



**NAMIBIA UNIVERSITY  
OF SCIENCE AND TECHNOLOGY**

**FACULTY OF HUMAN SCIENCES  
DEPARTMENT OF SOCIAL SCIENCES**

<b>QUALIFICATION : BACHELOR OF ACCOUNTING</b>	
<b>QUALIFICATION CODE:</b> 07BOAC; 07BACC	<b>LEVEL:</b> 6
<b>COURSE CODE:</b> CPL 511SS	<b>COURSE NAME:</b> COMPANY LAW
<b>SESSION:</b> JUNE 2019	<b>PAPER:</b> THEORY AND CASE STUDIES
<b>DURATION:</b> 3 HOURS	<b>MARKS:</b> 100

<b>FIRST OPPORTUNITY EXAMINATION</b>	
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<b>MODERATOR</b>	Johanna Nghishekwa

<b>INSTRUCTIONS</b>
<ol style="list-style-type: none"><li>1. The paper has 6 main questions.</li><li>2. ALL the questions are compulsory.</li><li>3. Read carefully before answering.</li><li>4. Number the answers clearly and according the structure in the examination question paper.</li><li>5. Use full sentences and proper paragraphs when answering questions. The inappropriate use of bullet-points will be penalised, as will poor spelling and grammar and illegible handwriting.</li></ol>

**ANNEXURE**

Selected Extracts: Companies Act 28 / 2004  
(11 pages)

**PERMISSIBLE MATERIAL**

Calculator

**THIS EXAMINATION PAPER CONSISTS OF 8 PAGES** (Including this front page)

## QUESTION 1

Choose the correct answer from the given options in each of the following questions. Only write down the correct letter next to the corresponding question number. USE BLOCK CAPITAL LETTERS.

- 1.1 A holding company/subsidiary relationship exists in the following circumstances:
- A. Where a company is a member of another company
  - B. Where a company can control another company
  - C. Where the holding company and its subsidiaries hold the voting rights in the holding company
  - D. Where a holding company holds a majority of the voting rights in a close corporation
- 1.2 The most important difference between a company and a partnership is that:
- A. A partnership is limited to 20 members, and a company to 50
  - B. A partnership has limited liability, and a company not
  - C. A company is a juristic person, and a partnership not
  - D. A partnership has members, and a company has shareholders
- 1.3 If a close corporation is converted to a company:
- A. The former members of the close corporation become personally liable for all the debts thereof
  - B. All debts of the close corporation become payable immediately
  - C. The juristic person continues to exist, only in a different format
  - D. The close corporation must be liquidated
- 1.4 The rationale behind certain persons being disqualified as auditors for a company is:
- A. Auditors should be diligent and reliable
  - B. Auditors should provide checks and balances
  - C. Auditors should have the required skill and objectivity
  - D. None of the above
- 1.5 The written consent of all the members of a close corporation will be required when:
- A. A breach of fiduciary duties or of a breach of the duty to act with the necessary care and skill is to be ratified
  - B. A new accounting officer is to be appointed
  - C. The close corporation disposes of its fixed property
  - D. All of the above

- 1.6 Four Company Law students at NUST are discussing companies incorporated in terms of Section 60(b) of the Companies Act.  
*Melody* says that in these types of companies the directors are jointly and severally liable for the contractual debts and liabilities of the company;  
*Tawanda* says that in these types of companies the directors are jointly and severally liable for the debts and liabilities of the company incurred during their term of office;  
*Toini* says that in these types of companies the directors are personally liable for the debts and liabilities of the company incurred during their term of office  
*Lefika* says that in these types of companies the directors are jointly and severally liable for the contractual debts and liabilities of the company incurred during their term of office. ~  
Whose opinion is the **MOST CORRECT**?
- A. Melody
  - B. Tawanda
  - C. Toini
  - D. Lefika
- 1.7 The following statement is the MOST CORRECT:
- A. Any kind of company can, by means of an ordinary resolution, be converted into any other type of company
  - B. Any kind of company can, by means of a special resolution, be converted into any other type of company
  - C. With the exception of a non-profit association any kind of company can, by means of a special resolution, be converted into any other type of company
  - D. With the exception of a non-profit association any kind of company can be converted into any other type of company provided it is to the benefit of all the shareholders.
- 1.8 In the absence of an association agreement, differences between members of a close corporation are settled by:
- A. Special resolution
  - B. Consensus
  - C. A fist fight
  - D. Majority vote
- 1.9 Group annual financial statements must be prepared:
- A. Whenever a company holds any shares in another company
  - B. When there is a holding company / subsidiary company relationship
  - C. When the same person is director of more than one company
  - D. When companies hold shares in each other



