee, the creditors, shall fix the basis of remuneration to be paid to the liquidator or liquidators.

Vacancy in office of liquidator.

145. If a vacancy occurs, by death, resignation or removal in the office of a liquidator who was not appointed by the court, a new liquidator shall be appointed in accordance with the provisions of paragraph (1) of regulation 137 of these regulations:

Provided that if a liquidator is not appointed in accordance with the provisions of the said paragraph, any member or creditor of the company may apply to the court for the appointment of a liquidator and the appointment shall be made by the court.

Liquidator to hold meeting of company and creditors where winding up continues for more than twelve months.

146. (1) In the event of the winding up continuing for more than twelve months, the liquidator shall summon a general meeting of the company and a meeting of the creditors at the end of the first period of twelve months from the commencement of the winding up, and of each succeeding period of twelve months, or at the first convenient date within three months from the end of the period of twelve months, or within a longer term as the Registrar may allow, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding twelve months, including a summary of receipts and expenditure.

(2) In the event that the conditions stated in paragraph (2) to regulation 140 of these regulations intervene, the liquidator shall bring such events to the knowledge of the committees and the committees shall resolve to terminate the liquidation, failing which the liquidator may apply to the court for such an order.

(3) If the liquidator fails to comply with the provisions of paragraph (1) of this regulation, he shall be liable to a penalty.

Final meetings.

147. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make an account of the winding up, showing how the winding up has been conducted and how the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanations thereof.

(2) Within seven days after the date of the meetings or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates; and if the copy is not sent or the return is not made in accordance with this paragraph the liquidator shall be liable to a penalty, and, for every day during which the default continues, to a further penalty:

Provided that, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return mentioned in this paragraph, make a return that the meeting was duly summoned and that no quorum was present thereat and upon such a return being made the provisions of this paragraph as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(3) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this regulation, he shall be liable to a penalty.

Striking company's name off the register.

148. (1) The Registrar shall, on receiving the account and, in respect of each such meeting as is referred to in regulation 147 of these regulations, the return or returns as mentioned in that regulation, forthwith register them, and on the expiration of three months from the publication of a notice in the Gazette, the Registrar shall strike the name of the company off the register:

Provided that the court may, on an application filed within the said period of three months by the liquidator or by any other person who appears to the court to have an interest, make an order deferring

the date at which the name of the company shall be struck off the register for such time and subject to such conditions as the court may provide.

(2) When an order by the court is made under paragraph (1) of this regulation, the Registrar of Courts shall forthwith forward a copy of it to the Registrar for registration and the Registrar shall defer applying the provisions of paragraph (1) of this regulation in accordance with the order given by the court referred to in that paragraph.

Chapter IV - Provisions applicable to every voluntary winding up. Distribution and Payment of Debts and other Administrative Matters.

Distribution of property of company.

149. (1) Subject to the provisions of these regulations and of any other law as to preferential debts or payments, and to the provisions of the Act, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities in accordance with the preferences available to them by law and *pari passu* within the same rank of creditors, and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

(2) The liquidator may –

(a) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of the court or of the liquidation committee or, if there is no such committee, of a meeting of the creditors, exercise any of the powers given by subparagraphs (c), (d) and (e) of paragraph (1) of regulation 110 of these regulations to a liquidator in a winding up by the court;

(b) without sanction, exercise any of the other powers given by these regulations to a liquidator in a winding up by the court;

(c) exercise the power of the court of making calls; and

(d) summon general meetings of the company for the purpose of obtaining the sanction of the company by extraordinary resolution or for any other purpose he may think fit.

(3) The liquidator shall pay the debts of the company.

(4) When several liquidators are appointed, any power given by these regulations may be exercised by such one or more of them as may be determined at the time of their appointment or, in default of such determination, by any number being not less than two.

When arrangement is binding on members.

150. (1) Any arrangement entered into between a company in the course of being wound up, and its creditors shall, subject to the right of appeal under this regulation, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by two-thirds in value.

(2) Any creditor may, within fourteen days from the completion of the arrangement, apply to the court contesting the arrangement, and the court may thereupon, as it thinks fit, amend, vary or confirm the arrangement.

Court may determine questions and exercise powers.

151. (1) The liquidator or any member, or creditor may apply to the court to determine any question arising in the course of winding up of a company, or to exercise, as respects the enforcement of calls or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) The liquidator may apply to the court to fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.

(3) The court, if satisfied that the determination of the question or the required exercise of power referred to in paragraph (1) of this regulation will be just and beneficial, may, but subject to the limitations under article 37C of the Act accede wholly or partially to the application on such terms and conditions as it thinks fit or may make such other order on the application as it so determines.

(4) A copy of any order made by virtue of this regulation staying the proceedings in the winding up shall forthwith be forwarded by the Registrar of Courts to the Registrar who shall make a minute of the order in the register relating to the company.

SUB-PART III - PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

Chapter I – General Provisions

Notice of dissolution and consequential winding up.

152. On the dissolution of a company, and in no case later than fourteen days after dissolution, the company shall deliver to the Registrar for registration and publication a notice of dissolution and consequential winding up in the form specified in the Seventh Schedule to these regulations:

Provided that where a company is dissolved by order of the court, notice of the dissolution shall be given as aforesaid by the Registrar of Courts.

Chapter II – Effect of appointment of liquidator and convening of meetings

Powers of directors to cease.

153. On the appointment of a liquidator, all the powers of the directors shall cease except as may be otherwise provided in this Part.

Summoning of meetings.

154. (1) The liquidator shall summon all meetings of creditors by giving not less than fourteen days' notice of the time and place thereof in the Gazette and in at least one local daily newspaper; and shall, not less than fourteen days before the day appointed for the meeting, send by post to every person appearing in the company's books to be a creditor of the company, notice of the meeting of creditors.

(2) The notice to each creditor shall be sent to the address given in the creditor's proof of his debt, or, if he has not proved his debt, to the address given in the statement of affairs of the company, if any, or to such other address as may be known to the person summoning the meeting.

(3) Where there is no continuing liquidator, any creditor may apply to the court for directions as to the summoning and holding of a meeting.

(4) The provisions of this regulation shall not apply to meetings held under regulation 141 or regulation 147 of these regulations.

Resolutions of creditors.

155. (1) At a meeting of creditors a resolution shall be deemed to be passed when a majority in value of the creditors present

personally or by proxy and voting on the resolution have voted in favour of the resolution.

(2) The provisions of these regulations and of the memorandum or articles of the company with respect to proxies at general meetings of the company shall apply to proxies at meetings of creditors, with such modifications and adaptations as may be required.

(3) A copy of every resolution of a meeting of creditors in a winding up by the court shall be certified by the liquidator, and filed in the Registry of the Superior Courts.

(4) Where a resolution is passed at an adjourned meeting of any creditors of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed at any earlier date.

Other proceedings at meetings.

156. (1) A meeting of creditors may not act for any purpose, other than:

(a) the election of a chairman where such election is necessary; or

(b) the proving of debts; or

(c) the adjournment of the meeting:

Provided that where there are present in a creditors' meeting at least three creditors entitled to vote if the number of creditors entitled to vote do not exceed three, the limitations laid down in this paragraph shall not apply.

(2) If within half an hour from the time appointed for the meeting, a quorum of creditors is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place or to such other day or time or place as the chairman may appoint, but so that the day appointed shall be not less than seven and not more than twenty-one days from the day from which the meeting was adjourned, and at such adjourned meeting the number present or represented shall form a quorum and may act for any purpose.

(3) The chairman may, with the consent of the meeting, adjourn it from time to time and from place to place, but the adjourned

meeting shall be held at the same place as the original meeting unless in the resolution for adjournment another place is specified or unless the court otherwise orders.

Minutes of proceedings.

157. (1) The chairman shall cause minutes of the proceedings of meetings to be drawn up and properly entered in a book kept for that purpose and the minutes shall be signed by him.

(2) A list of creditors present at every meeting shall be made and kept in such form as the chairman may deem appropriate or as may be prescribed.

Notice of resignation or removal of liquidator.

158. (1) Upon the resignation of a liquidator from his office, he shall deliver to the Registrar for registration a notice of his resignation and the resignation shall only become effective on such registration.

(2) Where a liquidator is removed from office by the court in accordance with the provisions of this Part, the Registrar of Courts shall forthwith deliver a notice of such removal to the Registrar for registration.

(3) Where a liquidator has been removed by an extraordinary resolution of the company in a members' voluntary winding up, a notice thereof shall be delivered to the Registrar for registration by any member of the company who has duly been authorised by the same resolution or by the company in general meeting.

(4) Where a liquidator has been removed by a resolution of the creditors in terms of regulation 155, in a creditors' voluntary winding up, a notice thereof shall be delivered to the Registrar for registration by any creditor of the company who has been duly authorised by the same resolution or by the creditors' meeting.

Chapter III– Proof and ranking of claims

Debts of all descriptions may be proved.

159. In every winding up of a company all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or which may be due in damages, shall be admissible as proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or which are due in damages but not ascertained, or which for some other reason do not bear a certain value.

160. Such claims shall be made in writing to the liquidator within the times set by him and shall be accompanied by all supporting evidence. The acceptance by the liquidator of claims shall be binding on the company. Claims to liquidator.

161. In the cases specified in regulation 111, the company shall be struck off upon the filing of a notice to the Registrar notifying him of the sale of the ship and the conclusion of the ranking of creditors procedure and this without the need of any further proceedings. The notice shall be in the form specified in the Seventh Schedule to these regulations. Striking off of company on filing of notice of judicial sale of ship.

162. In the winding up of a company the assets of which are insufficient to meet the liabilities, the rights of secured and unsecured creditors and the priority and ranking of their debts the provisions of the Act shall apply and all claims against a ship shall rank in priority to all other claims against the company. The determination by a liquidator of whether a claim is against a ship or not shall be binding on all the parties subject to the right of a creditor of a ship to apply to the court to review such determination. Application of rules in ranking.

163. The provisions of the Commercial Code on bankruptcy shall not apply to shipping organisations which are companies. Non-applicability of the provisions of the Commercial Code.

PART VI

COMPANY RECONSTRUCTIONS, CONVERSIONS, AMALGAMATIONS AND DIVISION OF COMPANIES

164. Part VI to Part IX of the Companies Act shall apply *mutatis mutandis* to these regulations. Part VI to Part IX of the Companies Act to apply.

PART VII

GENERAL

165. All judicial proceedings which are to be served on a shipping organisation shall be properly served if sent by registered mail or served by a court marshall at the registered office of the shipping organisation. Judicial Service of Acts.

166. The amount of penalties provided for in any provision of these regulations shall be determined by means of regulations specifying the maximum penalty that may be imposed by the Registrar under any of the provisions of these regulations. Administrative penalties under these regulations.

Registrar may vary thresholds and currency by notice.

167. The Minister responsible for registration of commercial partnerships may vary the thresholds, including the currency in these regulations from time to time by means of a notice.

PART VIII
TRANSITORY PROVISIONS

Transitory provisions.

168. (1) As from the date of the coming into force of these regulations, a shipping organisation shall not be formed and registered as a private company unless it complies with the provisions of these regulations.

(2) As from the date of the coming into force of these regulations all shipping companies formed and registered as private companies under the Commercial Partnerships Ordinance shall -

(i) be deemed to be formed and registered under these regulations and in compliance with the same, shall retain the same legal personality and all their rights and obligations shall not be prejudiced in any manner;

(ii) within a period of five years from such date take such action as is necessary to align the memorandum and articles of association of the company with the requirements of these regulations and for such purpose a resolution of the board of directors or the sole director, as the case may be, shall be sufficient.

(3) With regard to shipping companies formed and registered as private companies under the Commercial Partnerships Ordinance or shipping organisations formed as private companies under these regulations, the provisions of Chapter IX of Part III shall commence to apply to such accounting periods, not being an accounting period commencing earlier than five years from the entering into force of these regulations, as may be notified by the Minister in the Gazette.

(4) The provisions of regulation 37 relating to pledge of securities issued by a shipping company shall apply to all pledges done after the coming into force of these regulations.

(5) A pledge in writing executed in relation to securities issued by shipping companies prior to the entry into force of these regulations shall be valid and effective as a pledge and shall be regulated in accordance with the provisions of the Civil Code and regulation 37of these regulations:

Provided that –

(i) in addition to the above nothing in regulation 37 shall render invalid anything which was valid before the date of these regulations;

(ii) it shall not be deemed necessary for there to exist any authority in the memorandum and articles of the company for the securities to be pledged;

(iii) the obligation to file a notice with the Registrar as required by paragraph (2) of regulation 37 shall be at the option of the pledgee and any notice of pledge given to the company, the securities of which have been pledged, shall be deemed to comply with the requirements of paragraph (2);

(iv) such pledges shall be effective in relation to third parties from the date of the notice of the pledge to the company or from the date of the presentation of the pledge agreement to the Registrar, which ever is the earlier and any notice filed by the pledgee with the Registrar in terms of the preceding sub-paragraph shall refer to the date of service of the notice of pledge on the company or the Registrar as the case may be;

(v) the notice required by paragraph (13) of regulation 37 shall only be filed with the Registrar in case a notice had been previously filed by the pledgee in terms of the preceding sub-paragraph (iii).

Transitory provisions as to winding up of shipping companies.

169. (1) The dissolution of a shipping company occurring before the date of these regulations shall continue to be administered in accordance with the provisions of the Commercial Partnerships Ordinance and the consequential winding up of such a company shall be regulated accordingly unless the liquidator of the company elects, by notice in writing to the Registrar, that the dissolution and winding up be governed by these regulations.

(2) In relation to a shipping company, bankruptcy proceedings commenced before the date of these regulations shall, after the appointed day, continue to be governed by the provisions of Part III of the Commercial Code relating to bankruptcy.

Transitory provisions as to public companies formed under the Commercial Partnerships Ordinance.

170. A shipping company formed and registered as a public company in terms of the Commercial Partnerships Ordinance shall be governed by the Companies Act from the date on which these regulations come into force and shall comply with the Companies Act within six months from the date of these regulations.

FIRST SCHEDULE

(Regulation 16)

PART I - MODEL REGULATIONS FOR THE MANAGEMENT OF A SHIPPING COMPANY

Share capital and variation of rights

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

2. Subject to the provisions of regulation 31 of the Merchant Shipping (Shipping Organisations – Private Companies) Regulations, (hereinafter referred to as "the 2004 regulations"), any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the company are, liable to be redeemed on such terms and in such manner as the company before the issue of the shares may by extraordinary resolution determine.

