

SPECIAL REQUIREMENTS: COMPANIES ACT EXTRACT

Case study

Croppers Swaziland is a member of Croppers, a multinational professional services firm headquartered in Sidney, Australia. Chelsea limited has appointed Croppers Swaziland as their auditors. The company was incorporated in Swaziland on 01 March 2012. The authorised and issued share capital of the company is 55 000: E1 shares.

Sandile Khumalo, popularly known as 'SK' amongst his peers is the audit senior in the Chelsea engagement. He is a very competent clerk and his audit work has been credited as one of the best in the history of the firm. Sandile has prepared the following working paper in relation to the Chelsea engagement for the attention of the Team Manager and Engagement Leader (Partner):

Working paper 1: **Client acceptance: Background information)**

Prepared by: **Sandile Khumalo**

Date: **01 October 2012**

Chelsea Limited appointed Croppers Swaziland on 01 May 2012. This was the first audit appointment for the company. The company operates a transport business and their major client is Silgoacar, a mining company. The company is registered as a private company and the share register reflects that there company had three shareholders on the day of incorporation. There were no changes during the year.

The company commenced operations on 01 October 2012 and for reporting purposes the first year end was deemed to have commenced on 01 March 2012 and ended on 28 February 2013. Alexis, the Managing director has told Croppers that the Financial Statements and the Schedules supporting the balances will be provided to the external auditors but under no circumstances should they seek to gain access to the records of the company. She further mentioned that no member of the audit team is expected to attend the Annual General Meeting.

It was also agreed that although Miss Thamsanqa Dlamini, the engagement partner/leader owned 33.33 % shares in the company, she would be prohibited from attending the annual general meeting of the company due to her position as auditor of the company. This is to enable members of the company to objectively evaluate the work done by the audit firm before deciding on whether they should appoint them as auditors of the company for the next financial year. Miss Dlamini (The engagement leader) was instrumental in the firm getting the audit. It was felt that her presence in the team will help manage relations well between the client and the audit team.

The company did inform the audit team beforehand, that Chelsea does not maintain a detailed record of the assets of the company. The Managing director stated that such detail was deemed unnecessary due to the fact that the entity only owned trucks which were of a similar nature and had been bought in the same date. Blue books were available for these motor vehicles and copies of the blue books were sent to auditors as part of the audit schedules.

Croppers also offer accounting services to Chelsea. However, this service is offered by a different team, ably led by Linda Mkhwanazi, a very competent accounting clerk. The revenue earned for the

accounting service exceeds the audit income and it is of paramount importance that minimal errors are made by the accounting team. Chelsea confirms this by reviewing the number of accounting queries raised by the audit team.

Tim Hawk, the Financial Director of the company is very aggressive, domineering and dismissive of the audit function and the audit team. Tim Hawk and Thamsanqa are married in community of property.

Question 1

You are an independent chartered accountant CA (SD). The management of Chelsea limited has approached you for advice on their compliance with Chapter X and chapter XI requirements of the companies' act of 2009. These chapters deal with the appointment of auditors, accounting and disclosure requirements. The information compiled by the audit team senior has been forwarded to you. (You can assume, for the purposes of this section that the information contained in this working paper is complete)

Required:

- a) Prepare a letter to management drawing their attention to issues dealt with in the Swaziland companies' Act of 2009 from the information gathered by Sandile and discuss whether management's approach to the issues was appropriate. [30]
- b) From working paper 1, identify all potential threats to the independence of the audit firm of Croppers limited in the performance of the Chelsea limited audit. [20]

Question 2

Discuss the procedures that you would undertake in the audit of Property, Plant and equipment. [15]

Question 3

- A) Briefly discuss the following concepts in relation to the conduct of an audit of Financial statements (you are expected to also provide relevant examples):
 - i) Audit risk [5]
 - ii) Audit failure [5]
 - iii) Business failure [5]

Question 4

‘Audit standards require the auditor to accumulate sufficient appropriate audit evidence to support the opinion issued’

Required:

- i) Discuss what is meant by sufficient and appropriate evidence [5]
- ii) Briefly discuss at least five characteristics of reliable evidence [10]
- iii) Discuss at least 5 limitations of a financial statement audit [10]

Powers of curator ad litem.

229. (1) A provisional *curator ad litem* appointment by the court under section 228(3) and a *curator ad litem* whose appointment is confirmed by the court under section 228 (4) shall, in addition to the powers expressly granted by the court in connection with the investigation, proceedings and enforcement of a judgement, have the same powers as an inspector under section 222, and the provisions of that section shall, subject to the provisions of subsection (2) of this section, apply *mutatis mutandis* to the provisional *curator ad litem* and to the *curator ad litem* and to the directors, officers, employees, members and agents of the company concerned.