- 1.10 The Board of Directors cannot be compelled by an ordinary resolution passed by the general meeting to act in a certain way, if they believe such acts will not be to the benefit of the company, since they derive their mandate to manage from:
- A. Class meetings
  - B. Memorandum of Association
  - C. The Managing Director
  - D. Articles of Association
- 1.11 A company that has been registered for more than 5 years must hold its Annual General Meeting
- A. Within 18 months from the date of its registration
  - B. Not later than nine months after the end of each financial year
  - C. Within 15 months of the date of the preceding annual general meeting, but not later than 9 months after the end of each financial year
  - D. Not later than nine months after the end of each financial year, but at least 15 months after the date of the preceding annual general meeting.
- 1.12 One of the important consequences of legal personality is the fact that a company is a separate entity existing apart from its members and also the fact that the:
- A. Company estate is assessed apart from the estates of the members.
  - B. Sequestration of the estates of members will not lead to liquidation of the company
  - C. Debts of the company are the debts of the company and not those of members
  - D. All of the above
- 1.13 A company may dispense of holding an Annual General Meeting provided:
- A. It is ordered by Court
  - B. It is condoned by a majority in number of the members having a right to attend and vote at the meeting and who hold at least 95% of the total voting rights of all the members
  - C. All the members agree thereto in writing
  - D. None of the above
- 1.14 If a person who has been appointed as a director of a company fails to lodge the prescribed consent to her appointment with the Registrar of Companies:
- A. Her appointment will be invalid
  - B. The company must use Section 40 of the Companies Act to ratify contracts entered into by her
  - C. Her appointment will lapse after 2 months
  - D. It will be an offence.



- 1.15 In terms of the Companies Act companies are deemed to have the capacity and powers of a natural person of full capacity in so far as a juristic person is capable of exercising those powers. This means that:
- A. A company is incapable of performing acts that are regarded as inherently human
  - B. A company does not exist as an entity in a physical sense and must act through its organs or agents
  - C. A company a company has unlimited capacity to take part in commercial activities
  - D. All of the above
- 1.16 A “round robin” resolution is:
- A. A resolution signed by the majority of the members of a public company.
  - B. An agreement between directors.
  - C. A written resolution signed by the majority of the directors.
  - D. None of the above.
- 1.17 We can describe shares as rights of action entitling their owners, amongst other things, to:
- A. Dividends every financial year
  - B. Profits acquired in a financial year
  - C. A certain portion of the company assets
  - D. None of the above
- 1.18 The following is NOT a characteristic of a public company:
- A. Its shares are freely transferable
  - B. It must comply with comprehensive provisions regarding the compulsory disclosure of information to the public
  - C. the quorum for a general meeting of a private company is at least two members entitled to vote present in person or by proxy
  - D. None of the above
- 1.19 In terms of the Companies Act 28 of 2004, one of the basic types of companies that can be formed is a:
- A. Private company
  - B. Company with share capital
  - C. Company with no par value shares
  - D. Public company
- 1.20 The articles of association determine the manner in which the company is to function, and they can be amended to meet the needs of the company by of:
- A. Majority Vote
  - B. Ordinary resolution
  - C. Decree by the board of directors
  - D. Special resolution

*(Two marks each) [40]*

## **QUESTION 2**

**Briefly answer the following questions.**

- 2.1 What are the requirements for a company to pay dividends to its members? (3)
- 2.2 May a member of a Close Corporation be appointed as its accounting officer? (2)
- 2.3 Distinguish between the association agreement and founding statement of a close corporation. (4)
- 2.4 What are the consequences if a member of a close corporation fails to pay his/her contribution to a close corporation within the prescribed time? (4)
- 2.5 Agnelli Ltd is a member of and holds a majority of the voting rights in OM Ltd. OM Ltd is a member of, and has the right to appoint or remove Lungameni, a director of Karakul Ltd who holds 60% of the voting rights at board meetings of Karakul, from the board of directors. Describe the relationship between Agnelli Ltd and Karakul Ltd. (1)
- 2.6 What is a simple majority? (1)
- [15]**

## **QUESTION 3**

Your childhood friend Taimi, who has always had her head in the clouds, approaches you for advice. She wants to start an art gallery, and her aim is that all the proceeds from selling artworks should be used to support underprivileged artists. She is, however, concerned that people may think that she is personally profiting from the business, and does not want to run the risk of personal liability in the event of the business not being successful. Using your knowledge that you acquired about the different types of companies, advise your friend about the best way to structure her business, and what the requirements will be.

