

# Companies Law 5759-1999\*

## Part I: Interpretation

### Definitions

#### 1. In this Law –

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

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

“address” –

- (1) in respect of an individual who is a resident of Israel – his address as registered in the Population Registry, and if he gives any other address, that other address;
- (2) in respect of an individual who is not a resident of Israel – the address of his residence and if he gives any other address, that other address;
- (3) in respect of a company registered in Israel – the address of its registered office;
- (4) in respect of a company registered outside Israel – the address of its office outside Israel and if it gives an address in Israel, the address so given;
- (5) in respect of any other corporate body with an address registered by law – its registered address;

“annual meeting” – a meeting of shareholders under section 60;

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

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

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

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\* Enacted by the Knesset on 3 Iyyar 5759 (19 April 1999); The Bill and Explanatory Memorandum were published in *Hatsaot Chok* 2432, on 29 Tishri 5756 (23 October 1995), p. 2.

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

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

“class meeting” – a meeting of shareholders of a class of shares;

“Companies Ordinance” – the Companies Ordinance [New Version] 5743-1983<sup>1</sup>;

“control” – as defined in the Securities Law;

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

“the court” – the District Court;

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

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

“derivative action” – action filed by a plaintiff on behalf of a company based on the company’s cause of action;

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

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

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<sup>1</sup> *Dinei Medinat Yisrael*, New Version 37, p. 761.

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

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

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

“floating charge” – as defined in the Companies Ordinance;

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

“general meeting” – an annual meeting or an extraordinary meeting of shareholders;

“holding” and “purchase” – as defined in the Securities Law;

“identity number” –

- (1) in respect of a company registered in Israel – its registration number;
- (2) in respect of a company registered outside Israel – the State in which it is registered and its registration number, should it have one;
- (3) in respect of any other corporate body that has a registration number under any law – its registration number;
- (4) in respect of an individual who is a resident of Israel – his identity number as registered in the population registry;
- (5) in respect of an individual who is not a resident of Israel – the State in which his passport was issued and the passport number;

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

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

“means of control” – any of the following:

- (1) the right to vote at a general meeting of a company;
- (2) the right to appoint a director of a company;

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

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

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

“merging company” – an absorbed company and a surviving company;

“the Minister” – the Minister of Justice.

“nominee company” – as defined in the Securities Law;

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

“offeror”, in a tender offer – a person making a tender offer

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

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

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

“pledge” – as defined in the Pledges Law 5727-1967<sup>2</sup>, as well as a floating charge;

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

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<sup>2</sup> *Sefer Hachukim*, 5727, p. 48.

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

“private company” – a company that is not a public company;

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

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

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

“Registrar of Companies” or “Registrar” the Registrar of Companies as provided in section 36

“registration company” – as defined in the Securities Law

“related company” – as defined in the Securities Law;

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

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

“Securities Authority” – the authority as defined in the Securities Law;

“Securities Law” – the Securities Law 5728-1968<sup>3</sup>;

“security” – including a share, debenture, or rights to purchase, convert or sell any of these, whether registered under a person’s name or for bearer;

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

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

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<sup>3</sup> *Sefer Hachukim*, 5728, p. 234.

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

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

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

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

“subsidiary” – as defined in the Securities Law;

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

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

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

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

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

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

## **Part II: Foundation of a Company**

### **Chapter 1: Incorporation**

#### **Article A: Right of Incorporation**

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

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

#### **Article B: Legal Personality**

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

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

Lifting the corporate veil 6. (a) Lifting the corporate veil shall take place in any one of the following ways:  
(1) attribution of rights and obligations of the company to one of its shareholders;  
(2) attribution of qualities, rights or obligations of a shareholder to the company.  
(b) Notwithstanding the provisions of section 4, the court may lift the corporate veil if a condition relating thereto is prescribed under any enactment, or if it is just and right in the circumstances of the case to do so, or if the conditions prescribed in subsection (c) prevail:  
(c) The court hearing a proceeding against a company may, in exceptional cases and for special reasons, lift the corporate veil if any one of the following conditions prevails:

- (1) the use of the separate legal personality of the company is intended to frustrate the intent of any law or to defraud or discriminate against any person;
  - (2) in the circumstances of the case, it is just and right to do so, taking into account the fact that there was a reasonable basis for presuming that the management of the company's affairs was not in the company's best interest and that it involved the taking of an unreasonable risk in respect of the company's ability to pay its debts.
- (d) The lifting of the veil in order to attribute the debts of the company to one of its shareholders shall be effected while taking into account the company's ability to pay its debts.
  - (e) Nothing in the provisions of this section shall prevent a court from granting other remedies, including the suspension of the rights of a certain shareholder in the company from being paid his debt until the company fulfilled all of its other undertakings.

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

### **Article C: Establishment and Registration of a Company**

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

- (1) a copy of the articles of association;
- (2) a declaration by the first directors that they are willing to serve as directors, to be prescribed by the Minister.

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

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

- Certificate of incorporation 10.
- (a) The Registrar shall register a company if he considers that all the requirements of this Law in respect of registration, and any matter that is a precondition therefor, have been fulfilled.
  - (b) The Registrar shall give every company a registration number, as provided in section 38(c), and shall enter it on the certificate of registration.
  - (c) On registration, the Registrar shall deliver to the company a certificate of registration.
  - (d) A certificate of registration delivered to a company shall serve as conclusive evidence that all of the requirements under this Law regarding registration, and any matter that is a condition thereof, have been fulfilled.
  - (e) Nothing in the provisions of subsection (d) shall remedy any fault in the articles of association or preclude the need to remedy such fault.

#### **Article D: Purpose of Company**

- Purpose of company 11.
- (a) The purpose of a company shall be to operate in accordance with business considerations in realizing its profits, and within the scope of such considerations, the interests of its creditors, its employees and the public; may *inter alia* be taken into account; similarly, the company may donate a reasonable sum for a proper object, even if such donation is not within the scope of business considerations as aforesaid, if a provision for such is laid down in the articles of association.
  - (b) The provisions of subsection (a) shall not apply to a company the articles of association of which provide that it was established for public purposes only, and such articles of association prohibit the distribution of profits to shareholders.

#### **Article E: Acts Performed by a Promoter**

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

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

Status of a third party regarding a promotion

- 13. (a) Where a third party knows, at the time of an act referred to in section 12, of the existence of a promotion, such party may regard the promoter as his opposite number or may withdraw from the act, and claim damages from the promoter, in any one of the following events:
  - (1) the company did not ratify the act within a year of the date of its being performed;
  - (2) the circumstances show that the company is not likely to become incorporated, provided that the third party has so notified the promoter thirty days in advance;
  - (3) the company did not ratify the act within thirty days of the date on which the third party so required.
- (b) Where the company has ratified the act, the promoter shall not have any rights or obligations in respect of it.
- (c) The promoter and the third party may contract out of the provisions of this section.

Lack of awareness of promotion

- 14. Where the third party did not know of the existence of the promotion at the time of the act, the following provisions shall apply:
  - (1) the promoter’s act shall oblige or benefit the promoter as the case may be;
  - (2) once a company is incorporated, it may ratify the act, provided that such ratification is not inconsistent with the essence of the act, its conditions or the circumstances of the matter; where the company ratifies an act, the promoter’s act shall bind both the company and the promoter, jointly and severally, and shall benefit the company alone.

## Chapter 2: Articles of Association

### Article A: Contents of Articles and their Alteration

- Articles of association of a company 15. Every company shall have articles of association as provided in this Article.
- Validity of articles of association 16. The articles of association of a company as registered shall be effective from the date of its incorporation.
- Articles of association as a contract 17. (a) The articles of association shall be considered as a contract between the company and its shareholders, and between its shareholders themselves.  
(b) Alteration of the articles of association shall be effected in the ways provided in this Law.
- Details that must be included in the articles of association 18. The articles of association of a company shall contain the following details:  
  
(1) the name of the company;  
(2) the objects of the company;  
(3) details regarding the registered share capital, as provided in sections 33 and 34;  
(4) details regarding the limitation of liability, as provided in section 35.
- Details that may be included in the articles of association 19. A company may include in its articles of association matters relating to the company or to its shareholders, including the following:  
  
(1) the rights and duties of the shareholders and of the company;  
(2) provisions regarding ways of managing the company;  
(3) any other matter that the shareholders have seen fit to settle in the articles of association.
- Amendment of articles of association 20. (a) A company may alter its articles of association by a resolution passed by an ordinary majority at the general meeting of the company, unless the articles of association provide that a different majority is required, or if a resolution is passed in accordance with section 22.

			(b)	Where there is a provision in this Law which may be contracted out of, or where there is a provision in the articles of association stating that a particular majority is required for the alteration of some or all of the provisions thereof, the company shall only be allowed to alter such provision by resolution passed at the general meeting with the same particular majority or proposed majority, whichever is the greater.
			(c)	Where the shares of the company are divided into classes, no alteration shall be made to the articles of association that will affect the rights of any class of shares without the approval of a meeting of such class, unless otherwise provided in the articles of association; the provisions of subsections (a) and (b) shall apply <i>mutatis mutandis</i> to the passing of decisions in the meeting of the class.
			(d)	Notwithstanding the provisions of this section, an alteration of the articles of association requiring a shareholder to purchase further shares or to increase the scope of his liability shall not bind the shareholder without his consent.
Validity alteration reporting	of and	21.	(a)	The alteration of the articles of association, other than alterations under section 40, shall be valid from the date of passing the resolution in respect thereof by the company, or on such later date as may be fixed by the company by resolution.
			(b)	A company that has passed a resolution to alter its articles of association shall deliver the wording of the resolution to the Registrar, within fourteen days of the date of the resolution.
Limitation altering articles association	on the of	22.	(a)	A company may by contract limit its power to amend the articles of association, or provisions of it if a resolution to that effect is passed by the general meeting, by the majority required for the alteration of the articles of association.
			(b)	A resolution passed as aforesaid in subsection (a) shall be treated as a resolution to alter the articles of association and the provisions of this Article shall apply thereto.
Signature articles association	of of	23.	(a)	The articles of association shall be signed by the first shareholders and the shares allotted to them shall be noted therein, as shall be the name, address and identity number of each such shareholder.

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

Transitional provisions regarding memorandum and articles of association

24. A company incorporated prior to the commencement of this Law may:

- (1) alter the provisions laid down in its memorandum in the manner and subject to the conditions provided therefor in the Companies Ordinance as it stood immediately prior to the commencement of this Law, subject to the provisions of paragraph (5);
- (2) alter its memorandum or rescind it in the manner prescribed in section 350(a), (i), (j), (k) and (l);
- (3) alter the provisions laid down in its articles of association in a resolution passed at a general meeting by a majority of seventy-five percent of those present, or by such other majority as may be prescribed in the memorandum of the company or in its articles of association;
- (4) lay down in its articles of association, subject to the provisions of section 20(b), a provision regarding the majority required to alter the provisions of the articles of association, in a resolution made by a majority of seventy-five percent of those present at the general meeting, and by a larger majority if such is laid down in the memorandum of the company or in its articles of association; where such a new provision is laid down, the provisions of section 20(b) shall apply to its alteration;
- (5) prescribe in its memorandum, by resolution passed at the general meeting by a majority of seventy five percent of those present, a provision relating to the alteration of the majority required to alter provisions in the memorandum that the general meeting is authorized to alter; the provisions of section 20(b) shall apply in this regard, *mutatis mutandis*.

#### **Article B: Name of the Company**

Choice of name

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

- Notation of Ltd. at the end of the name of a company 26. The name of a company whose shareholders' liability is limited, as provided in section 35, shall include the notation "Limited" or "Ltd." at the end of it.
- Misleading name 27. (a) A company shall not be registered with a name that is:
- (1) the name of a corporation lawfully registered in Israel, or so similar thereto as to be misleading;
  - (2) a registered trade mark in respect of goods or services dealt with for purposes similar to those of the company seeking to be registered, or a name so similar to it as to be misleading, unless it is proved to the Registrar that the owner of the trade mark has agreed thereto in writing; for this purpose, "a registered trade mark" shall have the meaning attributed to it in the Trade Marks Ordinance [New Version], 5732-1972<sup>4</sup>.
- (b) Without derogating from the provisions of subsection (a), a company shall not be registered with a name which, in the Registrar's opinion, might be deceptive or misleading.
- Name contrary to public policy 28. A company shall not be registered with a name that, in the Registrar's opinion, might be contrary to public policy or to public sensitivity.
- Registrar's authority to order change of name 29. (a) Where a company has been registered with a name that is not permitted under this Article, the Registrar may require the company to change its name.
- (b) Where the company has not provided the Registrar with notice of a resolution to change its name within four months from the date of the requirement set out in subsection (a), the Registrar may change the name of the company to such name as he may choose.
- (c) Where the Registrar decides to change the name of the company, he shall send the company a certificate of change of name, and the change shall be considered to have been made in accordance with a resolution of the company and the Registrar.
- (d) The Minister may lay down provisions regarding the publication of a change of name.

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

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

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

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

#### **Article C: Objects of the Company**

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

(1) engaging in any lawful business;

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

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

#### **Article D: Registered Share Capital and Distribution Thereof**

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

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

- (b) Where the shares in the company have no nominal value, their number alone shall be set out in the articles of association; where the shares in the company are of nominal value, the nominal value of each share shall be noted in the articles of association in addition to their number.
- (c) Where the shares in the company have no nominal value, the provisions of this Law in respect of registered or issued share capital shall apply, *mutatis mutandis*, such that the registered share capital shall be the number of shares set out in the articles of association, and the issued capital shall be the number of shares allotted by the company.

### **Article E: Limitation of Liability**

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| Limitation of liability | 35. | <ul style="list-style-type: none"> <li>(a) The liability of shareholders for the debts of the company may be unlimited, and this shall be stated in the articles of association; where the liability of the shareholders is limited, the manner of limitation shall be set out in the articles of association.</li> <li>(b) Where the shares in the company are of nominal value, the shareholders shall be liable to pay at least the nominal value of the shares, unless the provisions of section 304 apply.</li> </ul> |
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## **Chapter 3: The Registrar of Companies**

### **Article A: The Companies Registry**

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| Appointment and qualification of Registrar and Deputy Registrar | 36. | <ul style="list-style-type: none"> <li>(a) The Minister shall appoint a civil servant, qualified to serve as a magistrate, to be the Registrar of Companies, and such person shall be in charge of the Companies Registry.</li> <li>(b) The Minister may appoint a government civil servant to be Deputy to the Registrar of Companies, and may authorize such person to exercise the powers of the Registrar.</li> <li>(c) Where the Registrar is precluded from fulfilling his duties, the Minister may authorize an employee of the Ministry of Justice to exercise all or any of the powers of the Registrar.</li> </ul> |
| Powers of the Registrar   | 37. | <ul style="list-style-type: none"> <li>(a) The Registrar shall determine whether the conditions and requirements laid down in this Law in respect of the following have been fulfilled:</li> </ul>   |

- (1) incorporation of a company;
  - (2) change of name of a company;
  - (3) registration of a document;
  - (4) merger.
- (b) The Registrar may, in order to ensure that the company is fulfilling its obligations under this Law, order it to produce for his inspection the registers and books that a company must keep and that are available for public inspection, or updated copies of such, within a period of no less than fourteen days from the date of demand.
- (c) Where the Registrar is of the opinion that the said registers or books are not up-to-date, he may order the company to update them within such period as he shall prescribe.

**Article B: Keeping of Registers**

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| Keeping registers and receipt of documents | 38. | <ul style="list-style-type: none"> <li>(a) The Registrar shall keep a register relating to every company and shall receive documents and reports for registration or filing in the company’s files, as shall be prescribed by the Minister.</li> <li>(b) The Minister may order that the delivery of documents and reports, registration or filing in company files, shall be effected by way of electronic communication only (hereinafter “electronic filing or reporting”).</li> <li>(c) The Registrar shall keep a register of companies in which every company shall be entered and shall give each company an identification number, and the Registrar may use a different type of numbering for different kinds of companies, as prescribed by the Minister.</li> </ul> |
| Submitting documents for registration      | 39. | <ul style="list-style-type: none"> <li>(a) Every document or report that is to be submitted to the Registrar shall bear the company’s identification number, and shall be signed by one of the office holders of the company, together with such person’s name and position, as confirmation of the fact that the details in it are correct and complete; for the purposes of this section, “office holder of the company” shall include the company secretary or any person authorized by the company for the purposes of this section.</li> </ul>  |

- (b) Despite the provisions of subsection (a), a document or report submitted from a company in receivership or liquidation may be signed by the receiver or liquidator.
- (c) The provisions of this section shall apply in the absence of any different provision in this regard in any law.
- (d) Where the Minister has made a provision regarding electronic reporting, he may prescribe that the provisions of subsection (a) regarding the signature of an office holder shall not apply to documents and reports submitted in such way.

Validity conditional upon registration 40. The following acts of the company shall have no effect unless registered:

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

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

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

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

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<sup>5</sup> *Sefer Hachukim*, 5755, p. 366.

- Inspection 43. The registers kept by the Registrar in the Companies Registry shall be open for public inspection and any person may inspect them and receive certified copies of their contents, either through the Registrar himself or others authorized by the Registrar for such purpose, as prescribed by the Minister.
- Regulations 44. The Minister may prescribe the following:
- (1) arrangements for registration and filing and the manner of submitting documents and reports for registration and filing as aforesaid, including electronic filing or reporting;
  - (2) the manner of keeping registers at the companies registry, and the public inspection thereof;
  - (3) the forms which must be used for the purposes of this Law, and the details to be included therein, including the manner of transferring information by electronic reporting;
  - (4) the manner of carrying out the Registrar's obligations under this Law;
  - (5) details with which a company or a foreign company must provide the Registrar in respect of every shareholder, or other holder of rights, and in respect of a creditor or any office holder of the company;
  - (6) amounts that the Minister may prescribe for registration fees, annual fees, and other fees and impositions payable for acts and services that the Registrar provides under this Law; and the Minister may determine the amount of different fees and payments for different companies according to such criteria as he shall prescribe.