3. If at any time the share capital is divided into different classes of shares, the change of any shares from one class into another or the variation of the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class which is to be changed or the rights attached to which are to be varied, according to the case) may, whether or not the company is being wound up, be made with the consent in writing of the holders of three-fourths of the issued shares of any other class affected thereby. Such change or variation may also be made with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the issued shares of that class and of an extraordinary resolution passed at a separate general meeting of the holders of the issued shares of any other class affected thereby. To every such separate general meeting the provisions of these model regulations relating to general meetings shall apply.

4. The company may exercise the power of paying commissions or of making discounts or allowances provided it complies with the requirements of regulation 29 of the 2004 regulations. Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other.

5. Every person whose name is entered as a member in the register of members shall be entitled without payment to receive one certificate for all his shares or several certificates each for one or more of his shares. If a share certificate be defaced, lost or destroyed, it may be renewed on application of the member on

such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the company of investigating evidence as the directors think fit.

Calls on shares

6. The board of directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares. A call may be revoked, modified or postponed as the directors may determine. Any member shall be entitled to at least 7 days notice.

7. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

8. If a sum called in respect of a share is not paid before or on the date appointed for the payment thereof, the person from whom the sum is due shall pay interest thereon from the day appointed for payment thereof to the time of actual payment at such rate not exceeding two per cent as the directors may determine, but the directors shall be at liberty to waive payment of such interest wholly or in part.

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

10. The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

11. The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the moneys uncalled and unpaid upon any shares held by him, and upon all or any of the moneys so advanced may (until the same would, but for such advance, become payable) pay interest at such rate not exceeding eight per cent, as may be agreed upon between the directors and the member paying such sum in advance.

Transfer and transmission of shares

12. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

13. Subject to such of the restrictions of these model regulations as may be applicable, any member may transfer all or any of his shares by instrument in writing in any usual or common form or any other form which the directors may approve.

14. The directors may decline to register the transfer of a share (not being a fully paid share) to a person of whom they shall not approve.

15. The directors may also decline to recognize 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 instrument of transfer is in respect of only one class of share.

16. The registration of transfers may be suspended at such times and for such periods as the directors may from time to time determine, provided always that such registration shall not be suspended for more than thirty days in any year.

17. Any person becoming entitled to a share in consequence of the death of a member may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by him registered as the transferee thereof, but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that member before his death.

19. If the person so becoming entitled shall elect to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects. If he shall elect to have another person registered he shall testify his election by executing to that person a transfer of the share. All the limitations, restrictions and provisions of these regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death of the member had not occurred and the notice or transfer were a transfer signed by that member.

20. A person becoming entitled to a share by reason of the death of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company:

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

21. In respect of a share held jointly by several persons the name of only one of such persons shall be entered in the register of members. Such person shall be elected by the joint holders and shall for all intents and purposes be deemed, vis-à-vis the company, to be the registered holder of the share so held.

Pledging of Securities

22. (a) The members may enter into any agreement relating to the pledging of their shares or the creation of any rights in connection with the said shares for any reason they may deem fit and with such third parties as they deem appropriate.

(b) The holders of other securities issued by the company may enter into any agreement relating to the pledging of their securities or the creation of any rights in connection with the said shares for any reason they may deem fit and with such third parties as they deem appropriate.

(c) Upon the company being notified of such a pledge agreement, the company shall record that fact in its register of members or debenture holders and the company shall recognize all rights thereby granted to any third parties and shall act according to and consistently with the terms of such agreement in all matters.

(d) In so far as and to the extent that such pledge vests third parties with rights pertaining to the shares or debentures normally exercisable by the members or debenture holders as the case may be, such rights shall be exercisable by third parties as though they were the members or debenture holders of the company to the exclusion of the registered member or members or registered holders of securities.

Failure to pay upon call

23. Where a member fails to pay up such part of any share after a call has been made to this effect such member shall be liable to the company and the company may sue the member for the collection of a civil debt.

General meetings

24. Subject to the provisions of the 2004 regulations the annual general meetings shall be held at such time and place as the directors may appoint.

25. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall be so convened on such requisition, or, in default, may be convened by such requisitionists, as provided by regulation 44 of the 2004 regulations.

Notice of General Meetings

26. A general meeting of the company shall be called by fourteen days' notice in writing at least. 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 meeting and, in case of special business, the general nature of that business, and shall be given, in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, by the 2004 regulations and under the regulations of the company, entitled to receive such notices from the company:

Provided that a meeting of the company shall, notwithstanding 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 all the members entitled to attend and vote thereat.

27. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

Proceedings at General Meetings

28. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the annual accounts and the reports of the directors and auditors, the election of directors in the place of those retiring and the appointment of, and the fixing of the remuneration of, the auditors.

29. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened by the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

30. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding

of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.

31. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.

32. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjourned meeting or of the business to be transacted at such meeting.

33. At any general meeting a resolution put to the vote of the meeting shall be approved by more than 50% of the voting rights in the company unless a higher majority is required by the memorandum and articles.

The demand for a poll may be withdrawn

34. In the case of an equality of votes, the chairman of the meeting shall be entitled to a second or casting vote.

Votes of members

35. Subject to any rights or restrictions for the time being attached to any class or classes of shares, every member shall have one vote for each share of which he is the holder.

36. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

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

38. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power of authority shall, as far as possible, be deposited at the registered office of the company or at such other place as is specified for the purpose in the notice

convening the meeting, not less than twenty-four hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty-four hours before the time appointed for the taking of the poll, in order to allow time for the verification of the authenticity of the instrument by the chairman and in default, saving verifiable proof of the authenticity of the instrument satisfactory to the chairman, the chairman shall be entitled in his sole discretion, to refuse the proxy.

39. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances permit:

…….(name of company)

"I/We……of…… residing at…… being a member/members of the above-mentioned company, hereby appoint ……of……or failing him……of……as my/our proxy to vote for me/us on my/our behalf at the (annual or extraordinary, as the case may be) general meeting of the company, to be held on the ……day of …….. 2……, and at any adjournment thereof.

Signed this …….. day of ……. 2…….

This form is to be used in favour of/against* the resolution. Unless otherwise instructed, the proxy will vote as he thinks fit.".

_____

*Strike out whichever is not desired.

Directors

40. The remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connection with the business of the company.

41. The shareholding qualification for directors may be fixed by the company in general meeting, and unless and until so fixed no qualification shall be required.

Powers and duties of directors

42. The directors shall exercise their powers subject to any of these model regulations, to the provisions of the 2004 regulations and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

43. The directors shall have the power to appoint any person to be the attorney of the company for such purposes and with such powers, authorities and discretion (not exceeding those vested in or exercisable by the directors under these model regulations) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

44. The directors shall cause minutes to be made in books provided for the purpose -

(a) of all appointments of officers made by the directors;

(b) of the names of the directors present at each meeting of the directors and of any committee of the directors;

(c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors.

45. The directors on behalf of the company may pay a gratuity or pension or allowance on retirement to any director who has held any other salaried office or place of profit with the company or to his widow or dependants and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.

Proceedings of directors

46. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may at any time summon a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Malta.

47. The continuing 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 the regulations of the company as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

48. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

49. A director may appoint any other person to act as his alternate by means of a written instrument. Such person so appointed shall enjoy all powers of the director. "Written instruments" include for this purpose an appointment by fax, e-mail or letter.

50. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

Secretary

51. The directors may appoint a secretary for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them:

Provided that no person shall be appointed or hold office as secretary who is the sole director of the company.

Dividends and reserve

52. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

53. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

54. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments, other than shares of the company, as the directors may from time to time think fit. The directors may also without placing the same to reserve carry forward any profits which they may think prudent not to divide.

55. Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.

56. The directors may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

57. No dividend shall bear interest against the company.

Accounts

58. Subject to the provisions of regulation 76 of the 2004 regulations, 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 annual accounts and accounting records of the company or any of them shall be open to the inspection of members not being directors, and no member, not being a director, shall have any right of inspecting any such account or record or other document of the company except as conferred by law or authorised by the directors or by the company in general meeting.

Capitalisation of profits

59. The company in general meeting may upon the recommendation of the directors resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportions on condition that the same be not paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by such members respectively or paying up in full unissued shares or debentures of the company to be allotted and distributed credited as fully paid up to and amongst such members in the proportion aforesaid, or partly in the one way and partly in the other, and the directors shall give effect to such resolution:

Provided that a share premium account and a capital redemption reserve may, for the purposes of this regulation, only be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares:

Provided further that the directors may in giving effect to such resolution make such provision by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions.

Indemnity

60. Every managing director, director holding any other executive office or other director, and every agent, auditor or secretary and in general any officer for the time being of the company shall be indemnified out of assets of the company against any liability incurred by him in defending any proceedings in which judgment is given in his favour or in which he is acquitted.

PART II – MODEL REGULATIONS FOR THE MANAGEMENT OF A SINGLE MEMBER COMPANY

1. The regulations contained in Part I of these Model Regulations shall apply subject to the following modifications.

2. The company is a single member company and accordingly -

(a) any decision required to be taken by the single member in general meeting shall be taken in the form of a written resolution passed by the single member.

(b) the single member minutes shall be recorded in the minute book in terms of regulation 63 of the 2004 regulations.

3. Regulations 24 to 39 of these Model Regulations both inclusive shall not apply.

SECOND SCHEDULE

(Regulation 66)

FORM AND CONTENT OF INDIVIDUAL ACCOUNTS

PART I - GENERAL RULES AND FORMATS

General rules

1. (1) Subject to the following provisions of this Schedule -

(a) every balance sheet of a company shall show the items listed in either of the balance sheet formats set out immediately following paragraph 13 of this Schedule; and

(b) every profit and loss account of a company shall show the items listed in any one of the profit and loss account formats set out immediately following the balance sheet formats;

in either case in the order and under the headings and sub-headings given in the format adopted. For this purpose the words in brackets against the headings, the sub-headings and the items are explanatory and do not have to be reproduced in the individual accounts.

(2) Sub-paragraph (1) of this paragraph is not to be read as requiring any item, or the heading or sub-heading for any item, to be distinguished by any letter or number assigned thereto in the format adopted.

2. (1) Where in accordance with paragraph 1 of this Schedule a company's balance sheet or profit and loss account for any accounting period has been prepared by reference to one of the formats set out herein, the directors of the company shall adopt the same format in preparing the individual accounts for subsequent accounting periods of the company unless in their opinion there are special reasons for a change.

(2) Particulars of any change in the format adopted in preparing a company's balance sheet or profit and loss account in accordance with paragraph 1 of this Schedule shall be disclosed, and the reasons for the change shall be explained, in the notes to the accounts drawn up when the new format is first adopted.

3. (1) Any item required in accordance with paragraph 1 of this Schedule to be shown in a company's balance sheet or profit and loss account may be shown in greater detail than required by the format adopted.

(2) A company's balance sheet or profit and loss account may include an item representing or covering the amount of any asset or liability, income or expenditure not otherwise covered by any of the items listed in the format adopted, but the following shall not be treated as assets in a company's balance sheet –

(*a*) expenses of and commission on any issue of shares or debentures; and

(*b*) costs of research.

Any additional items as aforesaid shall be included under either an existing heading or sub-heading or under a new heading or sub-heading as appropriate.

(3) The layout, nomenclature and terminology of items in the balance sheet and profit and loss account that are preceded by Arabic numerals shall be adapted where the special nature of an undertaking so requires.

(4) Items to which Arabic numbers are assigned in any of the formats set out herein may be combined in a company's individual accounts for any accounting period if either -

(a) their individual amounts are not material to assessing the state of affairs or profit or loss of the company for that accounting period; or

(b) the combination facilitates that assessment;

but where paragraph (*b*) of this sub-paragraph applies, the individual amounts of any items so combined shall be disclosed in the notes to the accounts.

(5) Save where there is a corresponding item for the preceding accounting period, a balance sheet or profit and loss account item for which there is no amount shall not be shown. In such case, the heading or subheading in respect of that item shall also not be shown if that item is the only one under such heading of subheading.

4. (1) In respect of every item shown in a company's balance sheet or profit and loss account or in the notes to the accounts, there shall also be shown the corresponding amount for the accounting period immediately preceding that to which the individual accounts relate.

(2) Where that corresponding amount is not comparable with the amount to be shown for the item in question in respect of the accounting period to which the individual accounts relate, the former amount shall be adjusted and particulars of the adjustment and the reasons for it shall be disclosed in the notes to the accounts.

5. Save as otherwise provided in this Schedule, any set-off between asset and liability items, or between income and expenditure items, shall be prohibited.

6. (1) In determining whether particular assets are to be shown as fixed assets or current assets reference shall be made to the purpose for which they are intended.

(2) Fixed assets shall comprise those assets which are intended to be held on a continuing basis in connection with the undertaking's activities.

(3) Where an asset or liability relates to more than one layout item, its relationship to the other item or items shall be disclosed either under the item where it appears or in the notes to the accounts, if such disclosure is essential to the comprehension of the individual accounts.

(4) Own shares and shares in group undertakings may be shown only under the items prescribed for that purpose.

7. (1) "Provisions for liabilities or charges" are intended to cover losses or debts the nature of which is clearly defined and which at the date of the balance sheet are either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which they will arise.

(2) "Provisions for liabilities or charges" may not be used to adjust the values of assets.

8. (1) "Associated undertaking" shall have the meaning assigned to it by paragraph 21 of the Third Schedule to these Regulations.

(2) "Turnover" shall comprise the amounts derived from the sale of products and the provision of services falling within the company's ordinary activities, after deduction of sales rebates and taxes directly linked to the turnover.

9. (1) Income and charges that arise otherwise than in the course of the company's ordinary activities shall be shown under "Extraordinary Income" and "Extraordinary Charges".

(2) Unless the income and charges referred to in sub-paragraph (1) hereof are immaterial for the assessment of the results, explanations of their amount and nature shall be given in the notes to the accounts. The same shall apply to income and charges relating to another accounting period.

10. (1) Every profit and loss account of a company shall show the amount of the company's profit or loss on ordinary activities before taxation.

(2) Taxes on the profit or loss on ordinary activities and taxes on the extraordinary profit or loss may be shown in total as one item in the profit and loss account before "Other Taxes not shown under the above items". In such a case "Profit or Loss on Ordinary Activities after Taxation" shall be omitted from the profit and loss account layouts prescribed in this Schedule.

(3) Where this derogation is applied there shall be disclosed in the notes to the accounts the extent to which the taxes on the profit or loss affect the profit or loss on ordinary activities and the extraordinary profit or loss.

11. Every profit and loss account of a company shall show separately as additional items:

(a) any amount set aside or proposed to be set aside to, or withdrawn or proposed to be withdrawn from, reserves; and

(b) the aggregate amounts of -

(i) any dividends paid; and

(ii) any dividends proposed.

12. (1) The provisions of this Schedule shall be interpreted to give a true and fair view within the meaning of paragraph (3) of Regulation 66 of the Regulations.