(2) If the disclosure of any information about the affairs of a company to a provisional *curator ad litem* or a *curator ad litem* would in the opinion of the company be harmful to the interests of the company, the court may on an application for relief by that company, if it is satisfied that the said information is not relevant to the investigation, grant such relief.

Power of court as to costs.

230. The court may order the company to pay the costs of the litigation where, in the circumstances of the case, it is established that the institution of the action by the applicant was a reasonable and prudent course to take in the interests of the company.

CHAPTER X

AUDITORS

Appointment

Appointment of first auditor of company.

231. (1) The first auditor of a company shall be appointed by the directors within 30 days of the issue of the certificate of incorporation in the case of a private company, and within 30 days of the issue of the certificate that the company is entitled to commence business in the case of a public company; and an auditor so appointed shall hold office until the conclusion of the first annual general meeting:

Provided that -

- (i) subject to the provisions of section 239 the company may at a general meeting, remove any such auditor and appoint in his place any other person who has by special notice been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than 14 days before the date of the meeting;
- (ii) if the directors fail to exercise their powers under this section, the company in a general meeting may appoint the first auditor, and thereupon the said powers of the directors shall cease; and

- (iii) if neither the directors nor the company appoint an auditor under this subsection, the Registrar may on the application of any member do so.
- (2) Notwithstanding anything to the contrary contained in this section, a private company shall not be required to appoint an auditor if-
 - (a) the number of shareholders in such company does not exceed five (5);
 - (b) the equity share capital in the company does not exceed fifty thousand Emalangeni (E50,000.00).

Annual appointment of auditor.

232. (1) Every company shall at each annual general meeting appoint an auditor to hold office from the conclusion of that meeting, until the conclusion of the next annual general meeting.

(2) Where at an annual general meeting no auditor is appointed or re-appointed, the Registrar may appoint a person to fill the vacancy.

(3) The company shall, within one week of the Registrar's power under subsection (2) becoming exercisable, give him notice of that fact, and, if a company fails to give notice as required by this subsection, the company and every officer of the company who is in default commits an offence and liable to a fine.

Election by private company to dispense with annual appointment.

233. (1) A private company may elect in accordance with section 185 to dispense with the obligation to appoint auditors annually.

(2) When such an election is in force the company's auditors shall be deemed re-appointed for each succeeding financial year on expiry of the time for appointing auditors for that year, unless a resolution has been passed under section 241 to the effect that their appointment should be brought to an end.

(3) If the election ceases to be in force, the auditors then holding office, shall continue to hold office until the conclusion of the next general meeting of the company and the provisions of section 232 shall then apply.

Filling of casual vacancies.

234. Directors may fill any casual vacancy in the office of auditor, but while such vacancy continues the surviving or continuing auditor may act.

Firm may be appointed auditor.

235. (1) A firm of auditors may be appointed to hold the office of auditor of a company.

(2) A change in the composition of the members of a firm of auditors while holding office as auditor of a company shall not constitute a casual vacancy in the office of auditor but if

less than one-half of the members of such firm remain after any one such change, it shall be taken as a resignation of auditor and a casual vacancy shall have been constituted.

Disqualification for appointment as auditor.

236. (1) No person shall be qualified for appointment as auditor of a company if he is -

- (a) a director, officer or employee of the company;
- (b) a director, officer or employee of any company performing secretarial work for such company;
- (c) a partner, employer or employee of a director or an officer of such company;
- (d) a person who by himself or his partner or employee habitually or regularly performs the duties of secretary or bookkeeper of the company
- (e) a person who at any time during the financial year was a director or officer of the company; or
- (f) not qualified to act as such under the Accountants Act, 1985.

(2) Any person who in terms of subsection (1) is disqualified for appointment as the auditor of a company shall likewise be disqualified for appointment as the auditor or another body corporate which is a subsidiary company controlled by that company, or is a holding company which controls that company, or is a subsidiary company of such holding company or would be so disqualified if such body corporate were a company.

(3) Subsection (1) shall not be construed as prohibiting the appointment as auditor of a private company, no shares of which are held by a public company, of a person who by himself or his partner or employee habitually or regularly performs the duties of secretary or bookkeeper of such private company if he is registered under The Accountants Act, 1985, and all the shareholders of such private company agree in writing to his appointment and the relevant circumstances are set out in the auditor's report on the affairs and annual financial statements of such private company.

(4) Any person who acts as the auditor of a company or other body corporate while disqualified under this section, commits an offence.

