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Preface

The Corporate Affairs Commission was established by virtue of the Companies Act 2009 primarily to supervise and regulate the incorporation of all companies in Sierra Leone. It is responsible for the establishment of a registry in Sierra Leone and is the body authorized to implement the Companies Act 2009 and subsequent amendments. In order for the Commission to carry out its functions effectively it has been granted the mandate to draft regulations that would facilitate its operations.

In a bid to promoting good corporate governance in Sierra Leone the Commission commenced a radio discussion program to inform the general public about the provisions of the Act and in particular duties of Company directors and secretaries, who have the task of ensuring a company is at all times compliant. During the course of the program and based on questions and feedback from listeners, it became apparent that information on corporate governance was not easily accessible and /or understood.

Given the role of the Commission in the promotion of good corporate governance, the Commission realizes the importance of providing timely and accurate information to its customers, i.e proposed investors and existing companies on the do's and don'ts of establishing and managing a company in Sierra Leone. Many times businesses make decisions regarding their structure, administration and general operations that is detrimental to their business and this is simply because information was not available which could have formed the basis for a better decision. Investors are not at all times aware that Directors are employees of their company and as such owe certain duties to the Company and to government institutions. Small and medium enterprises have been denied access to financial facilities because they may not have understood the importance of keeping proper books of accounts and have little evidence to show that they can sustain their operations, are self - accounting or can even repay loans if one were to be granted. The absence of structures in day to day management of businesses has also posed a major challenge in matters relating to transparency and accountability.

The Companies Act 2009 now caters for the establishment of a one man company and the amendment i.e Companies (Amendment) Act 2014 , does not limit the capital which a private company limited by shares should have in order to be incorporated or maintained. As such many sole proprietors may wish to take advantage of this opportunity presented to benefit from the legal status enjoyed by companies. The Commission notes the challenges that could be posed with reading and understanding legal language and thus saw it fitting for information to as far as possible be simplified and made available to the public. These are some of the reasons that led to the production of this handbook.

This handbook is divided into two parts: Part A deals with matters relating to Incorporation and Registration of a Company and covers the types of company that could be incorporated including what is required for registration of a company. Part B deals with Administration and Management of a Company. This section in particular aims to simplify certain aspects of shares, debentures and most important of all, outlines duties owed by directors both to their company and to the Commission. An Annex of Penalties gives an indication of what would be the consequences for non-compliance.

Despite the information put forward, this handbook serves as a guide only and should be read alongside the Companies Act 2009, The Companies (Amendment) Act 2014 and related regulations. It is important to note that topics mentioned in this book are not exhaustive. Information dissemination shall be a continuous progress using many medium including the Commission's website at www.cac.gov.sl

Let me take this opportunity to acknowledge Tim Moss, CEO of the Companies House UK and Dorothy Blair, Registrar of Companies for Scotland, for sharing their knowledge and experience with us. Gratitude also goes to the Board and Staff of the Corporate Affairs Commission for their invaluable contribution toward the production of this handbook.

CEO & Registrar

Michala Mackay

PART A INCORPORATION, REGISTRATION AND NAMES

CHAPTER 1: TYPES OF COMPANY

A company may be defined as an association where one or more persons come together for a common business goal.

It has what is termed **'separate legal personality'** meaning, it is treated as an entity separate from its shareholders/members.

As a legal entity, a company is subject to the Companies Act 2009 (as amended) and to such limitations as are inherent in its corporate nature, the capacity, rights, powers and privileges of an individual.

This entails that a company can own property, sue and be sued and enjoys perpetual succession or continuity, among others.

However, since a Company, unlike a human being, is an artificial person, it can only act through an agent, i.e. its Directors.

Types of Companies obtainable in Sierra Leone

1. Private Companies; and,
2. Public Companies.

Private Company - this is a registered company formed and owned by individuals other than the Public. Its name will always end with the word "limited" or “Ltd”. The minimum number of Shareholders required for a private company is one (1).

The following are the types of private limited companies that can be incorporated:

1. Company limited by Shares;
2. Company limited by Guarantee; and
3. Unlimited Company.

1. **Private Company Limited by shares**
   Companies limited by shares have a share capital and are formed or incorporated for purposes of carrying on business to derive a profit. Currently, there is no minimum requirement in the share capital of a company. This means you can now register a company with as little an amount as is possible to reasonably start a business and 25% of the nominal share capital must be paid up. Prior to the amendment of the Companies Act 2009 the minimum authorized capital for a private company was Le 1,000,000.00

   A private limited company may not have more than fifty (50) shareholders. It has the capacity to enter into any type of legal activities as long as its articles do not restrict it. The liability of its shareholders is limited to the amount left unpaid on their shares. This type of company cannot offer its shares to the general public.

2. **Company limited by Guarantee**
   A company limited by guarantee does not have a share capital and is not permitted to carry on business for the purpose of making a profit for its members or for anyone concerned in its promotion or management. Companies established to promote art, religion, sports research, charity or similar objects are established as companies limited by guarantee and the income or profits from its operations go towards promotion of the objects. These are normally formed in order to help the community benefit from a certain project.

   At the time of formation, each member must sign a declaration of guarantee, specifying the amount he undertakes to contribute to the company's assets if it is wound up. It therefore means that members do not make any contribution to the company during its lifetime as they do not purchase shares.

3. **Unlimited Company**
   An Unlimited Company is one that has a share capital but whose members have unlimited liability for the company's debts. In other words, whatever is incurred by the company is also deemed to have been incurred by the members.

The Companies Act 2009 now caters for the incorporation of a one - man company. This means that a sole proprietor can now register the business as a one **- man company provided all the requirements for incorporation of a company are met.**

Public Company - A Public Limited Company states in its articles of association that it is a" Public Limited Company". Its name always ends with the words "Public Limited Company" mostly abbreviated as "PLC". It has a share capital and its authorised minimum capital is Le 50, 000,000.00. Just as is the case with a private company limited by shares, 25% of the nominal share capital must be paid up. It has the capacity of entering into any business activity unless restricted by its articles.

This type of Company can offer its shares for sale to the general public and may list its shares on the Stock Exchange.

If it winds up and its assets are not sufficient to cover its liabilities, the liability of the shareholders is limited to the amount left unpaid on their shares.

CONVERSION OF A COMPANY

A company, of a certain type or category, may for various reasons wish to convert into another type of company. The Companies Act 2009 contains a number of explicit provisions for the conversion of companies, including provisions dealing with notice of an intended conversion and the effect of conversion on such matters as the corporate existence of the company, its debts and liabilities, rights and obligations, contracts and legal proceedings. There are procedures for conversion from a private company to a public company and vice versa e.g A private limited company can be re-registered as a public limited company (plc) provided:

- it has a share capital that meets the minimum requirements of a public limited company .
- it has sufficient assets to cover the issued share capital– a share capital of Le 50,000,000.
- it has at least two shareholders and two directors

- the shareholders pass a special resolution to authorize the change or conversion
- it alters its memorandum to state that the company is now a public limited company
- it makes necessary alterations to the articles of incorporation
- the necessary documents and forms are filed with the Corporate Affairs Commission.

If the company is to be registered with a different name (apart from the compulsory change from 'Limited' to 'PLC' or 'public limited company' at the end of the name) the name must be acceptable for registration.

There are minimum share capital requirements for a PLC and these must be complied with on conversion from private limited company to public limited company. As mentioned, a public limited company must have an issued share capital of at least Le 50,000,000 and at least 25% of the nominal amount and the whole of any premium payable on each share must be paid up.