### **Article C: Appeal**

- Appeal 45. (a) A person who feels aggrieved by a decision of the Registrar may appeal against such decision to the court.
- (b) The Minister may make regulations regarding the legal procedures for the appeal.

## **Part III: Structure of the Company**

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

#### **Article A: Organs**

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| The organs                                | 46. | The company's organs are the general meeting, the board of directors, the general manager and any person whose acts in any given matter are considered by law or by virtue of the articles of association to be the acts of the company with regard to the matter concerned. |
| Acts of an organ like acts of the company | 47. | The acts and intentions of an organ shall be the acts and intentions of the company.   |

### **Article B: Division of Powers Among Principal Organs**

- |  |     |   |
|--|-----|---|
| Powers of organs   | 48. | <p>(a) The general meeting shall have the powers specified in Article A of Chapter 2.</p> <p>(b) The board of directors shall have the powers specified in Article A of Chapter 3.</p> <p>(c) The general manager shall have the powers specified in Chapter 4.</p> <p>(d) All organs of the company shall have all auxiliary powers required to exercise their powers.</p>   |
| Residual power   | 49. | The board of directors may exercise any power of the company not granted to any other organ by law or by the articles of association.   |
| Transfer of power among organs pursuant to articles of association | 50. | <p>(a) A company may prescribe provisions in its articles of association to the effect that the general meeting may assume powers conferred on another organ and that the powers granted to the general manager be transferred to the board of directors, for any particular matter or period of time.</p> <p>(b) Where the general meeting has assumed powers conferred by this Law on the board of directors, the shareholders shall be liable and bound by the liability and duties of directors regarding the exercise of such powers, <i>mutatis mutandis</i>, taking into consideration their holdings in the company, their participation in the general meeting and the manner in which they voted.</p> |

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

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

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

### **Article C: Liability of Company for Acts of Organs**

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

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

### **Article D: Liability of Individuals in an Organ**

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

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

## Article E: Avoidance of Unauthorized Acts

- Act departing from authorization 55.
- (a) A company, or anyone acting on behalf of a company, shall not perform any act that constitutes a departure from the objects laid down in the articles of association and shall not perform an unauthorized act or an act that goes beyond any authorization.
  - (b) Where an act under subsection (a) has been performed, or where there is reason to presume that such an act is about to be performed, the court may, at the request of the company, a shareholder, or a creditor of the company in respect of whom there is an apprehension that his rights may be prejudiced, grant an order interrupting or preventing the act.

- Act departing from objects or without authorization 56.
- (a) An act performed for a company which departs from the objects laid down in its articles of association, or performed without authorization, or beyond such authorization, shall be invalid in respect of the company, unless the company approved the act in the ways prescribed in subsection (b), or if the party in respect of whom the act was performed did not know and was not expected to have known of the departure or of the lack of authorization.
  - (b) *Ex post facto* confirmation by a company of an act which departs from the objects prescribed by its articles of association shall be granted by the general meeting; such confirmation relating to an unauthorized act or an act which departs from a given authorization shall be granted by the organ empowered to issue such authorization.
  - (c) Confirmation referred to in subsection (b) shall not prejudice any right acquired by another person *bona fide* for value prior to grant of the confirmation.

## Chapter 2: The General Meeting

### Article A: Powers of the General Meeting

- Powers conferred on the general meeting 57.
- Resolutions of the company in respect of the following matters shall be passed by the general meeting:
- (1) alterations in the articles of association as referred to in section 20;
  - (2) exercise of the powers of the board of directors in accordance with the provisions of section 52(a);

- (3) appointment of the company's auditor, his conditions of employment and termination of his employment in accordance with the provisions of sections 154 to 167;
- (4) appointment of outside directors in accordance with the provisions of section 239;
- (5) confirmation of acts and transactions requiring confirmation of the general meeting under the provisions of sections 255 and 268 to 275;
- (6) increase and reduction of the registered share capital of the company in accordance with the provisions of sections 286 and 287;
- (7) merger referred to in section 320(a).

- Prohibition on stipulation 58.
- (a) A company may not contract out of the provisions of section 57.
  - (b) A company may add matters to its articles of association, where resolutions in that respect shall have been passed by the general meeting; however, the transfer of powers in the articles of association to the general meeting, in respect of matters where power was conferred on another organ in this Law without any possibility of contracting out in respect of such matters in the articles of association, shall be effected in accordance with the provisions of section 50.

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

**Article B: Annual General Meeting and Special General Meeting**

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

- (b) The agenda at the annual general meeting shall include a discussion of the financial reports and of the report of the board of directors pursuant to the provisions of section 173; the agenda may include appointment of directors, appointment of an auditor and any matter prescribed in the articles of association for discussion at the annual general meeting, or any other matter prescribed for the agenda as provided in section 66.
- Non-holding of annual general meeting 61. (a) A private company may provide in its articles of association that it is not required to have an annual general meeting as provided in section 60, except to the extent that such is required for appointing an auditor; where such a provision is laid down, the company shall not be required to hold an annual general meeting unless one of the shareholders or directors requires the company to hold it.
- (b) Where no annual general meeting is held, the company shall once a year send the shareholders entered on the shareholders register financial reports as referred to in section 172, no later than the final date on which it would have had to hold an annual general meeting but for the existence of a provision in its articles of association pursuant to subsection (a).
- Convening of annual general meeting by the court 62. (a) Where no annual general meeting is held as provided in section 60, or once a demand has been made that it be held in accordance with section 61, the court may, at the request of a shareholder or director of the company, order the convening of the annual general meeting.
- (b) Where the court has ordered as aforesaid, the company shall bear the reasonable costs incurred by the applicant in court proceedings, as fixed by the court, and the directors responsible for the non-convention of the general meeting shall be responsible for refunding such costs to the company.
- Convening of special general meeting 63. (a) The board of directors of a private company may resolve to convene a special general meeting, and shall so convene at the demand of any one of the following:

- (1) one director;
  - (2) one or more shareholders holding at least ten percent of the issued capital and at least one percent of the voting rights in the company, or one or more shareholders with at least ten percent of the voting rights in the company.
- (b) The board of directors of a public company may resolve to convene a special general meeting, and shall so convene at the demand of any of the following:
- (1) two directors or one-quarter of the directors in office;
  - (2) one or more shareholders with at least five percent of the issued share capital and at least one percent of the voting rights in the company, or one or more shareholders with at least five percent of the voting rights in the company.
- (c) Where a board of directors is requested to convene a special general meeting, it shall convene such meeting within twenty-one days of the date on which the request was made, on the date designated in an invitation pursuant to section 67 or by a notice pursuant to section 69, provided that in respect of a public company, the date of convening the meeting shall be no later than thirty-five days after the date of the notice, unless otherwise provided in respect of a meeting to which Article G applies, and in respect of a private company the provisions of section 67 shall apply.

Convening of  
general meeting  
by shareholders 64.

- (a) Where the board of directors has not convened a special general meeting demanded under section 63, the party demanding the convening of the meeting, and, in the case of shareholders, that portion of them that has more than half of their voting rights, may convene the meeting themselves, provided that the meeting shall not take place more than three months after the said demand is submitted, and that it is convened, if possible, in the same manner as meetings are convened by the board of directors.
- (b) Where a general meeting is convened as provided in subsection (a), the company shall cover the reasonable costs incurred by the party demanding the convening of the meeting, and the directors responsible for the non-convening of the meeting shall be responsible for repaying such costs to the company.

- Application to the court 65. (a) Where the board of directors has not convened a special general meeting in accordance with a demand pursuant to section 63, the court may order the convening of such a meeting, at the request of a person making a demand for such.
- (b) Where the court has ordered as aforesaid, the company shall bear reasonable costs incurred by the applicant in court proceedings, as set by the court, and the directors responsible for the non-convening of the meeting shall be responsible for repaying such costs to the company.

### **Article C: Convening and Direction of General Meeting**

- Agenda 66. (a) The agenda at a general meeting shall be fixed by the board of directors and may also include matters in respect of which the convening of a special meeting is required under section 63 as well as any matter requested as provided in subsection (b).
- (b) One or more shareholders with at least one percent of the voting rights at the general meeting may request that the board of directors include a matter in the agenda of a general meeting to be convened in the future, provided that it is appropriate to discuss such a matter in the general meeting.
- (c) Only resolutions regarding matters set out in the agenda may be passed by the general meeting.
- Dates of delivery of invitations for private company 67. An invitation to a general meeting of a private company shall be delivered to any person who is entitled to take part in the meeting, no later than seven days prior to the date of convening of the meeting, provided that such invitation shall not be delivered more than forty five days prior to the date of convening of the meeting, if not otherwise provided in the articles of association.
- Contents of invitation to general meeting of a private company 68. (a) An invitation to a general meeting of a private company shall set out the date and place in which the meeting is to be held, and the agenda and a reasonably detailed statement of the matters for discussion.
- (b) Where a proposal to alter the articles of association is on the agenda of a general meeting, the text of the proposed alteration shall be set out in detail.

Notice of general meeting of public company, and contents thereof	69.	<p>(a) Notice of a general meeting of a public company shall be published as prescribed by the Minister.</p> <p>(b) Notice of a general meeting of a public company shall be delivered to every shareholder on the register of shareholders at least twenty-one days prior to its being convened, unless the articles of association prescribe that no notice is to be delivered.</p> <p>(c) The notice shall set out the agenda, proposed resolutions and arrangements regarding voting by writing pursuant to the provisions of Article G.</p> <p>(d) The Minister may make provisions, after consultation with the Securities Authority, in matters relating to this section including the manner of detailing subjects, unless there are provisions in this regard in another law.</p>
Regulations regarding resolutions at general meetings	70.	The Minister may prescribe that where the text of resolutions are out specified an invitation or in a notice, the general meeting may pass resolutions that are differ in their wording from that of resolutions that were on the agenda, in respect of matters and according to such criteria as the Minister may prescribe.
Proof of ownership of shares in a public company	71.	A shareholder in a public company desirous of voting at a general meeting shall produce proof to the company of his ownership of the share in such manner prescribed by the Minister.
Convening meeting by court	72.	Where it is practicably impossible to convene a meeting or direct one in the manner prescribed in the articles of association or in this Law, the court may, at the request of the company, a shareholder entitled to vote at the meeting, or a director, order the meeting to be convened and directed in the manner that the court shall prescribe, and the court may make such supplementary provisions as it shall see fit.
Meeting in Israel	73.	A public company whose shares have been offered to the public in Israel only or that are traded on a stock exchange in Israel only shall hold its general meeting in Israel.

- Meeting adjourned by resolution of the meeting 74. (a) A general meeting with a quorum present may resolve to adjourn the meeting to such other time and place as it may determine; only matters that were on the agenda and in respect of which no resolution was passed shall be discussed at the adjourned meeting.
- (b) Where a general meeting is adjourned for more than twenty one days, notices and invitations for the adjourned meeting shall be given in accordance with sections 67 to 69.

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

#### **Article D: General Meeting of a Private Company**

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

- Holding of meeting through means of communication 77. A private company may hold a general meeting using any means of communication such that all shareholders participating in the meeting can hear each other simultaneously, unless otherwise provided in the articles of association.

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

- Quorum at general meeting 78. (a) The quorum for holding a general meeting shall be at least two shareholders holding at least twenty-five percent of the voting rights, within half an hour of the time fixed for the commencement of the meeting.
- (b) Where there is no quorum present at the general meeting at the end of half an hour from the time fixed for the commencement of the meeting, the meeting shall be adjourned for one week, to be held on the same day, at the same time and in the same place, or for a later time if indicated in the invitation to the meeting or in the notice of the meeting.

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

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

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

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

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

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

#### **Article F: Voting at General Meeting**

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

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

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

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

- (b) A shareholder in a private company may vote by himself or by proxy, unless otherwise provided in the articles of association.
- (c) A shareholder in a private company may vote by voting paper if there are provisions to that effect in its articles of association.

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

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

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

### **Article G: Voting by Voting Paper and Statement of Position**

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

- (1) appointment and removal of directors;
- (2) approval acts or transactions requiring the approval of the general meeting pursuant to the provisions of sections 255 and 268 to 275;
- (3) approval of a merger pursuant to section 320;
- (4) any other matter in respect of which there is a provision in the articles of association or thereunder to the effect that decisions of the general meeting may also be passed by means of a voting paper;
- (5) other matters prescribed by the Minister pursuant to section 89.

- (b) A voting paper shall be sent by the company to every shareholder; a shareholder may indicate his vote on the voting paper and send it to the company.
- (c) A voting paper on which a shareholder has indicated his vote and which has reached the company prior to the last day prescribed for such shall be considered as presence at the meeting for the purposes of the existence of a quorum as provided in section 78.
- (d) A voting paper received by the company as provided in subsection (c) regarding a particular matter in respect of which no vote was held at the general meeting shall be considered as an abstention in the vote at such general meeting in respect of a resolution to hold an adjourned meeting pursuant to the provisions of section 74, and shall be counted at the adjourned meeting to be held pursuant to the provisions of sections 74 or 79.

Addressing  
shareholders

- 88.
- (a) The board of directors and any person at whose demand the board of directors convenes a special general meeting pursuant to the provisions of section 63, may address the shareholders in writing, via the company, in order to convince them of how to vote on one of the matters enumerated in section 87 to be discussed at such meeting (hereinafter “statement of position”); the company shall send statements of position under this subsection to shareholders at its expense, together with a voting paper for such meeting.
  - (b) Where a general meeting has been convened with one of the matters enumerated in section 87 on its agenda, a shareholder of the company may address the company and request that it send a statement of position on behalf of the shareholder to the other shareholders in the company; a statement of position under this subsection may be at the shareholder’s expense, or at the company’s expense, as the Minister may prescribe pursuant to the provisions of section 89; however, a company may provide that all statements of position under this subsection be at its expense.
  - (c) The board of directors of the company may send a statement of position to shareholders, in response to a statement of position sent as provided in subsections (a) or (b), or in response to some other address to shareholders of the company.

89. The Minister may, in consultation with the Minister of Finance and the Securities Authority, prescribe provisions regarding the voting paper and the statement of position pursuant to this Article, *inter alia*, with respect to the following matters:
- (1) matters in addition to those provided in section 87 to which this Article applies;
  - (2) grant of a full or partial exemption from the application of the provisions of sections 87 and 88, regarding certain types of companies, under such classification as may be prescribed, taking into account, *inter alia*, the rate of holdings of a person holding control of such companies, the majority required for passing the resolution at the general meeting in certain companies and taking into account the place of registration for trading in the securities of the company;
  - (3) grant of an exemption from sending voting papers and statements of position to some of the shareholders in certain companies, taking into account the rate of voting rights or the value of shares held by them, and in respect of shareholders as provided in section 177(1), taking into account also the proportion of voting rights and the value of shares held by each separate member of a stock exchange in each securities account;
  - (4) the manner of service of voting papers and statements of position on shareholders, and the manner of sending voting papers to the company, including by means of members of a stock exchange or by means of a corporation controlled by them, or by means of some other corporation, the obligation of attaching a certificate evidencing ownership of shares on the prescribed date, and dates and timetables for effecting the acts required for carrying out the provisions of this Article;
  - (5) the maximum payment to be made for sending voting papers or statements of position and the manner of imposing such payments and expenses for sending them to the various parties taking part therein;
  - (6) publication of statements of position in the manner to be prescribed as an alternative to serving them on shareholders;
  - (7) the manner of supervising the performance of the provisions of this Article, including in respect of the obligation to keep registers of the performance of prescribed provisions;
  - (8) the draft form of the voting paper and statement of position for matters in respect of which this Article applies.

## Article H: Minutes of the Meeting

- Minutes at a general meeting 90.
- (a) A company shall keep minutes of the proceedings at the general meeting, and shall keep them at its registered office for a period of seven years from the date of such meeting.
  - (b) Minutes signed by the chairman of the meeting shall constitute *prima facie* evidence of the contents thereof.
  - (c) The register of minutes of general meetings shall be kept at the registered office of the company and shall be open for inspection by its shareholders, and a copy of the register shall be sent to any shareholder who so requests.

## Article I: Defects in Convening Meetings

- Defects in convening meetings 91.
- (a) The court may, on the application of a shareholder, order the cancellation of a resolution passed by a general meeting convened or held without the conditions prescribed for such in this Law or in the articles of association having been fulfilled.
  - (b) Where the defect in convening the meeting relates to a notice regarding the place where the meeting is to be held or its timing, a shareholder who arrived at the meeting despite the defect shall not be allowed to require abrogation of any resolution.

## Chapter 3: The Board of Directors

### Article A: Powers of the Board of Directors

- Powers and duties of the board of directors 92.
- (a) The board of directors shall outline the policy of the company and shall supervise the performance of the functions and acts of the general manager within that framework, and:
    - (1) shall determine the company's plans of action, principles for funding them and the priorities between them;
    - (2) shall examine the company's financial status, and shall set the credit limits that the company be entitled to operate;
    - (3) shall determine the organizational structure of the company and its wage policy;

- (4) may resolve to issue debenture series;
- (5) shall be responsible for preparing financial reports and certifying them, as provided in section 171;
- (6) shall report to the annual general meeting on the position of the company's affairs and on the outcome of its business activities as provided in section 173;
- (7) shall appoint and remove the general manager as provided in section 250;
- (8) shall decide on acts and transactions requiring its approval under the articles of association or pursuant to the provisions of sections 255 and 268 to 275;
- (9) may allot shares and securities convertible to shares up to the limit of the registered share capital of the company, in accordance with the provisions of section 288;
- (10) may resolve to effect a distribution as provided in sections 307 and 308;
- (11) shall give its opinion on special tender offers as provided in section 329.