(5) For the purposes of this section "secretarial work" does not include share transfer secretarial work.

Notice of appointment to Registrar.

237. A company which is required to appoint an auditor under this Act shall, in writing, within 14 days of appointing such auditor, give notice of that appointment to the Registrar.

Removal, resignation, etc of Auditors

Removal of auditors.

238. (1) A company may by ordinary resolution at any time remove an auditor from office, notwithstanding anything in any agreement between it and him.

(2) Where a resolution removing an auditor is passed at a general meeting of a company, the company shall within 14 days give notice of that fact in the prescribed form to the Registrar.

(3) If a company fails to give the notice required by this sub-section, the company and every officer of it who is in default is guilty of an offence and liable to a fine.

(4) Nothing in this section shall be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as auditor.

(5) Where an auditor has reason to believe that in the conduct of the affairs of a company a material irregularity has taken place or is taking place and has caused or is likely to cause financial loss to the company or to any of its members or creditors and he has made a report thereon in writing to the directors of the company, he may not be removed from office until the provisions of section 19 (b) of the Accountant Act have been complied with.

Special notice for removal of auditor.

239. (1) Special notice is required for a resolution at a general meeting of a company -

- (a) removing an auditor before the expiration of his term of office, or
- (b) appointing an auditor a person, other than a returning auditor.

(2) On receipt of notice of such an intended resolution the company shall forthwith send a copy of it to the person proposed to be removed or, as the case may be, to the person proposed to be appointed and to the retiring auditor.

(3) 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.

(4) 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 member 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.

(5) If a copy of any such representation is not sent out as required because 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.

(6) Copies of the representations need not be sent out and the representations need not be read at the meeting if, on the application either of the company or of any other person

claiming to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may 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.

Resignation of auditors.

240. (1) An auditor may at any time during the period of his office by depositing a notice in writing to that effect at the company's registered office.

(2) An auditor intending to resign shall deliver to the company and to the Registrar a statement in the prescribed form to the effect that he has no reason to believe that in the conduct of the affairs of the company a material irregularity has taken place or is taking place which has caused or is likely to cause financial loss to the company or to any of the members or creditors other than an irregularity (if any) in terms of section 19 (b) of the Accountants Act, 1985 and it shall not be necessary that such an auditor shall have carried out, for all purposes of such notification, a special audit subsequent to the date up to which the last annual financial statement on which he has already reported, were made up.

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

(4) The company shall within 14 days of the deposit of a notice of resignation send a copy of the notice to the Registrar.

(5) If default is made in complying with this subsection, the company and every officer of it who is in default is guilty of an offence and liable to a fine.

Termination of appointment of auditor not appointed annually.

241. (1) When an election is in force under section 233, any member of the company may deposit notice in writing at the company's registered office proposing that the appointment of the company's auditors be brought to an end.

(2) No member may deposit more than one such notice in any financial year of the company.

(3) If such a notice is deposited it is the duty of directors -

- (a) to convene a general meeting of the company for a date not more than 28 days after the date on which the notice was given, and
- (b) to propose at the meeting a resolution, in a form enabling the company to decide whether the appointment of the company's auditors should be brought to an end.

(3) If the decision of the company at the meeting is that the appointment of the auditors should be brought to an end, the auditors shall not be deemed to be re-appointed when next they would be and, if the notice was deposited within the period immediately following the distribution of accounts, any deemed re-appointment for the financial year following that to which those accounts relate which has already occurred shall cease to have effect.

(4) If the directors do not within 14 days from the date of the deposit of notice proceed duly to convene a meeting, the member who deposited the notice (or, if there was more than one, any of them) may himself convene the meeting; but any meeting so convened shall not be held after the expiration of three months from that date.

(5) A meeting convened under this section by a member shall be convened in the same manner, as nearly as possible, as that which meeting are to be convened by directors.

(6) Any reasonable expenses incurred by a member by reason of the failure of the directors' duly to convene a meeting shall be made good to him by the company; and any such sums shall be recovered by the company from such of the directors as were in default out of any sums payable, or to become payable, by the company by way of fees or either remuneration in respect of their services.

(7) This section has effect notwithstanding anything in any agreement between the company and its auditors; and no compensation or damages shall be payable, by reason of the auditors' appointment being terminated under this section.

Rights, duties and remuneration

Auditor's right of access to books and to be heard at general meetings.