On conversion, the company must also have assets to a value which is not less than it's called up share capital. To establish this, the application must be accompanied by an audited balance sheet and this must be accompanied by a statement from the company's auditors that the assets meet the statutory requirements.

In the same manner a public limited company (PLC) can be re-registered as a private company limited by shares provided:

- it adopts new articles suitable for a private limited company
- the shareholders pass a special resolution to the effect
- the necessary documents and forms are registered with the Commission .

Re-registration does not affect any existing rights or liabilities of the company.

There is no provision for a company limited by shares to be re-registered as one limited by guarantee or for the reverse process. It would therefore be necessary to register a new company and transfer

the assets of the old company to the new. There are restrictions on a company which has previously changed from limited to unlimited or vice versa changing back again.

CHAPTER 2: MEMORANDUM & ARTICLES OF ASSOCIATION

Both a memorandum and articles of association are required for a company formation in Sierra Leone under the Companies Act 2009 and its subsequent amendment.

The memorandum of association is the legal document prepared for the formation and registration of a company. It is the document that governs the relationship between the company and the outside. The memorandum of association must be in a prescribed form and must be authenticated by each subscriber. The articles of association on the other hand set out how the company is run, governed and owned. The memorandum of association and the articles of association are collectively known as the memorandum and articles (M&A).

The memorandum of association must contain the following:

1. The name of the company
2. The registered office which is to be situated in Sierra Leone
3. Nature of business authorized to be carry out, known as the objects
4. Restriction on the power of the company
5. Whether the company is a private or public company
6. Liability of members
7. If it is a company limited by shares, the share capital of a company of which 25% should have been taken by the subscribers
8. If it is a company limited by guarantee, the contribution of members in the event of closing up of the business

The prescribed form is stated in table B, C and D of the First Schedule or as near as permitted under the companies Act 2009.

Articles of Association

The articles of association set out how the company is run, governed and owned. The articles can put restrictions on the company's powers – which may be useful if shareholders want the comfort that the directors will not pursue certain courses of action, at least without shareholder approval. A company's articles of association are its main constitutional documents. Typically the articles will contain regulations covering the following areas, together with many other matters:

Directors' powers and responsibilities, directors' meetings, directors' appointment, resignation and removal, directors' remuneration, classes of shares, issuing shares, share certificates, share transfers, paying dividends, organisation of general meetings, such as notice of meetings, voting rights and proxies, quorum, etc. some of which we would elaborate on in this handbook.

There are adoptable rules contained in Table A of the First Schedule of the Companies Act 2009. Table A is simply the name given to the prescribed format for Articles of Association of a company limited by shares. The Articles set out the regulations by which the company will be managed.

The articles must be printed, divided into paragraphs numbered consecutively and signed by each subscriber of the memorandum in the presence of one witness who will attest the signature.

Nature of the business (objects)

The objects of the Company are to be stated in the memorandum and articles of association. The object clause identifies the activities which the company intends to engage in. A company shall not carry on any business not authorized by its memorandum.

A company cannot state as an object any activity that is illegal.

CHAPTER 3 NAMES

a. Choosing the name of a company

A company has the right to use any name provided it is “not identical” to or “same as” that of any registered business, such that it may deceive or mislead the public into believing that your business is that of another. A name should not mislead anyone as to the nature of its business or activities. The Commission would not allow use of any name that would violate an existing business name in Sierra Leone except if the consent of the business is sought and given.

Any name that is offensive or contrary to public policy cannot be used as a company name

b. Sensitive names and expression needing approval

There are certain names which when used would imply particular status or function. The use of such words have to be justified in order for the public not to be misled by the name.

The following words imply national pre- eminence and therefore cannot be used without the approval of the Commission.
Chamber of Commerce

Sierra
Leone
National
Government
Municipal
Chartered
Cooperative
Group
Holding
International

Any word which in the opinion of the Commission suggests that it enjoys patronage from the government municipality would require approval.

A company intending to include the word International would have to provide evidence that a part of its business is trading outside of Sierra Leone.

A company intending to use the word Group as part of its name would have to show evidence of a parent/subsidiary association with two or more other Sierra Leonean or foreign companies.

c. No name reservation

The Commission does not reserve names for use by a company. Where a search is conducted at the office or electronically, confirmation of availability of name would be valid only at that point in time. A delayed registration may mean the name is no longer available for use for which reason a further check will be made at point of incorporation.

All correspondences addressed to the Commission and business correspondences are expected to bear the company name and number and the name must be stated as it appears on the memorandum and articles of association.

d. Foreign Companies

A foreign company intending to register and carry on business in Sierra Leone has to conduct a name search prior to registration. Provided the name is available it would be used to register the company. The company is then mandated to ensure

a) The name of the company and the country in which it was incorporated is exhibited at its place of business
b) In every prospectus to state the name of the country of incorporation
c) In legible characters it is to state the company name and country it was incorporated on all its letterheads, notices, advertisements and official publications including electronic means of communication such as website, official emails etc.

Failure on the part of a company and its officers to comply with these provisions would constitute an offence.

CHAPTER 4 STATUTORY DECLARATIONS

Statutory declarations

For the purposes of incorporation, every company has to submit statements and what are known as statutory declarations. These are commonly used to allow a person to declare something to be true for the purposes of satisfying a legal requirement or regulation when no other evidence is available. They are thus similar to affidavits (except that they are not made on oath).

When a company is to be incorporated the following declarations are to be made by subscribers:

a) the names and address of the subscribers
b) the share capital of the company (this would only apply to companies having a share capital)
c) the number of shares to be issued to each subscriber
d) that twenty five percent (25%) of the shares have been subscribed
e) that subscriber has complied with the requirement of the law
f) that valid copies of the identification of subscribers and the directors of the Company have been submitted (see Companies (amendment) act 2014)

The Commission may require a statutory declaration to satisfy itself that a member is not in any way disqualified from joining or forming a company.

The commission may refuse a declaration and if it does do so it shall give notice of the same within a reasonable period of time.

CHAPTER 5 INCORPORATION – OTHER REQUIREMENTS

Other documents required (ID's of members and directors, statements and letters of consent

A company is also required to submit

a) A list of and particulars of the first directors of the company. The law also requires that every person appointed as a director of company has to give his consent to be listed as a director and evidence of this consent has to be submitted to the Commission at the point of incorporation or on the recruitment of a new director.

b) The person or persons who are to be the first secretaries of the Company.

The Companies (amendment) Act 2014 now makes it mandatory for all members of the company and their listed directors to submit copies of valid forms of Identification. It is important for the Commission to know its customers and for the general public to also know the hands and feet of the Company with whom they may have dealings at one point in time or the other.

Part B: LIFE OF A COMPANY – ADMINISTRATION AND MANAGEMENT

CHAPTER 1 CHANGE OF CONSTITUTION

1. Amendment of Memorandum and Articles of Association

   A Company can alter its memorandum by a special resolution, and after complying with the requirement of Section 41-42 of the Companies Act 2009.

   Alteration may take any of the following forms:

   a. Changing a company name:

   Any Change in the name of a company shall be subject to section 30 of the Companies Act 2009. Any such change of name shall have effect only with the consent of the Commission.

   In case of change in name, the registrar shall replace the old name with the new name in its register and shall issue a new Certificate of Incorporation. The change in name shall be effective only on issue of the new certificate of incorporation on change of name.

   To change the name of a company consideration has to be given to the same factors as choosing a company name in the first instance. Cognizance is to be taken of the distinction between a change of name and change of status of the company. Sometimes a change of name may come about as a result of the change of status of the company e.g changing from private company to a public company would require a change of name and a certificate of incorporation on re registration would be issued.