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

Board of 93.  
 directors  
 numbering one  
 person

(a) A private company may have a board of directors numbering one person.

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

**Article B: Chairman of Board of Directors**

- Election of chairman of board of directors 94. (a) The board of directors of a public company shall elect one of their number to act as chairman of the board of directors, unless another method of appointment is prescribed in the articles of association.
- (b) A private company shall not be obliged to appoint a chairman of the board of directors; where no chairman is appointed to the board of directors of a private company, each of the directors shall be entitled to convene the board of directors and determine its agenda, unless otherwise provided in the articles of association.

- Limitation on election of chairman of the board of directors 95. (a) The general manager of a public company may only serve as chairman of its board of directors in accordance with the provisions of section 121(c).
- (b) The chairman of the board of directors of a public company shall only be granted the powers of the general manager in accordance with the provisions of section 121(c).
- (c) The provisions of subsection (a) shall cease to apply three months from the date on which a company becomes a public company.

- Management of meetings of board of directors 96. (a) The chairman of the board of directors shall direct the meetings of the board of directors.
- (b) Where the chairman of the board of directors is not present at the meeting, the board of directors shall elect another of its number to direct the meeting and to sign the minutes of the meeting, however, the person so elected shall not have an extra vote when voting on resolutions of the board of directors as provided in section 107, unless otherwise provided in the articles of association.

### **Article C: Convening of Meetings of Board of Directors**

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

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

- (b) The board of directors shall hold a meeting regarding a specified matter, on the demand of any one of the following:
  - (1) two directors, and in a company in which the board of directors numbers up to five directors, one director;
  - (2) one director, if a provision as aforesaid is laid down in the articles of association of the company, or if the provisions of section 257 are fulfilled.
- (c) The chairman of the board of directors shall convene the board of directors in accordance with a demand as provided in subsection (b) or if the provisions of section 122(d) are fulfilled, relating to a notice or report by the general manager or relating to a notice by the company's auditor pursuant to section 169.
- (d) Where a meeting of the board of directors is not convened within fourteen days of the date of demand as provided in subsection (b), or of the date of notice or report of the general manager in respect which the provisions of section 122(d) are fulfilled, or of the date of notice by the auditor pursuant to section 169, each of the persons enumerated in subsections (b) and (c) may convene a meeting of the board of directors to discuss the matter specified in the demand, notice or report, as the case may be, unless the articles of association contain any other provision relating to the date of convening the meeting.

#### **Article D: Meetings of the Board of Directors and their Direction**

- Agenda
- 99. The agenda for meetings of the board of directors shall be determined by the chairman of the board of directors and shall include:
    - (1) matters determined by the chairman of the board of directors;
    - (2) matters determined as provided in section 98;
    - (3) any matter that a director or the general manager requests the chairman of the board of directors to include in the agenda, at a reasonable time prior to the convening of a meeting of the board of directors, unless otherwise provided in the articles of association.

- Notice of meeting of board of directors 100. (a) Notice of a meeting of the board of directors shall be delivered to all members at a reasonable time prior to the date of the meeting, unless there is a provision in the articles of association prescribing the time of delivery.
- (b) A notice under subsection (a) shall be delivered to the address of each director as made known to the company in advance, and it shall state the date of the meeting and the place at which it will convene, as well as a reasonably detailed statement of all of the matters on the agenda, unless otherwise provided in the articles of association.
- (c) In a public company, conditions may not be placed in the articles of association on the obligation to provide reasonable details of all the matters on the agenda in the notice of convening of a meeting of the board of directors.
- Holding of meeting by telecommunication 101. The board of directors may hold meetings using any means of telecommunication such that all directors participating in the meeting can hear each other simultaneously, unless otherwise provided in the articles of association.
- Convening of meeting without notice 102. Notwithstanding the provisions of section 100, the board of directors may be convened to meet without notice, by the consent of all of the directors, unless this is prohibited by the articles of association.
- Passing of resolutions without convening meeting 103. (a) The board of directors may pass resolutions even without actually convening, provided that all of the directors entitled to participate in the discussion and vote on the matter brought up for resolution have agreed thereto, unless this is prohibited by the articles of association.
- (b) Where resolutions are passed in accordance with the provisions of subsection (a), the chairman of the board of directors shall prepare minutes of the resolutions and shall attach thereto the signatures of the directors to such minutes, unless otherwise provided in the articles of association.
- (c) The provisions of section 108 shall apply, *mutatis mutandis*, to a resolution as provided in subsection (a).
- Quorum at meetings of the board of directors 104. The quorum for commencing a meeting of the board of directors shall be the majority of the directors, unless otherwise provided in the articles of association.

### **Article E: Voting at the Board of Directors**

- Voting at the board of directors 105. Each director shall have one vote at meetings of the board of directors, unless otherwise provided in the articles of association.
- Voting agreements 106. A director, in his capacity as such, shall not be party to a voting agreement, and a voting agreement shall be considered to be a breach of fiduciary duty.
- Passing resolutions of 107. Resolutions of the board of directors shall be passed by ordinary majority; where the votes are even, the chairman of the board of directors shall have a casting vote, unless otherwise provided in the articles of association.

### **Article F: Minutes of Meetings of the Board of Directors**

- Minutes of meetings of the board of directors 108. (a) A company shall prepare minutes of the proceedings at meetings of the board of directors and shall keep them at its registered office for a period of seven years from the date of the meeting.
- (b) Minutes approved and signed by the chairman of the meeting or by the chairman of the board of directors shall serve as prima facie evidence of their contents.

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

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

- (1) a director who was present at the meeting, provided that prior to the passing of the defective resolution, he insisted that it should not be passed;
  - (2) a director who was entitled to be invited to a meeting but was not present, within a reasonable time after being made aware of the resolution and no later than the first meeting of the board of directors that takes place after he knew of the resolution;
  - (3) where the defect in convening relates to a notice regarding the place or time or convening the meeting, a director who arrived at the meeting despite the defect may not demand the abrogation of the resolutions.
- (b) The provisions of subsection (a) shall not affect the validity of an act done for the company in respect of which the provisions of the last part of section 56(a) were fulfilled.

**Article H: Committees of the Board of Directors**

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

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

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

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

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

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

- (1) determining the company's general policy;
- (2) distribution, unless in respect of purchase of shares in the company in a framework outlined by the company in advance;
- (3) determining the position of the board of directors in respect of a matter requiring approval of the general meeting or the giving of an opinion as provided in section 329;
- (4) appointing directors, if the board of directors is entitled to so appoint;
- (5) allotting shares or securities convertible into shares or realizable as shares, or debenture series, unless the allotment is an allotment following the realization or conversion of securities in the company;
- (6) approval of financial reports;
- (7) approval of board of directors given to transactions and acts requiring the approval of the board of directors pursuant to the provisions of sections 255 and 268 to 275.

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

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

#### **Article I: Audit Committee**

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

- Members of committee 115. (a) There shall be no less than three members of the audit committee, and all of the outside directors shall be members thereof.
- (b) Neither the chairman of the board of directors nor any director who is employed by the company or who provides it with services on a permanent basis shall be members of the audit committee.
- (c) A holder of control or a relative of such a person shall not be a member of the audit committee.
- Invitation to meetings 116. (a) The internal auditor of the company shall receive notices of the holding of meetings of the audit committee and shall be entitled to take part in them.
- (b) The internal auditor may request that the chairman of the audit committee convene the committee to discuss such matter as he may specify in his request, and the chairman of the audit committee shall convene the committee within a reasonable time from the date of the request, if he finds reason to do so.
- (c) A notice of the holding of a meeting of the audit committee at which a matter relating to the audit of financial reports is to be dealt with shall be sent to the auditor who may participate in the meeting.
- Functions of audit committee 117. The functions of the audit committee shall be as follows:
- (1) to locate defects in the company's business administration, *inter alia* by consulting with the company's internal auditor or with the auditor, and to make proposals to the board of directors regarding ways of correcting such defects;
- (2) to decide whether to approve acts and transactions requiring the approval of the audit committee under sections 255 and 268 to 275.
- Audit committee in private company 118. (a) The board of directors of a private company may appoint an audit committee consisting of its members to which the provisions of section 115(b) shall apply and the provisions of sections 115(a) and (c) shall not apply; the function of the audit committee shall be as provided in section 117.

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

#### **Chapter 4: The General Manager**

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|-----------------------------------|------|---|
| Appointment of<br>general manager | 119. | <ul style="list-style-type: none"><li>(a) A public company shall appoint a general manager, and may appoint more than one general manager.</li><li>(b) A private company may appoint one or more general managers; where no general manager is appointed, the company shall be managed by the board of directors.</li></ul>   |
| Liability of<br>general manager   | 120. | <p>The general manager shall be liable for the current administration of the affairs of the company, within the scope of the policies determined by the board of directors, and subject to its guidelines.</p>  |
| Powers of general<br>manager      | 121. | <ul style="list-style-type: none"><li>(a) The general manager shall have all managerial and executive powers not granted by this Law or by the articles of association to any other organ of the company, and shall be subject to the supervision of the board of directors.</li><li>(b) The general manager may, with the approval of the board of directors, delegate any of his powers to any other person subordinate to him.</li><li>(c) Notwithstanding the provisions of section 95, the general meeting of a public company may resolve that for a period of no more than three years from the date of passing the resolution to such effect, the chairman of the board of directors may be authorized to fulfil the role of general manager, or to exercise the powers of the general manager, provided that in counting the votes at the general meeting, the majority shall include at least two-thirds of the shareholders who are not holders of control in the company or their representatives present at the vote; abstaining votes shall not be taken into account in counting the votes of the said shareholders.</li></ul> |

- Duty to report to board of directors 122.
- (a) The general manager shall be bound to notify the chairman of the board of directors of any extraordinary matter which is of significance to the company; where a company has no chairman of the board of directors, or where such person is prevented from fulfilling his role, the general manager shall so notify all members of the board of directors.
  - (b) The general manager shall submit reports to the board of directors on the matters, at the times and to the extent determined by the board of directors.
  - (c) The chairman of the board of directors may, at any time, on its own initiative or in accordance with the decision of the board of directors, require reports from the general manager on matters relating to the business of the company.
  - (d) Where a report or notification by the general manager requires an act on the part of the board of directors, the chairman of the board of directors shall convene a meeting of the board of directors without delay.

## **Part IV: Administration of the Company**

### **Chapter 1: Registered Office**

- Registered office 123.
- (a) As of the date on which a company is registered it shall be bound to establish a registered office in Israel to which all notices for the company may be sent.
  - (b) Notification of the address of the registered office shall be delivered to the Registrar together with the application for registration of the company; notification of any change of address of the registered office shall be delivered to the Registrar within fourteen days of the change; the Registrar shall register the address of the registered office of the company.
  - (c) Service of any document on the company shall be effected by leaving it at the registered office of the company as registered with the Registrar at the time of delivery, or by sending it thereto by mail.
  - (d) Service of any document from the Companies Registry to the company, or from the Securities Authority to a public company may, notwithstanding the provisions of subsection (c), be effected by leaving it at the place at which the Registrar or the Securities Authority, as the case may be, is convinced that the company actually runs its business.

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

- (1) the articles of association of the company;
- (2) minutes of meetings of the general meeting as provided in section 90;
- (3) minutes of meetings of the board of directors and resolutions as provided in sections 103 and 108;
- (4) minutes of meetings of committees of the board of directors as provided in section 111;
- (5) copies of notices from the company to shareholders over the previous seven years;
- (6) financial reports of the company as provided in section 171;
- (7) the register of shareholders, and for a public company the register of substantial shareholders, as provided in sections 127 and 128;
- (8) the register of directors, as provided in section 224.

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

Receipt of copies 126. (a) A person entitled to inspect the documents referred to in section 125 may receive a copy of them in return for such payment as the company may fix therefor.  
(b) The Minister may prescribe maximum sums for payment.

## **Chapter 2: Register of Shareholders and Register of Substantial Shareholders**

### **Article A: The Registers**

Register of shareholders 127. A company shall keep a register of shareholders.

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

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

### **Article B: Register of Shareholders**

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

- (1) in respect of shares registered under a person's name –
  - (i) the name, identity number and address of the shareholder, as notified to the company;
  - (ii) the amount of shares and class of shares held by each shareholder, indicating their nominal value, if any, and if any amount of the consideration fixed for a share is not yet paid, the amount unpaid;
  - (iii) the date of allotment of the shares or the dates of their transfer to shareholders, as the case may be;
  - (iv) where the shares are marked with serial numbers, the company shall note next to the name of each shareholder the numbers of the shares registered in such person's name;
- (2) in respect of bearer shares –
  - (i) indication of the fact of the allotment of bearer shares, the date of their allotment and the number of shares allotted;
  - (ii) the numbering of the bearer share and of the share warrant;
- (3) in respect of dormant shares, as defined in section 308, their number and the date on which they became dormant.

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

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

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

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

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

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

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

### **Article C: Registration of Share Warrant**

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

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

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

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

Additional register of shareholders 138. (a) A company may keep an additional register of shareholders outside Israel (hereinafter “the additional register”).  
(b) A company that keeps an additional register shall enter on the register of shares under section 130 (hereinafter “the principal register”) the number of shares registered in the additional register of shareholders, and their numbers if they are marked with numbers.

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

### **Chapter 3: Reporting**

#### **Article A: Reports of Private Companies**

Reporting by private companies 140. A private company shall send the Registrar an annual report, as provided in section 141, and shall report to the Registrar as specified in this Law and in respect of the following matters:  
(1) alterations in the articles of association as provided in section 21, including resolutions as to change of name as provided in section 31, and increase or decrease of capital as provided in sections 286 and 287;

- (2) change of address of the registered office as set out in section 123;
- (3) notification under section 159 to the effect that the company has no auditor;
- (4) appointments to the board of directors and changes in its composition, as provided in section 223;
- (5) allotment of shares as provided in section 292;
- (6) transfer of shares as provided in section 299, fourteen days from the date of transfer;
- (7) merger as provided in section 317.

- Annual report by private company 141.
- (a) A private company shall, once a year, prepare and submit an annual report as prescribed by the Minister, within fourteen days after the annual general meeting.
  - (b) A private company that does not hold an annual general meeting, in accordance with section 61, shall submit an annual report once a year no later than fourteen days after sending the financial reports to shareholders, and in respect of an inactive company that does not prepare financial reports pursuant to the provisions of section 172(g), once a year.

**Article B: Reporting by Public Company**

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

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

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

Regulations regarding reporting, filing and fees

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

- (1) electronic filing or reporting, as defined in section 38, regarding reports submitted by a public company to the Securities Authority;
- (2) fees that are to be paid for acts and services provided by the Securities Authority.

Reporting by public company to Registrar

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

- (1) a resolution regarding change of name as provided in section 31;
- (2) change of address of its registered office as provided in section 123;
- (3) merger as provided in section 317;
- (4) its conversion into a public company as provided in section 343.

#### **Chapter 4: Internal Auditor in a Public Company**

Duty to appoint internal auditor

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

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

Internal Law	Audit	147.	The provisions of sections 3(a), 4(b), 8 to 10 and 14(b) and (c) of the Internal Audit Law, 5752-1992 <sup>6</sup> shall apply to the internal auditor, subject to the provisions of this Chapter, and <i>mutatis mutandis</i> as the case may be.
Person responsible for internal auditor		148.	The internal auditor shall be responsible to the chairman of the board of directors or the general manager, as may be prescribed in the articles of association, or, in the absence of a provision in the articles of association, as the board of directors may determine.
Work program		149.	The internal auditor shall submit a proposal for an annual or periodical work program for the approval of the board of directors, or for the approval of the audit committee, as provided in the articles of association, or in the absence of a provision in the articles of association, as prescribed by the board of directors, and the board of directors or the audit committee, as the case may be, shall approve it, with such amendments as they see fit.
Urgent examination		150.	The chairman of the board of directors or the chairman of the audit committee may require the internal auditor to perform an internal audit, in addition to the work program, regarding matters requiring urgent examination.
Role of internal auditor		151.	The internal auditor shall examine, <i>inter alia</i> , the propriety of acts of the company from the point of view of compliance with the law and proper business administration.
Submitting reports	of	152.	The internal auditor shall submit a report of his findings to the chairman of the board of directors, to the general manager and to the chairman of the audit committee; a report relating to matters audited pursuant to section 150 shall be provided to whoever charged the internal auditor with carrying out the audit.
Ceasing to act		153.	(a) The office of an internal auditor shall not be terminated without his consent, nor shall he be suspended from his position, unless the board of directors has so resolved after hearing the opinion of the audit committee, and after giving the internal auditor a reasonable opportunity to present his case to the board of directors and to the audit committee.

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<sup>6</sup> *Sefer Hachukim*, 5752, p. 198.