(2) Amounts which in the particular context of any provision of this Schedule are not material may be disregarded for the purposes of that provision.

Required formats for accounts

13. References in this Schedule to the items listed in any of the formats set out below are to those items read together with any of the notes in the formats which apply to any of those items, and the requirement imposed by paragraph 1 to show the items listed in any such format in the order adopted in the format is subject to any provision in those notes for alternative positions for any particular items.

BALANCE SHEET FORMATS - FORMAT 1

A. Called Up issued share capital not paid (may be shown in either of the two positions herein)

B. Formation Expenses (may be shown as the first item under "Intangible Assets")

C. Fixed Assets

I. Intangible Assets

1. Development costs

2. Concessions, patents, licences, trade marks and similar rights and assets (if these were acquired for valuable consideration and are not to be shown under goodwill or these were created by the company itself)

3. Goodwill (only to the extent that this was acquired for valuable consideration)

4. Payments on account

II. Tangible Assets

1. Land and buildings (including all rights on immovable)
2. Plant and machinery
3. Other fixtures, fittings, tools and equipment
4. Payments on account and tangible assets in the course of construction

III. Financial Assets

1. Shares in group undertakings
2. Loans to group undertakings
3. Shares in associated undertakings
4. Loans to associated undertakings
5. Other investments other than loans
6. Other loans
7. Own shares (the nominal value of the shares held shall be shown separately in the notes to the accounts)

D. Current Assets

I. Stocks

l. Raw materials and consumables
2. Work in progress
3. Finished goods and goods for resale
4. Payments on account

II. Debtors (The amount falling due after more than one year shall be shown separately for each item included under debtors)

l. Trade debtors
2. Amounts owed by group undertakings
3. Amounts owed by associated undertakings
4. Other debtors

5. Called up issued share capital not paid (may be shown in either of the two positions herein)

6. Prepayments and accrued income (may be shown in either of the two positions herein)

III. Investments

l. Shares in group undertakings

2. Own shares (the nominal value of the shares held shall be shown separately in the notes to the accounts)
3. Other investments

IV. Cash at Bank and in Hand

E. Prepayments and Accrued Income (may be shown in either of the two positions herein)

F. Creditors: Amounts falling due within One Year

1. Debenture loans (the amount of any convertible loans shall be shown separately in the notes to the accounts)
2. Bank loans and overdrafts
3. Payments received on account (payments received on account of orders shall be shown here in so far as they are not shown as deductions from stocks)
4. Trade creditors
5. Bills of exchange payable
6. Amounts owed to group undertakings
7. Amounts owed to associated undertakings
8. Other creditors including taxation and social security (the amounts for creditors in respect of taxation and social security shall be shown separately from the amount for other creditors)
9. Accruals and deferred income

G. Net Current Assets/Liabilities (in determining the amount to be shown for this item any amounts shown under "prepayments and accrued income" shall be taken into account wherever shown)

H. Total Assets less Current Liabilities

I. Creditors: Amounts Falling due after more than One Year

1. Debenture loans (the amount of any convertible loans shall be shown separately in the notes to the accounts)
2. Bank loans and overdrafts
3. Payments received on account (payments received on account of orders shall be shown here in so far as they are not shown as deductions from stocks)
4. Trade creditors
5. Bills of exchange payable
6. Amounts owed to group undertakings
7. Amounts owed to associated undertakings
8. Other creditors including taxation and social security (the amounts for creditors in respect of taxation and social security shall be shown separately from the amount for other creditors)
9. Accruals and deferred income

J. Provisions for Liabilities and Charges

1. Pensions and similar obligations

2. Taxation, including deferred taxation
3. Other provisions

K. Capital and Reserves

I. Called Up Issued Share Capital (in addition, the amount of the issued share capital and the amount of the called up issued share capital which has been paid up shall be shown separately in the notes to the accounts)

II. Share Premium Account

III. Revaluation Reserve

IV. Other Reserves

1. Capital redemption reserve
2. Reserve for own shares
3. Reserves provided for by the articles of association
4. Other reserves

V. Profit and Loss Account

BALANCE SHEET FORMATS - FORMAT 2

ASSETS

A. Called Up Issued Share Capital not Paid (may be shown in either of the two positions herein)

B. Formation Expenses (may be shown as the first item under "Intangible Assets")

C. Fixed Assets

I. Intangible Assets

1. Development costs
2. Concessions, patents, licences, trade marks and similar rights and assets (if these were acquired for valuable consideration and are not to be shown under goodwill or if these were created by the company itself)
3. Goodwill (only to the extent that this was acquired for valuable consideration)
4. Payments on account

II. Tangible Assets

1. Land and buildings (including all rights on immovables)
2. Plant and machinery
3. Other fixtures, fittings, tools and equipment
4. Payments on account and tangible assets in the course of construction

III. Financial Assets

1. Shares in group undertakings
2. Loans to group undertakings
3. Shares in associated undertakings
4. Loans to associated undertakings
5. Other investments other than loans
6. Other loans

7. Own shares (the nominal value of shares held shall be shown separately)

D. Current Assets

I. Stocks

1. Raw materials and consumables
2. Work in progress
3. Finished goods and goods for resale
4. Payments on account

II. Debtors (the amount falling due after more than one year shall be shown separately for each item included under debtors)

l. Trade debtors
2. Amounts owed by group undertakings
3. Amounts owed by associated undertakings
4. Other debtors
5. Called up issued share capital not paid (may be shown in either of the two positions herein)
6. Prepayments and accrued income (may be shown in either of the two positions herein)

III. Investments

1. Shares in group undertakings
2. Own shares (the nominal value of the shares held shall be shown separately)
3. Other investments

IV. Cash at Bank and in Hand

E. Prepayments and Accrued Income (may be shown in either of the two positions herein)

LIABILITIES

A. Capital and Reserves

I. Called Up Issued Share Capital (in addition, the amount of the issued share capital and the amount of the called up issued share capital which has been paid up shall be shown separately)

II. Share Premium Account

III. Revaluation Reserve

IV. Other Reserves

l. Capital redemption reserve
2. Reserve for own shares
3. Reserves provided for by the articles of association

4. Other reserves

V. Profit and Loss Account

B. Provisions for Liabilities and Charges
1. Pensions and similar obligations
2. Taxation, including deferred taxation
3. Other provisions

C. Creditors (amounts falling due within one year and after one year shall be shown separately for each of these items and their aggregate shall be shown separately for all of these items in the notes to the accounts)
1. Debenture loans (the amounts of any convertible loans shall be shown separately in the notes to the accounts)
2. Bank loans and overdrafts
3. Payments received on account (payments received on account of orders shall be shown here in so far as they are not shown as deductions from stocks)
4. Trade creditors
5. Bills of exchange payable
6. Amounts owed to group undertakings
7. Amounts owed to associated undertakings
8. Other creditors including taxation and social security (the amount for creditors in respect of taxation and social security shall be shown separately from the amount for other creditors)
9. Accruals and deferred income (may be shown in either of the two positions herein)

D. Accruals and Deferred Income (may be shown in either of the two positions herein)

PROFIT AND LOSS ACCOUNT FORMATS - FORMAT 1

1. Turnover
2. Cost of sales (after taking into account any necessary provisions for depreciation or diminution in the value of assets)
3. Gross profit or loss
4. Distribution costs (after taking into account any necessary provisions for depreciation or diminution in the value of assets)
5. Administrative expenses (after taking into account any necessary provisions for depreciation or diminution in the value of assets)
6. Other operating income
7. Income from shares in group undertakings
8. Income from shares in associated undertakings

9. Income from other financial fixed assets (income, including interest, derived from group undertakings shall be shown separately from income derived from other sources)
10. Other interest receivable and similar income (interest and similar income derived from group undertakings shall be shown separately from that derived from other sources)
11. Amounts written off in respect of financial fixed assets and investments held as current assets
12. Interest payable and similar charges (the amount payable to group undertakings shall be shown separately)
13. Tax on profit or loss on ordinary activities
14. Profit or loss on ordinary activities after taxation
15. Extraordinary income
16. Extraordinary charges
17. Extraordinary profit or loss
18. Tax on extraordinary profit or loss
19. Other taxes not shown under the above items
20. Profit or loss for the accounting period

The amount of any provisions for depreciation and diminution in the value of tangible and intangible fixed assets, including formation expenses, falling to be shown under items 7(*a*) and A. 4(*a*) respectively in Formats 2 and 4 shall be disclosed in the notes to the accounts in any case where the profit and loss account is prepared by reference to this Format.

PROFIT AND LOSS ACCOUNT FORMATS - FORMAT 2

1. Turnover
2. Change in stocks of finished goods and in work in progress
3. Own work capitalised
4. Other operating income
5. (*a*) Raw materials and consumables
   (*b*) Other external charges
6. Staff costs:
   (*a*) wages and salaries
   (*b*) social security costs
   (*c*) other pension costs
7. (*a*) Depreciation and other amounts written off tangible and intangible fixed assets, including formation expenses
   (*b*) Exceptional amounts written off current assets
8. Other operating charges
9. Income from shares in group undertakings
10. Income from shares in associated undertakings

11. Income from other financial fixed assets (income, including interest, derived from group undertakings shall be shown separately from income derived from other sources)
12. Other interest receivable and similar income (interest and similar income derived from group undertakings shall be shown separately from that derived from other sources)
13. Amounts written off in respect of financial fixed assets and investments held as current assets
14. Interest payable and similar charges (the amount payable to group undertakings shall be shown separately)
15. Tax on profit or loss on ordinary activities
16. Profit or loss on ordinary activities after taxation
17. Extraordinary income
18. Extraordinary charges
19. Extraordinary profit or loss
20. Tax on extraordinary profit or loss
21. Other taxes not shown under the above items
22. Profit or loss for the accounting period

PROFIT AND LOSS ACCOUNT FORMATS - FORMAT 3

A. Charges
1. Cost of sales (after taking into account any necessary provisions for depreciation or diminution in the value of assets)
2. Distribution costs (after taking into account any necessary provisions for depreciation or diminution in the value of assets)
3. Administrative expenses (after taking into account any necessary provisions for depreciation or diminution in the value of assets)
4. Amounts written off in respect of financial fixed assets and investments held as current assets
5. Interest payable and similar charges (the amount payable to group undertakings shall be shown separately)
6. Tax on profit or loss on ordinary activities
7. Profit or loss on ordinary activities after taxation
8. Extraordinary charges
9. Tax on extraordinary profit or loss
10. Other taxes not shown under the above items
11. Profit or loss for the accounting period

B. Income
l. Turnover
2. Other operating income
3. Income from shares in group undertakings
4. Income from shares in associated undertakings

5. Income from other financial fixed assets (income, including interest, derived from group undertakings shall be shown separately from income derived from other sources)
6. Other interest receivable and similar income (interest and similar income derived from group undertakings shall be shown separately from that derived from other sources)
7. Profit or loss on ordinary activities after taxation
8. Extraordinary income
9. Profit or loss for the accounting period

The amount of any provisions for depreciation and diminution in the value of tangible and intangible fixed assets, including formation expenses, falling to be shown under items 7 (*a*) and A. 4(*a*) respectively in Formats 2 and 4 shall be disclosed in the notes to the accounts in any case where the profit and loss account is prepared by reference to this Format.

PROFIT AND LOSS ACCOUNT FORMATS - FORMAT 4

A. Charges
1. Reduction in stocks of finished goods and in work in progress
2. (*a*) Raw materials and consumables
   (*b*) Other external charges
3. Staff costs:
   (*a*) wages and salaries
   (*b*) social security costs
   (*c*) other pension costs
4. (*a*) Depreciation and other amounts written off tangible and intangible fixed assets, including formation expenses
   (*b*) Exceptional amounts written off current assets
5. Other operating charges
6. Amounts written off in respect of financial fixed assets and investments held as current assets
7. Interest payable and similar charges (the amount payable to group undertakings shall be shown separately)
8. Tax on profit or loss on ordinary activities
9. Profit or loss on ordinary activities after taxation
10. Extraordinary charges
11. Tax on extraordinary profit or loss
12. Other taxes not shown under the above items
13. Profit or loss for the accounting period

B. Income
1. Turnover
2. Increase in stocks of finished goods and in work in progress
3. Own work capitalised
4. Other operating income
5. Income from shares in group undertakings

6. Income from shares in associated undertakings
7. Income from other financial fixed assets (income, including interest, derived from group undertakings shall be shown separately from income derived from other sources)
8. Other interest receivable and similar income (interest and similar income derived from group undertakings shall be shown separately from that derived from other sources)
9. Profit or loss on ordinary activities after taxation
10. Extraordinary income
11. Profit or loss for the accounting period

PART II - ACCOUNTING PRINCIPLES AND RULES
Accounting principles

14. Items shown in the individual accounts shall be valued in accordance with the following general principles -

(*a*) the company must be presumed to be carrying on its business as a going concern;

(*b*) the methods of valuation must be applied consistently from one accounting period to another;

(*c*) valuation must be made on a prudent basis, and in particular:

(i) only profits realised at the balance sheet date may be included in the profit and loss account,

(ii) account shall be taken of all foreseeable liabilities and potential losses arising in the course of the accounting period concerned or of a previous one, even if such liabilities or losses become apparent only between the date of the balance sheet and the date on which it is drawn up,

(iii) account must be taken of all depreciation whether the result of the accounting period is a loss or a profit;

(*d*) account must be taken of income and charges relating to the accounting period, irrespective of the date of receipt or payment of such income or charges;

(*e*) the components of asset and liability items must be valued separately;

(*f*) the opening balance sheet for each accounting period must correspond to the closing balance sheet for the preceding accounting period.

Historical cost accounting rules

15. (1) Formation expenses shown as assets in the balance sheet shall be written off within a maximum period of five years.

(2) The amounts entered under “Formation Expenses” shall be explained in the notes to the accounts.

16. (1) In the case of any fixed asset which has a limited useful economic life, the amount of -

(*a*) its purchase price or production cost; or

(*b*) where it is estimated that any such asset will have a residual value at the end of the period of its useful economic life, its purchase price or production cost less that estimated residual value,

shall be reduced by provisions for depreciation calculated to write off that amount systematically over the period of the asset's useful economic life. Such provisions shall be charged in the profit and loss account.

(2) The purchase price of an asset shall be determined by adding to the actual price paid any expenses incidental to its acquisition.

(3) The production cost of an asset shall be determined by adding to the purchase price of the raw materials and consumables used the amount of the costs incurred by the company which are directly attributable to the production of that asset.

