LAWS OF THE STATE OF ISRAEL

VOL. 44 — SPECIAL VOLUME

COMPANIES LAW

5759-1999

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Translation from the Hebrew
Prepared by the Ministry of Justice

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EXPLANATIONS

IR (*Iton Rishmi*)	The Official Gazette during the tenure of the provisional Council of State
Reshumot	The Official Gazette since the inception of the Knesset

Sections of *Reshumot* referred to in this translation:

Yalkut Hapirsumim	Government Notices
Sefer Ha-Chukkim	Principal Legislation
Chukkei Taktziv	Budgetary Legislation
Kovetz Ha-Takkanot	Subsidiary Legislation
Hatza'ot Chok	Bills
Dinei Yisrael; (from No. 2): *Dinei Medinat Yisrael* (*Nusach Chadash*)	The revised up-to-date and binding Hebrew text of legislation enacted before the establishment of the State
PG (Palestine Gazette)	The Official Gazette of the Mandatory Government
Laws of Palestine	The 1934 revised edition of Palestine legislation (Drayton)
LSI (Laws of the State of Israel)	The English translation of laws of which this volume forms a part
NV (Laws of the State of Israel (New Version) (see above)	An English edition of the revised version of the pre-State legislation

COMPANIES LAW 5759-1999*

Part I: Interpretation

1. In this Law – Definitions

"absorbed company" – one or more companies intended to merge with a surviving company in such a manner as to bring about the extinction of the absorbed company;

"act" – a legal act, be it an action or an omission;

"address" –

(1) in respect of an individual who is a resident of Israel – his address as registered in the Population Registry, and if he gives any other address, that other address;

(2) in respect of an individual who is not a resident of Israel –the address of his residence and if he gives any other address, that other address;

(3) in respect of a company registered in Israel – the address of its registered office;

(4) in respect of a company registered outside Israel – the address of its office outside Israel and if it gives an address in Israel, the address so given;

(5) in respect of any other corporate body with an address registered by law – its registered address;

"annual meeting" – a meeting of shareholders under section 60;

"articles of association" – the articles of association of a company as first filed with the Registrar upon its incorporation or as altered under law;

"auditor" – an accountant appointed to perform acts of audit as provided in section 154;

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* Enacted by the Knesset on 3 Iyar 5759 (19th April, 1999); The Bill and Explanatory Memorandum were published in *Hatza'ot Chok* 2432, on 29 Tishrei 5756 (23rd October, 1995), p. 2.

"bonus shares" – shares allotted by a company for no consideration to shareholders entitled thereto;

"control block" – shares conferring twenty-five percent or more of the voting rights at the general meeting;

"certificate of incorporation" – a certificate signed by the Registrar evidencing the registration of a company;

"class meeting" – a meeting of shareholders of a class of shares;

"Companies Ordinance" – the Companies Ordinance [New Version] 5743-1983;[1]

"control" – as defined in the Securities Law;

"counting of votes" – counting of the votes of voters in accordance with the voting rights laid down for the shares by virtue of which the shareholders taking part in a meeting exercise their votes;

"the court" – the District Court;

"date of incorporation" – the date determined by the Registrar as the date of incorporation of a company in the certificate of incorporation;

"debenture" – a document issued by a company evidencing the existence of a monetary obligation owed by the company, and setting out the terms of such obligation, excluding promissory notes or bills of exchange given to a company during the course of its business;

"derivative action" – an action filed by a plaintiff on behalf of a company based on the company's cause of action;

"director" – a member of the board of directors of the company and a person actually serving in the position of director, whatever his title may be;

"distribution" – the grant of a dividend or an undertaking so to grant, directly or indirectly, as well as purchase; for this purpose, "purchase" – the purchase or grant of funding for the purchase, directly or indirectly, by a company or by its subsidiary or by any other corporate body controlled by it, of shares in the company or of securities convertible

1 *Dinei Medinat Yisrael*, New Version 37, p. 761.

to shares in the company or capable of realization for shares in the company, including undertakings to do any of the above;

"dividend" – any asset given by the company to a shareholder by virtue of his right as a shareholder, whether in cash or in any other manner, including transfer otherwise than for valuable consideration, but excluding bonus shares;

"extraordinary meeting" – a general meeting of shareholders that is not an annual meeting;

"extraordinary transaction" – a transaction not in a company's ordinary course of business, a transaction that is not undertaken in market conditions or a transaction that is likely substantially to influence the profitability of a company, its property or liabilities;

"floating charge" – as defined in the Companies Ordinance;

"foreign company" – a company registered outside Israel and any body of persons, other than a partnership, registered or incorporated outside Israel;

"general meeting" – an annual meeting or an extraordinary meeting of shareholders;

"holding" and "purchase" – as defined in the Securities Law;

"identity number" –

(1) in respect of a company registered in Israel – its registration number;

(2) in respect of a company registered outside Israel – the State in which it is registered and its registration number, should it have one;

(3) in respect of any other corporate body that has a registration number under any law – its registration number;

(4) in respect of an individual who is a resident of Israel – his identity number as registered in the population registry;

(5) in respect of an individual who is not a resident of Israel – the State in which his passport was issued and the passport number;

"index" – the consumer price index published by the Central Bureau of Statistics;

"interested party" – a substantial shareholder, a person with authority to appoint one or more directors or the general manager, and a person acting as director or general manager of a company;

"means of control" – any of the following:

(1) the right to vote at a general meeting of a company;

(2) the right to appoint a director of a company;

"member of a stock exchange" – a person who is the member of a stock exchange in accordance with the stock exchange rules as defined in section 46 of the Securities Law;

"memorandum" – as defined in the Companies Ordinance, in its version immediately prior to the coming into force of this Law;

"merger", for the purposes of Part VIII – the transfer of all assets and liabilities, including conditional, future, known and unknown debts of an absorbed company to a surviving company, as a result of which the absorbed company is absorbed, in accordance with section 323;
"merging company" – an absorbed company and a surviving company;

"the Minister" – the Minister of Justice.

"nominee company" – as defined in the Securities Law;

"offeree", in a tender offer – a shareholder whose shares are the subject of a tender offer;

"offeror", in a tender offer – a person making a tender offer

"office holder" – a director, general manager, chief business manager, deputy general manager, vice-general manager, any person filling any of these positions in a company even if he holds a different title, and any other manager directly subordinate to the general manager;

"outside director" – as defined in Part VI, Chapter 1, Article E;

"personal interest" – a personal interest of any person in an act or transaction of a company, including a personal interest of his relative or of a corporate body in which such person or a relative of such person has a personal interest, but excluding a personal interest stemming from the fact of a shareholding in the company;

"pledge" – as defined in the Pledges Law 5727-1967,[2] as well as a floating charge;

"premium" – the amount by which the consideration for allotment of shares in the company exceeds the nominal value of the shares;

"presence of a shareholder", at a general meeting – the presence of a shareholder himself or by proxy, or by a voting paper under section 87;

"private company" – a company that is not a public company;

"private placement" – an offer for the issue of securities of a public company that is not an offer to the public;

"promoter" – a person who performs an act in the name or in place of a company that has not yet been incorporated;

"public company" – a company whose shares are listed for trading on a stock exchange, or have been offered to the public pursuant to a prospectus as defined in the Securities Law, and are held by the public;

"Registrar of Companies" or "Registrar" the Registrar of Companies as provided in section 36

"registration company" – as defined in the Securities Law

"related company" – as defined in the Securities Law;

"relative" – spouse, sibling, parent, grandparent, child or child of spouse or spouse of any of the above;

"secured debenture" – a debenture under which a company's obligations is secured by a pledge over the company's assets, in whole or in part;

"Securities Authority" – the authority as defined in the Securities Law;

"Securities Law" – the Securities Law 5728-1968;[3]

"security" – including a share, debenture, or rights to purchase, convert

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2 *Sefer Ha-Chukkim*, 5727, p. 48.

3 *Sefer Ha-Chukkim*, 5728, p. 234.

or sell any of these, whether registered under a person's name or for bearer;

"series of debentures" – two or more debentures of equal status with regard to monetary obligation and the securing of payment;

"share" – a bundle of rights in a company laid down by law and in the articles of association;

"share certificate" – a certificate stating the name of the owner registered in the company's registers together with the number of shares owned by him;

"share warrant" – a document stating that the holder thereof is the owner of a bearer share;

"stock exchange" – a stock exchange in Israel and any stock exchange outside of Israel approved by a person authorized to grant such approval to such under the law of the State in which it operates;

"stock exchange in Israel" – a stock exchange licensed under the Securities Law;

"subsidiary" – as defined in the Securities Law;

"substantial act" – an act likely substantially to influence the profitability of a company, its assets or liabilities;

"substantial private placement" – a private placement in respect of which the provisions of section 270(5) apply;

"surviving company" – a company to which all of the assets and liabilities of an absorbed company are transferred in a merger;

"target company" – a company to whose shareholders a tender offer is made;

"tender offer" – an offer to purchase shares, made to all the shareholders of the company;

"transaction" – a contract or agreement as well as a unilateral decision on the part of a company in respect of the grant of a right or other benefit;

Part II: Foundation of a Company

Chapter 1: Incorporation

Article A: Right of Incorporation

2. Any person may found a company, provided that none of the purposes of the company is illegal, immoral or contrary to public policy. — The right to incorporate

3. A company can have a single shareholder. — One-person company

Article B: Legal Personality

4. A company shall be a legal personality having capacity for any right, duty or act consistent with its character and nature as an incorporated body. — Legal personality of a company

5. A company shall exist from the date of its incorporation as set out in its certificate of incorporation, until its incorporation is ended upon its dissolution. — Existence of company

6. (a) Lifting the corporate veil shall take place in any one of the following ways: — Lifting the corporate veil

(1) attribution of rights and obligations of the company to one of its shareholders;

(2) attribution of qualities, rights or obligations of a shareholder to the company.

(b) Notwithstanding the provisions of section 4, the court may lift the corporate veil if a condition relating thereto is prescribed under any enactment, or if it is just and right in the circumstances of the case to do so, or if the conditions prescribed in subsection (c) prevail:

(c) The court hearing a proceeding against a company may, in exceptional cases and for special reasons, lift the corporate veil if any one of the following conditions prevails:

(1) the use of the separate legal personality of the company is intended to frustrate the intent of any law or to defraud or unfairly prejudice any person;

(2) in the circumstances of the case, it is just and right to do so, taking into account the fact that there was a reasonable basis for presuming that the management of the company's affairs was not in the company's best interest and that it involved the taking of an unreasonable risk in respect of the company's ability to pay its debts.

(d) The lifting of the veil in order to attribute the debts of the company to one of its shareholders shall be effected while taking into account the company's ability to pay its debts.

(e) Nothing in the provisions of this section shall prevent a court from granting other remedies, including the suspension of the rights of a certain shareholder in the company from being paid his debt until the company fulfilled all of its other undertakings.

Restriction of occupation

7. Where the court has ordered that the debts of the company are to be attributed to one of its shareholders under the provisions of section 6(c), or to one of its office holders under the provisions of section 54(b), the court may order that during such period as it may determine, which period shall be no greater than five years, such person may not be a director or general manager of a company nor be involved, directly or indirectly, in the founding or management of a company.

Article C: Establishment and Registration of a Company

Application for registration

8. A person seeking to register a company shall submit an application to the Registrar in the form prescribed by the Minister, to which shall be attached:

(1) a copy of the articles of association;

(2) a declaration by the first directors that they are willing to serve as directors, to be prescribed by the Minister.

Fees

9. (a) A person wishing to register a company shall pay a fee (hereinafter the "registration fee") on submission of the application.

(b) A company shall pay an annual fee every year.

10. (a) The Registrar shall register a company if he considers that all the requirements of this Law in respect of registration, and any matter that is a precondition therefor, have been fulfilled. Certificate of incorporation

(b) The Registrar shall give every company a registration number, as provided in section 38(c), and shall enter it on the certificate of registration.

(c) On registration, the Registrar shall deliver to the company a certificate of registration.

(d) A certificate of registration delivered to a company shall serve as conclusive evidence that all of the requirements under this Law regarding registration, and any matter that is a condition thereof, have been fulfilled.

(e) Nothing in the provisions of subsection (d) shall remedy any fault in the articles of association or preclude the need to remedy such fault.

Article D: Purpose of Company

11. (a) The purpose of a company shall be to operate in accordance with business considerations in maximizing its profits, and within the scope of such considerations, the interests of its creditors, its employees and the public may *inter alia* be taken into account; similarly, the company may donate a reasonable sum for a proper object, even if such donation is not within the scope of business considerations as aforesaid, if a provision for such is laid down in the articles of association. Purpose of company

(b) The provisions of subsection (a) shall not apply to a company the articles of association of which provide that it was established for public purposes only, and such articles of association prohibit the distribution of profits to shareholders.

Article E: Acts Performed by a Promoter

12. (a) A company may approve the act of a promoter performed on behalf of or in place of the company prior to its incorporation. Approval of act

(b) Approval *ex post facto* shall be regarded as authorization *ab initio*, provided that no right acquired by any other person (in this Article "a third party") *bona fide* for value prior to the approval is prejudiced.

Status of a third party regarding a promotion

13. (a) Where a third party knows, at the time of an act referred to in section 12, of the existence of a promotion, such party may regard the promoter as his opposite number or may withdraw from the act, and claim damages from the promoter, in any one of the following events:

(1) the company did not confirm the act within a year of the date of its being performed;

(2) the circumstances show that the company is not likely to become incorporated, provided that the third party has so notified the promoter thirty days in advance;

(3) the company did not ratify the act within thirty days of the date on which the third party so required.

(b) Where the company has ratified the act, the promoter shall not have any rights or obligations in respect of it.

(c) The promoter and the third party may contract out of the provisions of this section.

Lack of awareness of promotion

14. Where the third party did not know of the existence of the promotion at the time of the act, the following provisions shall apply:

(1) the promoter's act shall oblige or benefit the promoter as the case may be;

(2) once a company is incorporated, it may confirm the act, provided that such confirmation is not inconsistent with the essence of the act, its conditions or the circumstances of the matter; where the company confirms an act, the promoter's act shall bind both the company and the promoter, jointly and severally, and shall benefit the company alone.

Chapter 2: Articles of Association

Article A: Contents of Articles and their Alteration

Articles of association of a company

15. Every company shall have articles of association as provided in this Article.

Validity of articles of association

16. The articles of association of a company as registered shall be effective from the date of its incorporation.

Articles of association as a contract

17. (a) The articles of association shall be considered as a contract between the company and its shareholders, and between its shareholders themselves.

(b) Alteration of the articles of association shall be effected in the ways provided in this Law.

Details that must be included in the articles of association

18. The articles of association of a company shall contain the following details:

(1) the name of the company;

(2) the objects of the company;

(3) details regarding the registered share capital, as provided in sections 33 and 34;

(4) details regarding the limitation of liability, as provided in section 35.

Details that may be included in the articles of association

19. A company may include in its articles of association matters relating to the company or to its shareholders, including the following:

(1) the rights and duties of the shareholders and of the company;

(2) provisions regarding ways of managing the company;

(3) any other matter that the shareholders have seen fit to settle in the articles of association.

Amendment of articles of association

20. (a) A company may alter its articles of association by a resolution passed by an ordinary majority at the general meeting of the company, unless the articles of association provide that a different majority is required, or if a resolution is passed in accordance with section 22.

(b) Where there is a provision in this Law which may be contracted out of, or where there is a provision in the articles of association stating that a particular majority is required for the alteration of some or all of the provisions thereof, the company shall only be allowed to alter such provision by resolution passed at the general meeting with the same particular majority or proposed majority, whichever is the greater.

(c) Where the shares of the company are divided into classes, no alteration shall be made to the articles of association that will affect the rights of any class of shares without the approval of a meeting of such class, unless otherwise provided in the articles of association; the provisions of subsections (a) and (b) shall apply *mutatis mutandis* to the passing of decisions in the meeting of the class.

(d) Notwithstanding the provisions of this section, an alteration of the articles of association requiring a shareholder to purchase further shares or to increase the scope of his liability shall not bind the shareholder without his consent.

Validity of alteration and reporting

21. (a) Alteration of the articles of association, other than an alteration under section 40, shall be valid from the date of passing the resolution in respect thereof by the company, or from such later date as may be fixed by the company by resolution.

(b) A company that has passed a resolution to alter its articles of association shall submit the text of the resolution to the Registrar, within fourteen days of the date of the resolution.

Limitation on altering the articles of association

22. (a) A company may by contract limit its power to amend the articles of association, or provisions of it if a resolution to that effect is passed by the general meeting, by the majority required for the alteration of the articles of association.