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

## **Chapter 5: Auditor**

### **Article A: Appointment of Auditor**

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| Duty to appoint auditor      | 154. | <ul style="list-style-type: none"><li>(a) A company shall appoint an auditor to audit its annual financial reports and to express an opinion on them (hereinafter “an act of audit”); the Minister may prescribe that certain other acts performed by an auditor by law shall be considered acts of audit for the purposes of this Chapter.</li><li>(b) An auditor shall be appointed at every annual general meeting and shall serve in that position until the end of the following annual general meeting; however, the general meeting may, if such a provision exists in the articles of association, appoint an auditor who may serve as such for a longer period of time, which period shall not extend beyond the end of the third annual general meeting after that at which he was appointed.</li><li>(c) In a private company where the provisions of section 61 prevail, an auditor may be appointed to serve in such position until the date of completion of a single act of audit, or, if the articles of association contain a provision to such effect, until the completion of three acts of audit.</li></ul> |
| Appointment of first auditor | 155. | <ul style="list-style-type: none"><li>(a) The board of directors may, at any time prior to the first annual general meeting, appoint the company’s first auditor and determine his salary; the first auditor appointed shall serve until the termination of the first annual general meeting.</li><li>(b) The provisions of section 154(c) shall apply to the termination of service of an auditor appointed by the board of directors in a private company in which the provisions of section 61 prevail.</li></ul>  |
| Joint auditors               | 156. | <p>A company may appoint several auditors to perform the act of audit jointly.</p>  |

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

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

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

Appointment by Registrar 159. (a) Where the auditor ceases to serve a company and no other person is appointed in his stead as prescribed by section 157, the company shall notify the Registrar of such within ninety days of the date on which the auditor ceased so to serve; however, the giving of such notice to the Registrar shall not derogate from the company’s obligation to appoint an auditor, as long as an auditor is not appointed under subsection (b); where the company appoints an auditor after giving notice to the Registrar, it shall notify the Registrar of this within fourteen days.

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

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

#### **Article B: Independence**

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

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

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

### **Article C: Ending of Auditor's Term of Office**

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

(b) Where a public company has on its agenda the termination of service or non-renewal of appointment of an auditor, the view of the audit committee shall be made known to the general meeting, after the auditor has been given reasonable opportunity to make his position known to the meeting.

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

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

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| Position<br>auditor | of 164. | <ul style="list-style-type: none"> <li>(a) The board of directors shall give the auditor a reasonable opportunity to make his position known to the general meeting that has the termination of service or non-renewal of his appointment on its agenda, and this shall include an invitation to the auditor to take part in the meeting.</li> <li>(b) Where the auditor resigns in circumstances in which the shareholders of the company have an interest, he shall notify the board of directors of the company thereof.</li> <li>(c) Without derogating from the provisions of any law, the board of directors shall notify the shareholders of the reasons of the auditor for his resignation, in such detail as the board of directors shall see fit, and it may also notify them of its position in this regard.</li> </ul> |
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**Article D: Fees Payable to Auditor**

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| Fees of auditor | 165. | <ul style="list-style-type: none"> <li>(a) Fees due to the auditor for acts of audit shall be determined by the general meeting, or by the board of directors if authorized therefor by the general meeting, and in accordance with the conditions of such authorization or, where there is a provision for such in the articles of association, in accordance with such provision.</li> <li>(b) Where a fee is determined for an act of audit by the board of directors, the board of directors shall inform the annual meeting of such fee.</li> </ul> |
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| Prohibition<br>against<br>stipulation of<br>salary or grant of<br>indemnity | 166. | <ul style="list-style-type: none"> <li>(a) A company shall not make the payment of fees of the auditor dependent on conditions that restrict the manner of performing acts of audit, or that connect the results of the audit to such payment.</li> <li>(b) Neither a company, nor any person acting on its behalf, shall indemnify the auditor, directly or indirectly, for an obligation imposed upon him for a breach of his professional liability or for the non-performance of any other duty imposed upon him by law.</li> </ul> |
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| Fee for additional<br>services | 167. | <ul style="list-style-type: none"> <li>(a) The fees of an auditor for additional services to the company that are not acts of audit shall be determined by the board of directors; however, it may be provided in the articles of association that fees for such services be determined by the general meeting.</li> </ul> |
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- (b) The board of directors shall inform the annual meeting as to fees of the auditor for additional services.

### **Article E: Powers, Duties and Responsibilities of Auditor**

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|----------------------------|------|---|
| Powers of auditor          | 168. | <ul style="list-style-type: none"><li>(a) The auditor may at any time inspect those documents of the company required by him for the purpose of fulfilling his function and receive explanations with regard to them.</li><li>(b) The auditor may participate in any general meeting at which financial reports are submitted in respect of which an act of audit is performed, and at any meeting of the board of directors dealing with the approval of financial reports or at any meeting of the board of directors convened in accordance with section 169; the board of directors shall notify the auditor of the place and time at which the general meeting or meeting of the board of directors is to be convened.</li></ul> |
| Duty to report             | 169. | <ul style="list-style-type: none"><li>(a) Where the auditor is aware, as a result of an act of audit, of substantial defects in inspection of the company's accounting, it shall report thereon to the chairman of the board of directors.</li><li>(b) Where the auditor reports on defects referred to in subsection (a), the chairman of the board of directors shall, without delay, convene a meeting of the board of directors to discuss the matters brought to his attention.</li></ul>  |
| Responsibility for opinion | 170. | <ul style="list-style-type: none"><li>(a) The auditor shall be liable to the company and its shareholders for the contents of his opinion regarding the financial reports.</li><li>(b) The provisions of subsection (a) shall not preclude the existence the auditor's liability under any law.</li></ul>   |

### **Chapter 3: Financial Reports**

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|-------------------|------|---|
| Financial reports | 171. | <ul style="list-style-type: none"><li>(a) A public company shall keep accounts, and shall also prepare financial reports pursuant to the Securities Law.</li><li>(b) A private company shall keep accounts, and shall also prepare financial reports as provided in this Law.</li></ul> |
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(c) The financial reports shall be approved by the board of directors and signed in its name.

Preparation of financial reports in a private company

172.

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

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

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

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

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

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

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

Presentation of reports to shareholders

173.

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

- (b) The board of directors of a private company shall present a report to the annual meeting containing its explanations regarding the events and changes that have taken place in the state of affairs of the company that have influenced the reports, in such detail as it sees fit.
- (c) The reports shall be kept at the registered office of the company for at least seven years from the date on which they were prepared, for the inspection of the directors and shareholders of the company.
- (d) A shareholder in a private company may receive a copy of the reports and of the opinion of the auditor in respect of them.
- (e) Copies of the reports in a private company shall be sent to all persons entitled to receive notice of general meetings, no later than fourteen days before the date on which the general meeting is to be held, unless otherwise provided in the articles of association.

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

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

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

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

## Part V: The Shareholder

### Chapter 1: The Shareholder and the Share Certificate

- Shareholder in private company 176. A shareholder in a private company is any person who is so registered in the register of shareholders, or whoever holds a share warrant.
- Shareholder in public company 177. A shareholder in a public company is any of the following:
- (1) A person for whose benefit a share is registered with a member of a stock exchange and such share is included in the shares registered in the register of shareholders in the name of the nominee company;
  - (2) A person registered as a shareholder in the register of shareholders;
  - (3) A person holding a share warrant.
- Share certificate 178. (a) A shareholder registered in the register of shareholders shall be entitled to receive a certificate from the company evidencing his ownership of a share.
- (b) A nominee company shall be entitled to receive a share certificate from the company evidencing the number and class of shares registered in its name in the register of shareholders.
- Share warrants 179. A company may, if there is a provision for such in its articles of association, issue a share warrant for a fully-paid share, and the provisions of section 135 shall apply.
- Text of share certificate and share warrant 180. The Minister may prescribe provisions relating to the text, form, format and printing of a share certificate or of a share warrant.

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| Forfeiture                                | 181. | <ul style="list-style-type: none"> <li>(a) A company may prescribe in its articles of association or in an allotment agreement provisions allowing the board of directors to forfeit a share allotted by the company and to sell it, if all or part of the consideration owed to the company by the shareholder (hereinafter “the debtor”) remains outstanding on the date and under the conditions prescribed in the articles of association or in such agreement.</li> <li>(b) Shares forfeited and not yet sold shall be dormant shares, as defined in section 308.</li> <li>(c) The debtor shall continue to be in debt to the company, unless the shares forfeited have been sold and the company has received the full consideration owed, together with additional sale costs.</li> <li>(d) Where the consideration received for sale of forfeited shares exceeds the consideration owed by the debtor, the debtor shall be entitled to a refund of part of the consideration given for them, if any, subject to the provisions of the articles of association or any allotment agreement, provided that the consideration remaining in the possession of the company shall be no less than the full consideration owed by the debtor, together with costs involved in the sale.</li> <li>(e) The provisions of this section shall not derogate from any other remedy available to the company as against the debtor.</li> </ul> |
| Determining date for ownership of a share | 182. | <ul style="list-style-type: none"> <li>(a) The shareholders who are entitled to a dividend as provided in section 306 shall be the holders of shares on the date of the resolution regarding the dividend or on a later date if a later date is prescribed in such resolution.</li> <li>(b) The shareholders in a public company that are entitled to participate and vote at the general meeting shall be the holders of shares on the date prescribed in the resolution to convene a general meeting, provided that such date falls no more than twenty-one days before the date of convening of the general meeting, and no fewer than four days prior to the date of convening.</li> <li>(c) The Minister may make other provisions regarding the dates referred to in subsection (b), if this is required for the purpose of voting by means of a voting paper under section 87.</li> </ul>  |

## Chapter 2: Rights and Obligations of Shareholders

Rights and obligations of shareholder	and of	183.	The rights and obligations of a shareholder shall be as laid down in this Law, in the articles of association of the company or under any other law.
Rights information	to	184.	<p>Shareholders shall have the right to inspect the following documents of the company:</p> <ol style="list-style-type: none"> <li data-bbox="539 524 1361 553">(1) minutes of general meetings, referred to in section 90;</li> <li data-bbox="539 591 1361 651">(2) the register of shareholders and the register of substantial shareholders, as referred to in section 129;</li> <li data-bbox="539 689 1361 750">(3) any document held by the company, as provided in section 185;</li> <li data-bbox="539 788 1361 848">(4) the articles of association of the company, referred to in section 187;</li> <li data-bbox="539 887 1361 1055">(5) any document which the company is required to file under this Law and under any law with the Companies Registry or the Securities Authority, available for public inspection at the Companies Registry or the Securities Authority, as the case may be.</li> </ol>
Inspection company documents	of	185.	<ol style="list-style-type: none"> <li data-bbox="539 1160 1361 1256">(a) A shareholder shall be entitled to require from the company inspection of any document in its possession, indicating for what purpose, in any of the following instances: <ol style="list-style-type: none"> <li data-bbox="635 1294 1361 1384">(1) the document relates to an act or transaction requiring the consent of the general meeting under the provisions of sections 255 and 268 to 275;</li> <li data-bbox="635 1422 1361 1518">(2) in a private company, if needed for passing a resolution regarding a matter that is on the agenda of the company's general meeting.</li> </ol> </li> <li data-bbox="539 1556 1361 1720">(b) The company may refuse the request of the shareholder if in its opinion the request was not made in good faith or the documents requested contain a commercial secret or a patent, or disclosure of the documents could prejudice the good of the company in some other way.</li> </ol>

Information on directors' remuneration	186.	<p>(a) The board of directors of a company shall, on the demand of one or more shareholders holding at least ten percent of the voting power in the company, be obliged to provide such person with a statement verified by the company's auditor, containing full details of all payments made by the company to each of the directors and of the obligations to pay that the company has taken upon itself, including conditions for retirement in respect of each of the last three years in which the company has prepared financial statements; the amount shall also include payments received by a director for being an office holder in a subsidiary of the company.</p> <p>(b) Where the board of directors finds that the demand is not made in good faith, it may refuse to comply therewith.</p>
Right to receive articles of association and financial reports	187.	<p>(a) Every shareholder shall be entitled to receive from the company, at his request, a copy of the articles of association and, in a private company, a copy of the financial reports referred to in section 173(d).</p> <p>(b) The Minister may prescribe the entitlement of a shareholder in a public company to receive from the company a copy of the financial reports.</p>
Right to vote	188.	Every shareholder shall be entitled to participate in the general meeting and to vote thereat, subject to the provisions of the articles of association regarding voting rights attached to any share.
Permission to conclude agreements	189.	Shareholders may conclude voting agreements between themselves, subject to the duties imposed upon them under this Law.
Right to dividend	190.	Every shareholder shall be entitled to receive a dividend, in accordance with the rights attached to each share, if a resolution as provided in section 306 regarding payment of a dividend has been passed.

- Rights in cases of discrimination 191. (a) Where the company's business is run in a way that constitutes discrimination against all or some of its shareholders, or in a way that gives rise to a real apprehension that the company's business will be run in such a way, the court may, at the request of a shareholder, give such instructions at it sees fit to remove or prevent such discrimination, including instructions for running the company's business in the future, or instructions to the shareholders of the company under which either they or the company itself is to purchase its shares, subject to the provisions of section 301.
- (b) Where the court rules as provided in subsection (a), appropriate alterations shall be made in the company's articles of association and in its resolutions, as the court may determine, and such alterations shall be considered to have been lawfully made by the company; a copy of the resolution shall be sent to the Companies Registrar, and if the company is a public company, to the Securities Authority.
- Shareholders' duties 192. (a) A shareholder shall act in exercising his rights and in fulfilling his duties towards the company and towards other shareholders with good faith and in a customary manner, and shall avoid exploiting his power in the company, *inter alia*, in voting at the general meeting or at class meetings, in the following matters:
- (1) alteration of the articles of association;
  - (2) increase in the registered share capital;
  - (3) merger;
  - (4) approval of acts and transactions requiring the approval of the general meeting pursuant to the provisions of sections 255 and 268 to 275;
- (b) A shareholder shall avoid discriminating against other shareholders.
- (c) The laws applying to breach of contract shall apply, *mutatis mutandis*, to breach of the provisions of subsections (a) and (b), and the provisions of section 191 shall also apply, *mutatis mutandis*, to breach of the provisions of subsection (b).

- Duty of interested party and of decisive voting power to act fairly
193. (a) The duty to act fairly towards the company shall apply to the following:
- (1) a holder of control in the company;
  - (2) a shareholder who knows that the manner in which he votes will be decisive in respect of a resolution of the general meeting or of a class meeting of the company;
  - (3) a shareholder who, pursuant to the provisions of the articles of association, has the power to appoint or to prevent the appointment of an office holder in the company or any other power *vis-a-vis* the company.
- (b) Breach of the duty of fairness shall be treated as a breach of the fiduciary duty of an office holder, *mutatis mutandis*.

### **Chapter 3: Derivative and Class actions**

#### **Article A: Derivative Action and Derivative Defense**

- Preconditions for filing of claim
194. (a) Any shareholder and any director of a company (in this Chapter “plaintiff”) may file a derivative action if the provisions of this Article prevail.
- (b) Any person wishing to file a derivative action shall address the company in writing, demanding that it exhaust its rights by instituting an action (in this Chapter “a demand”).
- (c) The demand shall be presented to the chairman of the board of directors of the company, and it shall set out in detail the facts giving rise to the cause of action and the reasons for its submission.

- Response of company
195. A company that receives a demand may proceed in one of the following ways:
- (1) do any act or pass any resolution resulting in the dropping of the cause of action;
  - (2) reject the plaintiff’s demand, for reasons specified in its resolution;
  - (3) resolve to file a suit.

- Company's response to plaintiff 196. The company shall inform the plaintiff of the way in which it proceeded under section 195 within forty-five days of the date of receipt of the demand, giving details of the action taken and the body that passed the resolution, including the names of those who participated in passing the resolution; where a participant or an office holder in the company has a personal interest in the resolution, this shall be stated in the resolution and in the notice to the plaintiff.
- Right to file derivative action 197. A plaintiff may file a derivative action with the approval of the court, in accordance with the provisions of section 198, if one of the following applies:
- (1) the act done or the resolution made under section 195(1) did not, in the plaintiff's opinion, bring about the dropping of the cause of action;
  - (2) the company rejected the plaintiff's demand as provided in section 195(2);
  - (3) the company gave notice to the plaintiff that it has resolved to file a suit, as provided in section 195(3), but no suit was filed within seventy-five days of the date of such notice;
  - (4) the company did not respond to the demand in accordance with section 196.
- Approval of derivative action 198. (a) A derivative action requires the approval of the court, which shall approve it if convinced that the claim, and the conduct thereof, are *prima facie* in the best interests of the company and that the plaintiff is not acting with lack of good faith.
- (b) The court may approve the filing of a derivative action filed before the dates laid down in sections 196 or 197 have elapsed if it is of the opinion that failure to file the claim on such date would cause it to become prescribed, and it may make the approval conditional upon the fulfillment of the conditions laid down in this article for filing a derivative action.
- (c) In this article, "court" – a court having competence to hear the action.
- Fee and costs 199. Where the court has approved a derivative action, it may:
- (1) give instructions as to the manner and dates of payment of court fees, including the division of payment of the fee between the plaintiff and the company;

		(2)	order the company to pay the plaintiff such sums as it may prescribe to cover the plaintiff's costs or to deposit a security for such payment;
		(3)	require the company or the plaintiff to deposit security to cover the defendant's costs.
Costs	200.		Where the court has adjudicated on a derivative action, it may require the company to pay the plaintiff's costs and it may require the plaintiff to pay costs incurred by the company, in whole or in part, taking into account the judgment and the other circumstances of the case.
Reward	201.		Where the court rules in favor of the company, it may order the payment of a reward to the plaintiff taking into account, <i>inter alia</i> , the benefit derived by the company from filing the claim and from winning it.
Arrangement or settlement	202.		A plaintiff shall not withdraw a derivative action, and shall not enter into an arrangement or settlement with the defendant, other than with the consent of the court; the application for such consent specify all details of the arrangement or settlement, including any payment offered to the plaintiff.
Derivative defense	203.	(a)	Where a claim is filed against a company, the court may, at the request of a shareholder or director (in this Chapter "the derivative defendant") allow such person to defend the claim on behalf of the company (hereinafter "the derivative defense") provided that the court is convinced that the conduct of the derivative defense is for the benefit of the company, and that the derivative defendant is not acting with lack of good faith.
		(b)	The provisions of this Article regarding a derivative action shall apply, <i>mutatis mutandis</i> , to a derivative defense to the extent that provisions are not prescribed by the Minister.
Prohibited distribution of dividend	204.		A creditor of a company may file a derivative action on behalf of the company in respect of a prohibited distribution effected by the company, and the provisions of this Article shall apply thereto, <i>mutatis mutandis</i> .