**[10]**

**QUESTION 4 FOLLOWS ON THE NEXT PAGE**

#### **QUESTION 4**

Dowell (Pty) Ltd (Dowell) discover that their financial manager, Mr. Innocent, has been defrauding the company over a period of three years. Dowell has lost millions of dollars. Mr. Innocent has left the country and the losses cannot be recovered from him.

The directors of Dowell are of the opinion that if their auditors had made proper enquiries during the annual audit, the fraud would have been detected and the losses averted. They allege that the auditors were grossly negligent and wish to institute legal action against the auditors.

Advise Dowell on the possible actions that can be instituted and what they will need to prove in order to succeed.

[15]

#### **QUESTION 5**

Pendukeni, Mary and Fossi are members of Alternative Energy Providers Close Corporation (AEP). In terms the founding statement, the principal business of the close corporation is to develop, promote and sell technology for alternative energy.

The association agreement provides that only Fossi has the authority to present the corporation in the conduct of business. It is further provided that Fossi may not enter into any contract where the value of such contract exceeds N\$20 million without first having obtained the written consent from the remaining members.

Indicate whether AEP will be bound to the following contracts. Motivate your answers.

- 5.1 Fossi buys wind energy generators from a manufacturer based in the USA for about N\$30,000,000 without obtaining the written prior consent from Mary and Pendukeni. (5)
- 5.2 Pendukeni buys wind energy generators for N\$30 million from supplier S; Sally, the representative of supplier S, was previously a member of AEP and has knowledge of the content of the association agreement. (5)

[10]

**QUESTION 6 FOLLOWS ON THE NEXT PAGE**



## **QUESTION 6**

Okadhimeti (Pty) Ltd is a company which manufactures face cream from indigenous plants. The company's issued share capital is N\$100,000 (all Class A ordinary shares) of which Barichello, Jason and Tjingaete each hold 30%. Omilongo holds 10%. Tjingaete and Omilongo are the directors of the company; Tjingaete is the Managing Director.

The articles of Okadhimeti provide that all contracts entered into by the company must be signed by at least two directors and that contracts in excess of N\$1 million must be authorised by ordinary resolution of the shareholders.

The directors wish to enter into a contract with a local advertising agency to promote their products. The total value of the contract is N\$ 1,5 million. They convene a General Meeting to seek the shareholders' approval. Notice of the meeting is hand delivered to all the shareholders on 9 May 2019.

**Answer the following questions, giving full motivations as required:**

- 6.1 What is the earliest date that the meeting can be held? (3)
- 6.2 Only Tjingaete and Omilongo are present at the meeting. Have the quorum requirements been met? (3)
- 6.3 The resolution is adopted by Tjingaete and Omilongo and they proceed with the transaction. Barichello and Jason are furious and want to dismiss the directors. Can they call a meeting in terms of Section 188 of the Companies Act? (3)
- 6.4 What is the notice period required for a meeting convened with the intention of dismissing the directors of a company? (1)
- [10]**

**TOTAL [100]**

**Additional fees in respect of late submissions or late payment of annual duty**

186. Without derogating from this Act, a company or an external company which has failed within the time prescribed in the relevant provision to lodge any return or other document or to pay any annual duty required under section 99(3), 181, 182, 183, 208(1), 219(3), 224(2) and 284, may lodge that return or other document or pay the annual duty subject to the payment to the Registrar of the prescribed additional fee in respect of each failure.

*Part 2*  
*Meetings of Company*

**Annual general meeting**

187. (1) Every company must, at the times specified in this section, hold general meetings to be known and described in the notices calling those meetings as annual general meetings of that company.

(2) The meetings referred to in subsection (1) must be held -

- (a) in the case of the first meeting, within a period of 18 months after the date of the incorporation of the company concerned;
- (b) thereafter within not more than nine months after the end of every ensuing financial year of that company;
- (c) within not more than 15 months after the date of the last preceding annual meeting of that company.

(3) The annual general meeting of a company must deal with and dispose of the matters provided for in this Act and may deal with and dispose of any further matters which are provided for in the articles of the company and, subject to this Act, any matters capable of being dealt with by any general meeting of the company.

(4) The Registrar may, on application to him or her before, or, for the purposes of subsection (8), also after, the expiry of the period within which an annual general meeting of a company must be held and on good cause shown, and on payment of the prescribed fee, extend the period within which an annual general meeting of the company concerned must be held by a period not exceeding three months, but, notwithstanding any extension, the date for the holding of the first annual general meeting following the meeting in respect of which the extension is granted, must be determined as if that meeting had been held on the last day on which it should have been held if the extension had not been granted.