(b) A resolution passed as aforesaid in subsection (a) shall be treated as a resolution to alter the articles of association and the provisions of this Article shall apply thereto.

Signature of articles of association

23. (a) The articles of association shall be signed by the first shareholders and the shares allotted to them shall be noted therein, as shall be the name, address and identity number of each such shareholder.

(b) An advocate shall verify the identity of the signatories to the articles of association by his signature on the articles of association.

24. A company incorporated prior to the commencement of this Law may: Transitional provisions regarding memorandum and articles of association

(1) alter the provisions laid down in its memorandum in the manner and subject to the conditions provided therefor in the Companies Ordinance as it stood immediately prior to the commencement of this Law, subject to the provisions of paragraph (5);

(2) alter its memorandum or rescind it in the manner prescribed in section 350(a), (i), (j), (k) and (l);

(3) alter the provisions laid down in its articles of association in a resolution passed at a general meeting by a majority of seventy-five percent of those present, or by such other majority as may be prescribed in the memorandum of the company or in its articles of association;

(4) lay down in its articles of association, subject to the provisions of section 20(b), a provision regarding the majority required to alter the provisions of the articles of association, in a resolution made by a majority of seventy-five percent of those present at the general meeting, and by a larger majority if such is laid down in the memorandum of the company or in its articles of association; where such a new provision is laid down, the provisions of section 20(b) shall apply to its alteration;

(5) prescribe in its memorandum, by resolution passed at the general meeting by a majority of seventy five percent of those present, a provision relating to the alteration of the majority required to alter provisions in the memorandum that the general meeting is authorized to alter; the provisions of section 20(b) shall apply in this regard, *mutatis mutandis*.

Article B: Name of the Company

25. A company may be registered with any name, subject to the provisions of this Article, and the provisions of any law. Choice of name

Notation of Ltd. at the end of the name of a company

26. The name of a company whose shareholders' liability is limited, as provided in section 35, shall include the notation "Limited" or "Ltd." at the end of it.

Misleading name

27. (a) A company shall not be registered with a name that is:

(1) the name of a corporation lawfully registered in Israel, or so similar thereto as to be misleading;

(2) a registered trade mark in respect of goods or services dealt with for purposes similar to those of the company seeking to be registered, or a name so similar to it as to be misleading, unless it is proved to the Registrar that the owner of the trade mark has agreed thereto in writing; for this purpose, "a registered trade mark" shall have the meaning attributed to it in the Trade Marks Ordinance [New Version], 5732-1972.[4]

(b) Without derogating from the provisions of subsection (a), a company shall not be registered with a name which, in the Registrar's opinion, might be deceptive or misleading.

Name contrary to public policy

28. A company shall not be registered with a name that, in the Registrar's opinion, might be contrary to public policy or to public sensitivity.

Registrar's authority to order change of name

Registrar's authority to order change of name

29. (a) Where a company has been registered with a name that is not permitted under this Article, the Registrar may require the company to change its name.

(b) Where the company has not provided the Registrar with notice of a resolution to change its name within four months from the date of the requirement set out in subsection (a), the Registrar may change the name of the company to such name as he may choose.

(c) Where the Registrar decides to change the name of the company, he shall send the company a certificate of change of name, and the change shall be considered to have been made in accordance with a resolution of the company and the Registrar.

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4 *Dinei Medinat Yisrael*, New Version 26, p. 511; LSI (NV) vol. 2, p. 292.

(d) The Minister may lay down provisions regarding the publication of a change of name.

Injunction

30. The court may, on the application of the company, order any person taking the company's name or a name so similar to it as to be misleading, or, on the application of any person harmed by the registration of a company with a name contravening the provisions of section 27, order the company, to cease using the name, unless the court is convinced that the defendant's right to use the name takes precedence over the applicant's right.

Change of name

31. (a) A company may, with the approval of the Registrar, change its name, and the provisions of sections 25 to 30 shall apply, *mutatis mutandis*, to the resolution to change the name and to the requested name.

(b) Where the Registrar has approved the change of name by the company, the Registrar shall register the new name in place of the previous name, and shall give the company a certificate of change of name.

Article C: Objects of the Company

Notation of purposes of the company in its articles of association

32. A company shall indicate its objects in its articles of association by specifying one of the following objects:

(1) engaging in any lawful business;

(2) engaging in any lawful business apart from the types of business set out in the articles of association;

(3) engaging in the types of business specified in the articles of association.

Article D: Registered Share Capital and Distribution Thereof

Registered share capital

33. The company shall determine its registered share capital, including the number of shares of each class, in its articles of association.

Nominal value of shares

34. (a) Shares in the company may all be of nominal value or may all be without nominal value.

(b) Where the shares in the company have no nominal value, their number alone shall be set out in the articles of association; where the shares in the company are of nominal value, the nominal value of each share shall be noted in the articles of association in addition to their number.

(c) Where the shares in the company have no nominal value, the provisions of this Law in respect of registered or issued share capital shall apply, *mutatis mutandis*, such that the registered share capital shall be the number of shares set out in the articles of association, and the issued capital shall be the number of shares allotted by the company.

Article E: Limitation of Liability

Limitation of liability

35. (a) The liability of shareholders for the debts of the company may be unlimited, and this shall be stated in the articles of association; where the liability of the shareholders is limited, the manner of limitation shall be set out in the articles of association.

(b) Where the shares in the company are of nominal value, the shareholders shall be liable to pay at least the nominal value of the shares, unless the provisions of section 304 apply.

Chapter 3: The Registrar of Companies

Article A: The Companies Registry

Appointment and qualification of Registrar and Deputy Registrar

36. (a) The Minister shall appoint a civil servant, qualified to serve as a magistrate, to be the Registrar of Companies, and such person shall be in charge of the Companies Registry.

(b) The Minister may appoint a government civil servant to be Deputy to the Registrar of Companies, and may authorize such person to exercise the powers of the Registrar.

(c) Where the Registrar is precluded from fulfilling his duties, the Minister may authorize an employee of the Ministry of Justice to exercise all or any of the powers of the Registrar.

37. (a) The Registrar shall determine whether the conditions and requirements laid down in this Law in respect of the following have been fulfilled:

Powers of the Registrar

(1) incorporation of a company;

(2) change of name of a company;

(3) registration of a document;

(4) merger.

(b) The Registrar may, in order to ensure that the company is fulfilling its obligations under this Law, order it to produce for his inspection the registers and books that a company must keep and that are available for public inspection, or updated copies of such, within a period of no less than fourteen days from the date of demand.

(c) Where the Registrar is of the opinion that the said registers or books are not up-to-date, he may order the company to update them within such period as he shall prescribe.

Article B: Keeping of Registers

38. (a) The Registrar shall keep a register relating to every company and shall receive documents and reports for registration or filing in the company's files, as shall be prescribed by the Minister.

Keeping registers and receipt of documents

(b) The Minister may order that the delivery of documents and reports, registration or filing in company files, shall be effected by way of electronic communication only (hereinafter "electronic filing or reporting").

(c) The Registrar shall keep a register of companies in which every company shall be entered and shall give each company an identification number, and the Registrar may use a different type of numbering for different kinds of companies, as prescribed by the Minister.

39. (a) Every document or report that is to be submitted to the Registrar shall bear the company's identification number, and shall be signed by one of the office holders of the company, together with such person's name and position, as confirmation of the fact that the details in it are correct and complete; for the purposes of this section, "office holder of the company"

Submitting documents for registration

shall include the company secretary or any person authorized by the company for the purposes of this section.

(b) Despite the provisions of subsection (a), a document or report submitted from a company in receivership or liquidation may be signed by the receiver or liquidator.

(c) The provisions of this section shall apply in the absence of any different provision in this regard in any law.

(d) Where the Minister has made a provision regarding electronic reporting, he may prescribe that the provisions of subsection (a) regarding the signature of an office holder shall not apply to documents and reports submitted in such way.

40. The following acts of the company shall have no effect unless registered:

(1) a change in the company's name pursuant to the provisions of section 31;

(2) a change in the objects of the company.

Copies as evidence

41. (a) A copy of any document held by or registered with the Registrar and certified by him shall be admissible in any legal proceeding as evidence, the evidentiary value of which shall be identical with that of the original document, and shall constitute conclusive evidence of the fact that the original document is in the Companies Registry.

(b) Where the Minister has made orders relating to electronic filing, the provisions of subsection (a) shall apply to the printout of such reports; for the purposes of this section, "printout" shall have the meaning ascribed to it in the Computers Law, 5755-1995.[5]

Negation of knowledge

42. The registration or existence of a document at a company or with the Registrar shall not, as such, constitute evidence as to the knowledge of its contents.

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5 *Sefer Ha-Chukkim*, 5755, p. 366.

43. The registers kept by the Registrar in the Companies Registry shall be open for public inspection and any person may inspect them and receive certified copies of their contents, either through the Registrar himself or others authorized by the Registrar for such purpose, as prescribed by the Minister. Inspection

44. The Minister may prescribe the following: Regulations

(1) arrangements for registration and filing and the manner of submitting documents and reports for registration and filing as aforesaid, including electronic filing or repor ting;

(2) the manner of keeping registers at the companies registry, and the public inspection thereof;

(3) the forms which must be used for the purposes of this Law, and the details to be included therein, including the manner of transferring information by electronic reporting;

(4) the manner of carrying out the Registrar's obligations under this Law;

(5) details with which a company or a foreign company must provide the Registrar in respect of every shareholder, or other holder of rights, and in respect of a creditor or any office holder of the company;

(6) amounts that the Minister may prescribe for registration fees, annual fees, and other fees and impositions payable for acts and services that the Registrar provides under this Law; and the Minister may determine the amount of different fees and payments for different companies according to such criteria as he shall prescribe.

Article C: Appeal

45. (a) A person who feels aggrieved by a decision of the Registrar may appeal against such decision to the court. Appeal

(b) The Minister may make regulations regarding the legal procedures for the appeal.

Part III: Structure of the Company

Chapter 1: Organs of the Company, their Powers and the Liability for their Acts

Article A: Organs

The organs

46. The company's organs are the general meeting, the board of directors, the general manager and any person whose acts in any given matter are considered by law or by virtue of the articles of association to be the acts of the company with regard to the matter concerned.

Acts of an organ like acts of the company

47. The acts and intentions of an organ shall be the acts and intentions of the company.

Article B: Division of Powers Among Principal Organs

Powers of organs

48. (a) The general meeting shall have the powers specified in Article A of Chapter 2.

(b) The board of directors shall have the powers specified in Article A of Chapter 3.

(c) The general manager shall have the powers specified in Chapter 4.

(d) All organs of the company shall have all auxiliary powers required to exercise their powers.

Residual power

49. The board of directors may exercise any power of the company not granted to any other organ by law or by the articles of association.

Transfer of power among organs pursuant to articles of association

50. (a) A company may prescribe provisions in its articles of association to the effect that the general meeting may assume powers conferred on another organ and that the powers granted to the general manager be transferred to the board of directors, for any particular matter or period of time.

(b) Where the general meeting has assumed powers conferred by this Law on the board of directors, the shareholders shall be liable and bound by the liability and duties of directors regarding the exercise of such powers, *mutatis mutandis*, taking into consideration their holdings in the company, their participation in the general meeting and the manner in which they voted.

Assuming powers of general manager

51. The board of directors may instruct the general manager how to act in a given matter; where the general manager has not fulfilled such instruction, the board of directors may exercise the power required to fulfill the instruction in his stead, even if there is no provision for such in the articles of association.

Organ that is precluded from fulfilling its role

52. (a) Where a board of directors is precluded from exercising its powers, and the exercise of one of its powers is essential for the proper management of the company, the general meeting may exercise it in place of the board of directors, even if there is no provision for such in the articles of association, for so long as the board of directors is so precluded, and provided that the general meeting has determined that the board of directors is indeed precluded from so acting and that the exercise of the power is essential; the provisions of section 50(b) shall apply to the exercise of the powers of the board of directors by the general meeting.

(b) Where the general manager is precluded from exercising his powers, the board of directors may exercise them in his place, even if there is no provision for such in the articles of association.

Article C: Liability of Company for Acts of Organs

Liability of company in tort

53. (a) The company shall be directly liable in tort for any civil wrong committed by one of its organs.

(b) Nothing in the provisions of subsection (a) shall derogate from the company's vicarious liability in tort under any law.

Article D: Liability of Individuals in an Organ

Liability of individuals in an organ

54. (a) Attribution of an act or intention of an organ to a company shall not derogate from the personal liability that individuals in such organ would have borne but for such attribution.

(b) In addition to the provisions of section 6, the court may attribute the rights and obligations of a company to individuals in various organs if the conditions prescribed for lifting the veil in section 6(c) have been fulfilled, *mutatis mutandis*, or if a condition prescribed in any enactment for attributing rights and obligations as aforesaid has been fulfilled.

Article E: Avoidance of Unauthorized Acts

Act departing from authorization

55. (a) A company, or anyone acting on behalf of a company, shall not perform any act that constitutes a departure from the objects laid down in the articles of association and shall not perform an unauthorized act or an act that goes beyond any authorization.

(b) Where an act under subsection (a) has been performed, or where there is reason to presume that such an act is about to be performed, the court may, at the request of the company, a shareholder, or a creditor of the company in respect of whom there is an apprehension that his rights may be prejudiced, grant an order interrupting or preventing the act.

Act departing from objects or without authorization

56. (a) An act performed for a company which departs from the objects laid down in its articles of association, or performed without authorization, or beyond such authorization, shall be invalid in respect of the company, unless the company approved the act in the ways prescribed in subsection (b), or if the party in respect of whom the act was performed did not know and was not expected to have known of the departure or of the lack of authorization.

(b) *Ex post facto* confirmation by a company of an act which departs from the objects prescribed by its articles of association shall be granted by the general meeting; such confirmation relating to an unauthorized act or an act which departs from a given authorization shall be granted by the organ empowered to issue such authorization.

(c) Confirmation referred to in subsection (b) shall not prejudice any right acquired by another person *bona fide* for value prior to grant of the confirmation.

Chapter 2: The General Meeting

Article A: Powers of the General Meeting

Powers conferred on the general meeting

57. Resolutions of the company in respect of the following matters shall be passed by the general meeting:

(1) alterations in the articles of association as referred to in section 20;

(2) exercise of the powers of the board of directors in accordance with the provisions of section 52(a);

(3) appointment of the company's auditor, his conditions of employment and termination of his employment in accordance with the provisions of sections 154 to 167;

(4) appointment of outside directors in accordance with the provisions of section 239;

(5) confirmation of acts and transactions requiring confirmation of the general meeting under the provisions of sections 255 and 268 to 275;

(6) increase and reduction of the registered share capital of the company in accordance with the provisions of sections 286 and 287;

(7) merger referred to in section 320(a).

Prohibition on stipulation

58. (a) A company may not contract out of the provisions of section 57.

(b) A company may add matters to its articles of association, where resolutions in that respect shall have been passed by the general meeting; however, the transfer of powers in the articles of association to the general meeting, in respect of matters where power was conferred on another organ in this Law without any possibility of contracting out in respect of such matters in the articles of association, shall be effected in accordance with the provisions of section 50.

Appointment of directors

59. The annual general meeting shall appoint the directors, unless provided otherwise in the articles of association.

Article B: Annual General Meeting and Special General Meeting

Convening of annual general meeting

60. (a) A company shall hold an annual general meeting every year no later than on the expiry of fifteen months from the previous annual general meeting.

(b) The agenda at the annual general meeting shall include a discussion of the financial reports and of the report of the board of directors pursuant to the provisions of section 173; the agenda may include appointment of directors, appointment of an auditor and any matter prescribed in the articles of association for discussion at the annual general meeting, or any other matter prescribed for the agenda as provided in section 66.

Non-holding of annual general meeting

61. (a) A private company may provide in its articles of association that it is not required to have an annual general meeting as provided in section 60, except to the extent that such is required for appointing an auditor; where such a provision is laid down, the company shall not be required to hold an annual general meeting unless one of the shareholders or directors requires the company to hold it.

(b) Where no annual general meeting is held, the company shall once a year send to the shareholders entered on the shareholders register financial reports as referred to in section 172, no later than the final date on which it would have had to hold an annual general meeting but for the existence of a provision in its articles of association pursuant to subsection (a).

Convening of annual general meeting by the court

62. (a) Where no annual general meeting is held as provided in section 60, or once a demand has been made that it be held in accordance with section 61, the court may, at the request of a shareholder or director of the company, order the convening of the annual general meeting.

(b) Where the court has ordered as aforesaid, the company shall bear the reasonable costs incurred by the applicant in court proceedings, as fixed by the court, and the directors responsible for not convening the general meeting shall be responsible for refunding such costs to the company.