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

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

### **Article B: Representative Action**

Representative action 207. (a) In this Article, “connection” – ownership, possession, purchase or sale.  
(b) A person having a cause of action under any law as a result of a connection to a security may, with the consent of the court as provided in section 210, sue on behalf of a group all of whose members have a cause of action deriving from the same connection to a security.

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

Funding Authority by 209. (a) A plaintiff seeking to sue in a representative action deriving from a connection to a security of a public company may request the Securities Authority to bear his costs.  
(b) Where the Securities Authority is convinced that the action is in the interests of the public and that there is a reasonable chance that the court will approve it as a representative action, the Authority may bear the plaintiff’s costs, in such sum and on such conditions as it shall prescribe.  
(c) Where the court rules in favor of the plaintiff, it may order in its judgment indemnification of the Securities Authority for its costs.

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

- (1) the bases of the cause of action are substantiated and where one such basis is damage, it is sufficient if the plaintiff shows *prima facie* injury to himself;
  - (2) substantive questions of fact and law common to all of the members of the group are to be settled in the action;
  - (3) a representative action is the most appropriate method for settling the dispute in the circumstances of the case, taking into account, *inter alia*, the size of the group;
  - (4) the interests of all of the members of the group will be represented and managed in an appropriate manner by the plaintiff; the defendant may not appeal or seek leave to appeal against a decision in this regard.
- (b) The court shall not approve a representative action if it finds that it was submitted with lack of good faith.

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

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

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

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

		(b)	Where the court is requested to approve an arrangement or compromise, it shall order the publication of a notice setting out the details of the arrangement or compromise; members of the group may file an objection to the approval of the arrangement or compromise within the time set down for such by the court.
Advocate's fees	214.		The court shall determine the fees of the advocate representing the group; the advocate shall not receive fees greater than the sum determined by the court.
Remuneration to plaintiff	215.		Where the court rules in favor of the plaintiff, it may order the payment of remuneration to him for his efforts in filing and proving the claim.
Compensation and costs	216.	(a)	Where the court adjudicates on monetary compensation in a class action, it may order that in addition to such compensation, costs will be paid in a fixed sum to each of the members of the group for their efforts in proving their right to relief.
		(b)	Where the court adjudicates an inclusive sum as monetary compensation in the action, it may give instructions regarding the use of the balance that would remain if any of the members of the group had not made any effort to prove their right to relief.
Other relief	217.		Subject to the provisions of section 212, the provisions of this Article shall not preclude any other legal relief to the defendant.
Regulations.	218.	(a)	The Minister shall prescribe rules of procedure regarding filing and conducting a representative action, and regarding court fees.
		(b)	The Minister may make provisions regarding methods of proving injury to each of the members of the group.

## **Part VI: Office Holders in a Company**

### **Chapter 1: Directors' Appointment and Term of Office**

#### **Article A: Term of Office of Director and Termination thereof**

Number of directors	219.	(a) The number of directors shall be prescribed in the articles of association; however it shall be sufficient for the articles of association to prescribe the maximum and minimum number of directors.  (b) At least one director shall hold office in a private company.  (c) At least two outside directors as provided in section 239 shall hold office in a public company.
Initial directors	220.	The initial directors of a company shall be the directors appointed by the founders of the company who have made the declaration provided in section 8; the initial directors shall cease to hold office at the end of the first annual general meeting, unless otherwise provided in the articles of association.
Commencement of office	221.	A director shall commence his term of office on the date of his appointment or on a later date if the articles of association have a provision permitting an appointment that is to commence in the future.
Period of office	222.	Directors appointed by the general meeting shall cease to hold office at the end of the first annual general meeting held after the date of their appointment, unless otherwise provided in the articles of association.
Reporting changes	of 223.	A private company shall report to the Companies Registrar the appointment of a director and of a director's ceasing to hold office within fourteen days of the date of appointment or of the date of cessation of holding office.
Directors register	224.	The company shall keep a register at its registered office of the members of the board of directors and of their substitutes, if substitutes are appointed for them under the provisions of section 237. Such register shall be available for inspection by any person.

**Article B: Restrictions on Appointment and Termination of Office**

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

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

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

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

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

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

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

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

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

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<sup>7</sup> *Sefer Hachukim*, 5737, p. 226; LSI Special Volume – The Penal Law.

- Termination of office 228.
- (a) Without derogating from the provisions of any law, the office of a director shall terminate before the end of the period of office for which he was appointed, in any of the following instances:
- ) he resigns or is dismissed from office as provided in sections 229 to 231;
  - ) he is convicted of an offense referred to in section 232;
  - ) in accordance with a court ruling as provided in section 233;
  - ) he has been declared bankrupt, or if a corporation, it has been resolved to liquidate the corporation voluntarily, or a winding up order has been issued in respect thereof.
- (b) A company may not stipulate conditions in its articles of association regarding the provisions of this section, but it may add additional causes for termination of the office of a director.

- Resignation of director 229.
- (a) A director may resign from office by delivery of a notice to the board of directors, to the chairman of the board of directors or to the company, and the resignation shall take effect on the date of delivery of the notice, unless a later date is set out in the notice.
- (b) A director shall give reasons for his resignation.
- (c) Where notice of the resignation of a director is received, the fact of the resignation and the reasons given therefor shall be presented to the board of directors and shall be recorded in the minutes of the first meeting convened after the resignation.

- Dismissal of director 230.
- (a) The general meeting may, at any time, dismiss a director unless otherwise provided in the articles of association, provided that the director shall be given the opportunity to put his case before the general meeting.
- (b) Where the articles of association contain a provision whereby a director may be appointed to hold office otherwise than by the general meeting, such person may only be removed from office by the person entitled to appoint him and in the manner prescribed for such in the articles of association, unless otherwise provided in the articles of association.

Obligation to cease holding office	231.	Where a company becomes aware that a director was appointed contrary to the provisions of section 226 or 227(a), or that a director committed a breach of the provisions of section 225, 227(b) or 232, the board of directors shall resolve, at its first meeting convened after becoming so aware, to terminate the office of such director, if it finds that the said conditions are fulfilled, and such office shall expire on the date of such resolution.
Termination of office due to offense	232.	Where a director has been convicted by a final judgment of an offense provided in section 226(a)(1) or (3), he shall so inform the company and his office shall terminate on the date of giving of such notice, and in a public company, it shall not be possible to reappoint him to hold office as a director unless five years have passed as provided in section 226.
Disqualification pursuant to court ruling	233.	<p>The court may, on the application of the company, a director, shareholder or creditor, order the termination of the office of a director if it is finds that one of the following prevails:</p> <ol style="list-style-type: none"> <li>(1) the director is permanently unable to fulfil his function;</li> <li>(2) in respect of a director acting in a public company – during the term of his office he was found guilty in a court outside Israel of offenses referred to in section 226(a)(2).</li> </ol>
Fiduciary duty	234.	A director who commits a breach of the duty of disclosure provided in sections 225, 227(b) or 232 shall be considered as having committed a breach of his fiduciary duty to the company.

### **Article C: Corporation as a Director**

Corporation as a director	235.	A corporation shall be eligible to serve as director, unless otherwise provided in the articles of association.
Individual acting on behalf of corporation	236.	<ol style="list-style-type: none"> <li>(a) A corporation serving as director shall appoint an individual who is eligible to be appointed as director of the company to act on its behalf and the corporation may replace such person, subject to its duties towards the company.</li> <li>(b) The name of the individual serving on behalf of the corporation shall be entered in the register of directors as the person serving on behalf of the corporation.</li> </ol>

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

#### **Article D: Substitute Director**

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| Substitute director | 237. | <ul style="list-style-type: none"><li>(a) It shall not be possible to appoint a substitute for a director (hereinafter “a substitute director”) unless the articles of association include a provision allowing such appointment.</li><li>(b) Neither a person who is not eligible to be appointed as a director, nor a person who is serving as director or substitute director shall be appointed or shall serve as a substitute director.</li></ul> |
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| Liability of substitute director | 238. | <ul style="list-style-type: none"><li>(a) The legal status of a substitute director shall be the same as that of a director.</li><li>(b) The appointment of an substitute director shall not terminate the liability of the director whom he replaces, which shall continue to apply, taking into account the circumstances of the case, including the circumstances of appointment of the substitute director and the duration of his office.</li></ul> |
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#### **Article E: Outside Director**

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| Duty to appoint | 239. | <ul style="list-style-type: none"><li>(a) Two outside directors shall hold office in a public company.</li><li>(b) The outside directors shall be appointed by the general meeting, provided that one of the following conditions prevails:<ul style="list-style-type: none"><li>) in counting the votes of the majority at the general meeting at least one-third of all the votes of shareholders who are not holders of control in the company or representatives of such persons, present at the time of voting are included; in counting the total votes of such shareholders, abstentions shall not be taken into account;</li><li>) the total number of votes opposing the appointment from among the shareholders referred to in paragraph (1) shall be no greater than one percent of the total voting rights in the company.</li></ul></li><li>(c) The Minister may prescribe different rates from the rate provided in subsection (b)(2).</li></ul> |
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- (d) In a company in which, on the date of appointment of an outside director, all members of the board of directors of the company are of one gender, the outside director appointed shall be of the other gender.
- Qualification for appointment 240. (a) An individual who is a resident of Israel and who is qualified for appointment as a director may be appointed as an outside director.
- (b) An individual who himself, or whose relative, partner, employer or a corporation in which he has control, has a connection with the company or with a holder of control of the company on the date of appointment, or to another body corporate shall not be appointed as an outside director; for purposes of this subsection:
- “connection” – the existence of labor relations, business or professional relations generally or control, as well as acting as an office holder, other than as a director for a period of no more than three months during which the company first offered its shares to the public;
- “other body corporate” – a body corporate in which the holder of control is, on the date of appointment or during the two years preceding the date of appointment, the company or a holder of control therein.
- (c) An individual shall not be appointed as an outside director if any other position or business of his might give rise to a conflict of interest with his role as director, or if these might harm his ability to act as a director.
- (d) A director of a company shall not be appointed as an outside director of another company if at such time, a director of the other company is acting as an outside director of the first company.
- (e) An individual shall not be appointed as an outside director if he is a member of the Securities Authority or an employee thereof or if he is a member of the board of directors of a stock exchange in Israel or an employee thereof.
- Declaration 241. (a) A general meeting at which the appointment of an outside director is on the agenda may only be convened if the nominee has declared that he fulfils the conditions required for being appointed as an outside director (hereinafter “the declaration”).
- (b) The declaration shall be kept at the registered office of the company and shall be open for inspection by any person.

- (c) The Minister may lay down provisions regarding the declaration.
- Initial outside directors 242. Initial outside directors shall be appointed by general meeting to be convened no later than three months from the date on which the company became a public company.
- Participation in committees 243. At least one outside director shall serve on every committee authorized to exercise any of the powers of the board of directors.
- Remuneration and refund of expenses 244. (a) An outside director is entitled to remuneration and to a refund of expenses as may be prescribed by the Minister upon consultation with the Securities Authority.
- (b) An outside director shall not receive, in addition to the remuneration to which he is entitled and refund of expenses, any other consideration, direct or indirect, for acting as a director of the company; for the purposes of this subsection, consideration shall not include the grant of an exemption, an undertaking to indemnify, indemnification or insurance pursuant to the provisions of Article C of Chapter 3.
- Duration of office 245. (a) The term of office of an outside director shall be three years, and the company may, notwithstanding the provisions of section 240, appoint him for one further term of three years.
- (b) An outside director shall only be dismissed in accordance with the provisions of sections 233, 246 and 247.
- Termination of office by general meeting 246. (a) Where the board of directors becomes aware that there is a suspicion that an outside director has ceased to fulfil one of the conditions required under this Law for his appointment as an outside director, or that there is a suspicion that the director has committed a breach of a fiduciary duty to the company, the board of directors shall discuss such matter at the first meeting to be convened after becoming so aware.
- (b) Where the board of directors finds that the outside director has ceased to fulfill one of the conditions required under this Law for his appointment or that he has committed a breach of his fiduciary duty, the board of directors shall convene a special general meeting on the agenda of which shall be the termination of office of the outside director.

- (c) The reasons for the finding of the board of directors shall be presented to the special general meeting and the outside director shall be given a reasonable opportunity to express his position; the resolution of the special general meeting regarding the termination of the office of the outside director shall be passed by the same majority as is required for his appointment.

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

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

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

## **Chapter 2: Appointment and Dismissal of Other Office Holders**

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

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

## **Chapter 3: Duties of Office Holders**

### **Article A: Duty of Care**

- Duty of care           252.   (a)   An office holder owes a duty of care to the company as provided in sections 35 and 36 of the Civil Wrongs Ordinance [New Version]<sup>8</sup>.
- (b)   The provisions of subsection (a) shall not preclude a duty of care being owed by an office holder to another person.

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

**Article B: Fiduciary duty**

- Fiduciary duty       254.   (a)   An office holder shall owe a fiduciary duty to the company, shall act in good faith and for the benefit of the company, including the following:
- ) he shall refrain from any act involving a conflict of interest between the fulfillment of his role in the company and the fulfillment of any other role or his own personal affairs;
  - ) he shall refrain from any act involving competition with the business of the company;
  - ) he shall refrain from taking advantage of a business opportunity of the company with the aim of obtaining a benefit for himself or for any other person;
  - ) he shall disclose all information to the company and shall provide it with all documents relating to its interest that reach him by virtue of his position with the company.
- (b)   The provisions of subsection (a) shall not preclude a fiduciary duty being owed by an office holder to any other person.

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

- Approval of acts 255. (a) A company may approve any of the acts enumerated in section 254(a) provided that all the following conditions apply:
- ) the office holder acted in good faith and neither the act nor the approval of the act prejudices the good of the company;
  - ) the office holder disclosed the essence of his personal interest in the act, including any substantial fact or document, a reasonable time before the date for discussion of the approval.
- (b) The company's approval for acts that are not substantial acts shall be given in accordance with the provisions of Chapter 5 regarding the approval of transactions, and the company's approval for substantial acts shall be given in accordance with the provisions of Chapter 5 regarding the approval of extraordinary transactions; the provisions of Chapter 5 regarding the validity of transactions shall apply, *mutatis mutandis*, to the validity of acts.
- Remedies 256. (a) The rules applying to breach of contract shall apply, *mutatis mutandis*, to the breach of the fiduciary duty of an office holder.
- (b) Without derogating from the generality of the provisions of subsection (a), an office holder in breach of a fiduciary duty towards the company shall be considered as a person in breach of his contract with the company.
- (c) A company may revoke an act done by an office holder on behalf of the company towards another person or may claim from such person the compensation owed to it from the office holder, even without canceling the act, if such person knew of the breach of the office holder's fiduciary duty, and knew or ought to have known of the lack of approval of the act.
- (d) There is a presumption that a person was not required to have known about the lack of approval of an act as necessitated under this Chapter if such person received confirmation from the board of directors that all consents required for the act were received.
- Disclosure of defects 257. Where a director becomes aware of a matter of the company in which an apparent breach of a law or harm to proper business procedures has been discovered, he shall immediately act to convene a meeting of the board of directors as provided in section 98(b)(2).

## Article C: Exemption, Indemnification and Insurance

- Authority of company to grant exemption, indemnification and insurance 258. (a) A company may not exempt an office holder from liability for breach of his fiduciary duty towards it.
- (b) A company may exempt an office holder from liability for breach of his duty of care towards it only in accordance with the provisions of this chapter.
- (c) A company may indemnify or insure the liability of an office holder only in accordance with the provisions of this Chapter.
- Authorization to grant exemption 259. A company may exempt in advance an office holder from liability in whole or in part, for damage flowing from breach of his duty of care towards it, if a provision to that effect is laid down in the articles of association.
- Permission regarding indemnity 260. (a) A company may, if one of the provisions specified in subsection (b) is laid down in the articles of association, indemnify an office holder for debts or expenses as specified in paragraphs (1) and (2) imposed upon such office holder due to an act done by virtue of his being an office holder of the company:
- ) a financial liability imposed upon him for the benefit of another person pursuant to a judgment, including a judgment given in the matter of a compromise or an arbitral award approved by the court;
  - ) reasonable litigation expenses, including attorney's fees, incurred by the office holder or charged to him by the court, in a proceeding filed against him by or on behalf of the company or by any other person, or for a criminal charge from which he was acquitted or for a criminal charge in which he was found guilty of an offense not requiring proof of criminal intent.
- (b) A provision in the articles of association regarding indemnity may be one of the following:

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

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

Liability  
insurance

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

- (1) breach of duty of care towards the company or towards any other person;
- (2) breach of fiduciary duty towards the company, provided that the office holder acted in good faith and had reasonable foundation for presuming that the act would not harm the good of the company;
- (3) a financial liability imposed upon him for the benefit of another person.