(5) If for any reason an annual general meeting of a company is not or cannot be held as provided in this section or any matter required by this Act to be dealt with and disposed of at that meeting is not dealt with at the meeting, the Registrar may, on application by the company or any member or the legal representative of that company or member and on payment of the prescribed fee, call or direct the calling of a general meeting of the company which must be deemed to be an annual general meeting, and may give ancillary or consequential directions which the Registrar may think expedient, including directions modifying or supplementing, in relation to the calling, holding and conduct of the meeting, the operation of the company's articles, and directions providing for one member or the legal representative of a member or any specified number of members present in person or by proxy, to be deemed to constitute a meeting, and any meeting called, held and conducted in accordance with that direction is, for all purposes deemed to be an annual general meeting of the company duly called, held and conducted.



(6) For the purpose of determining the date for the holding of the next succeeding annual general meeting of a company, after a meeting held in pursuance of subsection (5), subsection (4) does, with the necessary changes, apply.

(7) Any company which fails to comply with subsection (1) or with any direction given by the Registrar under subsection (5), and every director or officer of the company who knowingly is a party to the failure, commits an offence and is liable to a fine which does not exceed NS800.

(8) A company which has failed to hold its annual general meeting within the time or extended time contemplated in subsection (1) or (4), or as directed by the Registrar under subsection (5), is further liable to pay to the Registrar the prescribed additional fee for every day during which the default continues but not exceeding the prescribed maximum fee.

(9) A company need not hold any particular annual general meeting if all members entitled to attend that meeting agree in writing, and in that event a resolution in writing dealing with and disposing of -

- (a) the matters required by this Act to be dealt with and disposed of at an annual general meeting of a company; and
- (b) any other matters, if any, as may, in terms of subsection (2), be dealt with at that meeting,

and signed by all members entitled to vote at that meeting, before the expiry of the period within which that meeting is to be held, is deemed to be a resolution passed at an annual general meeting of the company held in terms of this section on the date on which the last signature to that resolution is affixed.

### General meetings

188. (1) General meetings of a company may, subject to its articles, be held from time to time.

(2) Any general meeting may, save in so far as is otherwise provided in the articles of a company and without derogation from any other provisions of this Act, be called by two or more members holding not less than one-tenth of its issued share capital or, in the case of a company not having a share capital, by not less than five per cent in number of the members of the company.

### Calling of general meetings on requisition by members

189. (1) The directors of a company must, notwithstanding anything in its articles, on the requisition of -

- (a) 100 members of the company or of members holding at the date of the lodging of the requisition not less than one-twentieth of such of the capital of the company as at the date of the lodgment carries the right of voting at general meetings of the company; or
- (b) in the case of a company not having a share capital, 100 members of the company or of members representing not less than one-twentieth of the total voting rights of all the members having at that date a right to vote at general meetings of the company,

within 14 days of the lodging of the requisition issue a notice to members convening a general meeting of the company for a date not less than 21 and not more than 35 days from the date of the notice.



(2) The requisition must state the objects of the meeting and must be signed by the requisitionists and lodged at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3) If the directors do not within 14 days from the date of the lodging of the requisition issue a notice as required by subsection (1), the requisitionists or any of them numbering more than 50 or representing more than one-half of the total voting rights of all of them, may themselves on 21 days' notice convene a meeting, stating the objects of the meeting, but the meeting so convened must not be held after the expiry of three months from that date.

(4) Any meeting convened under this section by the requisitionists must be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by the directors of the company concerned.

(5) Any reasonable expense incurred by the requisitionists because of the failure of the directors duly to convene a meeting must be repaid to the requisitionists by the company, and any sum so repaid must 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 those directors who were knowingly party to the default.

(6) Any director or officer of a company who knowingly is a party to a failure to convene a meeting as required by subsection (1) commits an offence and is liable to a fine which does not exceed NS400.

#### **Convening of general meetings by Registrar**

**190.** If all the directors of a company have become incapacitated or have ceased to be directors, the Registrar may, unless the articles of a company make other provision in that behalf, on the application of any member of the company or the legal representative of that member, and on payment of the prescribed fee, call or direct the calling of a general meeting of the company and may give any ancillary or consequential directions which the Registrar considers expedient, including directions modifying or supplementing, in relation to the calling, holding and conduct of the meeting, the operation of the company's articles, and directions providing for one member or the legal representative of a member or any specified number of members present in person or by proxy to be deemed to constitute a meeting, and any meeting called, held and conducted in accordance with any that direction, is, for all purposes, deemed to be a general meeting of the company duly called, held and conducted.