   A special resolution must be passed at a general meeting in order for a company's name to be changed. This means that in order to change the company name:

i) A special resolution has to be passed by members of the Company (i.e 21 day's notice is to be given to members to propose special resolution), a 2/3's majority of vote should be secured which should sum up to 95% of nominal shares/ total voting rights. This requirement does not apply to a one-man company. In this regard, actions to be carried out would be written down and signed off by the owner or the director The requirements of having a quorum at meetings is also not applicable to a one-man company.

ii) Name has to be available for use or approved by the commission.

A company may be directed by the Commission to change its name under certain circumstances

i. If registered with a name identical to a name already existing
ii. The name 'nearly resembles' another name to the point that it is likely to deceive
Iii. If there is a change in the nature of the business such that the name with which the company is registered is misleading

b. Changing of the objects clause

A company may change its objects at any time after the incorporation of the company. It can do so by passing what is known as a special resolution.

A company can amend its object clause by adding, removing or altering any or all of the statements relating to its object. An amendment to the object clause does not affect any rights or obligations of the company or render defective any legal proceedings brought against or by the Company.

To amend the object clause however, a notice is to be given to all the members of the Company and a special resolution is to be passed regarding the alteration. A copy of that resolution and the altered memorandum should be filed with the Commission.

A member can however object to such amendment. A holder of not less than 10% of the nominal value of the total share or not less than 10% of the total membership of the company or 10% of the company debenture holder can object to the change /amendment/ alteration of the purpose for which the company was incorporated . The member can do so on an application in court within 28 days of the passing of the resolution of alteration of the object clause and this may give rise to its ineffectiveness unless it is confirmed by the court

If an application is made to the court objecting to the alteration of the objects of the company, the company shall give notice of this to the Commission and shall make available a certified true copy of the order of the court refusing to confirm the resolution or a certified true copy of the order confirming the resolution. These documents should be filed within 15 days of passing of the order unless the court extends the time.

Any alteration that is not objected to by members and passed in compliance with procedures shall be valid as if they were the original objects.

It is important for a member of a company to know that if an alteration is made to the memorandum and articles of association after he becomes member and that alteration requires him to subscribe more shares than he holds or increases his debts, he is not bound by these changes or alterations unless he has agreed in writing to be bound by them.

In the same manner as the name and object clause can be amended, so can the articles of a company be amended. A company may alter its articles by a special resolution, subject to condition contained in its memorandum.

Such alteration should be filed with the Commission.

Amendments made to memorandum and articles of association once approved are binding on the members as if they had been signed by each member.

c. Limitation on alteration of memorandum and articles

Alterations to a company's articles shall not violate provisions of the memorandum. All clauses in the articles beyond the powers of the memorandum shall be null and void i.e insignificant. Alteration must not contain anything illegal and shall not constitute fraud on the minority shareholders. Alteration in the articles increasing the liability of the members can be done only with the consent of the members

In case of a company limited by guarantee and not having a share capital, any alteration of the memorandum proposing to give any non – member a right to participate in the profits of the company shall not be valid.

CHAPTER 2 - SHARES

Part VI and VII of the Companies Act 2009 (as amended) make several provisions relating to minimum share capital, nature of shares, issue of shares, allotment of shares, class of shares, numbering of shares, share certificates, transfer and transmission of shares and transactions by a company in respect of shares. The Companies (Amendment) Act 2014 also makes provision particularly in respect of transfer of shares. Information provided in this part would apply only to companies with a share capital.

For the purposes of administration of such a company it is important that members have a proper understanding of these provisions.

i. What are Shares?

Simply put, a share is a unit of the value of the Company. The value of the company is divided up into small parts and each part carries a value. What this means is that if the value of a company is Le100 million, and there are 50 million **shares** in issue, then each **share** is worth Le2.

It is important though to understand that this value is what is referred to as the nominal value. It does not reflect the real value. This means that if for instance a company worth Le100 million with 50 million shares is sold at Le200 million, although the nominal value is Le2, the real value of that share would be Le4.
If a person owns a share, they therefore have a token or part of the ownership of the company.

Shares may also carry a right to a dividend. A dividend is a payment made to the shareholders of a company in proportion to the number of shares held. Dividends are not paid automatically; it is the decision of the board of directors whether a dividend will be paid in a particular year, and how much dividend will be paid per share. This allows the individual shareholder to benefit from the profit made by the company. A decision to pay out a dividend would depend on whether the Company is making a profit and the criteria for this decision is not covered in the act although the procedure for the declaration of dividend is (section 322) of the Companies Act 2009

For the purpose of this handbook we would however focus on a few topics i.e the nature and class of shares, alteration of share capital, transfer of shares and share certificates.

ii. Nature and class of shares

The articles of every company would determine the terms attached to shares. However regardless of the type of company or articles every share holder has the right to attend any general meeting and to vote at such a meeting.

There are basically two classes of shares: Ordinary shares and preferential shares. Ordinary shares have voting rights confirmed on issue. A company may also issue what are known as preference shares. Holders of this class of shares may, if the articles of the company permit, have more than one vote per share. Preferential share holders also have dividend at a fixed rate and their share of profit of the company is paid before other ordinary shareholders.

Unless distinguished all shares are ordinary shares.

As every ordinary share counts as a vote in the company, the more shares you have the more votes you have - for example, a person with 5 shares can out-vote a person with 4 shares. No company can issue shares that do not carry a vote.

If a company does not adhere to these provision i.e attached voting rights to shares and to ensure a shareholder has a right to attend general meetings, the company and any officer shall be in default and liable to a fine (see table on penalties).

Generally speaking to understand the rights attached to shares there are certain rules that apply some of which are:

a) No dividend (i.e no share in the profit of a company) is paid on any shares unless members agree that it should be paid
b) Any amounts owed to preferential shareholders has to be paid first before any other dividend is paid

c) In the event a company is closing down (winding up of a company) any amounts owed to preferential shareholders are to be paid up to the date of the closing. In the case of a voluntary winding up, shareholders would have to pay up any outstanding amount on the nominal value of shares held.

d) If a preferential shareholder had rights to payment from assets of the company, when that company is closing (winding up) they cease to have that right

e) Unless the articles of the company draws a distinction in respect of rights attached to shares, all shares would rank equally.

The law makes it mandatory for all issued shares to be appropriately numbered unless they have been paid up in full.

iii. Alteration of shares

A company having shares can alter or make changes to the conditions of its share capital.

The company can if it so desires and provided the procedures are followed do any of the following at a general meeting:

a) Divide all or some part of its share capital into larger amounts

b) Change all or part of it's paid up shares into stock (another form of security) and also convert that stock into paid of shares and can change the value of the share

c) Divide the shares into smaller amounts but the paid or unpaid amount should be the same

d) Cancel shares that have not be taken

e) It can **increase or reduce** the amount of its share capital

It is important to note that a company is to inform the Commission of any alteration of share capital within one month of the resolution that an alteration has been made. Every officer and the company that fails to comply with this requirement shall be in default.

The following is a guide on the processes and procedures to be complied with in respect of increase reduction or general alteration of shares.

iv. Increase of share capital

A resolution should be passed authorizing the increase.