Convening of special general meeting

63. (a) The board of directors of a private company may resolve to convene a special general meeting, and shall so convene on the demand of any one of the following:

(1) one director;

(2) one or more shareholders holding at least ten percent of the issued capital and at least one percent of the voting rights in the company, or one or more shareholders with at least ten percent of the voting rights in the company.

(b) The board of directors of a public company may resolve to convene a special general meeting, and shall so convene at the demand of any of the following:

(1) two directors or one-quarter of the directors in office;

(2) one or more shareholders with at least five percent of the issued share capital and at least one percent of the voting rights in the company, or one or more shareholders with at least five percent of the voting rights in the company.

(c) Where a board of directors is requested to convene a special general meeting, it shall convene such meeting within twenty-one days of the date on which the request was made, on the date designated in an invitation pursuant to section 67 or by a notice pursuant to section 69, provided that in respect of a public company, the date of convening the meeting shall be no later than thirty-five days after the date of the notice, unless otherwise provided in respect of a meeting to which Article G applies, and in respect of a private company the provisions of section 67 shall apply.

Convening of general meeting by shareholders

64. (a) Where the board of directors has not convened a special general meeting demanded under section 63, the party demanding the convening of the meeting, and, in the case of shareholders, that part of them that has more than half of their voting rights, may convene the meeting themselves, provided that the meeting shall not take place more than three months after the said demand is submitted, and that it is convened, if possible, in the same manner as meetings are convened by the board of directors.

(b) Where a general meeting is convened as provided in subsection (a), the company shall cover the reasonable costs incurred by the party demanding the convening of the meeting, and the directors responsible for the non-convening of the meeting shall be responsible for repaying such costs to the company.

Application to the court

65. (a) Where the board of directors has not convened a special general meeting in accordance with a demand pursuant to section 63, the court may order the convening of such a meeting, at the request of a person making a demand for such.

(b) Where the court has ordered as aforesaid, the company shall bear reasonable costs incurred by the applicant in court proceedings, as set by the court, and the directors responsible for the non-convening of the meeting shall be responsible for repaying such costs to the company.

Article C: Convening and Management of General Meeting

Agenda

66. (a) The agenda at a general meeting shall be fixed by the board of directors and may also include matters in respect of which the convening of a special meeting is required under section 63 as well as any matter requested as provided in subsection (b).

(b) One or more shareholders with at least one percent of the voting rights at the general meeting may request that the board of directors include a matter in the agenda of a general meeting to be convened in the future, provided that it is appropriate to discuss such a matter in the general meeting.

(c) Only resolutions regarding matters set out in the agenda may be passed by the general meeting.

Dates of delivery of invitations for private company

67. An invitation to a general meeting of a private company shall be delivered to any person who is entitled to take part in the meeting, no later than seven days prior to the date of convening of the meeting, provided that such invitation shall not be delivered more than forty five days prior to the date of convening of the meeting, if not otherwise provided in the articles of association.

Contents of invitation to general meeting of a private company

68. (a) An invitation to a general meeting of a private company shall set out the date and place in which the meeting is to be held, and the agenda and a reasonably detailed statement of the matters for discussion.

(b) Where a proposal to alter the articles of association is on the agenda of a general meeting, the text of the proposed alteration shall be specified.

69. (a) Notice of a general meeting of a public company shall be published as prescribed by the Minister.

Notice of general meeting of public company, and contents thereof

(b) Notice of a general meeting of a public company shall be delivered to every shareholder on the register of shareholders at least twenty-one days prior to its being convened, unless the articles of association prescribe that no notice is to be delivered.

(c) The notice shall set out the agenda, proposed resolutions and arrangements regarding voting by writing pursuant to the provisions of Article G.

(d) The Minister may make provisions, after consultation with the Securities Authority, in matters relating to this section including the manner of detailing subjects, unless there are provisions in this regard in another law.

70. The Minister may prescribe that where the text of resolutions are specified in the invitation or in the notice, the general meeting may pass resolutions that differ in their wording from that of the resolutions that were on the agenda, in respect of matters and according to such criteria as the Minister may prescribe.

Regulations regarding resolutions at general meetings

71. A shareholder in a public company desirous of voting at a general meeting shall produce proof to the company of his ownership of the share in such manner as prescribed by the Minister.

Proof of ownership of shares in a public company

72. Where it is practicably impossible to convene a meeting or direct it in the manner prescribed in the articles of association or in this Law, the court may, at the request of the company, a shareholder entitled to vote at the meeting or a director, order the meeting to be convened and directed in the manner that the court shall prescribe, and the court may make such complementary provisions as it shall see fit.

Convening meeting by court

73. A public company whose shares have been offered to the public in Israel only or that are traded on a stock exchange in Israel only shall hold its general meeting in Israel.

Meeting in Israel

Meeting adjourned by resolution of the meeting

74. (a) A general meeting with a quorum present may resolve to adjourn the meeting to such other time and place as it may determine; only matters that were on the agenda and in respect of which no resolution was passed shall be discussed at the adjourned meeting.

(b) Where a general meeting is adjourned for more than twenty one days, notices and invitations for the adjourned meeting shall be given in accordance with sections 67 to 69.

Class meeting

75. The provisions of this Article, and of Articles D, E and F shall apply, *mutatis mutandis*, to class meetings, wherever the company is required to hold them.

Article D: General Meeting of a Private Company

Resolution without convening

76. A resolution may be passed by a general meeting of a private company without invitation and without convening the meeting, provided that such resolution is passed unanimously by all shareholders entitled to vote at the general meeting.

Holding of meeting through means of communi-cation

77. A private company may hold a general meeting using any means of communication such that all shareholders participating in the meeting can hear each other simultaneously, unless the articles of association provide to the contrary.

Article H: Quorum at General Meeting and Chairman of General Meeting

Quorum at general meeting

78. (a) The quorum for holding a general meeting shall be at least two shareholders holding at least twenty-five percent of the voting rights, within half an hour of the time fixed for the commencement of the meeting.

(b) Where there is no quorum present at the general meeting at the end of half an hour from the time fixed for the commencement of the meeting, the meeting shall be adjourned for one week, to be held on the same day, at the same time and in the same place, or for a later time if indicated in the invitation to the meeting or in the notice of the meeting.

(c) The provisions of this article shall not apply to a company with only one shareholder.

79. (a) Where there is no quorum present at an adjourned meeting under sections 74 or 78(b) at the end of half an hour after the time fixed for the meeting, the meeting shall take place with whatever number of participants who are present. Quorum at adjourned meeting

(b) Notwithstanding the provisions of subsection (a), where a general meeting is convened on the demand of shareholders as provided in sections 63 or 64, the adjourned meeting shall only take place only if there were present at least the number of shareholders required to convene a meeting as provided in section 63.

80. (a) A chairman shall be elected at every general meeting for that meeting. Chairman of general meeting

(b) The election of the chairman of the meeting shall be effected at the commencement of deliberations at the meeting, which shall be opened by the chairman of the board of directors, or by a director authorized by the board of directors for that purpose.

81. It shall be permissible to contract out of the provisions of this Article in whole or in part, by provision in the articles of association. Freedom to contract our

Article F: Voting at General Meeting

82. (a) A company may prescribe various voting rights for different classes of shares in its articles of association. Freedom to vary

(b) The provision of subsection (a) shall not derogate from the provisions of any other enactment.

(c) Where the company has not set out any other voting rights in its articles of association, each share shall have one vote.

83. (a) A shareholder in a public company may vote by himself or by proxy, as well as by way of a voting paper under Article G. Manner of voting at meeting

(b) A shareholder in a private company may vote by himself or by proxy, unless otherwise provided in the articles of association.

(c) A shareholder in a private company may vote by voting paper if there are provisions to that effect in its articles of association.

Voting by counting

84. A resolution at a general meeting shall be passed by counting of votes; a private company may prescribe different rules for decision making in its articles of association.

Majority at general meeting

85. Resolutions of the general meeting shall be passed by ordinary majority unless some other majority is prescribed by statute or in the articles of association.

Declaration as evidence

86. A declaration by the chairman to the effect that a resolution at a general meeting has been passed or rejected, be it unanimously or by any given majority, shall be *prima facie* evidence of the contents of such declaration.

Article G: Voting by Voting Paper and Statement of Position

Voting at general meeting by written vote

87. (a) In a public company, shareholders may vote in the general meeting and in a class meeting by means of a voting paper in which the shareholder indicates how he votes on resolutions relating to the following matters:

(1) appointment and removal of directors;

(2) approval of acts or transactions requiring approval of the general meeting pursuant to the provisions of sections 255 and 268 to 275;

(3) approval of a merger pursuant to section 320;

(4) any other matter in respect of which there is a provision in the articles of association or thereunder to the effect that decisions of the general meeting may also be passed by means of a voting paper;

(5) other matters prescribed by the Minister pursuant to section 89.

(b) A voting paper shall be sent by the company to every shareholder; a shareholder may indicate his vote on the voting paper and send it to the company.

(c) A voting paper on which a shareholder has indicated his vote and which has reached the company prior to the last day prescribed for such shall be considered as attendance at the meeting for the purposes of the existence of a quorum as provided in section 78.

(d) A voting paper received by the company as provided in subsection (c) regarding a particular matter in respect of which no vote was held at the general meeting shall be considered as an abstention on the vote at such general meeting in respect of a resolution to hold an adjourned meeting pursuant to the provisions of section 74, and shall be taken into account at the adjourned meeting to be held pursuant to the provisions of sections 74 or 79.

Addressing shareholders

88. (a) The board of directors and any person at whose demand the board of directors convenes a special general meeting pursuant to the provisions of section 63, may address the shareholders in writing, via the company, in order to convince them of how to vote on one of the matters enumerated in section 87 to be discussed at such meeting (hereinafter "statement of position"); the company shall send statements of position under this subsection to shareholders at its expense, together with a voting paper for such meeting.

(b) Where a general meeting has been convened with one of the matters enumerated in section 87 on its agenda, a shareholder of the company may address the company and request that it send a statement of position on behalf of the shareholder to the other shareholders in the company; a statement of position under this subsection may be at the shareholder's expense, or at the company's expense, as the Minister may prescribe pursuant to the provisions of section 89; however, a company may provide that all statements of position under this subsection shall be at its expense.

(c) The board of directors of the company may send a statement of position to shareholders, in response to a statement of position sent as provided in subsections (a) or (b), or in response to some other address to shareholders of the company.

Regulations

89. The Minister may, in consultation with the Minister of Finance and the Securities Authority, prescribe provisions regarding voting papers and statements of position pursuant to this Article, *inter alia*, with respect to the following matters:

(1) matters in addition to those laid down in section 87 to which this Article applies;

(2) grant of a full or partial exemption from the application of the provisions of sections 87 and 88, regarding certain types of companies, under such classification as may be prescribed, taking into account, *inter alia*, the rate of holdings of a person holding control of such companies, the majority required for passing the resolution at the general meeting in certain companies and taking into account the place of registration for trading in the securities of the company;

(3) grant of an exemption from sending voting papers and statements of position to some of the shareholders in certain companies, taking into account the rate of voting rights or the value of shares held by them, and in respect of shareholders as provided in section 177(1), taking into account also the proportion of voting rights and the value of shares held by each separate member of a stock exchange in each securities account;

(4) the manner of service of voting papers and statements of position on shareholders, and the manner of sending voting papers to the company, including by means of members of a stock exchange or by means of a corporation controlled by them, or by means of some other corporation, the obligation of attaching a certificate evidencing ownership of shares on the prescribed date, and dates and timetables for effecting the acts required for carrying out the provisions of this Article;

(5) the maximum payment to be made for sending voting papers or statements of position and the manner of imposing such payments and expenses for sending them to the various parties taking part therein;

(6) publication of statements of position in the manner to be prescribed as an alternative to serving them on shareholders;

(7) the manner of supervising the performance of the provisions of this Article, including in respect of the obligation to keep registers of the performance of prescribed provisions;

(8) the draft form of the voting paper and statement of position for matters in respect of which this Article applies.

Article H: Minutes of the Meeting

Minutes at a general meeting

90. (a) A company shall keep minutes of the proceedings at the general meeting, and shall keep them at its registered office for a period of seven years from the date of such meeting.

(b) Minutes signed by the chairman of the meeting shall constitute *prima facie* evidence of the contents thereof.

(c) The register of minutes of general meetings shall be kept at the registered office of the company and shall be open for inspection by its shareholders, and a copy of the register shall be sent to any shareholder who so requests.

Article I: Defects in Convening Meetings

Defects in convening meetings

91. (a) The court may, on the application of a shareholder, order the abrogation of a resolution passed by a general meeting convened or held without the conditions prescribed for such in this Law or in the articles of association having been fulfilled.

(b) Where the defect in convening the meeting relates to a notice regarding the place where the meeting is to be held or its timing, a shareholder who arrived at the meeting despite the defect shall not be allowed to require abrogation of the resolution.

Chapter 3: The Board of Directors

Article A: Powers of the Board of Directors

Powers and duties of the board of directors

92. (a) The board of directors shall outline the policy of the company and shall supervise the performance of the functions and acts of the general manager within that framework, and:

(1) shall determine the company's plans of action, principles for funding them and the priorities between them;

(2) shall examine the company's financial status, and shall set the credit limits that the company be entitled to operate;

(3) shall determine the organizational structure of the company and its wage policy;

(4) may resolve to issue debenture series;

(5) shall be responsible for preparing financial reports and certifying them, as provided in section 171;

(6) shall report to the annual general meeting on the position of the company's affairs and on the outcome of its business activities as provided in section 173;

(7) shall appoint and remove the general manager as provided in section 250;

(8) shall decide on acts and transactions requiring its approval under the articles of association or pursuant to the provisions of sections 255 and 268 to 275;

(9) may allot shares and securities convertible to shares up to the limit of the registered share capital of the company, in accordance with the provisions of section 288;

(10) may resolve to effect a distribution as provided in sections 307 and 308;

(11) shall give its opinion on special tender offers as provided in section 329.

(b) The powers of the board of directors under this section may not be delegated to the general manager; the powers set out in section 112 may be delegated as set out in that section.

Board of directors numbering one person

93. (a) A private company may have a board of directors consisting of one director only.

(b) The provisions of this Article shall apply to a board of directors numbering one person; the provisions of Article F shall apply to the resolutions of such a board of directors, *mutatis mutandis*; the remainder of the provisions of this chapter shall not apply to a board of directors consisting of one director only.

Article B: Chairman of Board of Directors

Election of chairman of board of directors

94. (a) The board of directors of a public company shall elect one of their number to act as chairman of the board, unless another method of appointment is prescribed in the articles of association.

(b) A private company shall not be obliged to appoint a chairman of the board of directors; where no chairman is appointed to the board of directors of a private company, each of the directors shall be entitled to convene the board and determine its agenda, unless otherwise provided in the articles of association.

Limitation on election of chairman of the board of directors

95. (a) The general manager of a public company may only serve as chairman of its board of directors in accordance with the provisions of section 121(c).

(b) The chairman of the board of directors of a public company shall only be granted the powers of the general manager in accordance with the provisions of section 121(c).

(c) The provisions of subsection (a) shall cease to apply three months from the date on which a company becomes a public company.

Management of meetings of board of directors

96. (a) The chairman of the board of directors shall direct the meetings of the board of directors.

(b) Where the chairman of the board of directors is not present at the meeting, the board shall elect another of its number to direct the meeting and to sign the minutes of the meeting; however, the person so elected shall not have an extra vote when voting on resolutions of the board of directors as provided in section 107, unless otherwise provided in the articles of association.

Article C: Convening of Meetings of Board of Directors

Meetings of board of directors

97. The board of directors shall be convened for meetings according to the needs of the company, at least once a year, and in the case of a public company, at least once every three months.

Convening of meetings of the board of directors

98. (a) The chairman of the board of directors may convene the board at any time.

(b) The board of directors shall hold a meeting regarding a specified matter, on the demand of any one of the following:

(1) two directors, and in a company in which the board of directors numbers up to five directors, one director;

(2) one director, if a provision as aforesaid is laid down in the articles of association of the company, or if the provisions of section 257 prevail.

(c) The chairman of the board of directors shall convene the board in accordance with a demand as provided in subsection (b) or if the provisions of section 122(d) prevail, owing to a notice or report by the general manager, or owing to a notice by the company's auditor pursuant to section 169.