Alteration  
articles  
of  
association

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

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

Invalid provisions 263. Neither a provision of the articles of association permitting the company to enter into a contract to insure the liability of an office holder, nor a provision in the articles of association or a resolution of the board of directors permitting the indemnification of an office holder, nor a provision in the articles of association exempting an office holder from liability towards the company shall be valid, where such insurance, indemnification or exemption relates to one of the following:

- (1) breach of fiduciary duty, other than as provided in section 261(3);
- (2) breach of a duty of care committed intentionally or recklessly;
- (3) an act done with intent to make unlawful personal profit;
- (4) a fine or forfeit imposed upon such office holder.

No contracting out 264. (a) A provision in the articles of association or in a contract or stipulated in any other manner purporting to contract out of the provisions of this article, directly or indirectly, shall be invalid.

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

#### **Chapter 4: Rights of Director**

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

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

- (c) The court may, on the application of an outside director, rule that the right set out in subsection (a) shall also apply to the documents and records of any related company, if it is convinced that the information requested is important for the performance of his role as an outside director.
- Right to employ advisers 266. (a) For the purpose of performing his functions, a director may, in special cases, receive professional advice at the company's expense, if coverage of the expense is approved by the board of directors of the company or by the court.
- (b) The court, when ruling on an application as provided in subsection (a), shall consider, *inter alia*, whether the company's specialists are not providing the assistance required by the director for the purpose of performing his function, and the reasonableness of the sum requested, taking into account the reason for seeking advice and the financial status of the company.
- Right to sue 267. (a) Where a director has reasonable cause to presume that an act is about to be performed by an office holder which might constitute a breach of the office holder's duty, he may, after acting as provided in section 257 if the circumstances so permit, apply to the court with a request that it enforce the duty or prevent the act; the court may grant an order preventing the act or any other remedy that it may see fit in the circumstances of the case.
- (b) Unless otherwise ruled by the court, the company shall bear all expenses incurred by a director who applied to the court pursuant to the provisions of this section, including court fees and advocates' fees, on the date determined by the court.

## Chapter 5: Transactions with Interested Parties

Definition of holder of control	268.	In this Chapter, “holder of control” – a holder of control as defined in section 1, including a person who holds twenty-five percent or more of the voting rights in the general meeting of the company if there is no other person who holds more than fifty percent of the voting rights in the company; for the purpose of a holding, two or more persons holding voting rights in a company each of which has a personal interest in the approval of the transaction being brought for approval of the company shall be considered to be joint holders.
Duty of disclosure	269.	<p>(a) An office holder in a company or a holder of control in a public company who is aware that he has a personal interest in an existing or proposed transaction of the company shall disclose the nature of his personal interest to the company without delay, including any substantial fact or document, no later than the meeting of the board of directors in which the transaction is first discussed.</p> <p>(b) The provisions of subsection (a) shall not apply when the personal interest stems only from the existence of the personal interest of a relative in a regular transaction.</p> <p>(c) An interested party, as defined in section 270(5), who is aware that he has a personal interest in a substantial private placement shall disclose the substance of his personal interest to the public company without delay, including any substantial fact or document.</p>
Transactions requiring special approvals	270.	<p>The following transactions of a company require approval as set out in this Chapter, provided that the transaction does not harm the best interests of the company:</p> <p>(1) a transaction by a company with an office holder thereof, and a transaction of a company with another person in which an office holder in the company has a personal interest; however, an office holder of a parent company as well as a wholly owned and controlled subsidiary thereof shall not be considered as having a personal interest in a transaction between the parent company and the subsidiary solely for the reason of his being an office holder of both of them;</p> <p>(2) the grant of an exemption, insurance, undertaking to indemnify or indemnification under a permit to indemnify to an office holder who is not a director;</p>

- (3) conclusion of a contract by a company with a director thereof as to the terms of his office, including the grant of an exemption, insurance, undertaking to indemnify or indemnification under a permit to indemnify, and the conclusion of a contract by a company with a director thereof as to the terms of his employment in other positions (hereinafter “terms of office and of employment”);
- (4) an extraordinary transaction of a public company with a holder of control therein, or an extraordinary transaction of a public company with another person in which the holder of control has a personal interest, including a private placement that is an extraordinary transaction; as well as the conclusion of a contract by a public company with a holder of control of it, if such person is also an office holder thereof – as to the conditions of his office and employment, and if he is an employee of the company but not an office holder thereof – as to his employment by the company;
- (5) a private placement as a result of which the holdings of a substantial shareholder in securities of the company will increase or as a result of which a person will become a substantial shareholder after the issue (hereinafter “an interested party”); for the purpose of holding, securities which are convertible into or realizable as shares held by such person or issued to him pursuant to the private placement, shall be considered as having been converted or realized.

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

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

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

- Conditions of office and employment 273. A transaction by a company to which the provisions of section 270(3) apply shall require the approval of the board of directors followed by the approval of the general meeting, and in a public company, the transaction shall require the approval of the audit committee followed by the approval of the board of directors.
- Private placement 274. A substantial private placement shall require the approval of the board of directors followed by the approval of the general meeting.
- Transaction with holder of control 275. (a) A transaction to which the provisions of section 270(4) apply shall require the approvals by those mentioned below, in the following order:
- the audit committee;
- the board of directors;
- the general meeting, provided that one of the following applies:
- in a count of votes, the majority in the general meeting includes at least one third of all of the votes of those shareholders that do not have a personal interest in the approval of the transaction, who are present at the meeting; in a count of all of the votes of such shareholders, abstentions shall not be taken into account;
- the total of opposition votes amongst the shareholders referred to in subparagraph (a) above shall not be greater than one percent of all the voting rights in the company.
- (b) The Minister may determine rates other than those prescribed in subsection (a)(3)(b).
- Disclosure of personal interest 276. A shareholder participating in a vote under section 275 shall notify the company prior to the vote in the meeting, or, if the vote is by way of voting papers, on the voting paper whether or not he has a personal interest in the approval of the transaction; where a shareholder does not so notify, he shall not vote and his vote shall not be counted.

Cumulative approvals	277.	Where the conditions prescribed for more than one of the alternatives in section 270 apply in respect of a transaction, the transaction shall require approvals in accordance with the provisions applying to each alternative.
Abstention of directors	278.	<p>(a) A director who has a personal interest in the approval of a transaction, other than a transaction as referred to in section 271, that is brought before the audit committee or the board of directors for approval, shall not be present during the deliberations and shall not take part in the voting of the audit committee or of the board of directors.</p> <p>(b) Notwithstanding the provisions of subsection (a), a director may be present at a deliberation of the audit committee and may take part in the voting if the majority of the members of the audit committee have a personal interest in the approval of the transaction; likewise, a director may be present at the deliberations of the board of directors and may take part in the voting if the majority of the directors of the company have a personal interest in the approval of the transaction.</p> <p>(c) Where the majority of the directors on the board of directors of a company have a personal interest in the approval of a transaction as aforesaid in subsection (a), the transaction shall also require the approval of the general meeting.</p>
Audit committee of a public company	279.	The audit committee of a public company shall not be permitted to grant an approval required under this Chapter, unless, at the time of the grant of the approval, two outside directors are sitting on the committee, and at least one of those was present at the deliberations in which the committee resolved to grant the approval.
Invalid transaction.	280.	(a) A transaction of a company with an office holder thereof or an extraordinary transaction by a public company with a holder of control thereof shall not be valid in respect of the company or the office holder or holder of control if the transaction is not approved in accordance with the provisions of this Chapter or if a substantial defect has occurred in the approval process, or if the transaction was effected in a way that deviated substantially from the terms of the approval.

		(b)	A transaction referred to in subsection (a) shall likewise not be valid in respect of any other person if such person knew of the personal interest of the office holder or of the holder of control in the approval of the transaction, and knew or ought to have known of the lack of approval of such transaction as required under this Chapter.
Revocation of transaction	281.		A company may revoke a transaction with another person requiring approval as provided in this Chapter, other than a transaction as provided in section 271, and it may claim compensation from such person for damage caused to it even without revoking the transaction, if such person knew of the personal interest of an office holder of the company in the approval of the transaction or of the personal interest of the holder of control of the public company in the approval of the transaction, and knew or ought to have known of the lack of approval of the transaction as required by this Chapter.
Approval by board of directors	282.		It shall be presumed that a person ought not to have known of the lack of approval of a transaction as required under this Chapter where such person has received the confirmation of the board of directors to the fact that all of the approvals required for the transaction have been obtained.
Remedies	283.	(a)	An office holder who fails to disclose a personal interest as provided in section 269 shall be considered to be in breach of fiduciary duty; a holder of control of a public company who does not disclose his personal interest as provided in that section shall be considered to have been in breach of duty to act fairly.
		(b)	Where an interested party is in breach of the duty of disclosure as provided in section 269 or where a shareholder fails to disclose his personal interest as provided in section 276, the company may claim compensation from such person for the damage caused to it due to the failure to disclose.
Regulations	284.		The Minister, upon consultation with the Securities Authority, may determine that the provisions of this Chapter shall not apply to various types of transactions.

## **Part VII: Capital of the Company**

### **Chapter 1: Securities and Transactions Therein**

### **Article A: Freedom to Diversify**

- Freedom to diversify 285. A company may have shares, debentures or other securities, each of which may have different rights attached.

### **Article B: Registered Share Capital**

- Increasing registered share capital 286. The general meeting may increase the registered share capital of a company in classes of shares, as it may determine.
- Cancellation of registered share capital 287. The general meeting may cancel unallotted registered share capital, provided that the company is under no obligation, including a conditional obligation, to allot such shares.

### **Article C: Issue of Securities**

- Authority to issue shares and convertible securities 288. The board of directors may issue shares and other securities, convertible into or realizable as shares, up to the limit of the company's registered share capital; for this purpose, convertible securities or securities realizable as shares shall be considered to have been converted or realized on the date of issue.
- Power to issue debentures 289. (a) The board of directors may resolve to issue a series of debentures within the scope of its power to borrow on behalf of the company, and within the bounds of such power.
- (b) The provisions of subsection (a) shall not negate the power of the general manager, or a person authorized by him for such purpose, from borrowing on behalf of the company, from issuing single debentures, promissory notes or bills of exchange, within the bounds of his power to do so.
- Entitlement to participate in future allotments 290. (a) In a private company, the issued capital of which contains one class of shares, shares shall be offered to each shareholder in accordance with the proportion of each shareholder's holding of the issued share capital; the board of directors may offer another person the shares that a shareholder refused to purchase or did not accept a tender offer before the final date fixed for such in the offer, unless otherwise prescribed in the articles of association.

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

- Allotment other than in return for cash 291. A company shall not allot a share the consideration for which, in whole or in part, is not paid up in cash, unless the consideration for the share is specified in a written document.
- Reporting allotments 292. A private company must, within fourteen days of an allotment of shares, provide the Registrar with the following documents:
- (1) a report, in the form prescribed by the Minister, specifying the details of the allotment;
  - (2) in allotments to which the provisions of section 291 apply – a copy of the document as referred to in that section.

#### **Article D: Transfer of Securities**

- Transferability 293. Every security shall be presumed to be transferable, in accordance with the provisions of this Law.
- Limitation on transferability 294. A company may lay down provisions in its articles of association limiting the transferability of shares, under conditions prescribed in the articles of association.
- Joint owners 295. A part of a share may not be transferred, but a single share may have several joint owners, each of which may transfer his or her rights, unless such right is restricted in the articles of association.
- Bearer securities 296. (a) A bearer security is a security the full consideration for which has been paid to the company, and in respect of which a warrant to that effect that has been issued.
- (b) Holding a warrant shall be prima facie evidence of ownership thereof.

Negotiability	297.	A bearer security is a negotiable instrument, the transfer of which is effected by delivery of the warrant to the transferee.
Purchase on stock exchange	298.	The provisions of section 34 of the Sale Law, 5728-1968 <sup>9</sup> , shall apply to a person purchasing a security in the course of trade on a stock exchange, and such person shall be considered to be a purchaser from one who deals in the sale of assets of that kind and the sale shall be considered to have taken place in the ordinary course of business of such person.
Alteration in registration	299.	<p>A company shall alter the registration of ownership of shares in the register of shareholders as provided in section 130(a)(1), in each of the following circumstances:</p> <ol style="list-style-type: none"> <li>(1) a deed of transfer of the share was delivered to the company signed by the transferor and the transferee, and any requirements of the articles of association have been complied with;</li> <li>(2) a court order requiring the amendment of the register was delivered to the company;</li> <li>(3) it has been proven to the company that the legal conditions for assigning the right have been fulfilled;</li> <li>(4) any other condition, sufficient, under the terms of the articles of association in its articles of association for registration of an alteration in the register of shareholders has been fulfilled.</li> </ol>
Forced sale	300.	(a) A private company may provide in its articles of association that a person entitled to by law to shares in the company, including an executor of a will, administrator of an estate, liquidator or trustee in bankruptcy, shall be required to offer for sale the shares to which such person is entitled to the company or the other shareholders, in consideration for their fair value, as agreed between the parties, and in the absence of such agreement, as a court may determine on the application of the company, or on the application of the other shareholders, all the above being subject to the provisions of the articles of association and to the provisions of this Law.

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<sup>9</sup> *Sefer Hachukim*, 5728, p. 98; LSI Vol. 22, p. 107.

- (b) Where the fair value of the shares has not been agreed upon and where no application has been submitted to the court, the shares shall be registered in the name of the person entitled to them, at the end of ninety days following the date of offer made by the person entitled to the shares.

## **Chapter 2: Preservation and Distribution of Capital**

### **Article A: Permitted Distribution**

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|------------------------|------|-----|---|
| No contracting out     | 301. | (a) | A company may only effect a distribution in accordance with the provisions of this Chapter; however, a company may undertake in its articles of association or in a contract not to effect distribution under restrictions additional to the provisions of this Chapter,.   |
|                        |      | (b) | A distribution in contravention of the provisions of this Chapter shall be a prohibited distribution.   |
| Permitted distribution | 302. | (a) | A company may effect a distribution of its profits (hereinafter “the profit criterion”), provided that there is no reasonable suspicion that such distribution might deprive the company of its ability to pay its existing and anticipated debts when the time comes for so paying (hereinafter “the ability to pay criterion”).   |
|                        |      | (b) | In this section: <ul style="list-style-type: none"> <li>“profits” for the purpose of the profit criterion – the balance of surplus or the surplus, accumulated over the past two years, whichever is the greater, in accordance with the latest adjusted financial reports, audited or surveyed, prepared by the company, provided that the date in respect of which the reports were prepared is no earlier than six months prior to the date of distribution;</li> <li>“adjusted financial reports” – financial reports adjusted to the index, or financial reports which replace or will replace such reports, in accordance with accepted accounting procedures;</li> <li>“surplus” – sums included in a company’s equity originating from the net profit of the company, as determined according to accepted accounting practice, and other sums included in the equity under accepted accounting practice other than share capital or premiums that are to be considered surplus, as prescribed by the Minister.</li> </ul> |

- (c) The Minister may lay down provisions regarding presumptions as to the fulfillment by a company of the conditions of the ability to pay criterion, and exemptions or alleviations regarding adjustment of the financial reports.
- Distribution with consent of court      303.      (a)      The court may, on the application of a company, allow it to effect a distribution in respect of which the profit criterion is not fulfilled, provided that the court is convinced that there is no reasonable suspicion that such distribution might prevent the company from being able to pay its existing and anticipated debts when the time comes for such payment.
- (b)      A company shall notify its creditors of the submission of an application to the court as provided in subsection (a), in the manner prescribed by the Minister.
- (c)      A creditor may apply to the court and oppose the application of a company to permit it to effect a distribution.
- (d)      The court may, after having given the opposing creditors the opportunity to put their case, approve the company's application, in whole or in part, reject it or make the approval of it conditional.
- Allotment of shares at less than nominal value      304.      (a)      Where a company decides to allot shares with a nominal value for consideration of less than their nominal value, including bonus shares, it must convert part of its profits from share premiums or from any other source including its own equity set out in its latest financial reports into share capital, as defined in section 302(b), in the sum equal to the difference between the nominal value and the actual consideration.
- (b)      The court may, on the application of a company, permit it to effect an allotment of shares for consideration of less than the nominal value of the shares, other than in accordance with subsection (a), on such conditions as it may prescribe.
- Regulations      305.      The Minister may prescribe provisions for the implementation of this Chapter.

### **Article B: Dividend**

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| Right to dividend or to bonus shares | 306. | <p>(a) A shareholder shall have the right to receive a dividend, or bonus shares, if the company passes a resolution to that effect.</p> <p>(b) Where there are shares in the capital of the company with different nominal values, dividends or bonus shares shall be distributed relative to the nominal value of each share, unless otherwise provided in the articles of association.</p>   |
| Resolution on payment of dividend    | 307. | <p>The resolution of a company to pay a dividend shall be passed by the board of directors of the company; however, the company may prescribe in its articles of association that the resolution be passed in one of the following ways:</p> <p>(1) at the general meeting, having been brought before it upon the recommendation of the board of directors; the general meeting may accept the recommendation or reduce the sum, but may not increase it;</p> <p>(2) at the board of directors of the company, after the general meeting has determined the maximum amount of the distribution;</p> <p>(3) in such other manner as may be determined in the articles of association, provided that the board of directors is given a proper opportunity to determine that the distribution is not a prohibited distribution before it is effected.</p> |

### **Article C: Purchase**

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| Consequences of purchase             | 308. | Where a company purchases one of its own shares, the share shall not afford any rights (hereinafter “a dormant share”) for so long as the dormant share is owned by the company.   |
| Purchase by a controlled corporation | 309. | <p>(a) A subsidiary or other corporation in control of a parent company (in this section the “purchasing corporation”), may purchase shares of the parent company to the same extent as the parent company may effect distributions, provided that the board of directors of the subsidiary or the managers of the purchasing corporation have determined that if the purchase of the shares were to be effected by the parent company, it would be considered a permitted distribution.</p> <p>(b) Where a share in a parent company is purchased by a subsidiary or by a purchasing corporation, such share shall not afford any voting rights for so long as the share is owned by the subsidiary company or by the purchasing corporation.</p> |

- (c) Where a prohibited distribution is effected, restitution referred to in section 310 shall be effected to the subsidiary or to the purchasing corporation, and the provisions of section 311 shall apply, *mutatis mutandis*, to the directors of the subsidiary and the managers of the purchasing corporation; however, if the board of directors of the parent company resolves that the distribution is permitted, the liability shall fall on the directors of the parent company, as set out in section 311.
- (d) Notwithstanding the provisions of subsection (a), a purchase by a subsidiary company or by a purchasing corporation that is not wholly owned by the parent company shall be a distribution of the product of the purchase money and the rights in the capital of the subsidiary or in the capital of the purchasing corporation held by the parent company.