1. Within 7 days of passing the resolution a notice is to be given to the Commission but if an approval is required to be sought under any other law, the Commission may extend the time to give notice, if the company applies for extension.
2. The notice to be sent to the Commission has to include particulars on any class of shares affected and the conditions which shall apply to new shares
3. Within six months of giving notice of increase to the Commission, the company is to ensure 25% of the share capital are issued
4. The directors are to give to the Commission a statutory declaration stating that 25% of the share capital including the increase has been paid up

Non - compliance with 1 & 2 above shall constitute a default. The increase of a share capital shall only take effect if 3 & 4 above are complied with and until then the status of the shares remains the same

v. Reduction of Share Capital

A company can reduce its share capital by special resolution provided the court confirms the reduction.
A company may:

1. Reduce the debts (liabilities) of shareholders holding any of its shares which have not been paid up
2. Cancel unpaid share capital i.e. cancel the amounts still owed by the shareholders
3. Pay-off any paid up share capital that is in excess of what the company wants
4. Apply to the court for confirmation of the reduction

Usually creditors of the company would be listed and this becomes of critical importance if and when claims are to be settled. A creditor can object to the reduction of a share capital if his consent has not been obtained or his debt or claim has not been settled. There may be instances though, were the objection of a creditor may be dismissed by the court provided the company owns up to the debt and is willing to pay it off.

The order of court shall take effect after it is filed with the Commission along with minutes of the meeting.

vi. Transfer of shares

A share is a personal estate. As with any other personal property that is owned, it can be transferred in the manner provided in the articles of association of the company.

A transfer of shares would not take effect unless a proper instrument of transfer has been completed and delivered to the company. The law can also authorize the transfer of a share. The approval of the Commission is to be sought before a transfer of shares takes effect.

The following are to be noted.

1. If a share is jointly owned and one person dies, the surviving joint owner shall be the person recognized by the company as the shareholder. If the share is not jointly owned, the legal representative of the deceased shall be the person recognized by the company as the shareholder.

2. When evidence of ownership of share is produced the legal representative would be registered by the company as a shareholder.

3. A legal representative of a share shall be entitled to the same dividend (profit), interest or any other advantage as if he was the registered shareholder and to the same rights as a member of the company. He/she would however not be allowed to vote until he is registered.

4. The executors or administrators of the deceased sole holder of a share, are the only persons recognized by the company as entitled to the share

Particular attention is drawn to the fact that it is mandatory for every company within 1 month after the allotment of any of its shares and in the case of a share transfer within 1 month of the same being agreed at a general meeting to seek approval from the Commission for the transfer of shares to be effected.

In order for the Commission to grant an approval in respect of transfer of shares, the Commission shall require the applicant (transferor) to submit the following:

a) A declaration by the transferor stating the particulars of the shares owned and intended to be transferred. The declaration should also give details of the transferee and confirm that the transferee is capable of holding shares as provided for by law. Articles of association of every company would state the procedures to be adopted when a share is to be transferred. The declaration should also confirm that these procedures have been complied with. This declaration should be accompanied by a share certificate confirming the number of shares held by the transferor i.e the person who intends to transfer all or part of his/her shares. If the transferee is an individual, a valid copy of a valid form of identification is required. In the case the transferee is a Sierra Leonean, a valid copy of his/her passport, NASSIT Card, National Identification card, driver's license is acceptable. If the transferee is a foreigner, a valid copy of their passport is required. Where the transferee is a corporation, the certificate of incorporation is required.

b) If the articles of the company state that a resolution of directors is required for shares to be transferred, a copy of that resolution is to be submitted to the Commission along with the application.

c) A copy of the instrument of transfer is also to be submitted to the Commission.

A share transferred as a result of trade on the stock exchange would not require prior approval by the Commission.

vii. Share certificate

The law states that the only evidence to serve as proof of ownership of shares is a share certificate. This is a certificate issued by the company to the shareholder and must state the name of the member, the number of shares held, and the amount paid up.

The directors of a company will determine the fee at which a certificate is issued. One certificate may be issued in respect of all shares held or several certificates may be issued – one per share.

A direction may be given to a company by the Commission for a share certificate to be issued to a member. If a company fails to comply, the company and every officer of the company shall be in default of the law.

CHAPTER 3. DEBENTURES AND CHARGES

1. WHAT IS A DEBENTURE?

A debenture is a debt instrument issued by a company to borrow money. When a company intends to raise funds it can issue a debenture. A person holding a debenture is called a debenture holder and the debenture holder is a creditor of the company.

Typically, a debenture will set out the terms of the loan: the amount borrowed, repayment terms, interest, charges securing the loan, provisions for protecting and insuring the property etc., and terms for enforcement if the company defaults.

Debentures may be secured by a fixed charge or a floating charge on the company's property.

Debentures, as such, do not have to be registered, but charges securing them do.

2. TYPES OF DEBENTURE

a. PERPETUAL DEBENTURE: this kind of debenture does not carry any date of redemption and as such there is no specific time of redemption of these debentures. They are redeemed either on the liquidation of the company or when the company chooses to pay them off to reduce their liability by issuing due notice to the debenture holders beforehand.

b. CONVERTIBLE DEBENTURES: Convertible debenture holders have an option of converting their holdings into equity shares. The rate of conversion and the period after which the conversion will take effect are declared in the terms and conditions of the agreement of debentures at the time of issue.

c. SECURED AND UNSECURED DEBENTURES: Debentures are secured in two ways. Either by a charge on some asset or set of assets which is known as a secured or mortgage debenture or when it is issued solely on the credibility of the issuer which is known as naked or unsecured debenture. A trustee is appointed for holding the secured asset as the title cannot be assigned to each and every debenture holder.

d. REDEEMABLE DEBENTURES: Redeemable debentures carry a specific date of redemption on the certificate. The company is legally bound to repay the principal amount to the debenture holders on that date.

3. WHAT IS A CHARGE?

A charge is a lien or claim to the whole of a part of a company's asset. Every charge of a company is to be registered within 21 days after its creation and a certificate of registration will be issued by the Commission. The law states that the following charges have to be registered with the Commission. Below are examples of charges to be registered:

a. A charge to secure the issue of a debenture.
b. A charge on unpaid share capital of the company
c. A charge on land
d. A charge on book debts of the company etc.
e. A floating charge on the undertaking or property of the company.
f. A charge on calls made but not paid
g. A charge on a ship or aircraft or any share in a ship
i. A charge on goodwill, on a patent or a license under copyright

The claim or lien on some or all of a company's assets may be 'fixed' or 'floating' and both are used to secure borrowing by the company. A floating charge unlike a fixed charge gives the creditor only equitable rights over some or all of the company's assets. With a floating charge the company can continue to sue the assets without the consent of the creditor until and unless the debt is not paid as specified then it “crystallizes”. Fixed charge is claim or lien over particular assets such as land and buildings. This property cannot be sold without the permission of the lender.

Whether or not the charge on a company's asset is floating or fixed it has to be registered with the commission. When the debt is paid the company may inform the Commission by filing a memorandum of satisfaction and the charge would be taken off the register.

When a company registers a charge, the Commission would issue a certificate of registration of a charge. A company that fails to register a charge shall be in default and the company and every officer shall be held liable. Existing and subsisting charges have to be registered.

CHAPTER 4: DIRECTORS AND THEIR DUTIES TO THE COMPANY.

a. Who is a director?

A director leads or supervises the affairs of a company. A director is engaged by the company as a director and is mandated by law to give his consent to his appointment. Directors act on the basis of resolutions made at directors' meetings, but mostly derive their powers from the corporate legislation and from the company's articles of association.
As the company's agent, they can bind the company with valid contracts entered into with third-parties. Every public company must have at least two directors. A private company must have at least one director.

It is therefore very important for a director to be made aware of his of roles and responsibilities at point of recruitment. It is usual practise for a director's letter of appointment to state duration of this employment, remuneration, the terms conditions of his employment, with a clear indication of his responsibilities. Once a director consents to this offer they remain as such until changes by resolutions of the shareholde or under law. Every director should ensure that he can give sufficient time and attention to the affairs of the company and should not accept the appointment if he cannot do so

b. Can anyone be a director?