(d) Where a meeting of the board of directors is not convened within fourteen days of the date of demand as provided in subsection (b), or of the date of notice or report of the general manager in respect which the provisions of section 122(d) prevails, or of the date of notice by the auditor pursuant to section 169, each of the persons enumerated in subsections (b) and (c) may convene a meeting of the board of directors to discuss the matter specified in the demand, notice or report, as the case may be, unless the articles of association contain any other provision relating to the date of convening the meeting.

Article D: Meetings of the Board of Directors and Management Thereof

Agenda

99. The agenda for meetings of the board of directors shall be determined by the chairman of the board and shall include:

(1) matters determined by the chairman of the board;

(2) matters determined as provided in section 98;

(3) any matter that a director or the general manager requests the chairman of the board of directors to include in the agenda, at a reasonable time prior to the convening of a meeting of the board of directors, unless otherwise provided in the articles of association.

Notice of meeting of board of directors

100. (a) Notice of a meeting of the board of directors shall be delivered to all members at a reasonable time prior to the date of the meeting, unless there is a provision in the articles of association prescribing the time of delivery.

(b) A notice under subsection (a) shall be delivered to the address of each director as notified to the company in advance, and it shall state the date of the meeting and the place at which it will convene, as well as a reasonably detailed statement of all of the matters on the agenda, unless otherwise provided in the articles of association.

(c) In a public company, conditions may not be placed in the articles of association on the obligation to provide reasonable details of all the matters on the agenda in the notice convening a meeting of the board of directors.

Holding of meeting through media

101. The board of directors may hold meetings using any means of communication provided that all directors participating in the meeting can hear each other simultaneously, unless this is provided by the articles of association.

Convening of meeting without notice

102. Notwithstanding the provisions of section 100, the board of directors may be convened to meet without notice, by the consent of all of the directors, unless this is precluded by the articles of association.

Passing of resolutions without convening meeting

103. (a) The board of directors may pass resolutions even without actually convening, provided that all of the directors entitled to participate in the discussion and vote on the matter brought up for resolution have agreed thereto, unless this is precluded by the articles of association.

(b) Where resolutions are passed in accordance with the provisions of subsection (a), the chairman of the board of directors shall prepare minutes of the resolutions and shall attach thereto the signatures of the directors, unless otherwise provided in the articles of association.

(c) The provisions of section 108 shall apply, *mutatis mutandis,* to a resolution as provided in subsection (a).

Quorum at meetings of the board of directors

104. The quorum for commencing a meeting of the board of directors shall be the majority of the directors, unless otherwise provided in the articles of association.

Article E: Voting at the Board of Directors

Voting at the board of directors

105. Each director shall have one vote at meetings of the board of directors, unless otherwise provided in the articles of association.

Voting agreements

106. A director, in his capacity as such, shall not be party to a voting agreement, and such agreement shall be considered a breach of fiduciary duty.

Passing of resolutions

107. Resolutions of the board of directors shall be passed by ordinary majority; where the votes are even, the chairman of the board of directors shall have a casting vote, unless otherwise provided in the articles of association.

Article F: Minutes of Meetings of the Board of Directors

Minutes of meetings of the board of directors

108. (a) A company shall prepare minutes of the proceedings at meetings of the board of directors and shall keep them at its registered office for a period of seven years from the date of the meeting.

(b) Minutes approved and signed by the chairman of the meeting or by the chairman of the board of directors shall serve as *prima facie* evidence of their contents.

Article G: Defects in Convening Meetings of the Board of Directors

Defects in convening meetings

109. (a) A resolution passed at a meeting of the board of directors convened where the preconditions for convening it are lacking (hereinafter a "defect in convening") may be abrogated at the request of any one of the following:

(1) a director who was present at the meeting, provided that prior to the passing of the defective resolution, he insisted that it should not be passed;

(2) a director who was entitled to be invited to a meeting but was not present, within a reasonable time after being made aware of the resolution and no later than the first meeting of the board of directors that takes place after he becomes aware of the resolution;

(3) where the defect in convening relates to a notice regarding the place or time of convening the meeting, a director who arrived at the meeting despite the defect may not demand the abrogation of the resolutions.

(b) The provisions of subsection (a) shall not affect the validity of an act done for the company in respect of which the provisions of the last part of section 56(a) prevail.

Article H: Committees of the Board of Directors

110. The board of directors may set up committees and appoint members of the board of directors to sit on them (hereinafter "committees of the board of directors"). Setting up of committees

111. (a) A resolution passed or an act done by a committee of the board of directors shall be considered as a resolution passed or an act done by the board of directors, unless otherwise provided in the articles of association. Acts of committees

(b) A committee of the board of directors shall provide reports on a current basis to the board of directors regarding its resolutions or recommendations.

(c) Articles B to D shall apply, *mutatis mutandis*, to the convening of meetings of committees and the manner in which such meetings are held.

(d) Minutes of meetings of committees of the board of directors shall be prepared and kept as provided in section 108.

112. (a) A board of directors may not delegate its powers to a committee of the board of directors with regard to the following matters, except for the purpose of recommendation only: Restriction on delegation of powers

(1) determining the company's general policy;

(2) distribution, unless in respect of purchase of shares in the company within a framework outlined by the company in advance;

(3) determining the position of the board of directors in respect of a matter requiring approval of the general meeting or the giving of an opinion as provided in section 329;

(4) appointing directors, if the board of directors is entitled to appoint them;

(5) allotting shares or securities convertible into shares or realizable as shares, or debenture series, unless the allotment is an allotment following the realization or conversion of securities in the company;

(6) approval of financial reports;

(7) approval by a board of directors for transactions and acts requiring such approval pursuant to the provisions of sections 255 and 268 to 275.

(b) A company may not stipulate conditions in its articles of association on the provisions of subsection (a); however, it may prescribe other matters in its articles of association in respect of which resolutions may be passed by the board of directors only.

Abrogation of resolutions of committee

113. The board of directors may abrogate the resolution of a committee appointed by it; however, such abrogation shall not prejudice the validity of a resolution of a committee pursuant to which the company has acted towards another person who was unaware of the abrogation.

Article I: Audit Committee

Appointment of committee

114. The board of directors of a public company shall appoint from its members an audit committee, and the provisions of Article H shall apply thereto, *mutatis mutandis*.

Members of committee

115. (a) There shall be no less than three members of the audit committee, and all of the outside directors shall be members thereof.

(b) Neither the chairman of the board of directors nor any director who is employed by the company or who provides it with services on a permanent basis shall be members of the audit committee.

(c) A holder of control or a relative of such a person shall not be a member of the audit committee.

Invitation to meetings

116. (a) The internal auditor of the company shall receive notices of the holding of meetings of the audit committee and shall be entitled to take part in them.

(b) The internal auditor may request that the chairman of the audit committee convene the committee to discuss such matter as he may specify in his request, and the chairman of the audit committee shall convene the committee within a reasonable time from the date of the request, if he finds reason to do so.

(c) A notice of the holding of a meeting of the audit committee at which a matter relating to the audit of financial reports is to be dealt with shall be sent to the auditor, who may participate in the meeting.

Functions of audit committee

117. The functions of the audit committee shall be as follows:

(1) to locate defects in the company's business administration, *inter alia* by consulting with the company's internal auditor or with the auditor, and to make proposals to the board of directors regarding ways of correcting such defects;

(2) to decide whether to approve acts and transactions requiring the approval of the audit committee under sections 255 and 268 to 275.

Audit committee in private company

118. (a) The board of directors of a private company may appoint an audit committee from among its members where the provisions of section 115(b) are satisfied, and the provisions of sections 115(a) and (c) shall not apply; the functions of the audit committee shall be as provided in section 117.

(b) An audit committee having a function as provided in section 117(2) shall not be appointed to a private company the majority of the members of which, or their relatives, are substantial shareholders.

Chapter 4: The General Manager

Appointment of general manager

119. (a) A public company shall appoint a general manager, and may appoint more than one general manager.

(b) A private company may appoint one or more general managers; where no general manager is appointed, the company shall be managed by the board of directors.

Liability of general manager

120. The general manager shall be liable for the day-to-day administration of the affairs of the company, within the scope of the policies determined by the board of directors, and subject to its guidelines.

Powers of general manager

121. (a) The general manager shall have all managerial and executive powers not granted by this Law or by the articles of association to any other organ of the company, and shall be subject to the supervision of the board of directors.

(b) The general manager may, with the approval of the board of directors, delegate any of his powers to any other person subordinate to him.

(c) Notwithstanding the provisions of section 95, the general meeting of a public company may resolve that for a period of no more than three years from the date of passing a resolution to such effect, the chairman of the board of directors may be authorized to fulfill the role of general manager, or to exercise the powers of the general manager, provided that in counting the votes at the general meeting, the majority shall include at least two-thirds of the shareholders who are not holders of control in the company or their representatives present at the vote; abstaining votes shall not be taken into account in counting the votes of the said shareholders.

Duty to report to board of directors

122. (a) The general manager shall be bound to notify the chairman of the board of directors of any extraordinary matter which is of significance to the company; where a company has no chairman of its board of directors, or where such person is prevented from fulfilling his function, the general manager shall so notify all members of the board of directors.

(b) The general manager shall submit reports to the board of directors on the matters, at the times and to the extent determined by the board of directors.

(c) The chairman of the board of directors may, at any time, on its own initiative or in accordance with the decision of the board of directors, require reports from the general manager on matters relating to the business of the company.

(d) Where a report or notification by the general manager requires an act on the part of the board of directors, the chairman of the board of directors shall convene a meeting of the board of directors without delay.

Part IV: Administration of the Company

Chapter 1: Registered Office

Registered office

123. (a) As of the date on which a company is registered it shall be bound to establish a registered office in Israel to which all notices for the company may be sent.

(b) Notification of the address of the registered office shall be delivered to the Registrar together with the application for registration of the company; notification of any change of address of the registered office shall be delivered to the Registrar within fourteen days of the change; the Registrar shall register the address of the registered office of the company.

(c) Service of any document on the company shall be effected by leaving it at the registered office of the company as registered with the Registrar at the time of delivery, or by sending it thereto by mail.

(d) Service of any document from the Companies Registry to the company, or from the Securities Authority to a public company may, notwithstanding the provisions of subsection (c), be effected by leaving it at the place at which the Registrar or the Securities Authority, as the case may be, is convinced that the company actually runs its business.

Documents to be kept at the registered office

124. Without derogating from the provisions of any law, a company shall keep the following documents at its registered office:

(1) the articles of association of the company;

(2) minutes of sessions of the general meeting as provided in section 90;

(3) minutes of sessions of the board of directors and resolutions as provided in sections 103 and 108;

(4) minutes of sessions of committees of the board of directors as provided in section 111;

(5) copies of notices from the company to shareholders over the previous seven years;

(6) financial reports of the company as provided in section 171;

(7) the register of shareholders, and in the case of a public company, the register of substantial shareholders, as provided in sections 127 and 128;

(8) the register of directors, as provided in section 224.

Manner of keeping documents

125. A company may keep the said documents by using electronic means, provided that those entitled to inspect them are enabled to receive copies of such documents.

Receipt of copies

126. (a) A person entitled to inspect the documents referred to in section 125 may receive a copy of them in return for such payment as the company may fix therefor.

(b) The Minister may prescribe maximum sums for payment.

Chapter 2: Register of Shareholders and Register of Substantial Shareholders

Article A: The Registers

Register of shareholders

127. A company shall keep a register of shareholders.

Register of substantial shareholders

128. A public company shall have a register of substantial shareholders in addition to the register of shareholders.

Inspection of registers

129. The register of shareholders and the register of substantial shareholders shall be open for inspection by any person.

Article B: Register of Shareholders

Contents of register of shareholders

130. (a) The following shall be entered in the register of shareholders:

(1) in respect of registered shares –

(i) name, identity number and address of the shareholder, as notified to the company;

(ii) quantity and class of shares held by each shareholder, indicating their nominal value, if any, and if any amount of the consideration fixed for a share is not yet paid, the amount unpaid;

(iii) date of allotment of the shares or the dates of their transfer to shareholders, as the case may be;

(iv) where the shares are marked with serial numbers, the company shall note next to the name of each shareholder the numbers of the shares registered in such person's name;

(2) in respect of bearer shares –

(i) indication of the fact of the allotment of bearer shares, the date of their allotment and the number of shares allotted;

(ii) numbering of the bearer share and of the share warrant;

(3) in respect of dormant shares, as defined in section 308, their number and the date on which they became dormant.

(b) A company shall preserve all entries noted in the register of shareholders as provided in subsection (a).

Registration of trustee on register of shareholders

131. A shareholder who is a trustee shall be registered on the register of shareholders, with a reference to the trusteeship, and such person shall be considered 1a shareholder for the purposes of this Law.

Nominee company

132. (a) Where a company's shares are listed for trading on a stock exchange in Israel, a registration company may be entered on the register of shareholders, in addition to what is provided in section 130(a)(1); however a registration company shall not be considered as a shareholder in the company, and the shares in its name shall be owned by those entitled to them as provided in section 177(1).

(b) A shareholder by virtue of an entitlement under section 177(1) may be entered on the register of shareholders in place of the registration of those shares listed under the name of the registration company, and the number of shares listed under the name of the registration company shall be altered accordingly.

Register of shareholders as evidence

133. (a) The register of shareholders shall be *prima facie* evidence of the correctness of its contents.

(b) In the event of a discrepancy between what is entered in the register of shareholders and a share certificate, the evidentiary value of the register of shareholders shall prevail over that of the share certificate.

Amendment of registration

134. Where a person is entered on the register of shareholders without being so entitled, or where a person is not entered on the register despite being so entitled, or where the registration is incomplete or inaccurate, and the company refuses to correct that which requires correcting, the court may, on the application of the party affected, or of any shareholder in the company, grant such relief as it sees fit in the circumstances of the case, including amendment of the register.

Article C: Registration of Share Warrant

Issue of share warrant

135. Where a share warrant is issued in place of a share registered under a person's name, the share shall be registered, as set out in section 130(a)(2), and the name of the shareholder shall be removed from the register of shareholders.

Cancellation of share warrant

136. A shareholder in lawful possession of a share warrant may return the warrant to the company for the purpose of its cancellation and conversion into a share registered under his name; upon cancellation, the name of the shareholder shall be entered in the register of shareholders, indicating the number of shares registered under his name, as prescribed in section 130(a)(1), provided that the articles of association do not contain a provision precluding the cancellation of share warrants.

Article D: Register of Substantial Shareholders and Additional Register of Shareholders Outside Israel

Contents of register of substantial shareholders

137. Reports received by the company pursuant to the Securities Law relating to the holdings of substantial shareholders of shares in the company shall be kept in the register of substantial shareholders.

138. (a) A company may keep an additional register of shareholders outside Israel (hereinafter "the additional register"). Additional register of shareholders

(b) A company that keeps an additional register shall enter on the register of shares under section 130 (hereinafter "the principal register") the number of shares registered in the additional register of shareholders, and their numbers if they are marked with numbers.

139. The Minister may lay down provisions for the keeping of an additional register under section 138, including provisions relating to the updating of the principal register with the details entered in the additional register. Regulations

Chapter 3: Reporting

Article A: Reports of Private Companies

140. A private company shall send the Registrar an annual report, as provided in section 141, and shall report to the Registrar as specified in this Law and in respect of the following matters: Reporting by private companies

(1) alterations in the articles of association as provided in section 21, including resolutions as to change of name as provided in section 31, and increase or decrease of capital as provided in sections 286 and 287;

(2) change of address of the registered office as set out in section 123;

(3) notification under section 159 to the effect that the company has no auditor;

(4) appointments to the board of directors and changes in its composition, as provided in section 223;

(5) allotment of shares as provided in section 292;

(6) transfer of shares as provided in section 299, fourteen days from the date of transfer;

(7) merger as provided in section 317.

Annual report by private company

141. (a) A private company shall, once a year, prepare and submit an annual report as prescribed by the Minister, within fourteen days after the annual general meeting.

(b) A private company that does not hold an annual general meeting, in accordance with section 61, shall submit an annual report once a year no later than fourteen days after sending the financial reports to shareholders, and in respect of an inactive company that does not prepare financial reports pursuant to the provisions of section 172(g), once a year.

Article B: Reporting by Public Company

Reporting public company

142. A public company shall report to the Securities Authority, to the stock exchange on which the company's securities are listed for trading, and to the Companies Registry as required by this Law, by the Securities Law or by any other law.

Inspection at the Securities Authority

143. (a) Reports submitted to the Securities Authority pursuant to section 142 shall be open for public inspection at the Securities Authority and any person may inspect them and receive certified copies of what is entered therein, whether through the Securities Authority or through others authorized by the Securities Authority for such purpose, unless such inspection is restricted by any law.