242. An auditor of a company shall -

- (a) have the right of access at all times to the accounting records and all books and documents of the company, and be entitled to require from the directors or officers of the company such information and explanations as he thinks necessary for the performance of his duties as auditor;
- (b) in the case of an auditor of a holding company, have the right of access to all current and former financial statements of any subsidiary and be entitled to require from the directors or officers of the company or subsidiary all such information and explanations in connection with any such statements and in connection with the accounting records, books and documents of the subsidiary as he may consider necessary; and
- (c) be entitled to attend any general meeting of the company and to receive all notices of and other communications relating to any general meeting which any member of the company is entitled to receive and to be heard at any general meeting which he attends on any part of the business of the meeting which concerns him as auditor.

Duties of auditor.

243. The auditor shall report to its members in such manner and on such matters as are prescribed by this Act and carry out all other duties imposed on him by this Act or any other law.

Remuneration of auditor.

244. (1) Save as is otherwise provided in this Act, the remuneration of the auditor shall be determined by agreement with the company.

(2) All payment made or to be made by a company to its auditor, specifying the remuneration for the audit, the remuneration for other specified services, the auditor's expenses and payments in respect of the audit and any other matter, shall be included under a separate heading in the income statement in respect of the accounting period concerned.

CHAPTER XI

ACCOUNTING AND DISCLOSURE

Accounting Records

Duty of company to keep accounting records.

245. (1) Every company shall keep such accounting records as are necessary fairly to present the state of affairs and business of the company and to explain the transactions and financial position of the trade or business of the company, including -

- (a) records showing the assets and liabilities of the company;
- (b) a register of fixed assets showing the respective dates of acquisition and the cost thereof, depreciation, if any, the respective dates of any disposals and the consideration received in respect thereof;

Provided that in respect of fixed assets acquired before the commencement of this Act, a company may, as at the end of its first financial year after the said commencement, take an inventory of all fixed assets and make a realistic allocation of the total value of fixed assets as shown in the financial statements as at that date over the inventory of assets;

- (c) records containing entries from day to day in sufficient detail of all cash received and paid out and of the matters in respect of which receipts and payments take place;
- (d) where the trade or business of the company has involved dealings in goods, records of all goods sold and purchased and (except in the case of ordinary retail trade) records showing the goods and the buyers and the sellers thereof in sufficient detail to enable the nature of those goods and those buyers to be identified; and
- (e) statements of the annual stocktaking.

(2) The accounting records referred to in subsection (1) may be kept either by making entries in bound books or by recording the matters in question in any other manner, and where such records are not kept by making entries in bound books, adequate precautions shall be taken for guarding against falsification and facilitating its discovery.

(3) The accounting records shall be kept at such place in Swaziland as the directors think fit and shall at all times be open to inspection by the directors.

Determination of financial year of company.

246. (1) Every company shall have an annual accounting period, which shall be known as its financial year, the commencing date of which shall be stated in the articles of association of the company and shall end on the day before and the date on the following calendar year:

Provided that the first financial year of a company shall, if the commencing date so determined -

- (a) is a date more than six months after such incorporation, be the period commencing on such incorporation and ending on the date immediately preceding the commencing date so determined; or
- (b) is a date not more than six months after such incorporation, be the period commencing on such incorporation and ending on the date so determined as the end of the financial year in the next calendar year.

Provided further that in the case of a company incorporated before the commencement of this Act, the financial year shall be the financial year as established under the previous order which shall be deemed to be stated in the company's articles of association.

(2) A company may at any time before the end of its current financial year change the end of its financial year to a date being not more than six months earlier or six months later than the date of its current financial year.

(3) Any reference in this Act to the financial year of a company shall be construed as including a reference to any period which in terms of this section stated to be a financial year of that company.

Duty to make out annual financial statements and to lay them before the annual general meeting.

247. (1) The directors of a company shall in respect of every financial year of the company cause to be made out annual financial statements and shall lay them before the annual general meeting of the company required to be held in terms of section 155 in respect of that financial year.

(2) The annual financial statements required to be made out under subsection (1) shall consist of -

- (a) the components of financial statement as set out in the financial reporting standards issued by the International Accounting Standards Board or its successor body;
- (b) a directors' report complying with the requirements of this Act; and
- (c) an auditor's report as required by section 262.

(2) The annual financial statements of a company shall -

- (a) be in conformity with Swaziland and International Financial Reporting Standards;

- (b) shall be in accordance with and include the matters set out in Schedule 3 in so far as they are applicable;
- (c) fairly present the state of affairs of the company and its business as at the end of the financial year concerned and the results of its operations for that financial year.

Election to dispense with laying of accounts and report before general meeting.

248. (1) A private company may elect in accordance with section 185 to dispense with the laying of accounts and reports before the company in general meeting.

(2) An election has effect in relation to the accounts and report in respect of the financial year in which the election is made and subsequent financial years.