(4) In addition to the costs specified in subparagraph (3) of this paragraph there may be included in the production cost of an asset -

(*a*) a reasonable proportion of the costs incurred by the company which are only indirectly attributable to the production of that asset, but only to the extent that they relate to the period of production; and

(*b*) interest on capital borrowed to finance the production of that asset, to the extent that it relates to the period of production. The inclusion of such interest and the amount thereof shall be disclosed in the notes to the accounts.

(5) Fixed asset investments shall be accounted for in accordance with the following rules:

(*a*) such investments shall be included in the company's individual accounts by using the cost method:

Provided that in the case of participating interests the equity method may be used as embodied in paragraphs 20 and 21 to the Third Schedule of these Regulations;

(*b*) the cost method referred to in sub-paragraph 5 (*a*) of this paragraph is a method of accounting whereby the investment is recorded at cost. The profit and loss account reflects income from the investment only to the extent that distributions are received or are receivable by the investor from accumulated net profits of the investment arising subsequent to the date of acquisition;

(*c*) when the equity method of accounting is used in the case of participating interests the provisions of sub-paragraph 6 hereof shall apply *mutatis mutandis* and references to consolidated accounts,

consolidated balance sheet, consolidated profit and loss account and notes to the consolidated accounts shall be construed accordingly;

(*d*) where the proportion of the profit attributable to participating interests exceeds the amount of dividends which are already received or the payment of which can be claimed, the amount of the difference shall be placed in a reserve which shall not be distributed to the shareholders.

17. (1) Where a financial fixed asset has diminished in value, provision for diminution in value may be made in respect of it and the amount to be included in respect of it may be reduced accordingly. Any such provisions shall be charged in the profit and loss account and if not shown separately in the profit and loss account, shall be disclosed (either separately or in aggregate) in the notes to the accounts.

(2) Provision for diminution in value shall be made in respect of any fixed asset which has diminished in value if the reduction in its value is expected to be permanent (whether its economic life is limited or not), and the amount to be included in respect of it shall be reduced accordingly. Any such provision shall be charged in the profit and loss account and if not shown separately in the profit and loss account, shall be disclosed (either separately or in aggregate) in the notes to the accounts.

(3) Where the reasons for which any provision was made in accordance with sub-paragraph (1) or (2) of this paragraph have ceased to apply to any extent, that provision shall be written back to the extent that it is no longer necessary. Any amounts written back in accordance with this sub-paragraph which are not shown separately in the profit and loss account shall be disclosed (either separately or in aggregate) in the notes to the accounts.

18. (1) Notwithstanding that an item in respect of "development costs" is included under "fixed assets" in the balance sheet formats contained in this Schedule, an amount may only be included in a company's balance sheet in respect of development costs in special circumstances.

(2) If any amount is included in the company's balance sheet in respect of development costs the following information shall be given in the notes to the accounts:

(a) the period over which the amount of those costs originally capitalised is being or is to be written off; and

(*b*) the reasons for capitalising the development costs in question.

19. (1) Where goodwill is treated as an asset the following provisions of this paragraph shall apply.

(2) Subject to sub-paragraphs (3) and (4) of this paragraph, the amount of the consideration for any goodwill acquired by a company shall be reduced by provisions for amortisation calculated to write off that amount systematically over a period chosen by the directors of the company.

(3) The period chosen shall not exceed the useful economic life of the goodwill in question.

(4) In any case where any goodwill acquired by a company is shown or included as an asset in the company's balance sheet the period chosen for writing off the consideration for that goodwill and the reasons for choosing that period shall be disclosed in the notes to the accounts.

20. (1) Subject to the following paragraph, assets which fall to be included -

(*a*) amongst the fixed assets of a company under the item "tangible assets"; or

(*b*) amongst the current assets of a company under the item "raw materials and consumables",

may be included at a fixed quantity and value.

(2) Sub-paragraph (1) of this paragraph applies to assets of a kind which are constantly being replaced, where -

(*a*) their overall value is not material to assessing the company's state of affairs; and

(*b*) their quantity, value and composition are not subject to material variation.

21. (1) Subject to sub-paragraphs (2) and (3) of this paragraph, the amount to be included in respect of any current asset shall, insofar as it is applicable, be its purchase price or production cost.

(2) If the net realisable value of any current asset is lower than its purchase price or production cost, the amount to be included in respect of that asset shall be the net realisable value.

(3) Where the reasons for which any provision for diminution in value made in accordance with sub-paragraph (2) of this paragraph have ceased to apply to any extent, that provision shall be written back to the extent that it is no longer necessary.

22. The method of determination of purchase price and the method of determination of production cost given in paragraph 16 of this Schedule shall apply for the purposes of paragraph 21 of this Schedule. Furthermore, distribution costs may not be included in production costs.

23. (1) Subject to the qualification mentioned in sub-paragraph (3) of this paragraph, the purchase price or production cost of -

(*a*) any assets which fall to be included under any item shown in a company's balance sheet under the sub-heading "stocks"; and

(b) any assets which are fungible assets (including investments),

shall be determined by the application of one of the methods mentioned in subparagraph (2) of this paragraph in relation to any such assets of the same class.

(2) The methods referred to in sub-paragraph (1) of this paragraph are -

(*a*) the method known as "first in, first out" (FIFO);
(*b*) the weighted average price method; and
(*c*) any other method similar to any of the methods mentioned above.

(3) The method actually chosen for the purposes of this paragraph shall be the one which appears to the directors to be appropriate in the circumstances of the company.

(4) Where in the case of any company -

(*a*) the purchase price or production cost of assets falling to be included under any item shown in the company's balance sheet has been determined by the application of any method permitted by this paragraph; and

(*b*) the amount shown in respect of that item differs materially from the relevant alternative amount given in sub-paragraph (5) of this paragraph,

the amount of that difference shall be disclosed in the notes to the accounts.

(5) Subject to sub-paragraph (6) of this paragraph, for the purposes of subparagraph (4) (*b*) of this paragraph, the relevant alternative amount, in relation to any item shown in a company's balance sheet, is the amount which would have been shown in respect of that item if assets of any class included under that item at an amount determined by any method permitted by this paragraph had instead been included at their replacement cost as at the balance sheet date.

(6) The relevant alternative amount may be determined by reference to the most recent actual purchase price or production cost before the balance sheet date of assets of any class included under the item in question instead of by reference to their replacement cost as at that date, but only if the former appears to the directors of the company to constitute the more appropriate standard of comparison in the case of assets of that class.

(7) For the purpose of this paragraph, assets of any description shall be regarded as fungible if assets of that description are substantially indistinguishable one from another.

24. (1) Where the amount repayable on any debt owed by a company is greater than the value of the consideration received in the transaction giving rise to the debt, the amount of the difference may be treated as an asset.

(2) Where any amount as referred to in sub-paragraph (1) of this paragraph is treated as an asset -

(*a*) it shall be written off by reasonable amounts each year;
(*b*) it shall be completely written off before repayment of the debt; and
(*c*) if the current amount is not shown as a separate item in the company's balance sheet it shall be disclosed in the notes to the accounts.

25. (1) Provisions for liabilities and charges may not exceed in amount the sums which are reasonably necessary.

(2) Particulars shall be given of each provision included in the item "other provisions" in the company's balance sheet in any case where the amount of that provision is material.

Alternative accounting rules

26. (1) Subject to paragraphs 28, 29 and 30 of this Schedule, the amounts to be included in respect of assets of any description mentioned in paragraph 27 of this Schedule shall be determined on any basis mentioned in that paragraph.

(2) References in paragraphs 27 to 30 of this Schedule to "the depreciation rules" are to the rules embodied in paragraphs 16, 17, 18, 20, 21 and 24 of this Schedule.

27. (1) Tangible fixed assets may be included at a market value determined as at the date of their last valuation.

(2) Investments of any description falling to be included under either of the balance sheet formats contained in Part I of this Schedule may be included either -

(*a*) at a market value determined as at the date of their last valuation; or

(*b*) at a value determined on any basis which appears to the directors to be appropriate in the circumstances of the company,

but in the latter case particulars of the method of valuation, etc., adopted and of the reasons for adopting it shall be disclosed in the notes to the accounts.

28. (1) Where the value of any asset of a company is determined on the basis mentioned in paragraph 27 of this Schedule that value shall be the starting point for determining the amount to be included in respect of that asset in the company's individual accounts, instead of its purchase price or production cost or any value previously so determined for that asset; and the depreciation rules shall apply accordingly in relation to any such asset with the substitution for any reference to its purchase price or production cost by a reference to the value most recently determined for that asset on any basis mentioned in paragraph 27 of this Schedule.

(2) The amount of any provision for depreciation required in the case of any fixed asset as it applies by virtue of sub-paragraph (1) of this paragraph is referred to in sub-paragraph (3) of this paragraph as the adjusted amount, and the amount of any provision which would be required in respect of that asset according to the historical cost accounting rules is referred to as the historical cost amount.

(3) Where sub-paragraph (1) of this paragraph applies in the case of any fixed asset, the amount of any provision for depreciation in respect of that asset -

(*a*) included in any item shown in the profit and loss account in respect of amounts written off against the assets of the description in question; or

(*b*) taken into account in stating any item so shown which is required by the explanatory notes in the profit and loss account formats contained in Part I of this Schedule to be stated after taking into account any necessary provisions for depreciation or diminution in the value of assets included under it,

may be the historical cost amount instead of the adjusted amount, provided that the amount of any difference between the two is accounted for in the profit and loss account and disclosed separately therein or in the notes to the accounts.

29. (1) This paragraph applies where the amounts to be included in respect of assets covered by any items shown in a company's individual accounts have been determined on any basis mentioned in paragraph 27 of this Schedule.

(2) The items affected and the basis of valuation adopted in determining the amounts of the assets in question in the case of each of such items shall be disclosed in the notes to the accounts.

(3) In the case of each balance sheet item which is affected -

(*a*) the comparable amounts determined according to the historical cost accounting rules; or
(*b*) the differences between those amounts and the corresponding amounts actually shown in the balance sheet in respect of that item,

shall be shown separately in the balance sheet or in the notes to the accounts.

(4) In sub-paragraph (3) of this paragraph, references in relation to any item to the comparable amounts determined as mentioned thereto are references to-

(*a*) the aggregate amount which would be required to be shown in respect of that item if the amounts to be included in respect of all the assets covered by that item were determined according to the historical cost accounting rules; and
(*b*) the aggregate amount of the cumulative provisions for depreciation or diminution in value which would be permitted or required in determining those amounts according to those rules.

30. (1) With respect to any determination of the value of an asset of a company on any basis mentioned in paragraph 27 of this Schedule the amount of any profit or loss arising from that determination shall be credited or, as the case may be, debited to a separate reserve to be called “the revaluation reserve”, after allowing, where appropriate, for any provisions for depreciation or diminution in value made otherwise than by reference to the value so determined and for any adjustments of any such provisions made in the light of that determination.

(2) The amount of the revaluation reserve shall be shown in the company’s balance sheet under a separate sub-heading in the position given for the item “revaluation reserve” in Format 1 or 2 of the balance sheet formats contained in this Schedule, but need not be shown under that name.

(3) The revaluation reserve shall be reduced to the extent that the amounts standing to the credit of the reserve are in the opinion of the directors of the company no longer necessary for the purpose of the accounting policies adopted by the company; but an amount may only be transferred from that reserve to the profit and loss account if -

(*a*) the amount in question was previously charged to that account; or

(*b*) it represents realised profit.

(4) Any amounts transferred from the revaluation reserve to the profit and loss account in accordance with the provisions of sub-paragraph (3) of this paragraph shall be shown separately in the profit and loss account.

(5) Notwithstanding the provisions of sub-paragraph (3) of this paragraph the balance standing to the credit of the revaluation reserve may be capitalised in whole or in part at any time.

(6) The treatment for taxation purpose of amounts credited or debited to the revaluation reserve shall be disclosed in the notes to the accounts.

PART III - THE NOTES TO THE ACCOUNTS

31. Any information required in the case of any company by the provisions of this paragraph shall, if not given in the balance sheet or the profit and loss account, be given by way of the notes to the accounts. The information in respect of the following matters shall be provided as a minimum -

(*a*) The valuation methods applied to the various items in the individual accounts, and the methods employed in calculating the provisions for depreciation and diminution in value. For items included in the individual accounts which are or were originally expressed in foreign currency, the bases of translation used to express them in local currency shall be disclosed;

(*b*) The number and the nominal value of the shares subscribed during the accounting period within the limits of the authorised capital;

(*c*) Where there is more than one class of shares, the number and the nominal value for each class, in respect of both the authorised and the issued shares;

(*d*) The existence of any participation certificates, convertible debentures or similar securities or rights, with an indication of their number and the rights they confer;

(*e*) Information concerning the acquisition by a company of its own shares, either itself or through a person acting in his own name but on the company's behalf, relating to -

(i) the reasons for acquisitions made during the accounting period;

(ii) the number and nominal value of the shares acquired and disposed of during the accounting period and the proportion of the issued share capital which they represent;

(iii) in the case of acquisition or disposal for a value, the consideration for the shares;

(iv) the number and nominal value of all the shares acquired and held by the company and the proportion of the issued share capital which they represent;

(*f*) The name, registered office and the type of each of the partnerships of which the company is a member with unlimited liability; provided that this information may be omitted if it is not material;

(*g*) Information in respect of each item which is or would but for subparagraph (4) (*b*) of paragraph 3 of this Schedule be shown under the general item "fixed assets" in the company's balance sheet, relating to -

(i) the amount of the purchase price or production cost, leaving out therefrom the depreciation or diminution in value in respect of that item, as at the date of the beginning of the accounting period and as at the balance sheet date respectively;

(ii) the effect on any amount shown in the balance sheet in respect of that item of -

- any revision of the amount in respect of any assets included under that item made during that period,

- acquisitions during that period of any assets,

- disposals during that period of any assets, and

- any transfers of assets of the company to and from that item during that period;

(*h*) In respect of each item within indent (*g*) of this paragraph -

(i) the cumulative amount of provisions for depreciation or diminution in the value of assets included under that item as at each date mentioned in indent (*g*) (i) of this paragraph;

(ii) the amount of any such provisions made in respect of the accounting period;

(iii) the amount of any adjustments made in respect of any such provisions during the period in consequence of the disposal of any assets; and

(iv) the amount of any other adjustments made in respect of any such provisions during the period;

(*i*) The information required to be disclosed by virtue of indents (*g*) and (*h*) of this paragraph shall also be provided in the case of "Formation Expenses" where this item is shown separately from "Fixed Assets" in the balance sheet;

(*j*) Amounts owed by the company and becoming due and payable after more than five years as well as the company's entire debts covered by valuable security furnished by the company with an indication of the nature and form of the security. This information shall be disclosed separately for each creditor's item, as provided for in the formats described in Part I of this Schedule;

(*k*) The total amount of any financial commitments that are not included in the balance sheet, in so far as this information is of assistance in assessing the financial position. Any commitments concerning pensions and group undertakings shall be disclosed separately;

(*l*) The turnover within the meaning of paragraph 8 of this Schedule, broken down by categories of activity and into geographical market in so far as, taking account of the manner in which the sale of products and the provision of services falling within the company's ordinary activities are organised, these categories and markets differ substantially from one another.