#### **General meetings on order of Court**

**191.** If, for any reason, it is impracticable to call an annual general meeting or other general meeting of a company in any manner in which meetings of that company may be called, or to conduct that meeting in the manner prescribed by the articles of a company or this Act, or if for any other reason the Court thinks fit to do so, it may, either of its own motion or on the application of the Registrar or any director of the company or of any member of the company or the legal representative of that member, order a meeting of the company to be called, held and conducted in any manner which it may direct and may in making an order give ancillary or consequential directions as it thinks expedient, including directions providing for one member or the legal representative of a member or any specified number of members present in person or by proxy to be deemed to constitute a meeting, and any meeting called, held and conducted in accordance with that order, is, for all purposes deemed to be an annual general meeting or a general meeting, as the case may be, of the company duly called, held and conducted.

**Meetings of company with one member**

192. In the case of a company having only one member, that member present in person or by proxy is deemed to constitute a meeting.

**Duty of company to circulate notice of resolutions and statements by members**

193. (1) Subject to this section, a company must, on the requisition in writing of the number of members referred to in subsection (2), and, unless the company otherwise determines, at the expense of the requisitionists -

- (a) give to members of the company entitled to receive notice of the next annual general meeting, notice of any resolution which may properly be moved and is intended to be moved at that meeting; and
- (b) circulate to members entitled to have notice of any general meeting sent to them, any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under subsection (1) must be -

- (a) any number of members representing not less than one-twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or
- (b) not less than one hundred members.

(3) Notice of any resolution referred to in subsection (1)(a) must be given and any statement referred to in subsection (1)(b) must be circulated to members of the company entitled to have notice of the meeting sent to them, by serving a copy of the resolution or statement on each member in any manner permitted for the service of notice of the meeting, and notice of that resolution must be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving that member notice of meetings of the company.

(4) A copy of a resolution or statement referred to in subsection (1) must be served and notice of that resolution must be given in the same manner and, so far as practicable, at the same time as the notice of the meeting in question, or if it is not practicable to do so, as soon as practicable thereafter.

(5) A company is not bound under this section to give notice of any resolution or to circulate any statement unless -

- (a) there is lodged at the registered office of the company a copy of the requisition signed by the requisitionists or two or more copies which between them contain the signatures of all the requisitionists -
  - (i) in the case of a requisition requiring notice of a resolution, not less than 30 days before the meeting; and
  - (ii) in the case of any other requisition, not less than 10 days before the meeting; and
- (b) there is lodged or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect to the requisition.



(6) If, after a copy of a requisition requiring notice of a resolution has been lodged at the registered office of the company, an annual general meeting is called for a date 30 days or less after the copy has been lodged, the copy, though not lodged within the time required by this subsection, is deemed to have been properly lodged.

(7) The Court may absolve any company from the obligation to circulate any resolution or statement in terms of this section if, on the application either of the company or of any other interested person, the Court is satisfied that the rights thereby conferred are being abused to secure needless publicity for defamatory matter.

(8) An order under subsection (7) may include an order for the payment by the requisitionists of the costs or any portion of the costs incurred in connection with the relevant application, whether or not they are parties to the application.

(9) Notwithstanding anything contained in the articles of a company, the business which may be dealt with at an annual general meeting, must include any resolution of which notice has been given in accordance with this section, and, for the purpose of this subsection, notice is deemed to have been so given notwithstanding the accidental omission to give that notice to one or more members.

(10) If there is a failure to comply with subsection (1), every director or officer of the company who authorises or knowingly permits or is party to the failure, commits an offence and is liable to a fine which does not exceed NS4 000.

#### **Notice of meetings and resolutions**

194. (1) Unless the articles of a company provide for a longer period of notice, the annual general meeting or a general meeting called for the purpose of passing a special resolution may be called by not less than 21 days' notice in writing and any other general meeting may be called by not less than 14 days' notice in writing.

(2) Any provision in the articles of a company providing for a shorter period of notice, not being of an adjourned meeting, is void.

(3) Notwithstanding subsection (1), a meeting of a company is deemed to have been duly called -

- (a) in the case of a meeting which is called on a shorter period of notice than is specified in that subsection or provided for in the company's articles, if it is so agreed, before or at the meeting, by a majority in number of the members having a right to attend and vote at the meeting who hold not less than 95 percent of the total voting rights of all the members of the company; or
- (b) in the case of a meeting in respect of which notice as contemplated in subsection (1) has not been given, if it is so agreed in writing, before or at the meeting, by all the members of the company.