Members of the company appoint the persons they believe are capable of running the company on their behalf, based on the criteria determined by members which should include skills and competencies. However members have to ensure that persons so appointed are not disqualified by law from acting as a company director. The law does not prescribe any minimum educational qualifications to be held by a director. However if a director possesses special expertise or knowledge, he or she is expected to employ it to the company's advantage

It is important though to take note of four factors which disqualifies a member from holding office as a director and these are:

1. Age: A director shall not be below the age of 18 years. In order for the Commission to ensure this is the case, copies of valid ID's of all directors should be submitted to the Commission bearing date of birth of the director.

2. Mental state: A director shall not be a lunatic i.e a person legally declared to be of unsound mind.

3. Financial status: A director should not be an undischarged bankrupt. An undischarged bankrupt is a person that still goes through bankruptcy and who still has to pay back debts.
4. The person must not have been disqualified by a court from acting as a company director in Sierra Leone or elsewhere of any offence involving fraud or dishonesty in connection with the promotion, formation and management of a company

As long as a person is not disqualified by reason of any or all of the above mentioned, he could be a director of a company. However the articles of association of a company may provide that its directors meet particular criteria or hold a specific qualification. In this case the criteria or qualification in addition to being legally qualified, has to be met.

In addition to the requirements of the articles of association, it is best practise for the board to have a balance of skills and experience appropriate for the requirements of the company. Usually, a board would consist of a balanced composition of executive and non-executive directors (including independent non- executive directors) so that there is a strong independent element on the board, which can effectively exercise independent judgement. All directors should have sufficient competence to execute their tasks. and number for their views to carry weight.

When appointing directors, members of a company have to ensure the roles of chairman of the Board and chief executive officer or managing director of the company are separate and should not be performed by the same individual. The division of responsibilities between the chairman and chief executive officer or Managing Director should be clearly established and set out in writing.

There is a presumption that a person acting on behalf of a company as a director has been duly appointed. This presumption protects persons dealing with companies in good faith. A person who is not a duly appointed director but hold himself out as one is guilty of an offence and liable to a fine not exceeding Le 20,000,000.

DUTIES OF DIRECTORS

The Companies Act 2009 and its subsequent amendment set out the duties of a director. In addition, the company as a separate legal entity, is subject to statutory controls and the directors are responsible for ensuring that the company complies with such statutory controls.
A director owes his general duties to the company, whether those duties come under statute or not.

This means that only the company will be able to enforce them. In certain circumstances, a shareholder may be able to bring a derivative claim on behalf of the company to enforce those duties

No provision in the articles, contract or resolution shall relieve any director from the duty to act contrary to the duties mentioned below

To the Company

A director owes several duties to a company and it is important this is clearly understood as any duty imposed on a director shall be enforceable against the director.

Below are duties owed to company but not regulated by the Commission. Any breach of these duties would have to be addressed by instituting court action.

1. A director stands in a relationship of trust to his company. A director holds a special relationship of trust and confidence with the company. They shall observe the utmost good faith towards the company in any transaction on its behalf.

2. A director should at all times act in the best interest of the company. Actions of a director should be towards protecting the assets of the company and should always promote the purpose for which the company was incorporated or formed. When a director sets out to take a decision on behalf of the company he/she is to consider the following:

   a) What is in the interest of the members, employees, and the company as a whole

   b) If there is a special class of members, consider the impact that decision would have on those members or creditors but the director has to ensure his/her "Decision does not depend exclusively on the consideration of a special class".

In other words a balance has to be maintained after consideration of all of the above.

3. A director shall in the exercise of his powers and the discharge of his duties act honestly and in good faith and again in the best interest of the company, exercise a degree of care , diligence and skill which any director in like circumstance would exercise. This simply means that a director cannot be negligent in the exercise of his duties. Any director that fails to take reasonable care in the execution of his duties could give rise to an action for negligence and breach of duty. Every director shall be individually responsible for his/her actions and the law states that absence from a meeting (unless it is justified) shall not excuse a director of his/her responsibilities.

4. Directors are trustees and agents of a company : what this means is that directors have to account for all moneys and properties of a company. Any money that paid out has to be refunded to the company. Anything a director does in the exercise of his/her duties, he/she does as agent of the Company. As mentioned earlier a director can only exercise his powers bestowed on him by the articles of the company or its resolution. Unless a special resolution is passed giving the director the mandate to exceed his powers, he cannot do so e.g if a director has been given the mandate to deal in a transaction that furthers

the business of the company but which does not exceed the threshold of Le 20,000,000, a director cannot pay out the sum of Le25,000,000 without express authority to do.

5. A director is to immediately disclose to members and directors any conflict of interest that may arise between his duty to the Company and his personal interest. The nature and extent of the conflict of interest should be disclosed. In the case a director is to ensure he does not put himself in a position where a conflict of interest may arise but in the event it does, immediate disclosure is to be made of the same. To further explain this the following should be noted:

a) No director can use company money, property or confidential information to his own benefit or advantage . Where a director enters into a transaction and makes a profit (secret profit) he has to account for this to the company.

b) No director should have any direct or indirect involvement in any business which competes with the company (except if they are a shareholder or debenture holder)

c) No director should have personal interest in any contract or other transaction entered into by the company except it is permitted by law.

It is also important to note that in any situation where disclosure of conflict of interest has been made, the Company needs to agree at its meeting to seek the approval of the Commission to proceed with this transaction. A disclosure of conflict of interest has to be published. This is geared towards improving transparency and accountability. Until and unless the company consents to the transaction in which a disclosure of conflict has been made, it cannot be carried out. In certain cases, the company may ratify the transaction after it has taken place.

6. If a director has access to special information regarding the value of shares, and then proceeds to buying or selling these share without disclosing the information, the transaction could be made voidable within 12 months. This means the sale could be set aside by one of the parties. A director that has disclosed a conflict of interest would not be allowed to take a vote in favour of that transaction. A director would be liable for failure to comply with these requirements.

Other duties of a director of critical importance as listed as follows:

A director of public company has duty to disclose his/her age to the company. If a person appointed or proposed to be appointed in a public company is 70 years and over such a fact should be disclosed in writing to members to the company.

1. **Statutory meetings** – A public company must hold a general meeting of its members within 6 months of incorporation. A copy of the statutory report is to be submitted to members at least 21days prior to the meeting. The details to be included in the statutory report are outlined in section 183 (s) of the Companies Act 2009. Not less than two directors or a director and the company secretary are to certify this report .

Every company shall at least once a year, hold a general meeting. This meeting is known as annual general meeting but other meetings may be held. If the company has been newly incorporated, an annual general meeting should be held within 18 months of its incorporation. If a meeting is not convened, the Commission may (on complaint) direct that a meeting is called.

An extraordinary meeting may also be called by directors. A 21 days' notice is to be given to members for any type of meeting to be held.

2. **Accounts** – Every company is mandated to keep accounts. It is the responsibility of the directors to ensure that the company maintains full and accurate accounting records. This includes the preparation of a balance sheet and a profit and loss account for each financial period of the company, and the presentation of these to shareholders and, subject to various exemptions, the filing of the accounts and report of the directors with the Registrar of the Commission.