(3) Whilst an election is in force, the references in the provisions of this Act to the laying of accounts before the company in general meeting shall be read as references to the sending of copies of the account to members and others under section 263.

(4) If an election under this section ceases to have effect, section 263 applies in relation to the accounts and reports in respect of the financial year in which the election ceases to have effect and subsequent financial years.

Right of shareholder to require laying of accounts.

249. (1) Where an election under section 258 is in force, the copies of the accounts and reports sent out in accordance with section 263 shall be-

- (a) sent not less than 28 days before the end of the period allowed for laying and delivering accounts and report, and
- (b) accompanied, in the case of a member of the company, a notice informing him of his right to require the laying of the accounts and reports before a general meeting.

(2) Before the end of the period of 28 days beginning with the day on which the accounts and reports are sent out in accordance with section 263, any member or auditor of the company may by notice in writing deposited at the registered office of the company require that a general meeting be held for the purpose of laying the accounts and reports before the company.

(3) If the directors do not within 21 days from the date of the deposit of such a notice proceed duly to convene a meeting, the person who deposited the notice may do so himself.

(4) A meeting so convened shall not be held more than three months from that date and shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(5) Where the directors do not duly convene a meeting, any reasonable expenses incurred by reason of that failure by the person who deposited the notice shall be made good to him by the company, and shall be recouped by the company out of any fees, or other

remuneration in respect of their services, due or to become due to such of the directors as were in default.

(6) The directors shall be deemed not to have duly convened a meeting if they convened a meeting if they convene a meeting for a date more than 28 days after the date of the notice convening it.

Accounting by Holding Companies

Obligation to lay group statements before annual general meeting.

250. (1) Where at the end of its financial year a company, which is not a wholly owned subsidiary of another company has subsidiaries, group annual financial statements shall be made out and shall be laid before the annual general meeting of the company before which its own annual financial statements are so laid under section 247 (1).

(2) Subject to the provisions of section 253 such group annual financial statement shall together with the company's own annual financial statements in conformity with generally accepted accounting practice fairly present the state of affairs and business of the company and all its subsidiaries at the end of the financial year concerned and the profit or loss of the company and all its subsidiaries for the financial year, as a whole so far as concerns the members of the company and shall for that purpose include at least the matters prescribed by Schedule 3, in so far as they applicable and comply with any other requirements of this Act.

Group annual financial statements.

251. (1) (a) Subject to section 252, group annual financial statements shall consist of consolidated financial statements as defined in the relevant financial reporting standards issued by the International Accounting Board or its successor body and shall include the following -

- (i) a consolidated balance sheet dealing with the state of affairs of the company and all the subsidiaries to be dealt with in group annual financial statements; and
- (ii) a consolidated income statements dealing with the profit or loss of the company and those subsidiaries.
- (iii) statements annexed to the company's own annual financial statements expanding the information there in contained about the subsidiaries,

or of any combination of these forms.

(2) Group annual financial statements may be wholly or partly incorporated in the company's own annual financial statements.

Where annual financial statements are to be consolidated.

252. Consolidated annual financial statements shall be presented in accordance with Swaziland and International Financial Reporting Standards.

Where group annual financial statements need not deal with subsidiary.

253. (1) Group annual financial statements need not deal with a subsidiary if the directors of the company are of the opinion that it is impracticable or would be of no real value to members of the company, in view of the insignificant amounts involved, or would entail expense or delay out of proportion to the value to members of the company and, if the directors are of such opinion about each of the company's subsidiaries, group annual financial statements shall not be required.

(2) If the directors of a company are of the opinion that-

- (a) if a subsidiary were to be dealt with in group annual financial statements, the result would be misleading or harmful to the business of the company or any of its subsidiaries; or
- (b) the business of the company and that of a subsidiary are so different that they cannot reasonably be treated as a single undertaking or are of such opinion about each of the company's subsidiaries,

group annual financial statements need not deal with that subsidiary or, as the case may be, no group annual financial statements shall be required, if the Registrar approves.

- (3) (a) A company shall apply to the Registrar for his approval under subsection (2) on the prescribed form and the application shall be accompanied by a report by the auditor of the company on the opinion and decision of the directors.
- (b) any such approval by the Registrar shall expire after two years and may be renewed on application by the company.

(4) Any director or officer of a company who fails to comply with the provisions of subsection (3), commits an offence.

Accounting periods of company and subsidiary to be the same.

254. The directors of any subsidiary shall, notwithstanding anything to the contrary in this Act or in its articles, cause annual financial statements as required by section 247 to be made out so as to cover an accounting period or accounting periods ending statements of its holding company or holding companies.