(*m*) The average number of persons employed during the accounting period, broken down by categories and, if they are not disclosed separately in the profit and loss account, the staff costs relating to the accounting period broken down as otherwise required by Formats 2 and 4 of the profit and loss account;

(*n*) The difference between the tax charged for the accounting period and for earlier accounting periods and the amount of tax payable in respect of those periods, provided that this difference is material for purposes of future taxation. This amount may also be disclosed in the balance sheet as a cumulative amount under a separate item with an appropriate heading;

(*o*) (i) The aggregate amount of the emoluments granted in respect of the accounting period to the directors of a company for their services as directors of that company or for their services as directors of any of its subsidiary undertakings, while acting as directors of that company; and

(ii) The aggregate amount of any other emoluments granted in respect of the accounting period to the directors of a company for their services in connection with the management of the affairs of the company or any of its subsidiary undertakings, while acting as directors of that company; and shown separately from the aggregate amount of emoluments referred to in item (i) above; and

(iii) The fact that the company has during the accounting period purchased or maintained any such insurance as is referred to in paragraph (2) of regulation 62 and the aggregate amount of premiums paid in respect thereof.

In this indent emoluments shall include the remuneration for the services of the directors referred to herein and all fees, percentages, gifts, compensation for loss of office and other similar payments; as well as any commitments arising or entered into in respect of retirement pensions, superannuation allowances, gratuities or other similar commitments in favour of former directors of the company referred to herein.

The commitments arising or entered into in respect of retirement pensions, superannuation allowances, gratuities or other similar commitments in favour of former directors of the company shall be shown separately from the other emoluments.

(*p*) The amount of advances and credits granted to directors of a company with indications of the interest rates, main conditions and any amounts repaid; as well as commitments entered into on their behalf by way of guarantees of any kind. The said commitments shall be shown separately;

(*q*) The name and registered office of the undertaking which draws up the consolidated accounts of the largest body of undertakings of which the company forms part as a subsidiary undertaking;

(*r*) The name and the registered office of the undertaking which draws up the consolidated accounts of the smallest body of undertakings of which the company forms part as a subsidiary undertaking; and

(*s*) Where the parent companies referred to in indents (*q*) and (*r*) of this paragraph are not registered in Malta the place where copies of the consolidated accounts referred to in these indents may be obtained, provided that they are available to the public.

32. (1) If at the end of its accounting period, the company has one or more subsidiary undertakings or participating interests in other undertakings the following information shall, where applicable, be given with respect to each such undertaking -

(*a*) the kind, name and registered or principal office of each undertaking;

(*b*) in relation to the shares of each class of each undertaking held by the company, the identity of each class and the proportion of the nominal value of the issued shares of that class represented by the shares held as at the end of the undertaking's relevant accounting period; and

(*c*) the aggregate amount of the capital and reserves of each undertaking as at the end of its relevant accounting period, and its profit or loss for that period.

(2) For the purposes of sub-paragraph (1) of this paragraph the relevant accounting period is -

(*a*) if the accounting period of the undertaking ends with that of the company giving the information in its notes to the accounts, that accounting period; and

(*b*) if not, the undertakings accounting period ending last before the end of the accounting period of the company giving that information.

(3) The provisions of sub-paragraph (1) of this paragraph are subject to the exceptions and other provisions contained in paragraphs 33 and 34 of this Schedule.

33. (1) The information otherwise required by sub-paragraph (1) (*c*) of paragraph 32 of this Schedule need not be given in respect of a subsidiary undertaking of a company if either -

(*a*) the company is exempt from the requirement to prepare consolidated accounts; or

(*b*) the company prepares consolidated accounts and -

(i) the accounts of the subsidiary undertaking are included in the consolidated accounts, or

(ii) the investment of the company in the shares of the subsidiary undertaking is included in the consolidated accounts, or in the

notes of the consolidated accounts, by way of the equity method of accounting.

(2) The information otherwise required by sub-paragraph (1) (*c*) of paragraph 32 of this Schedule need not be given in respect of another undertaking in which the company holds shares if the company's investment in those shares is included in the individual accounts, or in the notes to the accounts, by way of the equity method of accounting.

(3) The information otherwise required by sub-paragraph (1) (*c*) of paragraph 32 of this Schedule need not be given in respect of any undertaking if -

(*a*) the undertaking is not required by any provision of these Regulations to deliver a copy of its balance sheet for its relevant accounting period mentioned in paragraph 32 of this Schedule and does not otherwise publish that balance sheet in Malta or elsewhere; and

(*b*) the shares held by the company, either directly or indirectly, in that undertaking amount to less than one half in nominal value of the undertaking's issued share capital.

(4) Information otherwise required by sub-paragraph (1) of paragraph 32 of this Schedule need not be given if it is not material.

(5) References in this paragraph and in paragraph 32 of this Schedule to shares of undertakings shall include references to beneficial interests in undertakings where the capital of such undertakings is not divided into shares.

34. (1) The information referred to in paragraphs 32 and 33 of this Schedule may be disclosed in a separate statement which is to be filed with the Registrar together with the individual accounts of the company in accordance with Regulation 77 of these Regulations.

(2) Where the information referred to in sub-paragraph (1) of this paragraph is disclosed in a separate statement this fact shall be disclosed in the notes to the accounts.

(3) The information referred to in indent (1) of paragraph 31 and in paragraphs 32 and 33 of this Schedule may be omitted when it appears to the directors that their nature is such that they would be seriously prejudicial to any of the undertakings affected by these provisions and the Registrar agrees that the information need not be disclosed.

(4) Where any information is omitted from the notes to the accounts by virtue of the provisions of sub-paragraph (3) of this paragraph that fact shall be disclosed in the notes to the accounts.

35. (1) Particulars shall be given in the notes to the accounts of any charge on the assets of the company to secure the liabilities of any other person including, where practicable, the amount secured.

(2) The following information shall be given with respect to any other contingent liability not provided for other than where the possibility of a loss is judged by the directors of the company to be remote -

(*a*) the amount or estimated amount of that liability;
(*b*) its legal nature; and
(*c*) whether any valuable security has been provided by the company in connection with that liability and if so, what valuable security has been so provided.

(3) There shall be stated, where practicable -
(*a*) the aggregate amount or estimated amount of contracts for capital expenditure, so far as not provided for; and
(*b*) the aggregate amount or estimated amount of capital expenditure authorised by the directors which has not been contracted for.

(4) Commitments within any of the preceding sub-paragraphs of this paragraph undertaken on behalf of or for the benefit of a group undertaking shall be stated separately from the other commitments within that sub-paragraph.

36. (1) Where any amount is transferred -

(*a*) to or from any reserves; or
(*b*) to any provision for liabilities or charges; or
(*c*) from any provision for liabilities and charges otherwise than for the purpose for which the provision was established,

and the reserves or provisions are shown as separate items in the company's balance sheet or in the notes to the accounts, the information mentioned in sub-paragraph (2) of this paragraph shall be given in respect of the aggregate of reserves or provisions included in the same item.

(2) That information to which reference is made in sub-paragraph (1) of this paragraph is -

(*a*) the amount of the reserves or provisions as at the date of the beginning of the accounting period and as at the balance sheet date respectively;
(*b*) any amounts transferred to or from the reserves or provisions during that period; and
(*c*) the source and application respectively of any amounts so transferred.

PART IV - TRANSITIONAL ARRANGEMENT

37. (1) If, when individual accounts are drawn up in accordance with the provisions of this Schedule for the first time, the purchase price or production cost of a fixed asset cannot be determined without undue expense or delay, the net book amount at the beginning of the accounting period may be treated as the purchase price or production cost.

(2) Any application of the sub-paragraph (1) of this paragraph shall be disclosed in the notes to the accounts.

THIRD SCHEDULE

(Regulation 68)

FORM AND CONTENT OF CONSOLIDATED ACCOUNTS

General rules

1. (1) Consolidated accounts shall comply so far as practicable with the provisions of the Second Schedule as if the undertakings included in the consolidation were a single company.

(2) In particular, without prejudice to the provisions of this Schedule and taking account of the essential adjustments resulting from the particular characteristics of consolidated accounts as compared with individual accounts, the provisions of Part I of the Third Schedule shall apply in respect of the layout of consolidated accounts.

(3) References to shares of undertakings in this Schedule shall include references to beneficial interests in undertakings where the capital of such undertakings is not divided into shares; and reference to "relevant shares", "the issue of equities shares", "the issued share capital" and "the nominal value of the equity shares" shall be construed accordingly.

2. The consolidated balance sheet and profit and loss account shall incorporate in full the information contained in the individual accounts for the undertakings included in the consolidation, subject to the adjustments if any, as may be appropriate in accordance with generally accepted accounting principles or practice.

3. (1) Consolidated accounts shall be drawn up as at the same date as the individual accounts of the parent company.

(2) Notwithstanding the provisions of sub-paragraph (1) of this paragraph, consolidated accounts may be drawn up on a date other than the date of the individual accounts of the parent company where it appears to the directors of the parent company that it is more appropriate to do so when taking account of the balance sheet dates of the largest number and the most important of the subsidiary undertakings included in the consolidation:

Provided that such other date is within three months of the date of the individual accounts of the parent company.

(3) Where consolidated accounts are drawn up on a date other than the date of the individual accounts of the parent company in accordance with the

provisions of sub-paragraph (2) of this paragraph that fact shall be disclosed in the notes to the consolidated accounts together with the reasons therefor.

(4) Account shall be taken of material matters, or disclosure made of important events concerning the assets and liabilities, the financial position or the profit or loss of an undertaking included in a consolidation which have occurred between the undertaking's balance sheet date and the consolidated balance sheet date.

(5) Where a subsidiary undertaking's balance sheet date precedes the consolidated balance sheet date by more than three months, the undertaking shall be consolidated on the basis of interim accounts drawn up as at the consolidated balance sheet date.

4. (1) Assets and liabilities to be included in consolidated accounts shall be valued according to uniform methods.

(2) Where assets and liabilities to be included in the consolidated accounts have been valued or otherwise determined by undertakings according to accounting rules differing from those used for the consolidated accounts, the values or amounts shall be adjusted so as to accord with the rules used for the consolidated accounts.

(3) If it appears to the directors of the parent company that there are special reasons for departing from sub-paragraph (2) of this paragraph they may do so, but particulars of any such departure, the reasons for it and its effect shall be given in the notes to the consolidated accounts.

(4) The adjustments referred to in sub-paragraph (2) of this paragraph need not be made if they are not material for the purpose of giving a true and fair view.

(5) Any differences of accounting rules as between a parent company's individual accounts for an accounting period and its consolidated accounts shall be disclosed in the notes to the consolidated accounts and the reasons for any such differences given.

5. (1) The methods of consolidation shall be applied consistently from one accounting period to another.

(2) Derogations from the provisions of sub-paragraph (1) of this paragraph shall be permitted in exceptional cases. Any such derogations shall be disclosed in the notes to the consolidated accounts and the reasons for such derogations given together with the effect thereof on the assets, liabilities, financial position and profit or loss of the undertakings included in the consolidation taken as a whole.

(3) Where the composition of the undertakings included in a consolidation has changed significantly in the course of an accounting period, the consolidated accounts shall include information which makes the comparison of successive sets of consolidated accounts meaningful.

6. (1) The provisions of this Schedule shall be interpreted to give a true and fair view within the meaning of paragraph (3) of Regulation 68 of these Regulations.

(2) Amounts which in the particular context of any provision of this Schedule are not material may be disregarded for the purposes of that provision.

Elimination of group transactions

7. (1) Consolidated accounts shall show the assets, liabilities, financial positions and profits or losses of the undertakings included in a consolidation as if the latter were a single undertaking.

(2) Debts and claims between undertakings included in the consolidation, and income and expenditure relating to transactions between such undertakings, shall be eliminated in preparing the consolidated accounts.

(3) Where profits and losses resulting from transactions between undertakings included in the consolidation are included in the book value of assets, they will be eliminated in preparing the group accounts.

(4) Sub-paragraphs (2) and (3) of this paragraph need not be complied with if the amounts concerned are not material for the purposes of giving a true and fair view.

(5) The elimination required by sub-paragraph (3) of this paragraph may be effected in proportion to the group's interest in the shares of the undertakings.

Acquisition and merger accounting

8. The provisions of paragraphs 9 to 17 of this Schedule apply where an undertaking becomes a subsidiary undertaking of the parent company, which event is referred to in those provisions as an "acquisition", and references to the "undertaking acquired" shall be construed accordingly.

9. An acquisition shall be accounted for by the acquisition method of accounting unless the conditions for accounting for it as a merger are met and the merger method of accounting is adopted.

10. (1) The acquisition method of accounting is as detailed in this paragraph.

(2) The identifiable assets and liabilities of the undertaking acquired shall be included in the consolidated balance sheet at their fair values as at the date of acquisition.

In this paragraph the term "identifiable" assets or liabilities of the undertaking acquired means the assets or liabilities which are capable of being disposed of or discharged separately, without disposing of a business of the undertaking.

(3) The income and expenditure of the undertaking acquired shall be brought into the consolidated accounts only as from the date of the acquisition.

(4) There shall be set off against the acquisition cost of the interest in the shares of the undertaking held by the parent company and its subsidiary undertakings, the interest of the parent company and its subsidiary undertakings in the adjusted capital and reserves of the undertaking acquired.

For the purpose of this sub-paragraph -

"the acquisition cost" means the amount of any cash consideration and the fair value of any other consideration, together with such amount, if any, in respect of fees and other expenses of the acquisition as the company may determine, and "the adjusted capital and reserves" of the undertaking acquired means its capital and reserves at the date of the acquisition after adjusting the identifiable assets and liabilities of the undertaking to fair values as at that date.

(5) The amount resulting from the set off provided for in sub-paragraph (4) of this paragraph, if positive, shall be treated as goodwill and, if negative, as a negative consolidation difference.

(6) Goodwill shall be dealt with in accordance with the rules laid down in paragraph 19 of the Second Schedule.

11. (1) The conditions for accounting for an acquisition as a merger are -

(a) that at least ninety per cent of the nominal value of the relevant shares in the undertaking acquired is held by or on behalf of the parent company and its subsidiary undertakings;

(b) that the proportion referred to in paragraph (a) was attained pursuant to an arrangement providing for the issue of equity shares by the parent company or one or more of its subsidiary undertakings; and

(c) that the fair value of any consideration other than the issue of equity shares given exceed ten per cent of the nominal value of the equity shares issued.