Directors are to ensure the requirement of the Act in so far as accounts are concerned, are met. Company accounts should reflect day to day entry of moneys received or expended and the related transactions, assets and debts of the company. Accounts should detail items of expenditure and revenue and outline the profit on which tax is payable. Where the business of the company involves dealing in goods, the accounting records should contain statements on stock held, statement of goods purchased and sold including buyers and sellers. This however would not apply to retail sales. Company accounts must be filed by a particular date i.e accounting reference date and where no notice has been filed regarding a company's accounting reference date, the accounting reference date would be the 31st March.

3. **Appointment of auditors** – the law states that every company shall at each annual general meeting appoint an auditor. The amendment of the Companies Act however provided that the accounts of small companies need not be audited. A court may appoint an auditor of the company if one is not made. An auditor should be qualified to practice under the Institute of Chartered Account Act 1988 but if it is a public company the auditor is to be chartered accountant. The accounts are to be prepared in accordance with International Accounting Standards

The law states that the following people cannot be appointed as auditors:

- A director of the company
- An employee or partner of the company
- People or person that already offers professional services to the company
- A body that has provided consulting services to or closely connected with a firm or body that has provided such services to the company
- Any accountant disqualified from practicing his profession

After carrying out an audit, an auditor must make a report to members on the accounts of the company. Just as is the case with directors, the auditor also has to exercise his duty with due care and a failure to do, would result in a breach for which they would be held liable.

4. **Directors reports** – the directors of every company shall prepare a report each year known as a director's report (one report). This report shall state matters such as: transactions, events that had effect on the company, changes in assets and debts of the company, amounts that were agreed to be paid as dividend, etc. Part 1, 2, 3 of the Fourth Schedule of the Companies Act 2009 states information that should be included in the report.

5. **Role of director in winding up a company** – At the point of winding up of the company, the directors still have a role to play. In case of a proposed voluntary winding up, the majority of its directors shall at a Board meeting make a declaration verified by an affidavit that the company is capable of paying its debts within the period of 12 months A liquidator shall be appointed and it is only then the powers of a director ceases.

In the case of a compulsory winding up the powers of the directors of the company will to a certain extent continue. E.g they are to ensure proper books and records are still kept and upon failure to prepare a statement of accounts, the Official Receivers may take prosecution actions and disqualification actions against the directors.

It is the duty of the directors to ensure that within 14 days of passing of the resolution for winding up, that notice of the resolution is given to the public by advertising in the Gazette and also in the local newspaper and circulating the district where the registered office of the company is situated.

CHAPTER 5 DIRECTORS DUTIES TO THE COMMISSION

1. Submission of Annual Returns

Annual returns are very important. An annual return is a legislative requirement under the Companies Act 2009. It gives a snapshot of the particulars of a company as at the date to which the return is made-up including particulars of directors, shareholders and the number of shares held by each member. The nominal capital of the company and the value of each share (for companies limited by shares) are also to be specified. Non-filing of annual returns can result in the company being struck-off the register. Every company whether or not having a share capital shall once a year make a return to the Commission. Annual returns are to be sent to the Commission within 28 days after the first annual general meeting in a year and it is to be signed by a director or the secretary of the company. The annual return must be sent to the Commission along with the balance sheet of the Company and the auditor's report where the same applies.

See below for information that is to be provided in the returns.

A. ANNUAL RETURNS COMPANY HAVING SHARE CAPITAL

Every company having a share capital and that does not qualify as a small company, shall at least once in every year make a return containing the following information:

1. Names, address occupation of all past and present members and the number of shares held by them and the shares transferred since the last return.

2. Address of registered office, the address where the register of members is kept if different.

3. Summary distinguishing between shares issued by cash and shares fully paid or partly paid up otherwise than in cash stating the following particulars

a. Amount of share capital and number of shares into which this is divided.

b. Number of shares taken from the incorporation of the company up to date of return.

c. Amount called up on each share and total amount of the calls received and unpaid.

d. Total money (if any) paid on commission for shares or debentures.

e. Particulars of discount allowed on the issue of any shares issued at a discount which has not been written off at the date on which the return is made.

f. Amount of forfeited shares.

g. Amount of shares for which share warrants are outstanding at the date of the return and of the share warrants issued and surrendered since the date of the last return and the number of shares comprised in each warrant.

h. Particulars of directors and

i. The amount of indebtedness in respect of all mortgages and charges required to be registered under the Act.

j. Proof that taxes have been paid (see Company regulation 2015)

The return of the form set out in the 6th schedule of the Companies Act 2009 (as amended)

In the case of a company keeping a branch register, the particulars of the entry in the register so far as they connect to matters which are required to be stated in the return.

B. ANNUAL RETURNS OF COMPANY NOT HAVING SHARE CAPITAL

Every company not having a share capital ie company limited by guarantee shall at least once every year make a return stating:

1. Address of registered office and

2. Particulars of directors.

Attached to the above should be a statement containing particulars of the amount of indebtedness of the company, and of all mortgagees and charges which are required to be registered with the Commission.

3. Proof that taxes have been paid

C. ANNUAL RETURNS OF SMALL COMPANIES

Every small company should at least once every year make a return stating

1. Company name and address of registered office of the company.

2. If register of members kept elsewhere the address where it is kept.

3. If register of debenture holders kept elsewhere, the address where it is kept.

4. Share capital of company.

5. Issued capital.

6. Particulars of indebtedness of the company in respect of all mortgage and charges require to be registered with the Commission under this Act.

7. Particulars of directors and secretary

8. Proof that taxes have been paid (see Company regulations 2015).

D. ANNUAL RETURNS OF PUBLIC LIMITED COMPANIES

If the company is a public company the annual return shall also include:

a. A copy certified by a director or secretary of the balance sheet audited by the company auditor including every document to be attached.

b. Copy of the report of the auditors on the balance sheet. If not in English, a translation in English must be certified to be a correct translation.

Any company that fails to submit its returns shall be in default and liable to payment of a fine.

2. Change of director /secretary

Notification must be given to the Commission in respect of change of a director or secretary of a company. Notice of change of director or company secretary is to be filed within 14 days of the change and a valid copy of Identification of the director shall be submitted to the Commission.

A failure to file this notice within the required time frame is a default and the company and every officer would be liable to a default fine.

3. Change of Registered Office or of Registered Postal Address

Notification must be given to the Commission of any change in the registered office of the company. The registered office is the address to which all communications from the Commission will be sent.

4. Register Resolutions

All resolutions of a company are to be filed with the Commission and copies of every resolution is to attached to an annex to every copy of an article issued after passing of the resolution.

5. Determination of accounting reference period

A company must give notice to the Commission of their accounting reference period. The financial year is determined by the accounting reference date. The Notice is to be given to the Commission no later than six months from the date of commencement of the business.

A company may change its accounting reference period by giving sufficient notice to the Commission.

Where an accounting reference date is not prescribed, the Company's accounting reference date shall be 31st March.

6. Registration of charges

It is the duty of every company to send to the Commission for registration, particulars of every charge created by the Company but registration may be effected on the application of any interested party. If a company fails to register its charge, the Company and every officer shall be in default and liable to fine.

7. Submission of information to the Commission

Every company is obligated to submit to the Commission any document or information the Commission requires as prescribed by Law.

CHAPTER 6 COMPANY SECRETARY GUIDE

The Companies Act 2009 provides that every company must have a secretary.

The company secretary as chief administrative officer will be responsible for the performance of many of the administrative duties imposed under the Companies Act 2006.

WHAT ARE THE DUTIES OF SECRETARIES

The company secretary is required to:

a. Attend the meeting of the company, Board of Directors and its committees, rendering all necessary secretarial services in respect of the meeting and advising on compliance by the meeting with the applicable rules and regulations.

b. Maintain the register and other records required to be maintained by the company under the Company Act 2009 (as amended)

c. Submit proper returns and notifications to the Commission

d. Carry out such administrative and other secretarial duties as directed by the board of directors of the company.