#### **Article D: Prohibited Distribution**

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| Consequences of prohibited distribution            | 310. | <ul style="list-style-type: none"> <li>(a) Where a company effects a prohibited distribution, the shareholder shall restore what he received to the company, unless the shareholder did not know and ought not to have known that the distribution effected was prohibited.</li> <li>(b) It is to be presumed that a shareholder in a public company who is not also a director, general manager or holder of control of the company at the time of the distribution, did not know or ought not to have known that the distribution effected by the company was a prohibited distribution.</li> </ul>  |
| Liability of directors for prohibited distribution | 311. | <p>Where a prohibited distribution is effected in a company, any person who is, at the date of the distribution, a director, shall be considered to have thereby committed a breach of his fiduciary duty to the company, unless he proves one of the following:</p> <ul style="list-style-type: none"> <li>(1) that he objected to the prohibited distribution and took all reasonable steps to prevent it;</li> <li>(2) that he reasonably and in good faith relied on information that, but for its being misleading, the distribution would have been permitted;</li> <li>(3) that in the circumstances of the case, he did not know nor ought to have known of the distribution.</li> </ul> |

#### **Article E: Redeemable Securities**

- Redeemable securities
312. (a) Notwithstanding the provisions of section 302, a company may include in its articles of association a provision permitting it to issue securities subject to redemption on such conditions as may be prescribed in such provisions (hereinafter “redeemable securities”).
- (b) Where a company issues redeemable securities, it may redeem them and the restrictions laid down in this Chapter shall not apply to such redemption.
- (c) Where a company has issued redeemable securities, it may attach to them the attributes of shares, including voting rights and the right to participate in profits.
- (d) Redeemable securities shall not be regarded as part of the company’s equity, whatever they are called, unless the right to redeem them is limited to the case of winding up of the company, after payment of all of the debts of the company to its creditors upon winding up; where the right to redeem shares is limited as aforesaid, the provisions of this Law shall apply for the purpose of distribution, notwithstanding the provisions of subsection (b).

- Transitional provision
313. Redeemable shares allotted under section 141 of the Companies Ordinance, as it was worded immediately prior to the commencement of this Law, shall be considered as part of the company’s capital, and it shall be possible to redeem them subject to the provisions of this Chapter, on the conditions and in the manner laid down in the articles of association.

## **Part VII: Acquisition of Companies**

### **Chapter 1: Merger**

- Approvals by a company
314. Merger shall require the approval of the board of directors and of the general meeting, in each of the merging companies, in accordance with the provisions of this Chapter.

- Merger that prejudices a company’s ability to pay its debts
315. (a) The board of directors of a merging company, in considering whether to approve the merger, shall deliberate and determine, taking into account the financial situation of the merging companies, whether in its opinion there is a reasonable suspicion that the surviving company will not be able to pay its debts to its creditors following the merger.

		(b)	Where the board of directors determines that there is a suspicion as referred to in subsection (a), it shall not approve the merger.
Merger proposal	316.		Where each of the boards of directors of the merging companies has approved the merger, they shall jointly draw up a proposal for the approval of the merger (hereinafter “the merger proposal”), and shall sign it.
Notice to the Registrar of Companies	317.	(a)	A merging company shall forward the merger proposal to the Registrar of Companies within three days of the date of convening of the general meeting.
		(b)	A merging company shall notify the Registrar of Companies of the resolution of the general meeting, within three days of the date of passing of such resolution, shall inform the Registrar of the giving of notice to creditors under section 318, and shall provide him with a copy of any court ruling under sections 319 or 321, within three (3) days from the date of such ruling.
Notice to creditors	318.	(a)	A merging company shall send its merger proposal to the secured creditors of the company no later than three days after the date of submitting of the merger proposal to the Registrar of Companies.
		(b)	A merging company shall notify its unsecured creditors of the merger proposal and of the contents thereof as shall be prescribed by the Minister.
Objection by creditors	319.		The court may, on the application of a creditor of a merging company, order the delay or prevention of the merger if it finds that there is a reasonable suspicion that, following the merger, the surviving company will not be able to pay the debts of the merging company, and it may make orders ensuring the rights of the creditors.
Approval of merger	320.	(a)	Merger shall require the approval of the general meeting of each of the merging companies.
		(b)	Where shares in the absorbed company are divided into classes, the merger shall also require the approval of class meetings of the absorbed company.

- (c) In voting at the general meeting of a merging company the shares in which are held by the other merging company or by a person holding twenty-five percent or more of any kind of means of control in the other merging company, the merger shall not be approved if a majority of the shareholders present at the vote who are not either part of the other merging company, the person so holding or anyone acting on behalf of either of these, including relatives or corporations under their control, are opposed to it.
- (d) Where a person holds twenty-five percent or more of any kind of means of control in a number of merging companies, the merger proposal shall require approval in accordance with the provisions of subsection (c) in each of the said merging companies.
- (e) Shareholders taking part in the vote shall notify the company prior to the vote, or, if the vote is by way of voting paper, on the voting paper, whether their shares are held by the other merging company or by a person set out in subsection (c), or not so held; a shareholder who fails to notify as aforesaid, shall not vote and his vote shall not be counted.
- (f) The provisions of section 275(a)(3) shall not apply to a merger proposal requiring approval as provided in subsection (c).

Confirmation by  
court

- 321. (a) Where the general meeting of a merging company approves a merger proposal under section 320(a), the court may, on the application of the shareholders holding at least twenty-five percent of all the voting rights in the company, rule that the company has approved the merger even if the merger was not approved by the entire general meeting of the merging company under section 320(b) or even if the merger proposal did not gain the majority required in the general meeting of the merging company under section 320(c).
- (b) The court shall not confirm an application to approve a merger unless it is convinced that the merger proposal is fair and reasonable, taking into account the estimation of the value of the merging companies, and the consideration offered to the shareholders.

- Restrictive trade practices 322. Where a company receives a notice from the Controller of Restrictive Business Practices, as defined in the Restrictive Trade Practices Law, 5748-1988<sup>10</sup>, the company shall notify the Registrar, within three days of the date of receipt of such notice, whether the notice may delay the effecting of the merger, prevent it or remove such delay or prevention; where notice has been received by the Registrar of Companies of a prevention or delay, the merger shall not be effected so long as such prevention or delay has not been removed.
- Consequences of merger 323. Where the Registrar of Companies has received all the approvals required under this Chapter for merger from each of the merging companies, and seventy days have passed since the date on which the merger proposals were produced to the Registrar of Companies, the merger shall be effected as follows:
- (1) all the assets and liabilities of the absorbed company, including conditional, future, known and unknown obligations, shall be transferred to and vested in the surviving company;
  - (2) the surviving company shall be regarded as the absorbed company in respect of any legal proceedings, including execution proceedings;
  - (3) the Registrar shall transfer the register of charges, as defined in section 181 of the Companies Ordinance, of the absorbed company, to the register of charges of the surviving company;
  - (4) the absorbed company shall be liquidated and the Registrar shall strike it from the Register;
  - (5) the Registrar shall provide the surviving company with a certificate evidencing the merger and shall register the fact of the merger in the records of the surviving company.
- Freedom to impose conditions 324. The provisions of this Chapter shall not preclude a company from undertaking by contract or undertaking in its articles of association to refrain from the effecting mergers or making the effecting of mergers conditional.

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<sup>10</sup> *Sefer Hachukim*, 5748, p. 128; LSI vol. 42, p. 135.

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| Floating charge in merging company        | 325. | A floating charge over all or some of the assets of one merging company imposing a limitation on the right of the company to create charges shall not have preference over a charge created in the other merging company prior to the merger.  |
| Regulations regarding merger              | 326. | The Minister may prescribe provisions for implementing this Chapter, including provisions in respect of details to be included in the merger proposal and regarding the additional rights in respect of information to be provided to creditors or to classes of creditors, and in respect of the registration of transactions stemming from the merger; regarding a public merging company, such provisions shall be prescribed after consultation with the Securities Authority.   |
| Transitional provisions concerning merger | 327. | <p>(a) A company that was incorporated prior to the commencement of this Law shall be deemed to have included a provision in its articles of association to the effect that the approval of a merger requires a majority of three quarters of the persons present and voting at the general meeting of the company, and the provisions of section 20 shall apply.</p> <p>(b) Where floating charges have been imposed, at least one of which was created prior to the commencement of this Law, over the assets of a number of merging companies, such that after the merger it will not be possible to distinguish between the assets subject to each floating charge, the floating charges shall crystallize upon the merger, unless the consent of the creditors whose rights are secured by such charges is obtained for the amendment of the charges in such a way as to create a distinction between the assets subject to each charge, or a division of the consideration from realization of the assets subject to such charges.</p> |

## **Chapter 2: Special Tender Offer**

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| Purchase of control block or of control | 328. | <p>(a) In a public company, no purchase shall be effected as a result of which a person shall become a holder of a control block if there is no such holder in the company; likewise no purchase shall be effected as a result of which the purchaser's holdings shall increase above forty-five percent of the voting rights in the company if there is no other person holding more than one-half of the voting rights in the company, other than by way of a tender offer in accordance with the provisions of this Chapter (hereinafter "a special tender offer").</p> |
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- (b) The provisions of subsection (a) shall not apply to the purchase of shares under a private placement.
- (c) The provisions of this Chapter shall apply to a special tender offer, in addition to the provisions of any law regarding tender offers that are not consistent with the provisions of this Chapter.

Opinion of board of directors      329.      Where a special tender offer has been made, the board of directors of the target company shall give its opinion to offerees regarding the advisability of the special tender offer, or shall refrain from giving its opinion on the advisability of the special tender offer, if it is unable to do so, provided that it reports the reasons for its not so doing; the board of directors shall disclose all personal interests of each of the directors in or stemming from the tender offer.

Duties of office holders      330.      (a)      An office holder in a target company who does an act by virtue of his office, other than acts referred to in subsection (b), the purpose of which is to forestall an existing or anticipated special tender offer, or to harm the chances of its being accepted, shall be liable to the offeror and the offerees for any damage resulting from his acts, unless he acted in good faith and had reasonable grounds for presuming that the act done by him was for the good of the company.

(b)      An office holder may negotiate with an offeror for the improvement of the conditions of his offer, and may negotiate with others in order to make a counter-offer.

Consent of shareholders      331.      (a)      A special tender offer shall be made to all offerees and the offerees may notify their consent to the special tender offer or of their objection to it.

(b)      A special tender offer shall only be accepted by a majority of the votes of those offerees who gave notice of their position in respect of the offer.

(c)      In counting the votes of offerees, the votes of a holder of control in the offeror, being a holder of a control block in the company, or any person acting on their or on the offeror's behalf, including their relatives or corporations under their control, shall not be taken into account.

- (d) Where a special tender offer has been accepted, offerees who have not given notice of their position in respect of the tender offer, or who have objected to it, may consent to the offer, no more than four days after the last day for accepting the tender offer, or on such other date as the Minister may prescribe in this respect, and they shall be considered to have consented to the offer from the outset.
- Minimum acceptance 332. A special tender offer shall not be accepted unless shares conferring at least five percent of the voting rights in the company have been purchased.
- Consequences of prohibited purchase 333. (a) Shares purchased in contravention of the provisions of this Chapter shall not confer any rights and shall be dormant shares, as defined in section 308, for so long as they are held by the purchaser.
- (b) Without prejudice to the provisions subsection (a), where the rate of a person's holdings of voting rights increases, otherwise than due to a purchase under the provisions of section 328, to a rate conferring on him a control block where there is no owner of a control block in the company, or a rate higher than forty-five percent of the voting rights in the company if there is no other person holding more than half of the voting rights in the company, *inter alia*, as a result of the shares in the company having become dormant following a distribution, voting rights shall not be conferred on shares held by such person at a rate of more than twenty-five percent or forty-five percent, as the case may be, for so long as they are held by him.
- (c) The infringement of the provisions of this Chapter shall be a breach of statutory duty towards the shareholders of the company.
- Consecutive tender offers or mergers 334. Where a special tender offer has been accepted, the offeror, any person controlling the offeror on the date of the offer, and any corporation controlled by them, shall not, for a period of one year following the date of the tender offer, make another tender offer for purchase of shares in the company, and they shall not effect a merger of the company unless they undertook to do so in the special tender offer.

Regulations	335.	The Minister, after consulting with the Securities Authority, may make provisions for the implementation of this Chapter, including provisions in respect of the manner of delivery of the special tender offer to offerees, and the receipt of their notices, and in particular, the Minister may apply the provisions concerning voting papers, and may prescribe the dates for holding special tender offers and the date for giving the opinion of the board of directors.
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### **Chapter 3: Forced Sale of Shares**

#### **Article A: Purchase of Shares of the Minority by Holder of Control in a Public Company**

Complete tender offer	336.	<p>(a) A person shall not purchase shares or a class of shares in a public company that are listed for trading on a stock exchange in such a way that after the purchase he holds more than ninety percent of the shares or of the class of shares in the public company, other than by way of a tender offer of all of the shares or class of shares (hereinafter “a complete tender offer”), accepted under the provisions of this Chapter.</p> <p>(b) Where a person holds more than ninety percent of all of the shares in a public company, as set out in subsection (a), or of a class of shares, he shall not purchase any further shares, for so long as he holds such amount of shares.</p>
Forced sale	337.	<p>(a) Where a complete tender offer is accepted by the offerees in such a way that the rate of holding of the offerees who did not accept the offer is less than five percent of the issued share capital or the issued capital of a class of shares in respect of which the offer was made, all of the shares that the offeror sought to purchase shall be transferred to him and the records of ownership of the shares shall be amended accordingly.</p> <p>(b) Where a complete tender offer is not accepted as referred to in subsection (a), the offeror shall not purchase shares from offerees who have accepted the offer that will confer on him a holding of more than ninety percent of all the shares in the company or of all of a class of shares in respect of which the offer was made.</p>

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| Right in the form of assessment                   | 338. | <p>(a) The court may, on the application of any offeree in a complete tender offer accepted as aforesaid in section 337(a), rule that the consideration for the shares was less than their fair value, and that the fair value should be paid as determined by the court.</p> <p>(b) An application as aforesaid in subsection (a) shall be submitted no later than three months after the date of receipt of the complete tender offer; application may be made to submit an application referred to in subsection (a) in the form of a class action and the provisions of section 209 shall apply thereto.</p> |
| Conversion of public company into private company | 339. | <p>Where a full tender offer is accepted in accordance with the provisions of this Article, and the offer was for the single class of shares in the company or for any of the classes of shares in the company held by the public, the company shall become a private company.</p>   |
| Consequences of prohibited purchase               | 340. | <p>(a) Shares purchased in contravention of the provisions of this Chapter shall not confer rights and shall be dormant shares, as defined in section 308, for so long as they are held by the purchaser.</p> <p>(b) The infringement of the provisions of this Chapter shall be a breach of statutory duty towards the shareholders of the company.</p>   |

**Article B: Power to Purchase the Shares of Opposing Shareholders in a Private Company**

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| Power to purchase shares of opposing shareholders in a private company | 341. | <p>(a) Where a person offers to purchase shares or a class of shares in a private company (in this Article “the offeror”), and the shareholders who own eighty percent of the shares to be transferred have consented within two months to the offer, the offeror may, one month after the end of the said two months, give notice, in the manner to be prescribed by the Minister, to every shareholder who did not consent to the offer (in this Article “the opposing shareholder”), stating that he wishes to purchase their shares; in counting the said shareholders, a person having control of the offeror or a person acting on behalf of such person or of the offeror, including relatives or corporations controlled by them, shall not be taken into account.</p> |
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- (b) Where the offeror gives notice as referred to in subsection (a), the opposing shareholders must sell their shares and the offeror must purchase them, under the terms offered to the shareholders who consented to the transfer, unless the court decides otherwise on the application of an opposing shareholder submitted within one month of the date of the notice.
- (c) Where the offeror gives notice as referred to in subsection (a) and no other decision of the court has been made, the offeror shall, at the end of one month after the date of his notice, and if at such time an application by an opposing shareholder is pending in court, after the court has given judgment, send a copy of his notice to the company and shall transfer the consideration for the shares that he is required to purchase under this section to the company, and the company shall register the offeror as holder of such shares.
- (d) It shall be permitted to prescribe a rate different from that set out in subsection (a) in the articles of association; a resolution to amend the articles of association as aforesaid shall be passed as provided in section 20.

Transitional provisions

342. A company incorporated prior to the commencement of this Law shall be treated as if its articles of association contain a provision to the effect that confirmation of the offer referred to in section 341 shall require a majority of those shareholders holding ninety percent of the shares to be transferred.