(4) No resolution of which special notice is required to be given in terms of this Act has effect unless notice of the intention to move it has been given to the company not less than 28 days before the meeting at which it is moved, and the company must give its members notice of that resolution at the same time, and in the same manner as it gives notice of the meeting, or, if that is not practicable, either by advertisement in a newspaper having an appropriate circulation or in any other manner allowed by the articles of the company, not less than 21 days before the meeting, but, if a meeting of the company is called for a date 28 days or less after notice of the intention to move that resolution has been given to the company, the notice, though not given within the time required by this subsection, is deemed to have been properly given for the purposes of the meeting.



(5) Any company which fails to give notice to its members as required by subsection (4) commits an offence and is liable to a fine which does not exceed NS400.

#### **Manner of giving notice**

195. Unless the articles of a company otherwise provide, notice of a meeting of a company must be served on every member of the company in the manner in which notices are required to be served in terms of Table A or Table B of Schedule 1, whichever is applicable to the company.

#### **Representation of company or other body corporate at certain meetings**

196. (1) A company or other body corporate may, by resolution of its directors or other governing body, authorise any person to act as its representative at any meeting of any company of which it is a member or at any meeting of any class of members of that company.

(2) Subsection (1) does, with the necessary changes, apply with reference to meetings of debenture holders and creditors of a company.

(3) A person authorised under subsection (1) is entitled to exercise on behalf of the company or other body corporate which he or she represents, the same powers as that company or body corporate could have exercised if it were an individual shareholder, debenture holder or creditor of the company in relation to which that person has been authorised to act.

#### **Representation of members at meetings by proxies**

197. (1) Any member of a company entitled to attend and vote at a meeting of the company, or where the articles of a company limited by guarantee so provide, any member of that company, is entitled to appoint another person, whether a member or not, as proxy to attend, speak, and vote in that member's stead at any meeting of the company, but, unless the articles otherwise provide, a proxy is not entitled to vote except on a poll and a member of a private company is not entitled to appoint more than one proxy.

(2) In every notice calling a meeting of a company having a share capital and on the face of every proxy form issued at the company's expense there must appear with reasonable prominence a statement that a member entitled to attend and vote at the meeting is entitled to appoint a proxy or, where it is allowed, one or more proxies, to attend and speak and vote in that member's stead, and that a proxy need not also be a member of the company.

(3) If there is a failure to comply with the requirements of subsection (2) in respect of any meeting, every director and every officer of the company who authorises, knowingly permits or is party to the failure, commits an offence and is liable to a fine which does not exceed NS400.

(4) Any provision contained in a company's articles is void in so far as it would have the effect of requiring the 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 at its registered office or by any other person more than 48 hours before a meeting in order that the appointment may be effective.

(5) If, for the purposes of any meeting of a company, invitations to appoint as proxy a person, or one of a number of persons, specified in the invitations are issued at the company's expense to some only of the members entitled to notice of the meeting and to be represented by proxy, every director or officer of the company who authorises or knowingly permits or is a party to that issue, commits an offence and is liable to a fine which does not exceed NS400.

(6) Subsection (5) does not apply in respect of the issue to a member of a company at that member's request in writing of a form of appointment naming a 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 be represented at the meeting in question by proxy.

(7) If, for the purposes of any meeting of a company, invitations to appoint as proxy a person, or one of a number of persons, specified in the invitations or the instruments appointing a proxy, are issued at the company's expense, that invitation or instrument appointing a proxy must -

- (a) contain adequate blank space immediately preceding the name or names of the person or persons specified therein to enable a member to write in the name and, if so desired, an alternative name of a proxy of that member's own choice;
- (b) provide for the member to indicate whether that member's proxy is to vote in favour of or against any resolution or resolutions to be put at the meeting or is to abstain from voting.

(8) The person present at a meeting of the company, whose name appears first in the list of names which have not been deleted in any instrument appointing a proxy becomes the validly appointed proxy of the member concerned.

(9) If a member does not indicate on the instrument appointing a proxy that that member's proxy is to vote in favour of or against any resolution or resolutions or to abstain from voting, the proxy is entitled to vote as he or she thinks fit.

(10) If there is a failure to comply with any requirement of subsection (7), every director or officer of the company who authorises, knowingly permits or is party to the failure, commits an offence and is liable to a fine which does not exceed NS400.

(11) This section applies in relation to meetings of any class of members of a company as it applies in relation to general meetings of the company.

### **Quorum for meetings**

**198.** Unless the articles of a company provide for a greater number of members entitled to vote to constitute a quorum at meetings of a company, the quorum for those meetings is -

- (a) in the case of a public company, three members entitled to vote, personally present, or if a member is a body corporate, represented;
- (b) in the case of a private company, not being a private company having one member, two members entitled to vote, present in person or by proxy or, if a member is a body corporate, represented; and
- (c) in the case of a wholly-owned subsidiary company, the representative of the holding company.