Duty of auditor to report on decisions of directors on consolidated and group annual financial statements.

255. In every case where the directors of a holding company decide not to make out consolidated annual financial statements under section 252, or not to deal with any subsidiary in group annual financial statements under section 253(1), the auditor of the holding company shall report on such decision of the directors.

Disclosure of Certain Matters in Financial Statements

Annual financial statements of a company shall disclose loans and security for benefit of directors and managers.

256. (1) The annual financial statements of a company shall state -

- (a) the amount and particulars of every loan referred to in section 204(1) which has during the financial year concerned been made by virtue of the provisions section 204(3) (a), (b) or (e), including every such loan which has during the said financial year been repaid;
- (b) the particulars of every security (and of the transaction to which it relates) referred to in section 204(1), which has during the financial year concerned been provided by virtue of the provisions of section 204(3) (a), (b) or (e), including every such security which has during the said financial year been cancelled;
- (c) the balance outstanding of every loan described in paragraph (a), made at any time before the said financial year and outstanding at the end of thereof; and
- (d) the particulars of every security (and of the transaction to which it relates) described in paragraph (b), provided at any time before the said financial year and still in existence at the end of thereof (including, if applicable, the balance outstanding on the said transaction to which it relates).

(2) If a company which has made a loan or provided any security referred to in subsection (1) is a subsidiary and its holding company is by this Act required to make out group annual financial statements or otherwise to furnish particulars of such subsidiary, there shall be included therein the information provided for in subsection (1).

(3) Where a loan is a loan of share, debentures or other property, or where any security is provided in respect of a loan of share, debentures or other property, the requirements of this section may be complied with by stating the particulars in the director's report or by way of a note to the annual financial statements.

(4) If the provisions of this section are not complied with in respect of the annual financial statements of a company, the auditor of the company shall in his report relating to such annual financial statements include a statement containing such information in regard to the matter as he is reasonably able to furnish.

- (5) (a) Any director or manager or past director or manager of a company or of its holding company (if any) or of any other subsidiary of that holding company shall at the written request of the first-mentioned company or its auditor in writing give such information, including particulars relating to his control of a company or body corporate contemplated in section (1) (b), as the company or its auditor may require for compliance with the provisions of this section.
- (b) Any director or manager or past director or manager referred to in paragraph (a) who fails to comply with such request within one month from the date thereof, commits an offence.

Annual financial statements to disclose loans made to and security provided for benefit of directors or managers before their appointment.

257. (1) The annual financial statements of a company shall state-
- (a) the amount and particulars of every loan which has at any time been made by the company to any person before his appointment as director or manager of the company if-
 - (i) the loan was still in existence at the date of such appointment; and
 - (ii) such appointment was made at any time during the financial year concerned; and
 - (b) the particulars of every security (and of the transaction to which it relates) which has at any time been provided by the company for the benefit of any person before his appointment as director or manager of the company, if-
 - (i) the security was still in existence at the date of such appointment; and
 - (ii) such appointment was made at any time during the financial year concerned.
- (2) For the purposes of subsection (1)-
- (a) "loan" includes-
 - (i) a loan of money, shares, debentures or any other property; and
 - (ii) any credit extended by a company where the debt concerned is not payable or being paid in accordance with normal business practice in respect of payment of debts of the same kind; and
 - (b) "security" includes a guarantee.
- (3) The provisions of section 198 (2), (3), and (4) shall *mutatis mutandis* apply with reference to loans and securities contemplated in this section.
- (4) This section shall not apply in respect of a loan made or security provided bona fide in the ordinary course of the business of a company actually and regularly carrying on the business of making of loans or the provision of security.

Annual financial statements to disclose director's emoluments and pensions.

258. (1) The annual financial statements of a company shall in so far as the information necessary for the purpose is contained in the records of the company or is otherwise available to it, contain particulars showing -
- (a) the aggregate amount of the directors' emoluments;

- (b) the aggregate amount of directors' or past directors' pensions; and
- (c) the aggregate amount of any compensation to directors or past directors in respect of loss of office.

(2) The amount to be shown under subsection (1) (a) -

- (a) shall include any emoluments paid to or receivable by any person in respect of his services as a director of the company or any of its subsidiaries or in respect of services rendered in any other capacity while director of the company or of any subsidiary or otherwise in connection with any subsidiary or otherwise in connection with the carrying of the affairs of the company or any such subsidiary;
- (b) shall distinguish between emoluments in respect of services as a director, whether of the company or of its subsidiary, and other emoluments,

and for the purposes of this section "emoluments", in relation to a director, includes fees and percentages, salaries, any sums paid by way of expenses allowance, any contribution paid under any pension scheme and the estimated money value of any other material benefits received.

