

Key to your future



CAA

**CHARTERED
ACCOUNTANTS
ACADEMY**

**NATIONAL LEADER IN TRAINING
CHARTERED ACCOUNTANTS**

Companies Act

Learning Objectives

- Identifying and evaluating the requirements of the companies act ;
- Evaluating and advising on compliance with the requirements of the companies act;
- Providing appropriate recommendations for compliance with the Companies Act; and
- Perform substantive procedures with reference to Companies Act requirements.

Background



What are the key focus areas?

- Identifying and understanding the governance requirements as stipulated in the act;
- Identifying and understanding financial reporting requirements as found in the act;
- Identifying and interpreting requirements in respect of external audits; and
- Identifying and interpreting requirements on specific transactions.

Memorandum of incorporation (Sec 7 – 16)

Sec 8

Key highlights

- The memo shall state whether the company is a Public limited company or a private limited company.
- The share capital should be divided into shares of a fixed amount (nominal value)

Membership of company – sec 30 - 32

A body corporate cannot be a member of a company which is its holding company and any allotment or transfer of shares shall in a company to its subsidiary shall be void.

Private companies – (Sect 33 – 34)

Sect 33: Definition of a private company (means a company other than a cooperative company)

- Is a company which by its articles :
- Restricts the rights to transfer its share
- Less than 50 members
- Can not issue shares to the public

NB: By way of a special resolution and subject to confirmation by the court, a public company may convert itself into a private company.

Share Capital – Sec 53 - 111

Sect 73 : Financial assistance by company for purchase of its own or its holding company's shares

- General : It is prohibited for a company to give financial assistance for the purchase of its own or its holding company's shares.
- Unless:
 - Assistance is given in terms of a special resolution
 - Immediately after assistance is given : FV of assets exceed its liabilities and the company is able to discharge its debts in the ordinary course of its business.
- If provision breached directors can be held personally liable for any losses suffered through such actions

Share Capital – Sec 53 - 111

Sect 74 : Share premiums

- If shares are issued at a premium, the premium shall be transferred to a share premium account.
- Share premium can be used for the following purposes
 - Issuing of bonus shares
 - Writing of preliminary expenses
 - Providing for premiums which maybe payable on redemption of preference shares

Sect 75 : Share issue at a discount

- Shares can be issued at a discount if the following conditions are met :
 - Special resolution authorizing the issue and sanctioned by the court
 - Resolution should specify the max rate of discount
 - Not less than 1 year should have elapsed after the resolution
 - Shares to be issued within 30 days after being sanctioned by the courts

Share Capital – Sec 53 - 111

Sect 78 : Power of company to purchase own shares (treasury shares/redeemable shares)

- A company is allowed to purchase its own shares if permitted to do so by its Articles of Association, including any redeemable shares
- However a company is not allowed to purchase its own shares if as a result of the purchase there would no longer be any member holdings shares.

Sect 79 : Authority required by a company to purchase its own shares

- Should be authorised in advance in a general meeting
- The authority should specify the following:
 - State the price or the max or min price of the purchase
 - Max number of shares that may be repurchased
 - The date on which the authority will expire

Share Capital – Sec 53 - 111

Sect 87 : Power of company to alter its share capital

- A company may by special resolution alter the condition of its memo so as to :
 - increase its share capital by new shares
 - Consolidate and divide its share capital into shares of larger amounts
 - Subdivide its shares into shares of a smaller amount than is fixed by the memo

Meetings and Proceedings – Sec 124 - 139

Sec 125 : Annual General Meetings

- Every company shall hold annual general meetings
- Frequency
 - Within a period of 18 months from date of incorporation
 - thereafter within 6 months after the end of the ensuing financial year.
 - And within 15 months after the date of the previous AGM of the company

Sec 133 : Definition of special resolution

- It's a resolution passed by a majority of at least $\frac{3}{4}$ of the eligible votes who are present
- 21 days notice period should have been given before passing of such resolution.
- At least $\frac{1}{4}$ of the total votes of the company should be present for a special resolution to be passed,
- NB: All other resolutions at a general meeting shall be called ordinary resolutions

Meetings and Proceedings – Sec 124 - 139

Sect 138 : Minutes of proceedings of meetings of company or directors or managers.

- Every companies to minute all proceedings of meetings of its general meetings, directors meetings and management meetings.