(b) A certified copy referred to in subsection (a) may be admitted in any legal proceedings as evidence the evidentiary value of which is identical with that of the original document, and shall constitute conclusive evidence of the fact that the original document is in the possession of the Securities Authority.

Regulations regarding reporting, filing and fees

144. The Minister, upon consultation with the Minister of Finance and with the Securities Authority, may prescribe regulations for the effecting of the provisions of sections 142 and 143, including provisions relating to –

(1) electronic filing or reporting, as defined in section 38, regarding reports submitted by a public company to the Securities Authority;

(2) fees that are to be paid for activities and services provided by the Securities Authority.

145. A public company shall report to the Registrar regarding the following matters only:

Reporting by public company to Registrar

(1) a resolution regarding change of name as provided in section 31;

(2) change of address of its registered office as provided in section 123;

(3) merger as provided in section 317;

(4) its conversion into a public company as provided in section 343.

Chapter 4: Internal Auditor in a Public Company

146. (a) The board of directors of a public company shall appoint an internal auditor; the internal auditor shall be appointed on the proposal of the audit committee.

Duty to appoint internal auditor

(b) A person who has an interest in the company, who is an office holder in the company or is a relative of any of those, as well as the auditor or any person acting on his behalf, shall not act as internal auditor of the company.

147. The provisions of sections 3(a), 4(b), 8 to 10 and 14(b) and (c) of the Internal Audit Law, 5752-1992[6] shall apply to the internal auditor, subject to the provisions of this Chapter, and *mutatis mutandis*.

Internal Audit Law

148. The supervisor of the internal auditor shall be the chairman of the board of directors or the general manager, as determined in the articles of association, or, in the absence of a provision in the articles of association, as the board of directors may determine.

Person responsible for internal auditor

149. The internal auditor shall submit a proposal for an annual or periodical work program for the approval of the board of directors, or for the approval of the audit committee, as provided in the articles of association, or in the

Work program

6 *Sefer Ha-Chukkim*, 5752, p. 198.

absence of a provision in the articles of association, as prescribed by the board of directors, and the board of directors or the audit committee, as the case may be, shall approve it, with such alterations as they see fit.

Urgent examination

150. The chairman of the board of directors or the chairman of the audit committee may require the internal auditor to perform an internal audit, in addition to the work program, regarding matters requiring urgent examination.

Function of internal auditor

151. The internal auditor shall examine, *inter alia*, the propriety of acts of the company from the point of view of compliance with the law and proper business management.

Submitting of reports

152. The internal auditor shall submit a report of his findings to the chairman of the board of directors, to the general manager and to the chairman of the audit committee; a report relating to matters audited pursuant to section 150 shall be provided to whoever charged the internal auditor with carrying out the audit.

Termination of office

153. (a) The office of an internal auditor shall not be terminated without his consent, nor shall he be suspended from his position, unless the board of directors has so resolved after hearing the opinion of the audit committee, and after giving the internal auditor a reasonable opportunity to present his case to the board of directors and to the audit committee.

(b) For the purposes of subsection (a), the quorum required to open a meeting of the board of directors shall be no less than a majority of the members of the board of directors, notwithstanding the provisions at the end of section 104.

Chapter 5: Auditor

Article A: Appointment of Auditor

Duty to appoint auditor

154. (a) A company shall appoint an auditor to audit its annual financial reports and to express an opinion on them (hereinafter "an act of audit"); the Minister may prescribe that certain other acts performed by an auditor by law shall be considered acts of audit for the purposes of this Chapter.

(b) An auditor shall be appointed at every annual general meeting and shall serve in that position until the end of the following annual general meeting; however, the general meeting may, if such a provision exists in the articles of association, appoint an auditor who may serve as such for a longer period of time, which period shall not extend beyond the end of the third annual general meeting after that at which he was appointed.

(c) In a private company where the provisions of section 61 prevail, an auditor may be appointed to serve in such position until the date of completion of a single act of audit, or, if the articles of association contain a provision to such effect, until the completion of three acts of audit.

Appointment of first auditor

155. (a) The board of directors may, at any time prior to the first annual general meeting, appoint the company's first auditor and determine his salary; the first auditor appointed shall serve until the termination of the first annual general meeting.

(b) The provisions of section 154(c) shall apply to the termination of service of an auditor appointed by the board of directors in a private company in which the provisions of section 61 prevail.

Joint auditors

156. A company may appoint several auditors to perform the act of audit jointly.

Appointment by special general meeting

157. Where the position of auditor becomes vacant and the company has no additional auditor, the board of directors of the company shall convene a special general meeting, at the earliest possible date, on the agenda of which shall be the appointment of an auditor.

Inactive companies

158. (a) Notwithstanding the provisions of section 154, companies that are inactive and in which the public has no interest pursuant to the provisions and the conditions prescribed by the Minister under subsection (b) (hereinafter an "inactive company") may resolve in general meeting that an auditor shall not be appointed.

(b) The Minister may prescribe provisions and conditions pursuant to which a company shall be considered an inactive company.

Appointment by Registrar

159. (a) Where the auditor ceases to serve in a company and no other person is appointed in his stead as prescribed by section 157, the company shall

notify the Registrar thereof within ninety days of the date on which the auditor ceased so to serve; however, the giving of such notice to the Registrar shall not derogate from the company's obligation to appoint an auditor, as long as an auditor is not appointed under subsection (b); where the company appoints an auditor after giving notice to the Registrar, it shall notify the Registrar thereof within fourteen days.

(b) Where the Registrar receives notice of the auditor ceasing to serve, as provided in subsection (a), and so long as he has not received notice of appointment of a new auditor, he may appoint an auditor who shall serve in such position until the end of the next annual general meeting, and may determine the salary to be paid to such person by the company.

(c) The Minister may prescribe provisions and conditions for the appointment of an auditor to be appointed by the Registrar, the commencement of such person's service and his salary.

Article B: Independence

Independence of auditor

160. (a) The auditor shall be independent of the company, both directly and indirectly.

(b) The Minister may lay down provisions relating to the independent status of the auditor, including provisions relating to the independence of accountants who are partners in a partnership that is the auditor, or relating to the independence of the accountants who are shareholders in a company of accountants that is the auditor.

Duty to perform additional audit

161. Where an act of audit is performed at a time when there existed relations of dependence under section 160(b), an additional audit shall be performed by another auditor, unless at the time the matter was made known to the board of directors five years have passed since the date on which the said act of audit was performed.

Article C: Ending of Auditor's Term of Office

Ending term of office

162. (a) The general meeting may terminate the auditor's term of office.

(b) Where a public company has on its agenda the termination of

service or non-renewal of appointment of an auditor, the view of the audit committee shall be made known to the general meeting, after the auditor has been given reasonable opportunity to make his position known to the meeting.

Termination of service due to dependence

163. (a) Where the board of directors is aware of the existence of relations of dependence under section 160(b), it shall notify the auditor without delay that he must take action to end such dependence immediately; where the dependence is not brought to an end, the board of directors shall convene a special general meeting within a reasonable time, on the agenda of which shall be the termination of service of the auditor.

(b) A general meeting convened in accordance with the provisions of subsection (a) shall decide on the termination of service of the auditor; however, the general meeting may, after hearing the position of the auditor, decide not to accept the proposal of the board of directors to terminate his service, if it finds that the auditor is not dependent upon the company.

Position of auditor

164. (a) The board of directors shall give the auditor a reasonable opportunity to make his position known to the general meeting that has the termination of service or non-renewal of his appointment on its agenda, and this shall include an invitation to the auditor to take part in the meeting.

(b) Where the auditor resigns in circumstances in which the shareholders of the company have an interest, he shall notify the board of directors of the company thereof.

(c) Without derogating from the provisions of any law, the board of directors shall notify the shareholders of the reasons of the auditor for his resignation, in such detail as the board of directors shall see fit, and it may also notify them of its position in this regard.

Article D: Fees Payable to Auditor

Fees of auditor

165. (a) Fees due to the auditor for acts of audit shall be determined by the general meeting, or by the board of directors if authorized in that respect by the general meeting, and in accordance with the conditions of such authorization or, where there is a provision for such in the articles of association, in accordance with such provision.

(b) Where a fee is determined for an act of audit by the board of directors, the board of directors shall inform the annual general meeting of such fee.

Prohibition against stipulation of salary or grant of indemnity

166. (a) A company shall not make the payment of fees of the auditor dependent on conditions that restrict the manner of performing acts of audit, or that connect the results of the audit to such payment.

(b) Neither a company, nor any person acting on its behalf, shall indemnify the auditor, directly or indirectly, for an obligation imposed upon him for a breach of his professional liability or for the non-performance of any other duty imposed upon him by law.

Fee for additional services

167. (a) The fees of an auditor for additional services to the company that are not acts of audit shall be determined by the board of directors; however, it may be provided in the articles of association that fees for such services be determined by the general meeting.

(b) The board of directors shall inform the annual general meeting as to fees of the auditor for additional services.

Article E: Powers, Duties and Responsibility of Auditor

Powers of auditor

168. (a) The auditor may at any time inspect those documents of the company required by him for the purpose of fulfilling his function and receive explanations with regard to them.

(b) The auditor may participate in any general meeting at which financial reports are submitted in respect of which an act of audit is performed, and at any meeting of the board of directors dealing with the approval of financial reports or at any meeting of the board of directors convened in accordance with section 169; the board of directors shall notify the auditor of the place and time at which the general meeting or meeting of the board of directors is to be convened.

Duty to report

169. (a) Where the auditor is aware, as a result of an act of audit, of substantial defects in inspection of the company's accounting, it shall report thereon to the chairman of the board of directors.

(b) Where the auditor reports on defects referred to in subsection (a), the chairman of the board of directors shall, without delay, convene a meeting of the board of directors to discuss the matters brought to his attention.

Responsibility for opinion

170. (a) The auditor shall be liable to the company and its shareholders for the contents of his opinion regarding the financial reports.

(b) The provisions of subsection (a) shall not preclude the existence of the auditor's liability under any law.

Chapter 3: Financial Reports

Financial reports

171. (a) A public company shall keep accounts, and shall also prepare financial reports pursuant to the Securities Law.

(b) A private company shall keep accounts, and shall also prepare financial reports as provided in this Law.

(c) The financial reports shall be approved by the board of directors and signed in its name.

Preparation of financial reports in a private company

172. (a) A private company shall prepare financial reports for each year, which shall include a balance sheet as of 31 December (hereinafter "the determining date") as well as a profit and loss account for the period of a year ending on that date, and other financial reports, in accordance with the requirements of accepted accounting rules (in this Chapter "the reports"); the auditor shall audit the reports.

(b) A private company may prescribe in its articles of association that, notwithstanding the provisions of subsection (a), the reports shall be for a year that does not end on the determining date, but rather on some other date to be laid down in the articles of association (hereinafter "the special date").

(c) The reports of a private company shall be prepared within six months of the determining date or of the special date, as the case may be, or within such other period as may be laid down in the articles of association, provided that such period does not exceed nine months.

(d) The reports shall be prepared in accordance with accepted accounting rules, and shall properly reflect what they are supposed to reflect in accordance with such rules.

(e) The Minister may prescribe provisions relating to the identity and number of signatories to the reports; so long as no such provision has been prescribed, the reports shall be signed by at least one director.

(f) The Minister may prescribe details that are to be included in the reports; where the Minister has prescribed such details, they shall apply despite the provisions of accepted accounting rules.

(g) An inactive company, as referred to in section 158, may resolve in general meeting that it is not required to prepare reports under this Chapter.

Presentation of reports to shareholders

173. (a) The board of directors of a private company shall present the reports approved by it to the annual general meeting and, in a company in which the provisions of section 61 apply, shall send the reports to the shareholders.

(b) The board of directors of a private company shall present a report to the annual meeting containing its explanations regarding the events and changes that have taken place in the state of affairs of the company and have influenced the reports, in such detail as it sees fit.

(c) The reports shall be kept at the registered office of the company for at least seven years from the date on which they were prepared, for the inspection of the directors and shareholders of the company.

(d) A shareholder in a private company may receive a copy of the reports and of the opinion of the auditor in respect thereof.

(e) Copies of the reports in a private company shall be sent to all persons entitled to receive notice of general meetings, no later than fourteen days before the date on which the general meeting is to be held, unless otherwise provided in the articles of association.

Declaration by board of directors

174. The board of directors shall declare in the annual report, as provided in section 141, that it has fulfilled the provisions of section 173(a).

175. (a) A private company shall attach the balance sheet contained in the reports to its annual report, if at least one of the following conditions prevails: Obligation to submit balance sheets

(1) the articles of association of the company do not limit the right to transfer its shares;

(2) the articles of association of the company do not prohibit an offer to the public of shares or debentures;

(3) the articles of association of the company do not limit the number of shareholders in the company to fifty other than employees of the company or persons who were employees of the company and who, whilst being employees of the company or even after ceasing to be employees of the company, continue to hold shares in the company; for the purposes of this paragraph, two or more persons who jointly hold a share or shares in a company shall be considered as one shareholder.

(b) The Minister may determine that the provisions of subsection (a) shall not apply in general or to classes of private companies.

Part V: The Shareholder

Chapter 1: The Shareholder and the Share Certificate

176. A shareholder in a private company is any person who is so registered in the register of shareholders, or whoever holds a share warrant. Shareholder in private company

177. A shareholder in a public company is any of the following: Shareholder in public company

(1) A person for whose benefit a share is registered with a member of a stock exchange where such share is included in the shares registered in the register of shareholders in the name of a nominee company;

(2) A person registered as a shareholder in the register of shareholders;

(3) A person holding a share warrant.

Share certificate

178. (a) A shareholder registered in the register of shareholders shall be entitled to receive a certificate from the company evidencing his ownership of a share.

(b) A nominee company shall be entitled to receive a share certificate from the company evidencing the number and class of shares registered in its name in the register of shareholders.

Share warrants

179. A company may, if there is a provision for such in its articles of association, issue a share warrant for a fully-paid share, and the provisions of section 135 shall apply.

Text of share certificate and share warrant

180. The Minister may prescribe provisions relating to the text, form, format and printing of a share certificate or of a share warrant.

Forfeiture

181. (a) A company may prescribe in its articles of association or in an allotment agreement provisions allowing the board of directors to forfeit a share allotted by the company and to sell it, if all or part of the consideration owed to the company by the shareholder (hereinafter "the debtor") remains outstanding on the date and under the conditions prescribed in the articles of association or in such agreement.

(b) Shares forfeited and not yet sold shall be dormant shares, as defined in section 308.

(c) The debtor shall remain in debt to the company, unless the shares forfeited have been sold and the company has received the full consideration owed, together with costs incurred in the sale.

(d) Where the consideration received for sale of forfeited shares exceeds the consideration owed by the debtor, the debtor shall be entitled to a partial refund of the consideration given for them, if any, subject to the provisions of the articles of association or any allotment agreement, provided that the consideration remaining in the possession of the company shall be no less than the full consideration owed by the debtor, together with costs incurred in the sale.

(e) The provisions of this section shall not derogate from any other remedy available to the company as against the debtor.

182. (a) The shareholders who are entitled to a dividend as provided in section 306 shall be the holders of shares on the date of the resolution regarding the dividend or on a later date if another date is prescribed in such resolution.

Determining date for ownership of a share

(b) The shareholders in a public company that are entitled to participate and vote at the general meeting shall be the holders of shares on the date prescribed in the resolution to convene a general meeting, provided that such date falls no more than twenty-one days before the date of convening of the general meeting, and no fewer than four days prior to the date of convening.

(c) The Minister may make other provisions regarding the dates referred to in subsection (b), if this is required for the purpose of voting by means of a voting paper under section 87.

Chapter 2: Rights and Obligations of Shareholders

183. The rights and obligations of a shareholder shall be as laid down in this Law, in the articles of association of the company or under any other law.

Rights and obligations of shareholder

184. Shareholders shall have the right to inspect the following documents of the company:

Rights to information

(1) minutes of general meetings, referred to in section 90;

(2) the register of shareholders and the register of substantial shareholders, as referred to in section 129;

(3) any document held by the company, as provided in section 185;

(4) the articles of association and financial reports of the company, referred to in section 187;

(5) any document which the company is required to file under this Law and under any law with the Companies Registry or the Securities Authority, available for public inspection at the Companies Registry or the Securities Authority, as the case may be.

Inspection of company documents

185. (a) A shareholder shall be entitled to require from the company inspection of any document in its possession, indicating for what purpose, in any of the following instances:

(1) the document relates to an act or transaction requiring the consent of the general meeting under the provisions of sections 255 and 268 to 275;

(2) in a private company, if needed for passing a resolution regarding a matter that is on the agenda of the company's general meeting.