(3) The amount to be shown under subsection (1) (b) -

- (a) shall include any pension paid or receivable in respect of any such services of a director or past director of the company referred to in subsection (2) whether to or by him or on his nomination or, by virtue of dependence on or other connection with him, to or by any other person but shall not include any pension paid or receivable under a pension scheme, if the contributions payable thereunder are substantially adequate for the maintenance thereof; and
- (b) shall distinguish between pensions in respect of services as a director or otherwise, whether of the company or its subsidiary; and other pensions,

and for the purposes of this section, the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment, the expression "pension scheme" means a scheme for the provision of pensions in respect of services as a director or otherwise which is maintained in whole or in part by means of contributions, and the expression "contribution", in relation to a pension scheme, means any payment (including any insurance premium) paid for the purposes of the scheme by or in respect of which pensions will or may become payable under the scheme, but does not include any payment in respect of two or more person if the amount paid in respect of each of them is not ascertainable.

(4) The amount to be shown under subsection (1) (c) -

- (a) shall include any sums paid to or received by a director or past director by way of compensation for the loss of office as director of the company or for loss, while a director of the company, or any other office in connection with the carrying the management of the affairs of any subsidiary of the company; and

- (b) shall distinguish between compensation in respect of the office of director, whether of the company or its subsidiary, and compensation in respect of other offices,

and for the purpose of this section compensation for loss of office shall include sums paid as consideration for or in connection with a person's retirement from office.

- (5) The amounts to be shown under each paragraph of subsection (1) -

- (a) shall include all relevant sums paid by or received from:

- (i) the company;
- (ii) the company's subsidiaries; and
- (iii) any other person,

except sums to be accounted for to the company or any of its subsidiaries, or, by virtue of section 205 to past or present members of the company or any of its subsidiaries or any class of those members; and

- (b) shall distinguish, in the case of the amount to be shown under subsection (1) (c), between the sums respectively paid by or receivable from the company, the company's subsidiaries and other persons.

(6) The amounts to be shown under this section for any financial year shall be the sums received in respect of that year, when ever paid, or in the case that where any sums are not shown in the annual financial statemetns for the relevant financial year on the ground that the person receiving them is liable to account as mentioned in subsection (5) (a), but the liability is there after being wholly or partly released or is not enforced within a period of two years, those sums shall, to the extent to which the liability is released or not enforced, be shown in the first annual financial statements in which it is statistical to show them and shall be distringuished from the amount to be shown therein apart from this provisions.

(7) For the purpose of enabling them to show separately the respective amounts received under different headings as required by this section, the directors of a company may apportion any payments received or receivable in such manner as they consider appropriate.

(8) In this section any reference to a company's subsidiary shall for the purpose of subsection (2) and (3) include a reference to a company which was a subsidiary of the first mentioned company at the time the services contemplated in the said subsection were rendered, and, for the purposes of subsection (4), include a reference to a company which was such a subsidiary immediately before the loss of office as director of the company concerned.

(9) Every director or past director of a company shall at the written request of the company or its auditor give notice in writing to the company or the auditor, within twenty-one days from the date of such request, of such matters relating to himself as may be necessary for the purposes of this section, and shall if he fails to comply with any such request, be guilty of an offence.

(10) If in respect of any annual financial statements the requirements of this section are not complied with, the auditor of the company by whom the annual financial statements are

examined, shall include in his report so far as he is reasonably able to do so, a statement giving the required particulars.

Further requirements as to financial statements

Approval and signing of financial statements.

259. (1) The annual financial statements of a company other than the auditor's report, shall be approved by its directors and signed on their behalf by two of the directors or, if there is only one director, by that director, and group annual financial statements shall similarly be approved and signed by the directors of the holding company.

(2) If a copy of any annual financial statements, or group annual financial statements which have not been approved and signed as required by subsection (1), is issued, circulated or published, every director or officer of the company concerned who is a party to such issue, circulation or publication thereof, commits an offence.

Director's report.

260. (1) Except in the case of a company which is wholly-owned subsidiary of any other company incorporated in Swaziland, every company shall, as part of its annual financial statements, lay before the annual general meeting a report by the directors with respect to the state of affairs, the business and the profit or loss of the company or of the company and its subsidiaries, if any.

(2) The director's report shall deal with every matter which is material for the appreciation by the members of the company of the state of affairs, the business and the profit or loss of the company or of the company and its subsidiaries, if any, and shall for the purpose be in accordance with and include at least the matters prescribed by Schedule 3, in so far as these are applicable, and comply with any other requirement of this Act.