### **Chairperson of meetings**

**199.** Unless the articles of a company otherwise provide, any meeting of the company may elect any member to be the chairperson of the meeting.

### **Compulsory adjournment of meetings**

**200.** (1) If at any meeting of a company any member of the company who is present or represented and entitled to vote at the meeting demands an adjournment of the



meeting on any ground stated by that member, the chairperson must put the demand to the vote of the meeting, and if a majority of the members present or represented and entitled to vote at the meeting or members present or represented and entitled to vote representing either personally or by proxy more than half of the share capital of the company represented at the meeting, vote in favour of an adjournment, the chairperson must adjourn the meeting to a day not earlier than seven days and not later than 21 days after the date of the meeting.

(2) When a meeting has been adjourned as contemplated in subsection (1) the company must, on a date not later than three days after the adjournment, publish in a newspaper circulating in Namibia a notice stating -

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

(3) A private company may, instead of publishing the notice in a newspaper as contemplated in subsection (2), send it by registered post to the members not later than three days after the adjournment.

(4) Any person acting as chairperson of a meeting of a company who fails to comply with any requirement of subsection (1) and any company which fails to comply with any requirement of subsection (2) and any director or officer of a company who knowingly is a party to the failure, commits an offence and is liable to a fine which does not exceed N\$400.

### *Part 3* *Voting Rights and Voting*

#### **Voting rights of shareholders**

**201.** (1) Subject to sections 202 and 203 and to the exceptions stated in section 204, every member of a company having a share capital has a right to vote at meetings of that company in respect of each share held by that member.

(2) Every member of a company limited by guarantee has, unless the articles otherwise provide, the right to vote at meetings of that company and has one vote.

#### **Voting rights of preference shareholders**

**202.** (1) Notwithstanding section 20(1), the articles of a company may provide that preference shares do not confer the right to vote at meetings of the company except -

- (a) during any period determined as provided in subsection (2) during which any dividend or any part of any dividend on those shares or any redemption payment thereon remains in arrear and unpaid; or
- (b) in regard to any resolution proposed which directly affects any of the rights attached to those shares or the interests of the holders, including a resolution for the winding-up of the company.

(2) The period referred to in subsection (1)(a) must be a period commencing on a day specified in the articles of the company concerned, not being more than six months after the due date of the dividend or redemption payment in question, or, where no due date is specified, after the end of the financial year of the company in respect of which that dividend accrued or that redemption payment became due.



**Determination of voting rights**

203. (1) A member of a public company having a share capital is -

- (a) if the share capital is divided into shares of par value, entitled to that proportion of the total votes in the company which the aggregate amount of the nominal value of the shares held by that member bears to the aggregate amount of the nominal value of all the shares issued by the company;
- (b) if the share capital is divided into shares of no par value, entitled to one vote in respect of each share that member holds.

(2) The voting rights of a member of a private company must, subject to section 20(1), be determined by the articles of the company.

(3) When any shares of a company are converted into stock, or have been so converted after 1 January 1953, this section does, with the necessary changes, apply as if that stock consisted -

- (a) in the case of shares of par value, of as many units of equivalent number and value as the number and nominal value of the shares so converted; or
- (b) in the case of shares of no par value, of as many units as the number of shares so converted.

(4) Notwithstanding this section, the articles of a company may provide -

- (a) for the chairperson of any meeting to have a casting vote; and
- (b) for the votes to which any member is entitled above a stated number to increase, not in direct proportion to the number of shares held, but in some lower proportion specified in those articles and may in that event further provide that no member is entitled to a number of votes exceeding the number so specified or that the number of votes to which any member is entitled be limited to a specified number.

**Exceptions as regards voting rights**

204. (1) Section 20(1) does not apply in respect of shares of a company which on 1 January 1974 had already been issued without voting rights, or in respect of issued shares, other than preference shares, in respect of which at that date there existed different voting rights or in respect of shares subsequently issued in respect of which there existed at that date a contractual right or obligation to issue those shares.

(2) If a company issues new shares, all the provisions of this Act as to voting rights must, save as provided in subsection (1), apply in respect of those new shares, and, for the purpose of determining the voting rights attached to those new shares as provided in section 203 all its shares are deemed to have been issued with voting rights in accordance with this Act.

**Exercise of voting rights**

205. (1) Any person present and entitled to vote as a member or as a proxy or as a representative of a body corporate at any meeting of the company has, on a show of hands, only one vote, irrespective of the number of shares that person holds or represents.