(b) The company may refuse the request of the shareholder if in its opinion the request was not made in good faith or the documents requested contain a commercial secret or a patent, or disclosure of the documents could harm the best interests of the company in some other way.

Information on directors' remuneration

186. (a) The board of directors of a private company shall, on the demand of one or more shareholders holding at least ten percent of the voting power in the company, be obliged to provide such person with a statement verified by the company's auditor, containing full details of all payments made by the company to each of the directors and of commitments to pay that the company has taken upon itself, including conditions for retirement, in respect of each of the last three years in which the company has prepared financial statements; the amount shall also include payments received by a director for being an office holder in a subsidiary of the company.

(b) Where the board of directors finds that the demand is not made in good faith, it may refuse to comply therewith.

Right to receive articles of association and financial reports

187. (a) Every shareholder shall be entitled to receive from the company, at his request, a copy of the articles of association and, in a private company, a copy of the financial reports referred to in section 173(d).

(b) The Minister may determine the entitlement of a shareholder in a public company to receive from the company a copy of the financial reports.

Right to vote

188. Every shareholder shall be entitled to participate in the general meeting and to vote thereat, subject to the provisions of the articles of association regarding voting rights attached to any share.

189. Shareholders may conclude voting agreements between themselves, subject to the duties imposed upon them under this Law.

Permission to conclude agreements

190. Every shareholder shall be entitled to receive a dividend, in accordance with the rights attached to each share, if a resolution as provided in section 306 regarding payment of a dividend has been passed.

Right to dividend

191. (a) Where the company's business is run in a way that constitutes unfair prejudice against all or some of its shareholders, or in a way that gives rise to a real apprehension that the company's business will be run in such a way, the court may, at the request of a shareholder, give such instructions at it sees fit to remove or prevent such discrimination, including instructions for running the company's business in the future, or instructions to the shareholders of the company under which either they or the company itself is to purchase its shares, subject to the provisions of section 301.

Rights in cases of unfair prejudice

(b) Where the court rules as provided in subsection (a), appropriate alterations shall be made in the company's articles of association and in its resolutions, as the court may determine, and such alterations shall be considered to have been lawfully made by the company; a copy of the resolution shall be sent to the Companies Registrar, and if the company is a public company, to the Securities Authority.

192. (a) A shareholder shall act in exercising his rights and in fulfilling his duties towards the company and towards other shareholders with good faith and in a customary manner, and shall avoid exploiting his power in the company, *inter alia*, in voting at the general meeting or at class meetings, in the following matters:

Shareholders' duties

(1) alteration of the articles of association;

(2) increase in the registered share capital;

(3) merger;

(4) approval of acts and transactions requiring the approval of the general meeting pursuant to the provisions of sections 255 and 268 to 275;

(b) A shareholder shall avoid unfair prejudice against other shareholders.

(c) The laws applying to breach of contract shall apply, *mutatis mutandis*, to breach of the provisions of subsections (a) and (b), and the provisions of section 191 shall also apply, *mutatis mutandis*, to breach of the provisions of subsection (b).

Duty of holder of control and of decisive voting power to act fairly

193. (a) The duty to act fairly towards the company shall apply to the following:

(1) a holder of control in the company;

(2) a shareholder who knows that the manner in which he votes will be decisive in respect of a resolution of the general meeting or of a class meeting of the company;

(3) a shareholder who, pursuant to the provisions of the articles of association, has the power to appoint or to prevent the appointment of an office holder in the company or any other power *vis-a-vis* the company.

(b) Breach of the duty of fairness shall be treated as a breach of the fiduciary duty of an office holder, *mutatis mutandis*.

Chapter 3: Derivative and Class Actions

Article A: Derivative Action and Derivative Defense

Preconditions for filing of claim

194. (a) Any shareholder and any director of a company (in this Chapter "plaintiff") may file a derivative action if the provisions of this Article apply.

(b) Any person wishing to file a derivative action shall apply to the company in writing, demanding that it exhaust its rights by instituting an action (in this Chapter "a demand").

(c) The demand shall be presented to the chairman of the board of directors of the company, and it shall set out in detail the facts giving rise to the cause of action and the reasons for its submission.

Response of company

195. A company that receives a demand may proceed in one of the following ways:

(1) performing any act or passing any resolution resulting in the cause of action being dropped;

(2) rejecting the plaintiff's demand, for reasons specified in its resolution;

(3) resolving to file an action.

Company's response to plaintiff

196. The company shall inform the plaintiff of the way in which it has proceeded under section 195 within forty-five days of the date of receipt of the demand, giving details of the action taken and the body that passed the resolution, including the names of those who participated in passing the resolution; where a participant or an office holder in the company has a personal interest in the resolution, this shall be stated in the resolution and in the notice to the plaintiff.

Right to file derivative action

197. A plaintiff may file a derivative action with the approval of the court, in accordance with the provisions of section 198, if one of the following applies:

(1) the act performed or the resolution made under section 195(1) did not, in the plaintiff's opinion, bring about the dropping of the cause of action;

(2) the company has rejected the plaintiff's demand as provided in section 195(2);

(3) the company has given notice to the plaintiff that it has resolved to file a suit, as provided in section 195(3), but no suit was filed within seventy-five days of the date of such notice;

(4) the company has not responded to the demand in accordance with section 196.

Approval of derivative action

198. (a) A derivative action requires the approval of the court, which shall approve it if convinced that the action, and the conduct thereof, are *prima facie* in the best interests of the company and that the plaintiff is not acting with lack of good faith.

(b) The court may approve the filing of a derivative action filed before the times laid down in sections 196 or 197 have elapsed if it is of the opinion that failure to file the action within such time would bring about its prescription, and it may make the approval conditional upon the fulfillment of the conditions laid down in this article for filing a derivative action.

(c) In this article, "court" – a court having jurisdiction to hear the action.

Fee and costs

199. Where the court has approved a derivative action, it may:

(1) give instructions as to the manner and dates of payment of court fees, including the division of payment of the fee between the plaintiff and the company;

(2) order the company to pay the plaintiff such sums as it may prescribe to cover the plaintiff's costs or to deposit security for such payment;

(3) require the company or the plaintiff to deposit security to cover the defendant's costs.

Costs

200. Where the court has adjudicated on a derivative action, it may require the company to pay the plaintiff's costs and it may require the plaintiff to pay costs incurred by the company, in whole or in part, taking into account the judgment and the other circumstances of the case.

Benefit

201. Where the court rules in favor of the company, it may order the payment of a benefit to the plaintiff taking into account, *inter alia*, the advantage derived by the company from filing the action and from winning it.

Arrangement or settlement

202. A plaintiff shall not withdraw a derivative action, and shall not enter into an arrangement or settlement with the defendant, except with the approval of the court; application for such consent shall specify all details of the arrangement or settlement, including any payment offered to the plaintiff.

Derivative defense

203. (a) Where a claim is filed against a company, the court may, at the request of a shareholder or director (in this Chapter "the derivative defendant") allow such person to defend the claim on behalf of the company (hereinafter "the derivative defense") provided that the court is convinced that the conduct of the derivative defense is for the benefit of the company, and that the derivative defendant is not acting with lack of good faith.

(b) The provisions of this Article regarding a derivative action shall apply, *mutatis mutandis*, to a derivative defense to the extent that provisions are not laid down by the Minister in that regard.

Prohibited distribution of dividend

204. A creditor of a company may file a derivative action on behalf of the company in respect of a prohibited distribution effected by the company, and the provisions of this Article shall apply thereto, *mutatis mutandis*.

205. Neither a derivative action nor a derivative defense shall be filed on behalf of a company over which a liquidator has been appointed under Chapter 12 of the Companies Ordinance. Company in liquidation

206. The Minister may lay down provisions regarding derivative actions and derivative defenses, including procedures for the approval thereof. Regulations

Article B: Class Action

207. (a) In this Article, "connection" – ownership, possession, purchase or sale. Class action

(b) A person having a cause of action under any law as a result of a connection to a security may, with the consent of the court as provided in section 210, sue on behalf of a group all of whose members have a cause of action deriving from the same connection to a security.

208. A plaintiff filing a class action shall give notice thereof in writing to the Attorney-General; where the cause of action arises out of a connection to a security of a public company, the plaintiff shall also give notice thereof to the Securities Authority. Notice

209. (a) A plaintiff seeking to sue in a class action deriving from a connection to a security of a public company may request the Securities Authority to bear his costs. Funding by the Authority

(b) Where the Securities Authority is convinced that the action is in the interests of the public and that there is a reasonable chance that the court will approve it as a class action, the Authority may bear the plaintiff's costs, in such sum and on such conditions as it shall determine.

(c) Where the court rules in favor of the plaintiff, it may order in its judgment indemnification of the Securities Authority for its costs.

210. (a) The court may approve a class action if it is of the opinion that, *prima facie*, all of the following conditions are fulfilled: Court approval

(1) the elements of the cause of action are substantiated and where one such element is damage, it is sufficient if the plaintiff shows *prima facie* damage to himself;

(2) substantive questions of fact and law common to all members of the group are to be settled in the action;

(3) a class action is the most appropriate method for settling the dispute in the circumstances of the case, taking into account, *inter alia*, the size of the group;

(4) the interests of all members of the group will be represented and managed in an appropriate manner by the plaintiff; the defendant may not appeal or seek leave to appeal against a decision in this regard.

(b) The court shall not approve a class action if it finds that it was submitted with lack of good faith.

Definition of group

211. (a) Where the court approves the filing of an action as a class action, it shall define the group on behalf of which the claim is filed and shall give instructions to the plaintiff as to the manner in which its decision is to be made public.

(b) Any person included in the group as defined by the court shall be considered to have agreed to be included in the group unless any such person notifies the court of his desire not to be included in the group, within sixty days of the date of publication of the decision of the court; the court may, on the application of any person, extend the said period in respect of such person, if it is of the opinion that there is a special reason for doing so.

Res judicata

212. A judgment in a class action shall constitute *res judicata* in respect of all members of the group, subject to the provisions of section 211.

Arrangement or compromise

213. (a) A plaintiff shall not withdraw from a class action and shall not make an arrangement or compromise with a defendant without the approval of the court.

(b) Where the court is requested to approve an arrangement or compromise, it shall order the publication of a notice setting out the details of the arrangement or compromise; members of the group may file an objection to the approval of the arrangement or compromise within the time determined for such by the court.

214. The court shall determine the fees of the advocate representing the group; the advocate shall not receive fees exceeding the sum determined by the court. Advocate's fees

215. Where the court rules in favor of the plaintiff, it may order the payment of remuneration to him for his efforts in filing and proving the action. Remuneration to plaintiff

216. (a) Where the court adjudicates on monetary compensation in a class action, it may order that in addition to such compensation, costs will be paid in a fixed sum to each of the members of the group for their efforts in proving their right to relief. Compensation and costs

(b) Where the court adjudicates an inclusive sum as monetary compensation in the action, it may give instructions regarding the use of the balance that would remain if any of the members of the group had not made any effort to prove their right to relief.

217. Subject to the provisions of section 212, the provisions of this Article shall not preclude any other legal relief to the defendant. Other relief

218. (a) The Minister shall prescribe rules of procedure regarding filing and conducting a class action, and regarding court fees. Regulations

(b) The Minister may make provisions regarding methods of proving damage to each of the members of the group.

Part VI: Office Holders in a Company

Chapter 1: Appointment and Term of Office of Directors

Article A: Term of Office of Director and Termination thereof

219. (a) The number of directors shall be prescribed in the articles of association; however it shall be sufficient for the articles of association to prescribe the maximum and minimum number of directors. Number of directors

(b) In a private company, at least one director shall hold office.

(c) In a public company, at least two outside directors as provided in section 239 shall hold office.

Initial directors

220. The initial directors of a company shall be the directors appointed by the founders of the company who have made the declaration provided in section 8; the initial directors shall cease to hold office at the end of the first annual general meeting, unless otherwise provided in the articles of association.

Commencement of office

221. A director shall commence his term of office on the date of his appointment or on a later date if the articles of association have a provision permitting an appointment that is to commence in the future.

Period of office

222. Directors appointed by the general meeting shall cease to hold office at the end of the first annual general meeting held after the date of their appointment, unless otherwise provided in the articles of association.

Reporting of changes

223. A private company shall report to the Companies Registrar the appointment of a director and of a director ceasing to hold office, within fourteen days of the date of appointment or of the date of termination of holding office.

Register of directors

224. The company shall keep a register at its registered office of the members of the board of directors and of their substitutes if substitutes are appointed for them under the provisions of section 237; such register shall be available for inspection by any person.

Article B: Restrictions on Appointment and Termination of Office

Duty of disclosure

225. A person who is a candidate to hold office as a director shall disclose to the person appointing him whether he has been convicted by a conclusive judgment of an offense referred to in section 226, where five years have not yet elapsed from the date of the judgment under which he was convicted.

Restriction on appointment due to conviction

226. (a) A person convicted by a conclusive judgment of one of the following offenses shall not hold office as a director in a public company unless five years have passed since the date on which the judgment by which he was convicted was given:

(1) offenses under sections 290 to 297, 392, 415, 418 to 420 and 422 of the Penal Law, 5737-1977,[7] and under sections 52C, 52D, 53(a) and 54 of the Securities Law;

(2) conviction by a court outside Israel of the offenses of bribery, deceit, offenses by managers of a corporate body or offenses involving misuse of inside information;

(3) conviction of any other offense in respect of which a court holds that, due to the substance, gravity or circumstances of such offense, such person is not fit to serve as director in a public company.

(b) A court may determine, at the date of the conviction or thereafter, on the application of a person interested in being appointed as a director, that despite his conviction of offenses specified in subsections (a)(1) and (a)(2), and taking into account, *inter alia*, the circumstances in which the offense took place, such person is not precluded from holding office as director of a public company.

(c) The Minister may prescribe additional offenses to those laid down in subsection (a)(1).

Limitation on appointment due to bankruptcy or liquidation

227. (a) A person who has been declared bankrupt shall not be appointed as director for so long as such person remains undischarged, nor shall a corporation that has resolved to enter into voluntary liquidation or in respect of which a winding up order has been issued.

(b) A person nominated to hold office as director to whom the provisions of subsection (a) apply shall make disclosure thereof to the person appointing him.

Termination of office

228. (a) Without derogating from the provisions of any law, the office of a director shall terminate before the end of the period of office for which he was appointed, in any of the following instances:

(1) he resigns or is dismissed from office as provided in sections 229 to 231;

(2) he is convicted of an offense referred to in section 232;

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7 *Sefer Ha-Chukkim*, 5737, p. 226; LSI Special Volume – The Penal Law.

(3) in accordance with a court ruling as provided in section 233;

(4) he has been declared bankrupt, or if a corporation, it has been resolved to liquidate the corporation voluntarily, or a winding up order has been issued in respect thereof.

(b) A company may not contract out of the provisions of this section in its articles of association, but it may add additional causes for termination of the office of a director.

Resignation of director

229. (a) A director may resign from office by delivery of a notice to the board of directors, to the chairman of the board of directors or to the company, and the resignation shall take effect on the date of delivery of the notice, unless a later date is laid down in the notice.

(b) A director shall give reasons for his resignation.

(c) Where notice of the resignation of a director is received, the fact of the resignation and the reasons given therefor shall be presented to the board of directors and shall be recorded in the minutes of the first meeting convened after the resignation.

Dismissal of director

230. (a) The general meeting may, at any time, dismiss a director unless otherwise provided in the articles of association, provided that the director shall be given the opportunity to put his case before the general meeting.

(b) Where the articles of association contain a provision whereby a director may be appointed to hold office otherwise than by the general meeting, such person may only be removed from office by the person entitled to appoint him and in the manner prescribed therefor in the articles of association, unless otherwise provided therein.

Obligation to cease holding office

231. Where a company becomes aware that a director has been appointed contrary to the provisions of section 226 or 227(a), or that a director has committed a breach of the provisions of section 225, 227(b) or 232, the board of directors shall resolve, at its first meeting convened after becoming so aware, to terminate the office of such director, if it finds that the said conditions are fulfilled and such office shall expire on the date of such resolution.

232. Where a director has been convicted by a final judgment of an offense provided in section 226(a)(1) or (3), he shall so inform the company and his office shall terminate on the date of giving of such notice, and in a public company, it shall not be possible to reappoint him to hold office as a director unless five years have passed as provided in section 226.

Termination of office due to offense

233. The court may, on the application of the company, a director, shareholder or creditor, order the termination of the office of a director if it finds that one of the following applies:

Disqualification pursuant to court ruling

(1) the director is permanently unable to fulfill his function;

(2) in respect of a director serving in a public company – during the term of his office he was found guilty in a court outside Israel of offenses referred to in section 226(a)(2).