The Companies Act 2009 does not state the qualifications a company secretary is to have in order to serve in this capacity, in so far as private company secretaries are concerned. The law only states it is duty of the directors to ensure the secretary is a person “who appears to them to have the requisite knowledge and experience to discharge the functions of a secretary”.

However, where the company is a public company the secretary shall be:

a) A member of the Institute of Chartered Secretaries and Administrators

b) A legal practitioner within the meaning of the Legal Practitioners Act 2000

c) A member of Institute of Chartered Accountants in Sierra Leone or such other body of accountants
d) A body corporate or firm that has members belonging to any of the above.

If a secretary acts as an agent of the Company the Secretary shall owes a duty of care to the Company and shall be liable to the Company where he/she makes a profit or where there is a conflict of interest.

CHAPTER 7 -BEST CORPORATE GOVERNANCE PRACTICES

The Commission wishes to take this opportunity to encourage companies to practise good corporate governance in order to protect their investments.

What is corporate governance?

Generally speaking, corporate governance refers to the 'different type of relations' that can exist between directors of a company and investors (shareholders/members), employees and other parties that may from time to time have dealings with the Company. The Cadbury Report 1992 refers to corporate governance as “the system by which companies are directed and controlled”.

Corporate Governance has been described in many different ways.

However, there are certain principles of corporate governance which if applied by a small or large company, public or private, have proven to assist companies in achieving their objectives. These go beyond directors duties and responsibilities stated in this handbook. It touches and concerns structures put in place in the company, defining reporting lines, maintaining corporate integrity, reputation and being accountable within and outside the company.

Embracing corporate governance guarantees growth and sustainability in any Company. It begins with a company firstly having a strategic goal and defining its business ethics, understanding laws and regulations that apply to its operations and ensuring compliance with these laws and regulations, putting in place management strategies to deal with its employees, customers/suppliers and the community within which it operates.

Experts have noted five corporate governance best practices that if employed would benefit the company and these are as follows:

a) **Build a strong, qualified board of directors** – Investors are to ensure that directors employed have the necessary knowledge skills and experience required to perform their tasks and that their performance is regularly monitored. Even where the

Company is owned and managed by family members, it is important that the directors (though family members) have the relevant qualifications and skills required to perform the tasks they have been assigned and that they are committed to carrying out the tasks. Routine monitoring of performance of directors have helped members of a company know the gaps in the management team that could be addressed by way of training or even replacement. It gives an opportunity to ensure directors are aware of their duties and perform to the best of their ability.

b) **Clearly defined roles and responsibilities –** when a director is employed, he/she should have been informed of his roles and responsibilities. As mentioned in this handbook, a director's consent is required at point of engagement and this 'consent' assumes the director is fully aware of his duties and responsibilities. Such consent has to be filed with the Commission. Breach of directors duties carry with it both civil and criminal liability so companies are to ensure the right people are employed as directors. A director is to know where his authority begins and ends at all times.

It is best practise for there to be clear accounting authorities e.g mandate of the Chairman should be separate from that of the CEO and Managing Director, or from other directors and management.

It is important that roles and responsibilities are written down and understood by personnel to whom is it given. If a company wishes to establish committees to assist in the discharge of certain duties, these have to be made clear indicating the role of committee members and the terms of reference of every Committee.

c) **Emphasise on integrity and ethical dealings –** this has to do primarily with disclosures (financial or non-financial) that have to be made by the directors whether or not it is stated by law. Where there is a conflict of interest directors and other employees are to be aware of what they are to do in such a case and expectations of the company including their response. It

also deals with how the company develops its 'culture of integrity' in its dealing with every stakeholder.

d) **Compensation and fees** – directors need to know how much they would be paid and compensation (if any) to which they would be entitled in certain circumstances. This of course should be tied to performance which is turn links to clearly defined roles and responsibilities. Rewards driven performance system should be encouraged following evaluation of performance.

e) **Risk Management** – with every business there are usually risks attached to that business whether or not it is stemming from the legal and regulatory environment, state security, economy, competition or sector specific challenges. In order to safeguard investments, it is important for the company to identify risks associated with its operations and as far as possible put measures in place to mitigate or reduce these risks. Directors therefore need to understand the market within which the company operates, and provide 'strategic leadership' in ensuring the company is exposed to little or no risks.

The Commission encourages existing and proposed new companies to conduct research on these and other corporate governance best practises and identify those that could be applied by their company.

A lot of information could be found on the internet some of which the Commission may through the conduct of workshops and training sessions, bring to your attention from time to time.

No.	SECTION	BREACH	PENALTIES	SECTION
1	16 (1)	Operating a business or an association for profit with more than 20 members and not registering it as a company	(after 14 days of contravention) every person who is a member at that time is in default and liable to a daily default fine of Le 850,000 for each day the default continues	16 (3) CA 2009 but fine amended by 3 Companies (Amendment) Act 2014
2	22 (2)	A company limited by guarantee with a share capital that fails to amend its memorandum to be a company limited by guarantee with no share capital	company shall be in default and liable to default fine not below Le3,500,000 and not exceeding Le 8,000,000	22 (5) but fine amended 61 Companies (amendment) Act 2014
3	22 (5)	carrying on business for the purpose of distributing profit	All officers and members shall be jointly and severally liable for payment of discharge for debts and liabilities of the company: company and every other officer and member shall be liable to a daily fine not exceeding Le850,000	22 (5)CA 2009 but fine amended 61 Companies (amendment) act 2014
4	27 (1)	company limited by guarantee altering its memorandum and articles so that it ceases to comply with the exemption under section 26	company and every officer shall be in default and liable to a daily default fine of Le 850,000 and resolution filed under (3) shall be void.	6 companies (amendment) act 2014
5	27 (2)	company limited by guarantee fails to comply with directive of company to change name to include limited	Company and every officer liable to daily default fine of le 850,000	Sec 27 (4) but fine amended 61 Companies (amendment) act 2014
6	29	A company trading or carrying on business under a name with the word limited or any word with which they have not been registered.	Person shall be in default and liable to daily default fine of Le850,000 for every day the default continues	61 companies (amendment)act 2014
7	30 (2)	Failure to file change of name resolution as directed by the Commission	The company and any director who is aware of the default shall be liable to daily default fine of Le 850,000 for every day the default continues	9 companies (amendment) act 2014
8	38 (1)	failure to provide a copy of memorandum and articles to a member when it is required	Upon notice in writing to the Commission the company and every officer shall be in default and Commission shall give a directive to the Company and its members for copy to be made available. Failure to comply with the directive company and every member shall be liable to a default fine Le850,000 for each day default continues	12 companies (amendment) act 2014
9	42 (10)	failure to submit documents relating to alteration of object clauses	company and every officer who is in default shall be liable to default fine of not exceeding Le 3,000,000	13 companies (amendment) 2014