(2) The reference in sub-paragraph (a) of paragraph (1) to the "relevant shares" in an undertaking acquired is to those carrying unrestricted rights to participate both in distributions and in sharing of assets by members in the event of the undertaking's winding up.

12. (1) The merger method of accounting shall be as specified in this paragraph.

(2) The assets and liabilities of the undertaking acquired shall be brought into the consolidated accounts at the figures at which they stand in the undertaking's accounts, subject to any adjustment permitted or required by this Schedule.

(3) The income and expenditure of the undertaking acquired shall be included in the consolidated accounts for the entire accounting period, including the period before the acquisition.

(4) The consolidated accounts shall show corresponding amounts relating to the previous accounting period as if the undertaking acquired had been included in the consolidation throughout that year.

(5) There shall be set off against the aggregate of -

(a) the appropriate amount in respect of shares issued by the parent company or its subsidiary undertakings in consideration for the acquisition of shares in the undertaking acquired; and

(b) the fair value of any other consideration for the acquisition of shares in the undertaking acquired, determined as at the date when those shares were acquired,

the nominal value of the issued share capital of the undertaking acquired held by the parent company and its subsidiary undertakings.

(6) The resulting amount shall be shown as an adjustment to the consolidated reserves.

13. (1) Where a group is acquired, paragraphs 10 to 12 of this Schedule apply with the adaptations set out in this paragraph.

(2) Reference to shares of the undertaking acquired shall be construed as references to shares of the parent undertaking of the group.

(3) Other references to the undertaking acquired shall be construed as references to the group; and references to the assets and liabilities, income and expenditure and capital and reserves of the undertaking acquired shall be construed as references to the assets and liabilities, income and expenditure and capital and reserves of the group after making the set-offs and other adjustments required by this Schedule in the case of consolidated accounts.

14. (1) The information detailed in this paragraph with respect to acquisitions taking place in the accounting period shall be given in the notes to the consolidated accounts.

(2) There shall be stated -

(a) the name of the undertaking acquired or, where a group was acquired, the name of the parent company of that group and the address of the registered or principal office of such undertaking, and

(b) the effective date of the acquisition for accounting purposes, and

(c) whether the acquisition has been accounted for by the acquisition or the merger method of accounting,

and in relation to an acquisition which significantly affects the figures shown in the consolidated accounts, further information shall be given in accordance with sub-paragraph (3) to (7) of this paragraph.

(3) The composition and fair value of the consideration for the acquisition given by the parent company and its subsidiary undertakings shall be stated.

(4) Where the acquisition method of accounting has been adopted, the book values immediately prior to the acquisition, and the fair values at the date of acquisition, of each class of assets and liabilities of the undertaking or group acquired shall be stated in tabular form, including a statement of the amount of any goodwill or negative consolidation difference arising on the acquisition, together with an explanation of any significant adjustments made and in the case of goodwill the treatment thereof and the period of amortisation, where applicable.

(5) Where the merger method of accounting has been adopted, an explanation shall be given of any significant adjustments made in relation to the amounts of the assets and liabilities of the undertaking or group acquired, together with a statement of any resulting adjustment to the consolidated reserves, including the re-statement of the opening consolidated reserves.

(6) Where the merger method of accounting has been adopted there shall be stated details of the profit or loss of the undertaking or group acquired for the period from the beginning of the accounting period of the undertaking or, as the case may be, of the parent company of the group, up to the date of the acquisition and there shall also be stated the date on which the said accounting period began.

(7) In ascertaining for the purposes of sub-paragraphs (4), (5) and (6) of this paragraph, the profit or loss of a group, the book values and fair values of assets and liabilities of a group or the amount of the assets and liabilities of a group, there shall be made the set-offs and other adjustments required by this Schedule in the case of consolidated accounts.

15. (1) There shall also be stated in the notes to the consolidated accounts the cumulative amount of goodwill resulting from acquisitions in that and earlier accounting periods which has been written off.

(2) The figure required to be stated by sub-paragraph (1) of this paragraph shall be shown net of any goodwill attributable to subsidiary undertakings or businesses disposed of prior to the balance sheet date.

16. (1) Where during the accounting period there has been a disposal of an undertaking or group which significantly affects the figures shown in the consolidated accounts, there shall be stated in the notes to the consolidated accounts-

(a) the name of that undertaking or, as the case may be, of the parent company of that group, and

(b) the extent to which the profit or loss shown in the consolidated accounts is attributable to profit or loss of that undertaking or group.

17. The information required by paragraphs 14, 15 or 16 of this Schedule need not be disclosed with respect to an undertaking which -

(a) is established under the law of a country outside Malta, or

(b) carries on business outside Malta,

if in the opinion of the directors of the parent company the disclosure would be seriously prejudicial to the business of that undertaking or to the business of the parent company or any of its subsidiary undertakings, and the Registrar agrees that the information should not be disclosed.

Minority interests

18. (1) The amount attributable to shares in subsidiary undertakings included in the consolidation held by persons other than the undertakings included in the consolidation shall be shown in the consolidated balance sheet as a separate item with an appropriate heading.

(2) The amount of any profit or loss on ordinary activities attributable to shares in subsidiary undertakings included in the consolidation held by persons other than the undertakings included in the consolidation shall be shown in the consolidated profit and loss account as a separate item with an appropriate heading.

(3) The amount of any profit or loss on extraordinary activities attributable to shares in subsidiary undertakings included in the consolidation held by persons other than the undertaking included in the consolidation shall be shown in the consolidated profit and loss account as a separate item with an appropriate heading.

Interest in subsidiary undertakings excluded from consolidation

19. The interest of the group in subsidiary undertakings excluded from consolidation under paragraph (5) of regulation 67 of these Regulations and the amount of profit or loss attributable to such an interest, shall be shown in the consolidated balance sheet and in the consolidated profit and loss account respectively by the equity method of accounting.

Joint ventures

20. Where an undertaking included in the consolidation manages another undertaking jointly with one or more undertakings not included in the consolidation, that other undertaking ("the joint venture") may, if it is not a subsidiary undertaking of the parent company and has not been treated as an associated undertaking within the terms of paragraph 21 of this Schedule be included in the consolidated accounts in proportion to the rights in its capital held by the undertaking included in the consolidation (referred to as : proportional consolidation).

Associated undertakings

21. (1) Where an undertaking included in a consolidation exercises a significant influence over the operating and financial policy of an undertaking not included in the consolidation (an associated undertaking) in which it holds a participating interest, that participating interest shall be shown in the consolidated balance sheet as a separate item with an appropriate heading.

(2) An undertaking shall be presumed to exercise a significant influence over another undertaking where it has twenty per cent or more of the shareholders' or members' voting rights in the undertaking.

(3) The provisions of the Sixth Schedule to these Regulations shall be taken into account in determining for the purposes of this paragraph, whether an undertaking holds twenty per cent or more of the voting rights in another undertaking.

(4) The proportion of the profit or loss of the associated undertakings attributable to such participating interests shall be shown in the consolidated profit and loss account as a separate item under an appropriate heading.

(5) The elimination referred to in sub-paragraph (2) of paragraph 7 of this Schedule shall be effected in so far as the facts are known or can be ascertained. Such elimination need not be effected however, where the amounts concerned are not material for the purposes of providing a true and fair view.

(6) When the provisions of this paragraph are applied for the first time to a participating interest covered by sub-paragraph (1) of this paragraph that participating interest shall be shown in the consolidated balance sheet at its book value calculated in accordance with the valuation rules laid down in the Second Schedule to these Regulations. The difference between that value and the amount corresponding to the proportion of capital and reserves represented by that participating interest shall be disclosed separately in the consolidated balance sheet or in the notes to the consolidated accounts. That difference may be calculated as at the date at which that method is used for the first time or as set out in sub-paragraph (7) of this paragraph.

(7) The difference referred to in sub-paragraph (6) of this paragraph may be calculated as at the date of acquisition of the shares or, where they were acquired in two or more stages, as at the date on which the undertaking became an associated undertaking.

(8) Where an associated undertaking's assets or liabilities have been valued by methods other than those used for the consolidation, they shall for the purpose of calculating the difference referred to in sub-paragraph (6) of this paragraph, be revalued by the methods used for consolidation:

Provided that the directors of a company to which regulation 67 of these Regulations applies may decide not to carry out such revaluation in which case that fact shall be disclosed in the notes to the consolidated accounts.

(9) The book value referred to in sub-paragraph (6) of this paragraph above shall be increased or reduced by the amount of any variation which has

taken place during the accounting period in the proportion of the associated undertaking's capital and reserves represented by that participating interest; moreover it shall be reduced by the amount of the dividends relating to that participating interest.

(10) In so far as the positive difference referred to in sub-paragraph (6) of this paragraph cannot be related to any category of assets or liabilities it shall be dealt with in accordance with the rules laid down for the item "goodwill" within the Second Schedule to these Regulations. Such a positive difference may, however, if the directors of the companies to which regulation 67 of these Regulations applies so determine, be immediately and clearly deducted from reserves.

(11) Where an associated undertaking draws up consolidated accounts, the provisions of this paragraph shall apply to the capital and reserves shown in such consolidated accounts.

(12) The provisions of this paragraph need not be applied where the participating interest in the capital of the associated undertaking is not material for the purposes of giving a true and fair view.

Information by way of notes to the consolidated accounts

22. In addition to the information required under any other provisions of this Schedule, the notes to the consolidated accounts shall, at least, set out information in respect of the following matters -

(1) The valuation methods applied to the various items in the consolidated accounts, and the methods employed in calculating the value adjustments. For items included in the consolidated accounts which are or were originally expressed in foreign currency the basis of conversion used to express them in the currency in which the consolidated accounts are drawn up shall be disclosed.

(2) (a) The names and addresses of the registered or principal offices of the undertakings included in the consolidation; the proportion of the capital held in undertakings included in the consolidation, other than the parent undertaking, by the undertakings included in the consolidation; which of the conditions referred to in the definition of parent company, in paragraph (2) of regulation 3 of these Regulations, has formed the basis on which the consolidation has been carried out.

The latter disclosure may, however, be omitted where consolidation has been carried out in the case of a subsidiary undertaking in which the parent company has a majority of the

shareholders' or members' voting rights and where the proportion of the capital and the proportion of the voting rights held are the same.

(b) The information set out in paragraph (a) of this sub-paragraph in so far as it is applicable shall be given in respect of undertakings excluded from a consolidation pursuant to the provisions of paragraphs (3) to (7) of regulation 67 and an explanation must be given for the exclusion of the undertakings referred to in paragraph (5) of that regulation.

(3) (a) The names and registered or principal offices of undertakings associated with an undertaking included in the consolidation as described in paragraph 21 of this Schedule and the proportion of their capital held by undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings.

(b) The information set out in paragraph (a) of this sub-paragraph shall be given in respect of the associated undertakings referred to in sub-paragraph (12) of paragraph 21, of this Schedule together with the reasons for applying that provision.

(4) The names and registered or principal offices of undertakings proportionally consolidated pursuant to paragraph 20, the factors on which joint management is based, and the proportion of their capital held by the undertakings of this Schedule included in the consolidation or by persons acting in their own names but on behalf of those undertakings.

(5) The names and registered or principal office of each of the undertakings, other than those referred to in sub-paragraphs (2), (3) and (4) of paragraph, in which undertakings included in the consolidation and those excluded pursuant to paragraph (5) of regulation 67, either themselves or through persons acting in their own names but on behalf of those undertakings, hold at least twenty per cent of the capital showing the proportion of the capital held, the amount of the capital and reserves, and the profit or loss for the latest accounting period of the undertaking concerned for which accounts have been adopted. Where this information is considered by the directors of a company to which regulation 67 of these Regulations applies not to be material for the purposes of giving a true and fair view it may be omitted. The information concerning capital and reserves and the profit or loss may also be omitted where the undertaking concerned does not publish its balance sheet and where less than fifty per cent of its capital is held, directly or indirectly, by the above mentioned undertakings.

(6) The average number of persons employed during the accounting period by undertakings to which paragraph 20 of this Schedule has been applied shall be disclosed separately.

(7) The amount of the emoluments paid in respect of the accounting period to the members of the board of directors of the parent company by reason of their responsibilities in the parent company and its subsidiary undertakings, and any commitments arising or entered into under the same conditions in respect of retirement pensions for former members of those bodies, with an indication of the total for each category.

(8) The amount of advances and credits granted to the board of directors of the parent company by that undertaking or by one of its subsidiary undertakings, with indications of the interest rates, main conditions and any amounts repaid, as well as commitments entered into on their behalf by way of guarantee of any kind with an indication of the total for each category.

(9) Sub-paragraphs (7) and (8) of this paragraph shall apply to the exclusion of the corresponding provisions of the Second Schedule to these Regulations.

23. (1) The information contained in sub-paragraphs (2), (3) and (4) of paragraph 22 of this Schedule may be disclosed in a separate statement which is to be filed with the Registrar together with the annual accounts of the parent company in accordance with Regulation 79 of these Regulations.

(2) Where this information is set out in a separate statement as provided in sub-paragraph (1) of this paragraph this fact shall be disclosed in the notes to the consolidated accounts.

24. (1) The information contained in sub-paragraphs (2), (3) and (4) of paragraph 22 of this Schedule may be omitted when it appears to the directors of a company to which Regulation 67 of these Regulations applies that the nature of the information is such that it would be seriously prejudicial to any of the undertakings affected by these provisions, and the Registrar agrees that the information should not be disclosed.

(2) Where any information is omitted from the notes to the consolidated accounts by virtue of the provisions of previous sub-paragraph (1) of this paragraph this fact shall be disclosed in the said notes to the consolidated accounts.

FOURTH SCHEDULE

(Regulation 73)

CONTENTS OF DIRECTORS' REPORT

1. The directors' report shall contain -

(a) particulars of any important events affecting the company or any of its subsidiary undertakings which have occurred since the end of the accounting period;

(b) an indication of likely future developments in the business of the company and of its subsidiary undertakings;

(c) an indication of the activities, if any, of the company and of its subsidiary undertakings in the field of research and development; and

(d) the amount, if any, which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to reserves.

2. The directors' report shall disclose the information specified in paragraph 3 of this Schedule where in an accounting period shares in a company -

(a) are purchased by the company or are acquired by it by forfeiture or surrender or the company otherwise acquires its own shares; or

(b) are acquired by another person in circumstances where the acquisition is by company's nominee, or by another with the company financial assistance, the company itself having a beneficial interest; or

(c) are made subject to pledge or other privileges, to a hypothec or to any other charge in favour of the company.