234. A director who commits a breach of the duty of disclosure provided in sections 225, 227(b) or 232 shall be considered as having committed a breach of his fiduciary duty to the company.

Fiduciary duty

Article C: A Body Corporate as Director

235. A corporation shall be eligible to serve as director, unless otherwise provided in the articles of association.

Corporation as a director

236. (a) A corporation serving as director shall appoint an individual who is eligible to be appointed as director of the company to act on its behalf and the corporation may replace such person, subject to its duties towards the company.

Individual acting on behalf of corporation

(b) The name of the individual serving on behalf of the corporation shall be entered in the register of directors as the person serving on behalf of the corporation.

(c) The duties that apply to a director shall apply to the individual serving on behalf of a corporation and to the corporation itself, jointly and severally.

Article D: Substitute Director

Substitute director

237. (a) It shall not be possible to appoint a substitute for a director (hereinafter "a substitute director") unless the articles of association include a provision allowing such appointment.

(b) Neither a person who is not eligible to be appointed as a director, nor a person who is already serving as director or substitute director shall be appointed or shall serve as a substitute director.

Liability of substitute director

238. (a) The legal status of a substitute director shall be the same as that of a director.

(b) The appointment of an substitute director shall not terminate the liability of the director whom he replaces, which shall continue to apply, taking into account the circumstances of the case, including the circumstances of appointment of the substitute director and the duration of his office.

Article E: Outside Director

Duty to appoint

239. (a) In a public company, two outside directors shall hold office.

(b) The outside directors shall be appointed by the general meeting, provided that one of the following conditions applies:

(1) in counting the votes of the majority at the general meeting at least one-third of all the votes of shareholders who are not holders of control in the company or representatives of such persons, present at the time of voting are included; in counting the total number of votes of such shareholders, abstentions shall not be taken into account;

(2) the total number of votes opposing the appointment from among the shareholders referred to in paragraph (1) shall be no greater than one percent of the total voting rights in the company.

(c) The Minister may prescribe different rates from the rate provided in subsection (b)(2).

(d) In a company in which, on the date of appointment of an outside director, all members of the board of directors of the company are of one gender, the outside director appointed shall be of the other gender.

240. (a) An individual who is a resident of Israel and who is qualified for appointment as a director may be appointed as an outside director. Qualification for appointment

(b) An individual who himself, or whose relative, partner, employer or a corporation in which he has control, has a connection with the company or with a holder of control of the company on the date of appointment, or with another body corporate shall not be appointed as an outside director; for purposes of this subsection:

"connection" – the existence of labor relations, business or professional relations generally or by way of control, as well as acting as an office holder, other than as a director for a period of no more than three months during which the company first offered its shares to the public;

"another body corporate" – a body corporate in which the holder of control is, on the date of appointment or during the two years preceding the date of appointment, the company or a holder of control therein.

(c) An individual shall not be appointed as an outside director if any other position or business of his might give rise to a conflict of interest with his role as director, or if these might affect his ability to act as a director.

(d) A director of a company shall not be appointed as an outside director of another company if at such time, a director of the other company is acting as an outside director of the first company.

(e) An individual shall not be appointed as an outside director if he is a member of the Securities Authority or an employee thereof or if he is a member of the board of directors of a stock exchange in Israel or an employee thereof.

241. (a) A general meeting at which the appointment of an outside director is on the agenda may only be convened if the nominee has declared that he fulfills the conditions required for being appointed as an outside director (hereinafter "the declaration"). Declaration

(b) The declaration shall be kept at the registered office of the company and shall be open for inspection by any person.

(c) The Minister may lay down provisions regarding the declaration.

Initial outside directors

242. Initial outside directors shall be appointed by general meeting to be convened no later than three months from the date on which the company became a public company.

Participation in committees

243. At least one outside director shall serve on every committee authorized to exercise any of the powers of the board of directors.

Remuneration and refund of expenses

244. (a) An outside director is entitled to remuneration and to a refund of expenses as may be prescribed by the Minister upon consultation with the Securities Authority.

(b) An outside director shall not receive, in addition to the remuneration to which he is entitled and refund of expenses, any other consideration, direct or indirect, for acting as a director of the company; for the purposes of this subsection, consideration shall not include the grant of an exemption, an undertaking to indemnify, indemnification or insurance pursuant to the provisions of Article C of Chapter 3.

Duration of office

245. (a) The term of office of an outside director shall be three years, and the company may, notwithstanding the provisions of section 240, appoint him for one further term of three years.

(b) An outside director shall only be dismissed in accordance with the provisions of sections 233, 246 and 247.

Termination of office by general meeting

246. (a) Where the board of directors becomes aware that there is a suspicion that an outside director has ceased to fulfill one of the conditions required under this Law for his appointment as an outside director, or that there is a suspicion that the director has committed a breach of fiduciary duty to the company, the board of directors shall discuss such matter at the first meeting to be convened after becoming so aware.

(b) Where the board of directors finds that the outside director has ceased to fulfill one of the conditions required under this Law for his appointment or that he has committed a breach of his fiduciary duty, the board of directors shall convene a special general meeting on the agenda of which shall be the termination of office of the outside director.

(c) The reasons for the finding of the board of directors shall be presented to the special general meeting and the outside director shall be given a reasonable opportunity to express his position; the resolution of the

special general meeting regarding the termination of the office of the outside director shall be passed by the same majority as is required for his appointment.

247. The court may, on the application of a director or a shareholder, order the termination of office of an outside director if it is of the opinion that he has ceased to fulfill one of the conditions required under this Law for his appointment as an outside director or that he has committed a breach of fiduciary duty to the company.

Termination of office by court

248. Where the position of outside director becomes vacant and there are not two other outside directors serving in the company, the board of directors shall convene a special general meeting, for the earliest date possible, on the agenda of which shall be the appointment of an outside director.

Appointment by special general meeting

249. A company shall not appoint a person who has served as outside director of the company as an office holder of the company, shall not hire such person as an employee and shall not receive professional services from such person in return for payment, whether directly or indirectly, including by way of a corporate body controlled by such person, unless two years have elapsed from the termination of his office as outside director of such company.

Prohibition against appointment and employment

Chapter 2: Appointment and Dismissal of Other Office Holders

250. The general manager shall be appointed and dismissed by the board of directors, unless otherwise provided in the articles of association.

Appointment and dismissal of general manager

251. Office holders in a company, other than directors and the general manager, shall be appointed and dismissed, in a public company by the general manager and in a private company by the board of directors, unless otherwise provided in the articles of association.

Appointment and dismissal of office holders

Chapter 3: Duties of Office Holders

Article A: Duty of Care

Duty of care

252. (a) An office holder owes a duty of care to the company as provided in sections 35 and 36 of the Civil Wrongs Ordinance [New Version].[8]

(b) The provisions of subsection (a) shall not preclude a duty of care being owed by an office holder to another person.

Precautions and standard of proficiency

253. An office holder shall act with the standard of proficiency with which a reasonable office holder, in the same position and in the same circumstances, would act; this shall include taking reasonable steps, in view of the circumstances of the case, to obtain information regarding the business expedience of an act submitted for his approval or of an act done by him by virtue of his position, and to obtain all other pertinent information regarding such acts.

Article B: Fiduciary Duty

Fiduciary duty

254. (a) An office holder shall owe a fiduciary duty to the company and shall act in good faith and for the benefit of the company, including the following:

(1) he shall refrain from any act involving a conflict of interest between the fulfillment of his function in the company and the fulfillment of any other function or his own personal affairs;

(2) he shall refrain from any act involving competition with the business of the company;

(3) he shall refrain from taking advantage of a business opportunity of the company with the aim of obtaining a benefit for himself or for any other person;

(4) he shall disclose all information to the company and shall provide it with all documents relating to its interests that reach him by virtue of his position with the company.

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8 *Dinei Medinat Yisrael*, New Version 10, p. 266; LSI (NV) vol. 2, p. 5.

(b) The provisions of subsection (a) shall not preclude a fiduciary duty being owed by an office holder to any other person.

Approval of acts

255. (a) A company may approve any of the acts enumerated in section 254(a) provided that all the following conditions apply:

(1) the office holder acted in good faith and neither the act nor the approval of the act harm the best interests of the company;

(2) the office holder disclosed the substance of his personal interest in the act, including any essential fact or document, a reasonable time before the date for discussion of approval.

(b) The company's approval for acts that are not essential acts shall be given in accordance with the provisions of Chapter 5 regarding the approval of transactions, and the company's approval for essential acts shall be given in accordance with the provisions of Chapter 5 regarding the approval of extraordinary transactions; the provisions of Chapter 5 regarding the validity of transactions shall apply, *mutatis mutandis*, to the validity of acts.

Remedies

256. (a) The rules applying to breach of contract shall apply, *mutatis mutandis*, to the breach of the fiduciary duty of an office holder.

(b) Without derogating from the generality of the provisions of subsection (a), an office holder in breach of a fiduciary duty towards the company shall be considered as a person in breach of his contract with the company.

(c) A company may revoke an act done by an office holder on behalf of the company towards another person or may claim from such person the compensation owed to it from the office holder, even without canceling the act, if such person knew of the breach of the office holder's fiduciary duty, and knew or ought to have known of the lack of approval of the act.

(d) A person is presumed not to have been required to know about the lack of approval of an act as necessitated under this Chapter if such person received confirmation from the board of directors that all consents required for the act have been obtained.

Disclosure of defects

257. Where a director becomes aware of a matter of the company in which an apparent breach of a law or harm to proper business procedures has been discovered, he shall immediately act to convene a meeting of the board of directors as provided in section 98(b)(2).

Article C: Exemption, Indemnification and Insurance

Authority of company to grant exemption, indemnification and insurance

258. (a) A company may not exempt an office holder from liability for breach of his fiduciary duty towards it.

(b) A company may exempt an office holder from liability for breach of his duty of care towards it only in accordance with the provisions of this chapter.

(c) A company may indemnify or insure the liability of an office holder only in accordance with the provisions of this Chapter.

Authorization to grant exemption

259. A company may exempt in advance an office holder from liability in whole or in part, for damage deriving from breach of his duty of care towards it, if a provision to that effect is laid down in the articles of association.

Permission regarding indemnity

260. (a) A company may, if one of the provisions specified in subsection (b) is laid down in the articles of association, indemnify an office holder for debts or expenses as specified in paragraphs (1) and (2) imposed upon such office holder due to an act done by virtue of his being an office holder of the company:

(1) a financial liability imposed upon him for the benefit of another person pursuant to a judgment, including a judgment given in the matter of a compromise or an arbitral award approved by the court;

(2) reasonable litigation expenses, including attorney's fees, incurred by the office holder or charged to him by the court, in a proceeding filed against him by or on behalf of the company or by any other person, or for a criminal indictment from which he was acquitted or for a criminal indictment in which he was found guilty of an offense not requiring proof of criminal intent.

(b) A provision in the articles of association regarding indemnity may be one of the following:

(1) a provision permitting the company to give an undertaking in advance to indemnify its office holder, provided that such undertaking be limited to types of events that in the opinion of the board of directors can be foreseen at the time of granting the undertaking to indemnify, and to a sum determined by the board of directors as reasonable in the circumstances of the case (hereinafter an "indemnity undertaking");

(2) a provision permitting the company to indemnify its office holder *ex post facto* (hereinafter "authorization for indemnity").

Liability insurance

261. A company may, if an appropriate provision has been laid down in the articles of association, enter into a contract to insure the liability of an office holder therein for an obligation imposed upon him pursuant to an act performed by him by virtue of his being an office holder, in any of the following instances:

(1) breach of duty of care towards the company or towards any other person;

(2) breach of fiduciary duty towards the company, provided that the office holder acted in good faith and had a reasonable foundation for presuming that the act would not harm the best interests of the company;

(3) a financial obligation imposed upon him for the benefit of another person.

Alteration of articles of association

262. (a) In a private company the shares of which are divided into classes, the resolution to include a provision in the articles of association regarding an exemption or indemnity shall require the approval of a class meeting in addition to the approval of the general meeting.

(b) In a public company in which an office holder is a holder of control as defined in section 268, the resolution of the general meeting to include a provision in the articles of association regarding an exemption, indemnity or insurance shall require the approval of shareholders who do not have personal interests in the approval of the resolution, as required for an extraordinary transaction, pursuant to the provisions of section 275(3)(a), in addition to the majority required for alteration of the articles of association.

Invalid provisions

263. Neither a provision of the articles of association permitting the company to enter into a contract to insure the liability of an office holder, nor a

provision in the articles of association or a resolution of the board of directors permitting the indemnification of an office holder, nor a provision in the articles of association exempting an office holder from liability towards the company shall be valid, where such insurance, indemnification or exemption relates to one of the following:

(1) breach of fiduciary duty, other than as provided in section 261(3);

(2) breach of a duty of care committed intentionally or recklessly;

(3) an act done with intent to make unlawful personal profit;

(4) a fine or forfeit imposed upon such office holder.

No contracting out

264. (a) A provision in the articles of association or in a contract or stipulated in any other manner purporting to contract out of the provisions of this article, directly or indirectly, shall be invalid.

(b) An undertaking to indemnify or to insure the liability of an office holder due to the breach of a fiduciary duty towards the company shall not be valid, nor shall an office holder accept, directly or indirectly, such an undertaking; receiving such an undertaking shall constitute a breach of fiduciary duty.

Chapter 4: Rights of a Director

Right to receive information

265. (a) Every director shall have the right to inspect the documents and records of the company and to receive copies thereof, and to examine the assets of the company, to the extent required for the fulfillment of his duties as a director.

(b) The company may prevent a director from examining a document or asset of the company if the board of directors is of the opinion that the director is acting other than in good faith, or that such examination might harm the best interests of the company.

(c) The court may, on the application of an outside director, rule that the right provided in subsection (a) shall also apply to the documents and records of any related company, if it is convinced that the information requested is important for the performance of his role as an outside director.

Right to employ advisers

266. (a) For the purpose of performing his functions, a director may, in special cases, receive professional advice at the company's expense, if coverage of the expense is approved by the board of directors of the company or by the court.

(b) The court, when ruling on an application as provided in subsection (a), shall consider, *inter alia*, whether the company's specialists are not providing the assistance required by the director for the purpose of performing his function, and the reasonableness of the sum requested, taking into account the reason for seeking advice and the financial status of the company.

Right to sue

267. (a) Where a director has reasonable cause to presume that an act is about to be performed by an office holder which might constitute a breach of the office holder's duty, he may, after acting as provided in section 257 if the circumstances so permit, apply to the court with a request that it enforce the duty or prevent the act; the court may grant an order preventing the act or any other remedy that it may see fit in the circumstances of the case.

(b) Unless the court has rules otherwise, the company shall bear all expenses incurred by a director who applied to the court pursuant to the provisions of this section, including court fees and advocates' fees, on the date determined by the court.

Chapter 5: Transactions with Interested Parties

Definition of holder of control

268. In this Chapter, "holder of control" – a holder of control as defined in section 1, including a person who holds twenty-five percent or more of the voting rights in the general meeting of the company if there is no other person who holds more than fifty percent of the voting rights in the company; for the purpose of a holding, two or more persons holding voting rights in a company each of which has a personal interest in the approval of the transaction being brought for approval of the company shall be considered to be joint holders.

Duty of disclosure

269. (a) An office holder in a company or a holder of control in a public company who is aware that he has a personal interest in an existing or proposed transaction of the company shall disclose the nature of his personal interest to the company without delay, including any substantial fact or

document, no later than the meeting of the board of directors in which the transaction is first discussed.

(b) The provisions of subsection (a) shall not apply when the personal interest derives only from the existence of the personal interest of a relative in a regular transaction.

(c) An interested party, as defined in section 270(5), who is aware that he has a personal interest in a substantial private placement shall disclose the substance of his personal interest to the public company without delay, including any essential fact or document.