10	46 (7)	failure to deliver to the Commission an order of a court cancelling or confirming a resolution for re registration of company	company and every officer who is in default shall be liable to default fine of not exceeding Le 5,000,000	15 companies (amendment) act 2014
11	73 (1)	If member is not allowed to inspect the register of members within business hours	The company and every officer in default shall be liable to a default fine of Le5,000,000	18 Companies (amendment) act 2014
12	86 (3)	A company altering its share capital is to notify the commission within one month of the same..if the company fails to do so	The company and every officer who is in default shall be liable to a default fine of le 850,000 for every day the default continues	22 Companies (Amendment) Act 2014
13	87	failure to give notice to the Commission relating to increase in share capital within 15 days of passing resolution authorizing the same and providing relevant information	the company shall be liable to a daily default fine of 850,000 for every day the default continues	87 CA 2009 but fine amended by 61 Companies (amendment) act 2014
14	96 (1)	Issue a shares by its articles or otherwise which carry no rights	the company and any officer in default shall be liable to a daily fine of Le850,000 and the resolution passed in contravention shall be void	25 Companies (amendment) act 2014
15	new section 120 of CA 2014	failure to make available documents requested by a member	Commission shall issue a directive to do so: if directive not complied with company shall be liable to default fine of Le 5,000,000 and Le 850,000 for every day the default continues	29 Companies (amendment) act 2014
16	new 122 (1) - 122 (5)	Company within one month of allotment of shares or in case of share transfer within 1 month of the same and approval granted by the Commission, fails to complete a share transfer certificate, fail to issue a certificate under company seal, fail to make good a default within 10 days after notice is served by the Commission	Upon application to the Commission of person entitled to the certificate, commission shall give a directive : failure to comply with the directive shall be a default and the company and every officer shall be liable to a default fine of Le 850,000 per day for continued default	30 Companies (amendment) act 2014
17	148 (1)	Failure to open for inspection register of holders of debentures and of any holder of shares for less than two hours a day	company and every officer shall be in default and liable to default fine not exceeding Le5,000,000 (section 148 (5)	fine amended in 61 Com (amendment) act 2014
18	155 (7)	failure to execute debenture trust deed when debenture has been issued or issue debenture under a trust deed for two or more classes of debentures	every director who commits an offence shall be liable on conviction to fine not exceeding Le8,000,000	fine amended in 61 Com (amendment) act 2014
19	157 (1) - (2)	Failure by director to state contents required by debenture trust deed, failure to state it is unsecured if no mortgage charge or security is vested in the holder of the debenture	Any director involved in violation shall be guilty of an offence and upon conviction liable to a fine not exceeding Le 5,000,000	157 CA 2009 but fine amended in 61 Companies (amendment) act 2014

20	164 (1)	Failure to enter all charges in the register	Any officer who knowingly and willfully authorize or permits the omission of any entry would be guilty of an offence and liable upon conviction	164 (2) fine amended in 61 Companies (amendment) act 2014
21	169	failure to notify transferee within two months of lodging debenture that the said transfer would not be registered	company and every officer in default would be guilty of an offence and liable to fine not exceeding Le 5,000,000	169 CA 2009 but fine amended in 61 Com (amendment) act 2014
22	172	if a company defaults in sending to the commission for registration, particulars of charges created by the company and if registration not issue by third party	company and every officer shall be in default and liable to a default fine not exceeding Le 5,000,000	32 Companies (amendment) act 2014
23	173	failure to register a property acquired subject to a charge of any kind	the company and every officer of the company who is in default shall be liable to a default fine not exceeding Le 5,000,000	33 Companies (amendment act) 2014
24	204 (1)	Failure to embody or annex resolutions to every copy of the articles issued after passing the resolution	Company and every officer in default would be guilty of an offence and liable to fine not exceeding Le 5,000,000	Sec 204 CA 2009 but fine amended by 61 Companies (amendment) act 2014
25	206 (1)	failure to enter minutes of meetings and proceedings of its directors in the book kept for that purpose/ failure to have minutes signed by the chairman	company and every officer of the company in default shall be guilty of an offence and liable to a fine not exceeding Le5,000,000	sec 206 (4) of CA 2009 but fine amended by 61 Companies (amendment) act 2014
26	207 (1)	books containing minutes of general meeting to be held at registered office of the company and to be available for inspection not less than 6 hrs daily. Member should not be refused copy of minutes less than 14 days of request and inspection of register should not be refused	company and every office in default shall be liable to default fine of not below Le 10,000,000 and not exceeding Le 20,000,000	42 Companies (amendment) act 2014
24	209 (4)	a person not being a duly appointed director holding him/herself as such or knowingly to be allowed himself to be held out as such	person is guilty of an offence and liable to a fine not exceeding Le8,000,000	209 (4) CA 2009
25	216 (1)	Director of public company 70 years or more to disclose his/her age fails to disclose age in writing or makes false declaration	liable on conviction to fine not exceeding Le 8,000,000	216 (2) but fine amended by 61 Companies (amendment) act 2014
26	232	Failure on the part of a director to take reasonable care in the discharge of his powers and duties	ground an action for negligence and breach of duty	232 (2) CA 2009
27	238	Failure to (A) declare nature and extent of interest at a meeting of directors. (B) make declaration (notice in writing) of interest at first meeting after director becomes interested	director or officer shall be guilty of an offence and be liable to a fine not exceeding Le8,000,000	Sec 238 (10) but fine amended by 61 Companies (amendment) ant 2014

28	238 (8) & (9)	failure to (A) keep every declaration in the book kept for that purpose within 3 days of the making of the declaration (B) making book available for inspection	the company and every officer shall be guilty of an offence and liable to a fine not exceeding Le 5,000,000	238 (11) but fine amended by 61 Companies (amendment) act 2014
29	328 (5)	fail to comply with Annual returns	every officer and director shall be liable to a daily fine of Le850,000.	320(5) but fine amended by 61 of the Companies (amended) Act 2014
30	214	liability of person not duly appointed as director	his act is not binding on the company and shall be personally liable	section 214 CA 2009
31	216 (2)	fails to disclose age or makes false disclosure	any person is guilty of an offence and liable on conviction to a fine not exceeding Le8,000,000	216(2) but amended by section 61 of the Companies (amended) act 2014
32	217	insolvent person acting as director	guilty of an offence and liable to a fine not exceeding Le8,000,00 or imprisonment not exceeding 6 months or both	207 but amended by section 61 of the Companies amended act 2014
33	218	fraudulent persons convicted by a court of any offence in connection with the promotion, formation or management of the company or in the course of winding up	found guilty while an officer of the company or in breach of his duty to the company. The court shall order that such person may not be a director or take part in the management for a specified period not exceeding 10 years. Guilty of an offence and liable to a fine not exceeding 6 months or both fine and imprisonment.	218 but amended by section 61 of the amended act 2014
34	238	Contract in which directors are interested in should be done with a declaration made and file with the Commission immediately for that purpose to any director, secretary, auditor or member at the registered office or other place as requested by the director.	failing shall be guilty of an offence and liable to a fine not exceeding Le8,000,000	238(10) but amended by section 61 of the amended. Section 48 of the amended act
35	228	director should do everything to ensure that particulars of proposed payment and amount included or sent with any notice of the offer made for their shares which is given to any shareholders	guilty of an offence and liable to a fine not exceeding Le8,000,000.	228 but amended by section 61 of the amended act 2014
36	238	director or company fails to make declaration and the three days notice and entry in a book for inspection.	guilty of an offence and liable to a fine not above Le5,000,000	238 but amended by section 61 of the (amendment) act 2014
37	243	directors with unlimited liability in a limited company	guilty of an offence and liable to a fine not exceeding Le5,000,000.00	243 but amended by section 61 of the (amendment) act 2014.
38	299	penalty of laying or deliver defective financial statement	guilty of an offence and liable to a fine not exceeding Le8,000,000.00	299 but amended by section 61 of the amended act 2014
39	407	false statutory declaration of solvency	guilty of an offence and liable to a fine not exceeding Le8,000,000.00 or a term of imprisonment not exceeding 6 months or both	407 but amended by section 61 of the amended act 2014.