3. The information required to be disclosed in the directors' report in accordance with the provisions of paragraph 2 of this Schedule shall consist of the following:

(a) the reasons for such transactions or occurrences;

(b) the number and nominal value of the shares so purchased, the aggregate amount of the consideration paid by the company for such shares and the reasons for their purchase;

(c) the number and nominal value of the shares so acquired by the company or acquired by another person in such circumstances and so charged respectively during the accounting period;

(d) the maximum number and nominal value of shares which, having been so acquired by the company, acquired by another person in such circumstances or so charged, whether or not during that period, are held at any time by the company or that other person during that period;

(e) the number and nominal value of the shares so acquired by the company, acquired by another person in such circumstances or so charged, whether or not during that period, which are disposed of by the company or cancelled by the company during that period;

(f) where the number and nominal value of the shares of any particular description are stated in pursuance of any of the preceding subparagraphs, the percentage of the called-up share capital which shares of that description represent;

(g) where any of the shares have been so charged the amount of the charge in each case; and

(h) where any of the shares have been disposed of by the company for the person who acquired them in such circumstances for money or money's worth, the amount or value of the consideration in each case.

4. The director's report shall also state the number and nominal value of all the parent company's shares held by that company itself or by subsidiary undertakings of that company:

Provided that the particulars referred to in this paragraph need not be shown in the directors' report if they are included in the notes to the accounts.

FIFTH SCHEDULE

(Regulation 80)

Company No. …….

CONTENTS AND FORM OF ANNUAL RETURN

ANNUAL RETURN of ……

……

……(name of company)

Date to which this return is made up*:……

(being the anniversary of the company's date of registration)

---

1. ***Address***

(*Address of the registered office of the company*)

This form must be completed in BOLD TYPED FORM

2. *Summary of Share Capital and Debentures*

All Maltese liri amounts are to be preceded by the symbol Lm. Symbols used for other currencies are to be indicated (where applicable).

Currency	Symbol
…….	…….
…….	…….
…….	…….
…….	…….

(a) Nominal Share Capital

Nominal Share Capital Lm……divided into:

(Insert number and class)

……	……..	shares of …….. each
…….	…….	shares of ……. each
…….	…….	shares of ……. each
…….	…….	shares of ……. each

(b) ***Issued Share Capital and Debentures***

	Number	Class
Number of shares of each class taken up to the date of this return (which number must agree with the total shown on the list as held by existing members).	……	……shares
	……	……shares
	……	……shares
	……	……shares
Number of shares of each class issued as partly paid up and extent to which each such share is so paid up.	Issued as paid up to the extent of ……. per share ……. …… shares Issued as paid up to the extent of ……. per share ……. …… shares Issued as paid up to the extent of ……. per share ……. …… shares Issued as paid up to the extent of ……. per share ……. …… shares	
Number of shares of each class issued as fully paid up for a consideration other than cash.	……	……shares
	……	……shares
	……	……shares
Number of shares of each class issued as partly paid up for a consideration other than cash and extent to which each such share is so paid up.	issued as paid up to the extent of ……per share ……...shares issued as paid up to the extent of ……per share ……...shares issued as paid up to the extent of ……per share ……...shares issued as paid up to the extent of ……per share ……...shares	

	Number	Class
Total number of shares of each class forfeited.	..……	……shares
	……	……shares

Total amount paid, if any, on shares forfeited. …….. …… ……

3. *List of Past and Present Members*

List of persons holding shares or stock in the company on the date to which this return is made up, and of persons who have held shares or stock therein at any time since the date of the last return, or in the case of the first return, of the registration of the company.

Folio in register ledger containing particulars	Names Addresses (in the case of a body corporate, its registered office)	Account of Shares		Remarks
		Number of shares held by existing members at date of return *#	Particulars of shares transferred or transmitted *causa mortis* since the date of the last return, or, in the case of the first return, of the registration of the company by (a) persons who are still members and (b) persons who have ceased to be members * *	
			Number # / Date of registration of transfer	
			(a) (b)	

3. *List of Past and Present Members (cont. sheet)*

*The aggregate number of shares held by each member shall be stated, and the aggregates shall be added up so as to agree with the number of the shares stated in the Summary of Share Capital and Debentures to have been taken up.

When the shares are divided into different classes these columns should be sub-divided so that the number of each class held, transferred or transmitted *causa mortis*, may be shown separately. Where any shares have been converted into stock the amount of stock held by each member shall be shown.

** The date of registration of each transfer or transmission *causa mortis* shall be given as well as the number of shares transferred or transmitted *causa mortis* on each date. The particulars shall be placed opposite the name of the transferor and not opposite that of the transferee, but the name of the transferee may be inserted in the "Remarks" column immediately opposite the particulars of each transfer. (The word "transferor" shall mean the deceased and the word "transferee" shall mean the heir or legatee, in the case of transmission *causa mortis*).

4. *Particulars of Directors*

Particulars of the persons who are directors of the company at the date of this return.

Name (in the case of an individual, name or names and surname. In the case of a body corporate, the corporate name)	Nationality	Usual residential address (in the case of a body corporate, its registered office)

SIXTH SCHEDULE

(Regulation 3)

EXPLANATION OF EXPRESSIONS USED IN PARAGRAPH (1) OF REGULATION 3 OF THESE REGULATIONS AND PROVISIONS SUPPLEMENTARY THERETO

Voting rights in an undertaking

1. (a) References to voting rights in an undertaking are to the rights conferred on shareholders in respect of their shares or, in the case of an undertaking not having a share capital, on members, to vote at general meetings of the undertaking on all, or substantially all, matters.

(b) References to directors shall be taken to include references to persons entrusted with the administration of undertakings not having directors and references to the board of directors shall be taken to include the equivalent body in such undertakings.

2. In relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, the references to holding a majority of the voting rights in the undertaking shall be construed as references to having the right under the constitution of the undertaking to direct overall policy of the undertaking or to alter the terms of its constitution.

Rights to appoint or remove a majority of the directors

3. Reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters.

4. An undertaking shall be treated as having the right to appoint to a directorship if-

(a) a person's appointment to it follows necessarily from his appointment as director of the undertaking; or

(b) the directorship is held by the undertaking itself.

5. The right to appoint or remove which is exercisable only with the consent or concurrence of another person shall not be taken into account unless no other person has a right to appoint or, as the case may be, to remove in relation to that directorship.

Right to exercise dominant influence

6. An undertaking shall not be regarded as having the right to exercise a dominant influence over another undertaking unless it has a right to give directions with respect to the operating and financial policies of that other undertaking which its directors are obliged to comply with, whether or not those directions are for the benefit of that other undertaking.

Rights exercisable only in certain circumstances

7. Rights which are exercisable only in certain circumstances shall be taken into account only -

(a) when the circumstances have arisen, and for so long as they continue to exist; or

(b) when the circumstances are within the control of the person having the rights.

8. Rights which are normally exercisable but which are temporarily incapable of exercise shall continue to be taken into account.

Rights held by one person on behalf of another

9. Rights held by a person in a fiduciary capacity shall be treated as not held by him.

10. Rights held by a person as nominee for another shall be treated as held by the other.

11. Rights shall be regarded as held by a person as nominee for another if they are exercisable on that other's instructions or with his consent or concurrence.

Rights attached to shares held by way of security

12. Rights attached to shares held by way of security shall be treated as held by the person providing the security-

(a) where, apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with the instructions of the person providing the security; and

(b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in the interests of the person providing the security.

Rights attributed to parent undertaking

13. Rights shall be treated as held by a parent undertaking if they are held by any of its subsidiary undertakings.

Disregard of certain rights

14. The voting rights in an undertaking shall be reduced by any rights held by the undertaking itself.

SEVENTH SCHEDULE

FORMS

Form A

No. of Company ……..

MERCHANT SHIPPING (Shipping Organisations – Private Companies) REGULATIONS, 2004

Notice that a company has become a Single-Member Company

Pursuant to Regulation 8(2)

Name of Company ……...

Delivered by ……...

To the Registrar of Companies:

(a) ……...

hereby gives notice in accordance with Regulation 8 (2) of the Merchant Shipping (Shipping Organisations – Private Companies) Regulations, 2004 that with effect from……..
it has become a single member company through the acquisition of all its shares by
(b) ……. as a result of transfer inter vivos/transmission causa mortis*, and that the provisions of Regulation 8 have been complied with.

Signature ……
Director/Secretary/Representative*

Dated this …… day of …… of the year ……

This form must be completed in typed form.

(a) State company name.
(b) State name, residence and identification document number.
*** Delete as necessary.**

Form B

No. of Company ……

MERCHANT SHIPPING (Shipping Organisations – Private Companies) REGULATIONS, 2004

Notice that a company has ceased to be a Single-Member Company

Pursuant to Regulation 8(6)

Name of Company ……..

Delivered by ……

To the ***Registrar of Companies:***

(a) ……

hereby gives notice that it has ceased to be a single-member company with effect from the

……..

Signature …….
Director/Secretary/Representative*

Dated this …… day of …….. of the year ……..

This form must be completed in typed form.
(a) State company name.
*** Delete as necessary.**

B 4010

Form C

No. of Company……

MERCHANT SHIPPING (Shipping Organisations – Private Companies) REGULATIONS, 2004

Return of allotments of shares [(a)]

Pursuant to Regulation 25 (7)

Name of Company .....……
Delivered by .....……

To the ***Registrar of Companies:***

Date/s on which the shares were allotted (complete (a) or (b) as applicable
a) on ..... or
b) from ..... to .....

A. This section must be completed for allotments made for cash

Description of shares (ordinary/preference/others)			
Number of shares allotted			
Nominal value of each share and Premium (if any) on each share			
Total amount paid on each share on account of nominal value/premium			
Amount due and payable (if any) on account of nominal value/premium			

B. This section must be completed for allotments made other than for cash

Description of shares (ordinary/preference/others)			
Number of shares allotted			
Nominal value of each share and Premium (if any) on each share			
Extent to which each share is to be treated as paid up on account of nominal value/premium			
Consideration for which the shares have been allotted			

C. This section must be completed in all cases

Names and Addresses of the allottees	Number of share allotted		
	Ordinary	Preference	Others
TOTAL			

Signature .....

Director/Secretary/Representative*

Dated this ..... day of ..... of the year .....

This form must be completed in typed form.

(a) To be delivered within one month.

*** Delete as necessary.**

Form D

No. of Company …….

MERCHANT SHIPPING (Shipping Organisations – Private Companies) REGULATIONS, 2004

Notice of disclosure of financial assistance

Pursuant to Regulation 26(1)(b)

Name of Company ……

Delivered by …….

To the *Registrar of Companies:*

I hereby give notice in accordance with Regulation 26(1)(b) of the Merchant Shipping (Shipping Organisations – Private Companies) Regulations, 2004 that with effect from……..the undermentioned financial assistance for the purpose of an acquisition/subscription * of shares was made as follows:

Signature ……..

Dated this ……. day of …….. of the year …….

This form must be completed in typed form
* Delete as necessary.

Form E

Name of Company .....

MERCHANT SHIPPING (Shipping Organisations – Private Companies) REGULATIONS, 2004

Notice of redemption of preference shares

Pursuant to Regulation 31 (5)

No. of Company .....

Delivered by .....

To the ***Registrar of Companies:***

(a) .....hereby gives notice in accordance with Regulation 31 (5) of the Merchant Shipping (Shipping Organisations – Private Companies) Regulations, 2004 that (b) ..... fully paid preference shares have been redeemed and the price of redemption has been paid in full.

Names and address of holders of redeemed preference shares

Name	Address	No of shares redeemed	Class
	TOTAL		

Signature .....
Director/Secretary/Representative*

Dated this ..... day of ..... of the year .....

This form must be completed in typed form.
(a) State company name.
(b) State number of shares.
*** Delete as necessary**

Form F

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations – Private Companies) REGULATIONS, 2004

Notice of transfer or transmission of shares

Pursuant to Regulation 36 (3)

Name of Company .....

Delivered by .....

To the ***Registrar of Companies:***

(a) .....hereby gives notice in accordance with Regulation 36 (3) of the Merchant Shipping (Shipping Organisations – Private Companies) Regulations, 2004 that (b) ..... shares having a nominal value of ..... per share have been transferred/transmitted causa mortis* as indicated hereunder.

Name and Address of transferor / deceased*	Name and Address of transferee/ person entitled to shares transmitted	No. of shares transferred / transmitted	Type and Class of shares

The above transfer/transmission causa mortis* of shares has been registered with the company/in the name of the person entitled to be the registered holder *on the .....

Signature .....
Director/Secretary/Representative*

Dated this ..... day of ..... of the year .....

This form must be completed in typed form.
(a) State company name.
(b) State number of shares.
*** Delete as necessary.***

Form G

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations – Private Companies) REGULATIONS, 2004

Notice of a pledge of securities

Pursuant to Regulation 37 (2)

Name of Company .....

Delivered by .....

To the ***Registrar of Companies:***

I hereby give notice in accordance with Regulation 37(2) of the Merchant Shipping (Shipping Organisations - Private Companies) Regulations, 2004 that with effect from ..... the undermentioned securities have been pledged as follows:

Pledgor (Name and Address)	Pledgee (Name and Address)	Securities		
		Number	Type	Nominal Value

Signature .....

Pledgor/Pledgee*

Dated this ..... day of ..... of the year .....

This form must be completed in typed form.

*** Delete as necessary.**

Form H

No of Company .....

MERCHANT SHIPPING (Shipping Organisations – Private Companies) REGULATIONS, 2004

Notice of termination of a pledge of securities

Pursuant to Regulation 37(13)

Name of Company .....

Delivered by .....

To the *Registrar of Companies:*

I hereby give notice in accordance with Regulation 37 (13) of the Merchant Shipping (Shipping Organisations – Private Companies) Regulations, 2004 that with effect from .....the pledge of the undermentioned securities has been terminated.

Pledgor (Name & Address)	**Pledgee (Name & Address)**	**Securities**		
		Number	**Type**	**Nominal Value**

Signature .....
Pledgee

Dated this .....day of .....of the year.....

This form must be completed in typed form.

Form I

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations – Private Companies) REGULATIONS, 2004

Notification of changes among directors or in the representation of a company

Pursuant to Regulation 60

Name of Company .....

Delivered by .....

To the *Registrar of Companies*:

(a) .....

hereby gives notice in accordance with Regulation 60 of the Merchant Shipping (Shipping Organisations – Private Companies) Regulations, 2004 that:-

……..

……

……

Effective Date of Change .....

Signature .....

*Director/Secretary/Representative**

Dated this ..... day of .....of the year.....

This form must be completed in typed form.
(a) State company name.
* Delete as necessary.

Form J

No. of Company …….