Transactions requiring special approvals

270. The following transactions of a company shall require approval as laid down in this Chapter, provided that the transaction does not harm the best interests of the company:

(1) a transaction by a company with an office holder thereof, and a transaction of a company with another person in which transaction an office holder in the company has a personal interest; however, an office holder of a parent company as well as a wholly owned and controlled subsidiary thereof shall not be considered as having a personal interest in a transaction between the parent company and the subsidiary solely for the reason of his being an office holder of both of them;

(2) the grant of an exemption, insurance, undertaking to indemnify or indemnification under a permit to indemnify to an office holder who is not a director;

(3) conclusion of a contract by a company with a director thereof as to the terms of his office, including the grant of an exemption, insurance, undertaking to indemnify or indemnification under a permit to indemnify, and the conclusion of a contract by a company with a director thereof as to the terms of his employment for other functions (hereinafter "terms of office and of employment")[a]

(4) an extraordinary transaction of a public company with a holder of control therein, or an extraordinary transaction of a public company with another person in which the holder of control has a personal interest, including a private placement that is an extraordinary transaction; as well as the conclusion of a contract by a public company with a holder of control therein, if such person is also an office holder

thereof – as to the conditions of his office and employment, and if he is an employee of the company but not an office holder thereof – as to his employment by the company;

(5) a private placement as a result of which the holdings of a substantial shareholder in securities of the company will increase or as a result of which a person will become a substantial shareholder after the issue (hereinafter "an interested party"); for the purpose of holding, securities which are convertible into or realizable as shares held by such person or issued to him pursuant to the private placement, shall be considered as having been converted or realized.

Transactions which are not extraordinary

271. A transaction where the provisions of section 270(1) prevail, other than an extraordinary transaction, shall require the approval of the board of directors, unless some other manner of approval is prescribed in the articles of association.

Extraordinary transactions with office holders

272. (a) A transaction of a company to which the provisions of section 270(1) apply, and which is an extraordinary transaction, or to which the provisions of section 270(2) apply, shall require the approval of the audit committee followed by the approval of the board of directors.

(b) Where a private company does not have an audit committee, the transaction shall require the approval of the board of directors only, if the office holder is not a director, and if the office holder is a director, the transaction shall also require the approval of the general meeting.

Conditions of office and employment

273. A transaction by a company to which the provisions of section 270(3) apply shall require the approval of the board of directors followed by the approval of the general meeting, and in the case of a public company, the transaction shall require the approval of the audit committee followed by the approval of the board of directors.

Private placement

274. A substantial private placement shall require the approval of the board of directors followed by the approval of the general meeting.

Transaction with holder of control

275. (a) A transaction to which the provisions of section 270(4) apply shall require the approvals by those mentioned below, in the following order:

(1) the audit committee;

(2) the board of directors;

(3) the general meeting, provided that one of the following applies:

(i) in a count of votes, the majority in the general meeting includes at least one-third of all the votes of those shareholders that do not have a personal interest in the approval of the transaction who are present at the meeting; in a count of all of the votes of such shareholders, abstentions shall not be taken into account;

(ii) the total of opposition votes amongst the shareholders referred to in sub-paragraph (a) above shall not be greater than one percent of all the voting rights in the company.

(b) The Minister may determine rates other than those prescribed in subsection (a)(3)(ii).

Disclosure of personal interest

276. A shareholder participating in a vote under section 275 shall notify the company prior to the vote in the meeting, or, if the vote is by way of voting papers, on the voting paper, whether or not he has a personal interest in the approval of the transaction; where a shareholder does not so notify, he shall not vote and his vote shall not be counted.

Cumulative approvals

277. Where the conditions prescribed for more than one of the alternatives in section 270 apply in respect of a transaction, the transaction shall require approvals in accordance with the provisions applying to each alternative.

Abstention of directors

278. (a) A director who has a personal interest in the approval of a transaction, other than a transaction as referred to in section 271, that is brought before the audit committee or the board of directors for approval, shall not be present during the deliberations and shall not take part in the voting of the audit committee or of the board of directors.

(b) Notwithstanding the provisions of subsection (a), a director may be present at a deliberation of the audit committee and may take part in the voting if the majority of the members of the audit committee have a personal interest in the approval of the transaction; likewise, a director may be present at the deliberations of the board of directors and may take part in the voting

if the majority of the directors of the company have a personal interest in the approval of the transaction.

(c) Where the majority of the directors on the board of directors of a company have a personal interest in the approval of a transaction as aforesaid in subsection (a), the transaction shall also require the approval of the general meeting.

Audit committee of a public company

279. The audit committee of a public company shall not be permitted to grant an approval required under this Chapter, unless, at the time of the grant of the approval, two outside directors are sitting on the committee, and at least one of those was present at the deliberations in which the committee resolved to grant the approval.

Invalid transaction.

280. (a) A transaction of a company with an office holder thereof or an extraordinary transaction by a public company with a holder of control therein shall not be valid in respect of the company or the office holder or holder of control if the transaction is not approved in accordance with the provisions of this Chapter or if a substantial defect has occurred in the approval process, or if the transaction was effected in a way that deviated substantially from the terms of the approval.

(b) A transaction referred to in subsection (a) shall likewise not be valid in respect of any other person if such person knew of the personal interest of the office holder or of the holder of control in the approval of the transaction, and knew or ought to have known of the lack of approval of such transaction as required under this Chapter.

Revocation of transaction

281. A company may revoke a transaction with another person requiring approval as provided in this Chapter, other than a transaction as provided in section 271, and it may claim compensation from such person for damage caused to it even without revoking the transaction, if such person knew of the personal interest of an office holder of the company in the approval of the transaction or of the personal interest of the holder of control in the public company in the approval of the transaction, and knew or ought to have known of the lack of approval of the transaction as required by this Chapter.

Approval by board of directors

282. A person is presumed to to have known of the lack of approval of a transaction as required under this Chapter where such person has received the confirmation of the board of directors to the fact that all the approvals required for the transaction have been obtained.

Remedies

283. (a) An office holder who fails to disclose a personal interest as provided in section 269 shall be considered to be in breach of fiduciary duty; a holder of control in a public company who does not disclose his personal interest as provided in that section shall be considered to have been in breach of duty to act honestly.

(b) Where an interested party is in breach of the duty of disclosure as provided in section 269 or where a shareholder fails to disclose his personal interest as provided in section 276, the company may claim compensation from such person for the damage caused to it due to the failure to disclose.

Regulations

284. The Minister, upon consultation with the Securities Authority, may determine that the provisions of this Chapter shall not apply to various types of transactions.

Part VII: Capital of the Company

Chapter 1: Securities and Transactions Therein

Article A: Freedom to Diversify

Freedom to diversify

285. A company may have shares, debentures or other securities, each of which may have different rights attached thereto.

Article B: Registered Share Capital

Increasing registered share capital

286. The general meeting may increase the registered share capital of a company in classes of shares, as it may determine.

287. The general meeting may cancel unalloted registered share capital, provided that the company is under no obligation, including a conditional obligation, to allot such shares.

Cancellation of registered share capital

Article C: Issue of Securities

288. The board of directors may issue shares and other securities, convertible into or realizable as shares, up to the limit of the company's registered share capital; for this purpose, convertible securities or securities realizable as shares shall be considered to have been converted or realized on the date of issue.

Authority to issue shares and convertible securities

289. (a) The board of directors may resolve to issue a series of debentures within the scope of its power to borrow on behalf of the company, and within the bounds of such power.

Power to issue debentures

(b) The provisions of subsection (a) shall not abrogate the power of the general manager, or a person authorized by him for such purpose, from borrowing on behalf of the company, or from issuing single debentures, promissory notes or bills of exchange, within the bounds of his power to do so.

290. (a) In a private company, the issued capital of which contains one class of shares, shares shall be offered to each shareholder in accordance with the proportion of each shareholder's holding of the issued share capital; the board of directors may offer another person the shares that a shareholder refused to purchase or did not accept an offer to purchase before the final date fixed for such in the offer, unless otherwise prescribed in the articles of association.

Entitlement to participate in future allotments

(b) A company incorporated prior to the commencement of this Law which in its articles of association has contracted out of article (4) of the Second Schedule to the Companies Ordinance, in the version that was in force prior to the commencement of this Law, shall be considered to have contracted out of subsection (a) in its articles of association.

Allotment other than in return for cash

291. A company shall not allot a share the consideration for which, in whole or in part, is not paid up in cash, unless the consideration for the share is specified in a written document.

Reporting allotments

292. A private company must, within fourteen days of an allotment of shares, provide the Registrar with the following documents:

(1) a report, in the form prescribed by the Minister, specifying the details of the allotment;

(2) in the case of allotments to which the provisions of section 291 apply – a copy of the document as referred to in that section.

Article D: Transfer of Securities

Transferability

293. Every security shall be presumed to be transferable, in accordance with the provisions of this Law.

Limitation on transferability

294. A company may lay down provisions in its articles of association limiting the transferability of shares, under conditions prescribed in the articles of association.

Joint owners

295. A part of a share may not be transferred, but a single share may have several joint owners, each of whom may transfer his or her rights, unless such right is restricted in the articles of association.

Bearer securities

296. (a) A bearer security is a security the full consideration for which has been paid to the company, and in respect of which a share warrant attesting thereto has been issued.

(b) The holding of a share shall be *prima facie* evidence of ownership thereof.

Negotiability

297. A bearer security is a negotiable instrument, the transfer of which is effected by delivery of the warrant to the transferee.

Purchase on stock exchange

298. The provisions of section 34 of the Sale Law, 5728-1968,[9] shall apply to a person purchasing a security in the course of trade on a stock exchange, and such person shall be considered to be a purchaser from one who deals in the sale of assets of that kind and the sale shall be considered to have taken place in the ordinary course of business of such person.

Alteration in registration

299. A company shall alter the registration of ownership of shares in the register of shareholders as provided in section 130(a)(1), in each of the following circumstances:

(1) a deed of transfer of the share was delivered to the company signed by the transferor and the transferee, and any requirements of the articles of association have been complied with;

(2) a court order requiring the amendment of the register was delivered to the company;

(3) it has been proved to the company that the legal conditions for assigning the right have been fulfilled;

(4) any other condition sufficient under the terms of the articles of association for registration of an alteration in the register of shareholders has been fulfilled.

Forced sale

300. (a) A private company may provide in its articles of association that a person entitled by law to shares in the company, including an executor of a will, administrator of an estate, liquidator or trustee in bankruptcy, shall be required to offer for sale the shares to which such person is entitled to the company or the other shareholders in consideration for their fair value, as agreed between the parties, and in the absence of such agreement, as a court may determine on the application of the company, or on the application of the other shareholders, all the above being subject to the provisions of the articles of association and to the provisions of this Law.

(b) Where the fair value of the shares has not been agreed upon and where no application has been submitted to the court, the shares shall be registered in the name of the person entitled to them, at the end of ninety days following the date of the offer made by the person entitled to the shares.

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9 *Sefer Ha-Chukkim*, 5728, p. 98; LSI Vol. 22, p. 107.

Chapter 2: Preservation and Distribution of Capital

Article A: Permitted Distribution

No contracting out

301. (a) A company may only effect a distribution in accordance with the provisions of this Chapter; however, a company may undertake in its articles of association or in a contract not to effect distribution under restrictions additional to the provisions of this Chapter,.

(b) A distribution in contravention of the provisions of this Chapter shall be a prohibited distribution.

Permitted distribution

302. (a) A company may effect a distribution of its profits (hereinafter "the profit criterion"), provided that there is no reasonable suspicion that such distribution might deprive the company of its ability to meet its existing and anticipated liabilities when the time comes for the fulfillment thereof (hereinafter "the ability to meet liabilities criterion").

(b) In this section:

"profits" for the purpose of the profit criterion – the balance of surplus or the surplus, accumulated over the past two years, whichever is the greater, in accordance with the latest adjusted financial reports, audited or surveyed, prepared by the company, provided that the date in respect of which the reports were prepared is no earlier than six months prior to the date of distribution;

"adjusted financial reports" – financial reports adjusted to the index, or financial reports which replace or will replace such reports, in accordance with accepted accounting principles;

"surplus" – sums included in a company's equity originating from the net profit of the company, as determined according to accepted accounting principles, and other sums included in the equity under accepted accounting principles other than share capital or premiums that are to be considered surplus, as prescribed by the Minister.

(c) The Minister may lay down provisions regarding presumptions as to the fulfillment by a company of the conditions of the ability to meet liabilities criterion, and exemptions or alleviations regarding adjustment of the financial reports.

303. (a) The court may, on the application of a company, allow it to effect a distribution in respect of which the profit criterion is not fulfilled, provided that the court is convinced that there is no reasonable suspicion that such distribution might prevent the company from being able to meet its existing and anticipated liabilities when the time comes for such payment.

Distribution with consent of court

(b) A company shall notify its creditors of the submission of an application to the court as provided in subsection (a), in the manner prescribed by the Minister.

(c) A creditor may apply to the court and oppose the application of a company to permit it to effect a distribution.

(d) The court may, after having given the opposing creditors the opportunity to put their case, approve the company's application, in whole or in part, reject it or make the approval of it conditional.

304. (a) Where a company decides to allot shares with a nominal value for consideration of less than their nominal value, including bonus shares, it must convert part of its profits, as defined in section 302(b), from share premiums or any other source included in its equity set out in its latest financial reports into share capital, in the sum equal to the difference between the nominal value and the actual consideration.

Allotment of shares at less than nominal value

(b) The court may, on the application of a company, permit it to effect an allotment of shares for consideration of less than the nominal value of the shares, other than in accordance with subsection (a), on such conditions as it may prescribe.

305. The Minister may prescribe provisions for the implementation of this Chapter.

Regulations

Article B: Dividend

306. (a) A shareholder shall have the right to receive a dividend, or bonus shares, if the company passes a resolution to that effect.

Right to dividend or to bonus shares

(b) Where there are shares in the capital of the company with different nominal values, dividends or bonus shares shall be distributed relative to the nominal value of each share, unless otherwise provided in the articles of association.

Resolution on payment of dividend

307. The resolution of a company to pay a dividend shall be passed by the board of directors of the company; however, the company may prescribe in its articles of association that the resolution be passed in one of the following ways:

(1) at the general meeting, having been brought before it upon the recommendation of the board of directors; the general meeting may accept the recommendation or reduce the sum, but may not increase it;

(2) at the board of directors of the company, after the general meeting has determined the maximum amount of the distribution;

(3) in such other manner as may be determined in the articles of association, provided that the board of directors is given a proper opportunity to determine that the distribution is not a prohibited distribution before it is effected.

Article C: Purchase

Consequences of purchase

308. Where a company purchases one of its own shares, the share shall not afford any rights (hereinafter "a dormant share") for so long as the dormant share is owned by the company.

Purchase by a controlled corporation

309. (a) A subsidiary or other corporation in control of a parent company (in this section the "purchasing corporation"), may purchase shares of the parent company to the same extent as the parent company may effect distributions, provided that the board of directors of the subsidiary or the managers of the purchasing corporation have determined that if the purchase of the shares were to be effected by the parent company, it would be considered a permitted distribution.

(b) Where a share in a parent company is purchased by a subsidiary or by a purchasing corporation, such share shall not afford any voting rights for so long as the share is owned by the subsidiary company or by the purchasing corporation.

(c) Where a prohibited distribution is effected, restitution referred to in section 310 shall be effected to the subsidiary or to the purchasing corporation, and the provisions of section 311 shall apply, *mutatis mutandis*,

to the directors of the subsidiary and the managers of the purchasing corporation; however, if the board of directors of the parent company resolves that the distribution is permitted, the liability shall fall on the directors of the parent company, as provided in section 311.

(d) Notwithstanding the provisions of subsection (a), a purchase by a subsidiary company or by a purchasing corporation that is not wholly owned by the parent company shall be a distribution of the product of the purchase money and the rights in the capital of the subsidiary or in the capital of the purchasing corporation held by the parent company.

Article D: Prohibited Distribution

Conse-quences of prohibited distribution

310. (a) Where a company effects a prohibited distribution, the shareholder shall restore what he received to the company, unless the shareholder did not know and ought not to have known that the distribution effected was prohibited.

(b) A shareholder in a public company who is not also a director, general manager or holder of control of the company at the time of the distribution, is presumed not to have known and not to have been required to know that the distribution effected by the company was a prohibited distribution.

Liability of directors for prohibited distribution

311. Where a prohibited distribution is effected in a company, any person who is, at the date of the distribution, a director, shall be considered to have thereby committed a breach of his fiduciary duty to the company, unless he proves one of the following:

(1) that he objected to the prohibited distribution and took all reasonable steps to prevent it;

(2) that he reasonably and in good faith relied on information that, but for its being misleading, the distribution would have been permitted;

(3) that in the circumstances of the case, he did not know nor ought to have known of the distribution.

משרד המשפטים

מסמך זה הינו העתק שנסרק בשלמותו ביום ובשעה המצוינים,
בסריקה ממוחשבת מהימנה מהמסמך המצוי בתיק,
בהתאם לנוהל הבדיקות במשרד המשפטים.

על החתום

משרד המשפטים (חתימה מוסדית).

נאחזו בעיין
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על החתום
משרד המשפטים (חתימה מוסדית).
Geoda User
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