Accounts and Audit – Sec 140 - 155

Sec 140 : Books of accounts

- Every company is to keep books of accounts in the English language.
- Records may be destroyed after 8 years from the completion of the transactions or operations to which they relate.

Sec 143 : Meaning of holding company, subsidiary and wholly owned subsidiary

- A company shall be deemed to a subsidiary of another if -
 - That other company is a member of it and controls the composition of directors or
 - Holds more than half in nominal value of its equity share capital.
 - Or the first mentioned company is a subsidiary of any company which is that other's subsidiary.
- A company is a wholly owned subsidiary if it has no other members except that other company.

Accounts and Audit – Sec 140 - 155

Sec 144 : Obligation to lay group accounts before holding company.

- Required unless
 - The holding company is itself a wholly owned subsidiary of another company incorporated in Zimbabwe
 - It is impracticable
 - Would result in misleading or harmful to the business of the company
 - Business of the holding company and the subsidiary are so different that they can not reasonably be treated as a single undertaking.
 - NB: The auditors of the holding co. shall in every case report on the decision of directors not to deal in group accounts with any subsidiary. Approval of the minister would also be required in some instances.

Sec 150 : Appointment and remuneration of auditors

Accounts and Audit – Sec 140 - 155

Sec 150 : Appointment and remuneration of auditors

- **First auditor to be appointed by directors within one month**
- **Auditors are supposed to be re/appointed at each annual general meeting**
- **Remuneration of auditors shall be fixed at the AGM**
- **A private company shall not be required to appoint auditors if:**
 - **It has less than 10 members**
 - **None of the shareholders is**
 - **Public company**
 - **A pvt company owned by a public company**
 - **The company is not a subsidiary of a holding company which has itself appointed auditors**
 - **Members agree that an auditor shall not be appointed**

Sect 151 : Special notice required of resolution to appoint or remove auditor

- **Special notice is required for a resolution at a company's AGM to appoint an auditor**

Accounts and Audit – Sec 140 - 155

Sec 152 : Disqualifications for appointment as auditor

- An officer or servant of the company
- A person who is a partner of an officer or servant of the company
- A person who is an employer or an employee of an officer or servant of the company
- A body corporate
- A person who by himself or his partner performs the duties of secretary or bookkeeper of the company.

Sec 153 : Auditors report

Sec 154 : Auditor's right of access to books and to attend general meetings

Directors and officers – Sec 169 to 189

Sect 169 : Directors and Secretary

- Every company shall have at least 2 directors and at least 1 of the directors should be ordinarily resident in Zimbabwe
- Appoint at least 1 secretary ordinarily resident in Zimbabwe

Section 174 : Appointment of directors to be voted on individually.

- Directors are appointed at a general meeting and they should be voted for individually.

Directors and officers – Sec 169 to 189

Sect 175 : Removal of directors

- Before expiry of term directors can be removed by resolution of which special notice has been given
- Director is allowed to make representation

Sec 177: Prohibitions of loans to directors

- Loans to directors are prohibited unless the funds are provided to :
 - Reimburse expenditure to be incurred by the director in discharging company business.
 - The company is in the business of giving out such types of loans.
 - The company is a private company and at least 9/10 of the shareholders consent.
 - Purchase shares in the company (as read with sec 73).

Directors and officers – Sec 169 to 189

Sec 184 : Particulars in accounts of director's salaries and pensions

- Aggregate of director's emoluments
- Aggregate of director's pensions
- Aggregate of any compensation to director's of past directors in respect of loss of office

Sec 185 : Particulars in accounts of loans to officers

- To be disclosed in the accounts except for private companies.

Sec 186 : Disclosure by directors of interests in contracts

- Directors are required to disclose at a meeting of directors any interest that they might have in a contract or proposed contract with the company

Other

Sec 190 : Limitation of liability – auditors

- Auditors are prohibited from indemnifying themselves against any liability which may arise by law in respect of any negligence, default or breach of contract.

Responsibility of directors and other persons for fraudulent conduct of

business – sect 318

- If at any time it appears that any business of a company was being carried on –
 - Recklessly or
 - With gross negligence; or
 - With intent to defraud any person or for any fraudulent purpose
- The directors or any other persons who were parties to these shall be personally responsible without limitation of liability.

Application of Knowledge

1. Study Unit D practice question;