MERCHANT SHIPPING (Shipping Organisations – Private Companies) REGULATIONS, 2004

Notice of accounting periods

Pursuant to Regulation 65(2)

Name of Company …….

Delivered by ……

To the *Registrar of Companies:*

(a) …….

hereby gives notice in accordance with paragraph (2) of Regulation 65 of the Merchant Shipping (Shipping Organisations – Private Companies) Regulations, 2004 that the accounting periods of the company shall be from …….to ……..

Date of resolution of directors …….

Signature ……..
Director/Secretary/Representative*

Dated this ……day of……..of the year……..

This form must be completed in typed form.
(a) State company name.
*** Delete as necessary.**

Form K

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations – Private Companies) REGULATIONS, 2004

Notice to the Registrar to exercise his power to appoint an auditor.

Pursuant to Regulation 83 (5)

Name of Company .....…….

Delivered by .....

To the Registrar of Companies:

(a) .....……..
hereby gives notice in accordance with Regulation 83(5) of the Merchant Shipping (Shipping Organisations – Private Companies) Regulations, 2004 that the power of the Registrar of Companies to apply to the court for the appointment of an auditor in terms of Regulation 84(5) of the Merchant Shipping (Shipping Organisations – Private Companies) Regulations, 2004 has now become exercisable.

Signature.....

Director/Secretary/Representative*

Dated this .....day of ..... of the year.....

This form must be completed in typed form.

a) State company name.
* Delete as necessary.

Form L

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations – Private Companies) REGULATIONS, 2004

Notice of the removal of an auditor

Pursuant to Regulation 89 (2)

Name of Company .....……

Delivered by .....

To the *Registrar of Companies*:

(a) .....

hereby gives notice in accordance with Regulation 90 (2) of the Merchant Shipping (Shipping Organisations – Private Companies) Regulations, 2004 that ..... has been removed from auditor of the company with effect from .....

Signature .....
*Director/Secretary/Representative**

Dated this .....day of .....of the year.....

This form must be completed in typed form.

a) State partnership or company name.
* Delete as necessary.

Form M

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations – Private Companies) REGULATIONS, 2004

Notification by company of the resignation of an auditor.

Pursuant to Regulation 91(3)

Name of Company .....……..

.....

Delivered by .....

To the *Registrar of Companies:*

(a).....…….

hereby gives notice of the resignation of .....…… from the post of auditor of the company and is hereby submitting a certified true copy of the notice of resignation in accordance with Regulation 91 (3) of the Merchant Shipping (Shipping Organisations – Private Companies) Regulations, 2004.

Signature .....……

Director/Secretary/Represetnative*

Dated this .....day of .....of the year.....

This form must be completed in typed form.

a) State partnership/company name.
* Delete as necessary.

Form N

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations – Private Companies) REGULATIONS, 2004

Notice of appointment of liquidator by the court

Pursuant to Regulation 107(4)

Name of Company .....

Delivered by .....

To the *Registrar of Companies:*

I hereby give notice that I have been appointed by the court as liquidator of

(a) .....

with effect from .....

Signature .....
Liquidator

Dated this .....day of .....of the year.....

This form must be completed in typed form.
(a) State company name.

Form O

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations – Private Companies) REGULATIONS, 2004

Notification of bank account by liquidator

Pursuant to Regulation 113(1)

Name of Company ……

Delivered by ……..

To the Registrar of Companies:

I .....being the Liquidator of

(a) ..... hereby give notice in accordance with Regulation 113 (1) of the Merchant Shipping (Shipping Organisations – Private Companies) Regulations, 2004 that I shall be using Bank

Account Number (b) .....
held with

(c) .....for the purposes of receiving and making payments on behalf of the said company.

Signature .....

Liquidator

Dated this .....day of .....of the year…...
This form must be completed in typed form.

B 4024

Form P

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations – Private Companies) REGULATIONS, 2004

Notice of appointment of liquidator

Pursuant to Regulation 126

Name of Company .....

Delivered by .....

To the *Registrar of Companies:*

I/We hereby give notice in accordance with Regulation 126 of the Merchant Shipping (Shipping Organisations – Private Companies) Regulations, 2004 that I/we have been appointed liquidator/s of the above-named company.

Name	Address
.....	.....
.....	.....
.....	.....
.....	.....

Date of appointment .....

Signature .....
Liquidator/s (a)

Dated this .....day of .....of the year .....

This form must be completed in typed form.
(a) To be signed by each liquidator, if more than one.

Form Q

No. of Company ……

MERCHANT SHIPPING (Shipping Organisations – Private Companies) REGULATIONS, 2004

Notice of completion of liquidation

Pursuant to Regulation 132(3)

Name of Company ……

Delivered by ……

To the *Registrar of Companies:*

I …… being the liquidator of (a)
……

hereby give notice that the liquidation of the said company has been completed on ……

of ……. of the year ……

Signature ……
Liquidator

Dated this …….. day of …… of the year …….

This form must be completed in typed form.

(a) State company name.

Form R

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations – Private Companies) REGULATIONS, 2004

Declaration of seizure of ship

Pursuant to Regulation 140

Name of Company.....

Delivered by .....

To the Registrar of Companies:

I/We.....being the director/s [(b)] of [(c)]..... hereby declare that

(a) the company is the owner of the ship …….which is its sole asset;
(b) the ship has been arrested by the company's creditors in the port of ……;
(c) the value of the ship appears to us to be less than the total value of claims against the company.

By this notice we therefore notify that no liquidation proceedings will be pursued in terms of the Regulations and the creditors shall pursue their claims in the court of ……..

Note
The company rights are hereby preserved and further notice will be filed in the Registry when the ship is sold and proceeds distributed which will result in the Company being struck off the Register.

Signature .....
Director/s

Dated this .....day of .....of the year

This form must be completed in typed form.

a) This declaration is to be delivered together with the notice of dissolution.
b) In the case of a company having more than two directors, this declaration is to be submitted and signed by the majority of the directors.
c) State company name.

Form S

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations – Private Companies) REGULATIONS, 2004

Notice of dissolution and consequential winding up

Pursuant to Regulation 152

Name of Company .....

Delivered by .....

_____

To the *Registrar of Companies:*

(a).....

hereby gives notice in accordance with Regulation 152 of the Merchant Shipping (Shipping Organisations – Private Companies) Regulations, 2004 of dissolution on the ..... and consequential winding up.

Date of resolution/ Date of court order……...

Signature .....
Director/Secretary/Representative*

Dated this ..... day of ..... of the year .....

_____

This form must be completed in typed form.

a) State company name.

*** Delete as necessary**

Form T

No. of Company .....

MERCHANT SHIPPING (Shipping Organisations – Private Companies) REGULATIONS, 2004

Notice of resignation of liquidator

Pursuant to Regulation 158

Name of Company .....

Delivered by .....

To the *Registrar of Companies:*

I .....…….being the liquidator of

(a) .....

hereby give notice that I have resigned from the post of liquidator of the said company with effect

from the ..... of .....of the year ..... .

Signature .....

Liquidator

Dated this .....day of .....of the year.....

This form must be completed in typed form.
(a) State company name.

FORM U

No. of Company ……

MERCHANT SHIPPING (Shipping Organisations – Private Companies) REGULATIONS, 2004

Notice of winding up without procedures

Pursuant to Regulation 161

Name of Company ……..

Delivered by ……..

To the Registrar of Companies:

Notice is hereby given in terms of Regulation 161 of the Merchant Shipping (Shipping Organisations – Private Companies) Regulations, 2004 that the Company's ship …… has been sold by judicial auction and all proceeds therefrom deposited in the court of ……..……

The procedure for ranking of creditors has been concluded and therefore the company is hereby dissolved and wound up without the need for further procedures in terms of the said Regulation 161 of the Merchant Shipping (Shipping Organisations - Private Companies) Regulations, 2004.

Signed…….
Directors

Dated this ……..day of……of the year …….

This form must be completed in typed form.
(a) State company name.

EIGHTH SCHEDULE

(Regulation 12 (2) (b))

CONVERSION RULES APPLICABLE ON A CHANGE IN THE CURRENCY IN WHICH THE SHARE CAPITAL OF A COMPANY IS EXPRESSED AND THE CORRESPONDING REPORTING CURRENCY

Interpretation

1. In this Schedule, unless the context otherwise requires -

"Reporting Currency" shall mean the currency used in presenting the annual accounts in accordance with the provisions of Regulation 82 of these Regulations. On a change in the reporting currency consequent to a change in the currency in which the share capital of a company is expressed which is effected in accordance with the provisions of Regulation 12 of these Regulations, the term "original reporting currency" shall refer to the reporting currency in operation before the change; and the term "new reporting currency" shall refer to the reporting currency applicable following the change, and in the case of the change taking place in the first accounting period, to the reporting currency which would have been used had such change not taken place.

"Foreign currency" means a currency other than the reporting currency.

"Exchange rate" means the ratio at which the currencies of two countries are exchanged at a particular point in time.

"Spot rate" means the middle exchange rate on a particular day for the exchange of currencies on that day.

"Closing rate" means the spot rate that exists at the balance sheet date which immediately precedes the accounting period to which the change in reporting currency applies.

"Monetary items" are money held and items to be received or paid in money. All other assets and liabilities are "non-monetary items".

"Average annual exchange rate" means an average of the exchange rates that existed during an accounting period. For the purpose of calculating this average it shall be sufficient to take an average of the spot rates applicable on the last working day of each week comprised within the said accounting period.

General rules

2. On a change in the reporting currency, the new reporting currency shall become applicable from the first day of the accounting period to which the change in reporting currency applies, which day is referred to as the "applicable date" in the rest of this Schedule.

3. (1) The balance sheet items existing at the applicable date shall be converted from the original reporting currency to the new reporting currency in accordance with the rules set out in the remaining paragraphs of this Schedule.

(2) Such conversion shall be deemed to take place before any transactions stand to be accounted for within the accounting period to which the change in reporting currency applies.

Conversion rules

4. (1) The paid-up share capital and the balance on the share premium account shall be converted at the exchange rate or rates applicable on the respective date or dates when the shares in question were issued by the company.

(2) The amount which is still uncalled on any shares issued by the company shall be converted at the exchange rate or rates applicable on the respective date or dates when the shares in question were issued.

(3) The nominal value per share in the new reporting currency shall be calculated by taking the aggregate of the paid-up share capital converted as set out in sub-paragraph (1) of this paragraph and the uncalled amount, if any, on any shares issued by the company converted in accordance with sub-paragraph (2) of this paragraph, and dividing this aggregate amount (the issued share capital) by the number of shares in issue:

Provided that where there exists-

(a) preference shares or different classes of preference shares; or

(b) different classes of ordinary shares and where the nominal value per share varies between one class and the other,

the conversion of the nominal value per share to the new reporting currency shall be carried out separately for the ordinary shares and the preference shares, or for each class of ordinary shares in so far as the nominal value per share varies between one class and the other, as the case may be.

(4) The authorised share capital of the company shall be converted by taking the aggregate of -

(a) the aggregate amount referred to in sub-paragraph (3) of this paragraph (the converted issued share capital); and

(b) the amount of the authorised share capital, which has not yet been issued, converted from the original share capital at the closing date.

5. (1) For the purposes of this paragraph, the terms "reserves created out of profits" and "accumulated losses" shall be calculated for each accounting period by taking the profits or losses for such period to the exclusion of any provisions for exchange variations.

(2) Reserves created out of profits, including retained profits, shall be converted at the average annual exchange rate pertaining to the accounting period during which the profits from which such reserves originated were earned.

(3) For the purposes of determining the amount of profits pertaining to an accounting period from which reserves were created the following rules shall apply -

(a) when dividends are paid out of profits and the accounting period to which such profits relate has not been nominated, such dividends shall be deemed to have been paid on a first in first out basis;

(b) losses resulting during an accounting period shall not be netted off against profits earned in other accounting periods, but shall be converted at the average annual exchange rate for the accounting period during which such losses were incurred.

(4) Where at the date of conversion there is an amount representing accumulated losses such amount shall be converted at the average annual exchange rate for the accounting period or periods during which such losses were incurred.

(5) For the purposes of sub-paragraph (4) above, any profits earned during any accounting period shall not be netted off against losses incurred in other accounting periods, but shall be converted at the average annual exchange rate for the accounting period or periods during which such profits were earned.

(6) Reserves which were not created out of profits shall be converted at the exchange rate or rates applicable on the date or dates when such reserves were created.

6. (1) All monetary items shall be converted at the closing rate.

(2) Non-monetary items that are recorded in terms of past events (for example historical cost) shall be converted at the average annual exchange rates for the relevant accounting period.

(3) Non-monetary items that are revalued shall be converted at the exchange rates that existed on the dates of their revaluations.

(4) Provisions for depreciation or for diminution in the value of non-monetary assets shall be converted at the average annual exchange rate applied to convert the cost or revalued amount of the relative assets in accordance with the provisions of sub-paragraph (2) or (3) of this paragraph.

7. (1) Where following conversion to the new reporting currency the total assets exceed the aggregate of total liabilities and the funds attributable to shareholders, such excess shall be shown as a separate item within reserves under the heading "Reporting currency conversion difference".

(2) The reporting currency conversion difference shall not be distributed by way of dividend.

(3) Where following conversion to the new reporting currency the aggregate of total liabilities and the funds attributable to shareholders exceeds total assets, such excess shall be netted off against distributable reserves or added to accumulated losses, as the case may be.

8. (1) In the annual accounts of the accounting period to which the change in reporting currency applies, the amounts of the previous accounting period corresponding to the items included in the balance sheet and, where applicable, in the notes to the accounts, whether individual or consolidated, shall be stated at the new reporting currency after applying the conversion rules set out in the previous provisions of this Schedule.

(2) In the annual accounts of the accounting period to which the change in reporting currency applies, the amounts of the previous accounting period corresponding to the items included in the profit and loss account and, where applicable, in the notes to the accounts, whether individual or consolidated, shall be converted to the new reporting currency at the average annual exchange rate pertaining to the previous accounting period.

Disclosure

9. In the first annual accounts following the conversion, the notes to the accounts, whether individual or consolidated, shall include full details of the method of conversion and the exchange rates used for each category of assets and liabilities as categorised in this Schedule.

NINTH SCHEDULE

(Regulation 1(4)(a))

Form relating to Notice by Shipping Company electing to be governed by the Companies Act

No. of Company …….

Name of Company ……

Delivered by ……..

To the Registrar of Companies:

([a]) ……

hereby gives notice that it elects to be regulated by the Companies Act and that the requirements of the Companies Act will be complied with within ninety days from the filing of this notice.

Signature ……
Director/Secretary/Representative*

Dated this …… day of …… of the year……..

This form must be completed in typed form.

(a) State company name.
*** Delete as necessary.**

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