(2) On a poll at any meeting of a company, any member, including a body corporate, or that member's proxy is entitled to exercise all voting rights as determined in accordance with this Act, but is not obliged to use all his or her votes or cast all the votes he or she uses in the same way.

**Right to demand poll**

**206.** (1) A provision contained in a company's articles is void in so far as it has the effect -

- (a) of excluding the right to demand a poll at a general meeting on any question other than the election of the chairperson of the meeting or the adjournment of the meeting; or
- (b) of rendering ineffective a demand for a poll made -
  - (i) by not less than five members having the right to vote at that a meeting;
  - (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 entitled to vote at the meeting and holding in the aggregate not less than one-tenth of the issued share capital of the company.

(2) The instrument appointing a proxy to vote at a meeting of a company is deemed also to confer authority to demand or join in demanding a poll, and for the purposes of subsection (1), a demand by a person as proxy for a member is the same as a demand by the member.

*Part 4*  
*Special Resolutions*

**Requirements for special resolutions**

**207.** (1) A resolution by a company is a special resolution if at a general meeting of which not less than 21 days' notice has been given specifying the intention to propose the resolution as a special resolution, the terms and effect of the resolution and the reasons for it and at which -

- (a) members holding in the aggregate not less than one-fourth of the total votes of all the members entitled to vote, are present in person or by proxy; or
- (b) in the case of a company limited by guarantee, not less than one-fourth of the members entitled to vote are present in person or by proxy,

the resolution has been passed, on a show of hands, by not less than three-fourths of the number of members of the company entitled to vote on a show of hands at the meeting who are present in person or by proxy or, where a poll has been demanded, by not less than three-fourths of the total votes to which the members present in person or by proxy are entitled.

(2) If less than one-fourth of the total votes of all the members entitled to attend the meeting and to vote or, in the case of a company limited by guarantee, less than one-fourth of the members of that company, are present or represented at a meeting called for the purpose of passing a special resolution, the meeting stands adjourned to a day not earlier than seven days and not later than 21 days after the date of the meeting and section 200(2) applies in respect of that adjournment.

(3) At the adjourned meeting the members who are present in person or by proxy and are entitled to vote may deal with the business for which the original meeting was convened and a resolution passed by not less than three-fourths of those members is deemed to be a special resolution even if less than one-fourth of the total votes are represented at that adjourned meeting.



(4) With the consent of a majority in number of the members of a company having the right to attend and vote at a meeting and holding in the aggregate not less than 95 per cent of the total votes of all those members, a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given.

(5) A copy of the consent referred to in subsection (4) must, on the prescribed form, be lodged with the Registrar together with the copy of the special resolution.

(6) Notwithstanding subsection (1), a resolution may, with the written consent of all the members of the company, be proposed and passed as a special resolution at a meeting of which notice as contemplated in subsection (1) has not been given.

(7) The written consent referred to in subsection (6) must be in the prescribed form and copy of that notice must be lodged with the Registrar together with a copy of the special resolution.

(8) At any meeting at which a special resolution is submitted to be passed, a declaration by the chairperson that the resolution is carried is, unless a poll is demanded, sufficient evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(9) If a poll is demanded regard must be had, in computing the majority on the poll, to the number of votes cast for and against the resolution.

(10) For the purposes of this section notice of a meeting is, subject to this Act, deemed to have been duly given and the meeting must be taken to be duly held when the notice is given and the meeting is held in the manner provided by the articles of the company concerned.

#### **Registration of special resolutions**

208. (1) Within one month from the passing of a special resolution a copy of that resolution together with either a copy of the notice convening the meeting concerned or a copy of the consent contemplated in section 207(4) or (6), as the case may be, must be lodged with the Registrar, who must, subject to subsection (2), and on payment of the prescribed fee, register that resolution.

(2) The Registrar may refuse to register any special resolution lodged under subsection (1), except on an order of the Court, if that resolution appears to him or her to be contrary to this Act or to the memorandum or articles of the company concerned.

(3) A copy of every special resolution for the time being in force must be embodied in or annexed to every copy of the articles issued after the registration of the resolution.

(4) The company concerned must transmit a copy of a special resolution to any member at that member's request, and on payment of an amount equal to the cost of making that copy or a lesser amount as the company may determine.

(5) Any company which fails to comply with any requirement of subsection (3) or (4) and every director or officer thereof who knowingly permits or is a party to the failure, commits an offence and is liable to a fine which does not exceed N\$200.

(6) If a company makes default in lodging with the Registrar a copy of any special resolution, and the notice or the consent, as required by subsection (1), the company, and every director or officer who knowingly permits or is a party to the default, commits an offence and is liable to a fine which does not exceed N\$40 for every day during which the contravention continues.