(3) Any director of a company who fails to take all reasonable steps to ensure compliance with the provisions of this section, commits an offence.

Auditor's duties as to annual financial statements

Auditor's duties as to annual financial statements and other matters.

261. It shall be the duty of the auditor of a company -

- (a) to audit the annual financial statements and group annual financial statements to be laid before its annual general meeting;
- (b) to satisfy himself that proper accounting records as required by this Act have been kept by the company and that proper returns adequate for the purposes of his audit have been received from branches not visited by him;
- (c) to satisfy himself that the minute books and attendance register in respect of meetings of the company and of directors and managers have been kept in proper form as required by this Act;

- (d) to satisfy himself that a register of interests in contracts as required by section 208 have been kept and that the entries therein are in accordance with the minutes of director's meetings;
- (e) to examine or satisfy himself as to the existence of any securities of the company;
- (f) to obtain all information and explanations which to the best of his knowledge and belief are necessary for the purposes of carrying out his duties;
- (g) to satisfy himself that the company's annual financial statements are in agreement with its accounting records and returns;
- (h) to examine group annual financial statements and satisfy himself that they comply with the requirements of this Act;
- (i) to examine such of the accounting records of the company and carry out such tests in respect of such records and such other auditing procedures as he considers necessary in order to satisfy himself that the annual financial position of the company and its subsidiaries and the result of its operations and those of its subsidiaries, are in conformity with Swaziland and International Financial Reporting Standards applied on a basis consistent with that of the preceding year;
- (j) to satisfy himself that statements made by the directors in their report do not conflict with a fair interpretation or distort the meaning of the annual financial statements and accompanying notes,
- (k) when he gets to know, or has reason to believe, that the company is not carrying on business or is not in operation and has no intention of resuming operations in the foreseeable future, to report forthwith accordingly by certified post to the Registrar;
- (l) to comply with any other duty imposed on him by this Act; and
- (m) to comply with any applicable requirements of the Accountants' Act, 1985.

Auditor's report.

262. (1) If the auditor of a company has carried out his audit free from any restrictions whatsoever, and in accordance with the requirements of section 261 and the International Standards on auditing and auditing guidelines as laid down by the Swaziland Institute of Accountants he shall make a report to the members of the company to the effect that he has examined the annual financial statements and that in his opinion they fairly represent the financial position of the company and the results of its operations in the manner required by this Act.

(2) In the event that the auditor is unable to make such a report or to make it without qualification, he shall include in his report a statement to that effect and set forth the facts or circumstances which prevent him from making his report or from making it without qualification.

Issue of copies of annual financial statements

Duty of company to send financial statements to members and Registrar.

263. (1) A copy of the annual financial statements of a company and the group annual financial statements, if any, shall not less than twenty-one days before the date of the annual general meeting of the company at which such financial statements are to be considered be sent to every member of the company and every holder of debentures of the company (whether or not such member or holder of debentures is entitled to receive notices of general meetings of the company) and to all persons other than members or holders of debentures of the company who are entitled to receive such notices.

(2) Any such copy not sent to members at least twenty-one days before the date of the relevant meeting shall be deemed to have been so sent if it is so agreed by all members entitled to attend and vote at the meeting and debenture-holders and other persons referred to in subsection (1).

(3) A public company shall on the day on which it sends such copies to its members as provided in subsection (1), send to the Registrar under cover of the prescribed form a copy, certified to be a true copy by a director and the secretary of the company of the annual financial statements and group annual financial statements, if any.

Right of Members and others to copies of annual financial statements and interim reports.

264. (1) Any member or holder of debentures of a company shall be entitled to be furnished on demand without charge a copy of the last annual financial statements (including group annual financial statements where applicable).

(2) A judgment creditor of a company shall, if it appears from the return of the person whose duty it is to execute the judgement in question that he has not found sufficient disposable property to satisfy that judgement, be entitled to be furnished on demand without charge with a copy of the last annual financial statements of the company.

CHAPTER XII

COMPROMISE, AMALGAMATION, ARRANGEMENT AND TAKE-OVERS

Compromise and arrangement between company, its members and creditors.

265. (1) Where any compromise or arrangement is proposed between a company and its creditors or any class of them or between a company and its members or any class of them, the Court may, on the application of the company or any creditor or member of the company or, in the case of a company being wound up, of the liquidator, or if the company is subject to a judicial management order, of the judicial manager, order a meeting of the creditors of class of creditors, or of the members of the company or class of members as the case may be, to be summoned in such manner as the Court may direct.

(2) If the compromise or arrangement is agreed to by -

- (a) a majority in number representing three-fourths in value of the creditors or class of creditors; or