## **Part IX: General Provisions**

### **Chapter 1: Alteration of Class of Corporation**

A company that has become public or private

343. (a) A private company that has become a public company or a public company that has become a private company shall give notice thereof to the Registrar of Companies within fourteen days of the date of change.
- (b) The Minister, after consulting with the Securities Authority, may make provisions in respect of the implementation of this section, including provisions regarding the documents to be transferred from the Registrar of Companies to the Securities Authority or from the Authority to the Registrar.

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| Alteration in liability of shareholders            | 344. | <p>(a) A company in which the liability of its shareholders is not limited may alter its articles of association and prescribe, with the approval of the court on an application under section 350(a), and on such conditions as the court may prescribe, that the liability of the shareholders is limited; the Minister may make provisions regarding the implementation of this section.</p> <p>(b) A company in which the liability of shareholders is limited may alter its articles of association with the consent of all its shareholders and determine that the liability of shareholders shall not be limited.</p>  |
| Conversion of a cooperative society into a company | 345. | <p>(a) A registered cooperative society (in this section “a society”) seeking to be registered as a company, shall prepare a plan for organization as a company and shall submit it for the approval of the Registrar of Cooperative Societies as defined in the Cooperative Societies Ordinance<sup>11</sup>.</p> <p>(b) The Minister, in consultation with the Minister of Labor and Welfare, may prescribe conditions under which the Registrar of Cooperative Societies may approve a plan submitted to him pursuant to the provisions of subsection (a), including conditions the aim of which is to ensure that the position of creditors of the society shall not be impaired.</p> <p>(c) Where the Registrar of Cooperative Societies has approved of the plan, the plan shall be brought for approval by the general meeting of the society, of which notice, setting out the details of the plan, has been delivered according to the law twenty-one days prior to the meeting; where the plan is accepted by at least a three-quarters majority of the members entitled to vote and who voted in person or by proxy, articles of association shall be drawn up in accordance with this Law and upon submission of an application for registration, a copy of the articles of association shall be delivered to the Registrar of Companies and the fees prescribed by the Minister shall be paid.</p> <p>(d) Where the Registrar of Companies has approved the registration, he shall give notice thereof to the Registrar of Cooperative Societies, who shall delete the registration of the society as a cooperative society and shall publish a notice to that effect in <i>Reshumot</i>; after such deletion, the Registrar of Companies shall register the society as a company.</p> |

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<sup>11</sup> Laws of Palestine, vol. I, p. 360.

- (e) Upon registration of the society as a company, the Registrar of Cooperative Societies shall provide the Registrar of Companies with an extract of all the entries on the register of charges regarding charges created by the society prior to its being registered as a company, which existed at the time of registration, and of all documents held by the Registrar of Cooperative Societies creating or evidencing such charges, and the Registrar of Companies shall register the charges and the details in the extract relating to each charge without collecting a fee.
- (f) All of the assets and liabilities of the society, including known and unknown liabilities, existent and contingent, shall be transferred upon registration to the company, and all legal proceedings to which the society is a party may be continued in such a way that the company shall be party to them.

## **Chapter 2: Foreign Companies**

Duty to register  
foreign company

- 346.
- (a) A foreign company shall not keep a place of business in Israel, and in particular shall not maintain an office for the transfer of shares or for the registration of shares, unless registered as a foreign company under the provisions of this section and unless it pays the registration and publication fees prescribed by the Minister under this section.
  - (b) The application for registration shall be submitted to the Registrar within one month of setting up a place of business and the following documents shall be attached thereto:

- (1) a copy and translation into Hebrew, confirmed in the manner prescribed by the Minister, of the documents under which the company is incorporated or pursuant to which it operates, as required under the laws of the country in which it is incorporated, including its articles of association, if any;
  - (2) a list of the directors of the company;
  - (3) the name and address of a person resident in Israel who is authorized to receive judicial documents on behalf of the company, and to receive notices issued to the company;
  - (4) a copy certified in the manner prescribed by the Minister, of a power of attorney authorizing a person normally resident in Israel to act on behalf of the company in Israel.
- (c) Where an alteration occurs in a document or a change of the directors or the name or address of one of the persons referred to in paragraphs (3) and (4) of subsection (b) is altered, the company shall give notice thereof to the Registrar within fourteen days of the date of the change.
- (d) The Minister may prescribe additional documents that a foreign company must attach to an application for registration and must notify the Registrar of any changes therein.

Service on foreign company 347. A judicial document or notice required to be served on a foreign company registered in Israel shall be considered to have been served in accordance with the law if addressed to the authorized person notified to the Registrar as referred to in section 346 and left at the address notified as aforesaid, or sent there by mail.

Annual report 348. A foreign company shall file, once a year, an annual report as prescribed by the Minister.

- Penalties
349. A foreign company in breach of the provisions of section 346(a), as well as any office holder thereof who is party to such breach, shall be subject to a fine in accordance with section 61(a)(2) of the Penal Law 5737-1977<sup>12</sup>, and, in the case of an ongoing breach, shall be subject to a further fine in accordance with section 61(c) of the said Law for every day on which the breach continues, from the date that the company receives a notice from the Registrar of Companies.

### Chapter 3: Compromise or Arrangement

- Authority for compromise or arrangement
350. (a) Where a compromise or arrangement are proposed between a company and its creditors or shareholders, or between a company and any particular class of creditors or shareholders, the court may, on the application of the company, of a creditor or of a shareholder, or of a liquidator if the company is in liquidation, order the convening of a meeting of such creditors or shareholders, as the case may be, in such manner as the court shall order.
- (b) The court to which the application for a compromise or arrangement is submitted as referred to in subsection (a) (in this Chapter “the plan”) may, if it is convinced that this would assist in drawing up or approving a plan aimed at reviving the company, grant an order stating that for a period that shall not exceed nine months, it shall not be possible to continue with or commence any proceedings against the company, other than with the permission of the court, and on conditions that it may determine (in this Chapter “a stay of proceedings order”).
- (c) A stay of proceedings order may be granted in the presence of the applicant alone, if the court is convinced that the circumstances of the case so require, provided that notice of issue of the stay of proceedings order be published and be delivered to whomever might be prejudiced thereby, as the court may order.
- (d) A person prejudiced by a stay of proceedings order granted in the presence of the applicant alone may apply to the court that gave the order to revoke it; the court shall deal with any such application for revocation submitted on the same date to be fixed for that purpose, provided that the hearing take place within thirty days of the date of grant of the order as aforesaid.

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- (e) The court may, for special reasons that it shall specify in writing, deal with an application by a creditor to revoke a stay of proceedings order even if the date laid down in subsection (d) has passed, if it is of the opinion that a significant change has taken place in the circumstances which may substantially prejudice the rights of the creditor.
- (f) Where a stay of proceedings order is granted, the court shall permit:
  - (1) on the application of a secured creditor – the realization of assets mortgaged to him;
  - (2) on the application of a creditor who is the holder of a floating charge – the crystallization thereof;
  - (3) on the application of a creditor who is the holder of a floating charge that has crystallized – the realization of one or more such assets;

provided the court is of the opinion that no proper protection of the rights of the creditor in the asset has been secured or that the realization of the mortgage or the crystallization of the floating charge will not prejudice consolidation and approval of the plan.

- (g) The period in which proceedings are stayed under this section shall not be included in counting the periods prescribed under the Companies Ordinance to the extent that the staying of proceedings affects such periods, nor in reckoning the periods prescribed under the Prescription Law, 5718-1958<sup>13</sup>, unless the court orders otherwise.
- (h) In subsections (b) to (g), “proceedings” – shall include a proceeding under the Execution Law 5727-1967<sup>14</sup>, but shall not include proceedings completed immediately prior to the grant of the order even if the money received in respect of such proceeding has not yet been transferred.
- (i) If, in a meeting referred to in subsection (a), the majority in number of the persons present and voting together holding three quarters of the value represented at the vote agree to the compromise or arrangement, and the court approves the compromise or arrangement, they shall bind the company and all the creditors or shareholders, or any class of them, as the case may be, and if the company is in liquidation, the liquidator and any contributory.

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<sup>13</sup> *Sefer Hachukim*, 5718, p. 112; LSI, vol. 12, p. 129.

<sup>14</sup> *Sefer Hachukim*, 5727, p. 116; LSI, vol. 21, p. 112.

- (j) An order granted under subsection (b) shall not be valid until a certified copy thereof is submitted to the Registrar of Companies; a copy of the order shall be attached to all copies of the articles of association of the company issued after the granting of the order, and if the company does not have articles of association, to every copy of the document under which the company is incorporated and pursuant to which it acts, issued as aforesaid.
- (k) For the purposes of this section:
  - “company” – any company that may be subject to winding up under the Companies Ordinance;
  - “settlement” – including reorganization of the share capital by amalgamation of shares of different classes or by division of shares into various classes, or by both such ways.
- (l) The Minister may make provisions regarding the implementation of this section, including provisions regarding claims for debt and convening of meetings.

Change of structure and merger

- 351. (a) Where an application is submitted to the court for the approval of a compromise or arrangement as referred to in section 350, and it is proved to the court that the compromise or arrangement have been proposed in respect of a plan for the alteration of the structure of a company or for the merger of companies, and that, under the plan, a building or assets of one of the companies (in this Chapter “the transferor company”) are to be transferred to another company (in this Chapter the “transferee company”), the court may, in an order approving the application or in an order granted thereafter, make provision for -

transfer of the concern, the assets or the liabilities, of the transferor company, in whole or in part, to the transferee company;

allotment of shares, debentures, policies or other similar benefits in the transferee company which it is required to allot to a person under the compromise or arrangement;

continuation on behalf of the transferee company of a pending proceeding by or against the transferor company;

dissolution of the transferor company without winding up;

relief for persons objecting to the compromise or arrangement within the time and in the manner ruled upon by the court;

any routine matter required in order to ensure that the change in structure or the merger be effected completely and effectively.

- (b) Where an order is granted as aforesaid for the transfer of assets or liabilities, the assets shall be transferred by virtue of the order and shall be vested in the transferee company, and shall be freed, if so prescribed in the order, from all charges that have ceased to be valid by virtue of the compromise or arrangement, and the liabilities shall be transferred to the transferee company and shall become its liabilities.
- (c) Where an order is granted under this section, every company to which the order applies shall transfer a certified copy of the order to the Registrar within seven days of the date on which it is granted; a company in breach of this provision, as well as any office holder of such company who approved or permitted such breach, shall be liable to a fine as prescribed in section 61(c) of the Penal Law, 5737-1977, for every day on which the breach continues.

## Chapter 4: Remedies and Monetary Sanctions

### Article A: Remedies

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| Remedies | 352. | (a) For the breach of a right conferred under this Law on a shareholder as against the company or as against another shareholder, or on a company as against a shareholder, the laws applying to breach of contract shall apply, <i>mutatis mutandis</i> . |
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- (b) The provisions of this section shall not derogate from the rights of a shareholder under any law.

Breach of duties to keep registers and reporting duties

353. Without derogating from the provisions of any law, the breach of a duty to keep registers or to give notices or reports to the Registrar of Companies owed by a company under this Law or under the Companies Ordinance, shall be considered a breach of statutory duty as against whoever relies on the registers of the company or of the Registrar of Companies.

### Article B: Monetary Sanctions

Monetary sanctions

354. (a) Where the Registrar has reasonable grounds for presuming that a private company has done any of the following, he may impose a monetary sanction upon the company in the sum of six thousand new Israeli shekels:
- breach of the Registrar's instructions under section 37(b) or (c);
  - breach of the duty to file reports, pursuant to the provisions of section 140;
  - breach of the duty to file an annual report pursuant to the provisions of sections 141 or 348;
  - breach of the duty imposed upon it under the provisions of sections 173(a) or 175;
  - breach of the duty imposed upon it under the provisions of section 343.
- (b) Where the Registrar has reasonable grounds for presuming that a public company has infringed a duty imposed upon it under the provisions of section 343, he may impose monetary sanctions as aforesaid in subsection (a) upon it.
- (c) Where the Registrar has reasonable grounds for presuming that a company upon which monetary sanctions have been imposed has infringed the same provision for which the monetary sanction was imposed within two years from the date it was imposed, he may impose upon such company double the sanction prescribed in subsection (a); the Registrar may also do so if the company has committed three or more breaches during the said period, even if the sanctions were imposed for breaches of different provisions.

Update of monetary sanction	355.	<p>(a) The monetary sanction shall be in accordance with the sum updated on the date of demand for payment thereof, and if an appeal is filed and the court hearing the appeal does not rule that it be paid, in accordance with the sum as updated on the date of the ruling on the appeal.</p> <p>(b) The Registrar may update the sum of the monetary sanctions on 1 January in each year, according to the rate of alteration of the index from the last index published prior to the update compared with the last index published prior to the date of commencement of this Law; the Registrar may also round off the amount of the monetary sanction to the nearest sum that is a product of ten New Israeli Shekels.</p> <p>(c) The Registrar shall publish the amount of the updated monetary sanction by notice in <i>Reshumot</i>.</p>
Demand for monetary sanction and payment thereof	356.	<p>(a) A monetary sanction shall be imposed upon a company on the demand of the Registrar made to the company (in this Chapter “a demand”); the Registrar shall set out in the demand the breach referred to in section 354, and shall notify the company that if the breach is not remedied within forty-five days of the date of the demand, the company shall be required to pay the monetary sanction on the date fixed in the demand.</p> <p>(b) Where the company remedies the breach within the time stipulated in the demand, it shall notify the Registrar thereof.</p> <p>(c) Where an appeal is filed against the decision of the Registrar as aforesaid in section 359, the monetary sanction shall not be paid unless the court orders otherwise.</p>
Linkage and interest differentials	357.	Where a monetary sanction is not paid on time, linkage and interest differentials under the Adjudication of Interest and Linkage Law 5721-1961 <sup>15</sup> (hereinafter “linkage and interest differentials”) shall be added to it for the period of the delay up until the date of payment.
Collection	358.	The Taxes (Collection) Ordinance <sup>16</sup> shall apply to the collection of the monetary sanction.

<sup>15</sup> *Sefer Hachukim*, 5721, p. 192; LSI vol. 15, p. 214.

<sup>16</sup> *Laws of Palestine*, Vol. II, p. 1399.

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| Appeal                   | 359. | <ul style="list-style-type: none"> <li>(a) The decision of the Registrar under section 354 shall be subject to appeal to the Magistrates' Court, within thirty days of the date of receipt of the demand.</li> <li>(b) Where the monetary sanction has been paid and the appeal has been allowed, the monetary sanction shall be refunded together with linkage and interest differentials.</li> <li>(c) The court's decision on the appeal is subject to appeal by leave.</li> </ul>  |
| Collection from director | 360. | <ul style="list-style-type: none"> <li>(a) Where a monetary sanction imposed under section 354 is not paid on time, the Registrar may, subject to the provisions of subsection (e), demand the payment of it by any person registered in the Registrar's records as a director of such company or who was so registered on the date of the breach.</li> <li>(b) The provisions of sections 355 to 359 shall apply to a demand under this section.</li> <li>(c) Where one of the persons designated in subsection (a) has paid the monetary sanction, the company shall not be required to pay it, and the payer shall be entitled to a refund from the company.</li> <li>(d) The court shall not charge a person required to pay a monetary sanction under this section with the payment thereof if such person proves one of the following: <ul style="list-style-type: none"> <li>that he took all appropriate steps to prevent the breach;</li> <li>that he did not know of the breach and ought not to have known of it.</li> </ul> </li> <li>(e) The company may designate in its annual report that the general manager or a particular director as being responsible for the fulfillment of the provisions and obligations referred to in section 354; where the company so designates, the Registrar shall not require payment of the monetary sanction from any other director of the company, unless the payment of the monetary sanction has already been demanded previously from the general manager or director designated by the company, and has not been paid by them.</li> </ul> |

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| Retention of criminal liability                | 361. | <p>(a) The provisions of this Article shall not derogate from the power of a prosecutor to file an information for an offense under this Law in respect of which a monetary sanction may be imposed under this Article, for reasons that shall be set out in writing; for these purposes, “prosecutor” – as defined in section 12 of the Criminal Procedure Law (Consolidated Version)), 5742-1982<sup>17</sup>.</p> <p>(b) Where an information is filed against the infringing party as aforesaid in subsection (a), such person shall not be charged with paying the monetary sanction under this Article, and if such has already been paid, the Registrar shall be ordered to refund it to the infringing party, together with linkage and interest differentials.</p> |
| Winding up on the application of the Registrar | 362. | <p>The Registrar may request the winding up of a company under Chapter 12 of the Companies Ordinance, if the monetary sanction imposed upon the company under section 354 is not paid by it, and within three years from the date of imposition of the monetary sanction, the Registrar has imposed a further monetary sanction, which was also not paid on time, provided that such have not been paid up to the date of the filing of the application for winding up.</p>   |
| Regulations                                    | 363. | <p>The Minister may make regulations for the implementation of this Chapter.</p>  |

## **Chapter 5: A Public Company Whose Shares are Traded Outside Israel**

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| Limitation on application | 364. | <p>(a) The Minister may prescribe, after consulting with the Securities Authority, that the provisions of this Law that apply to public companies shall not apply, in whole or in part, to public companies whose shares have been offered to the public outside Israel only, or that are registered on stock exchanges outside Israel only, whether generally or in respect of classes, as the Minister may prescribe.</p> |
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<sup>17</sup> *Sefer Hachukim*, 5742, p. 43;LSI vol. 36, p. 35.

- (b) The Minister may prescribe, after consulting with the Securities Authority, that the provisions of this Law that apply to public companies shall not apply, in whole or in part, to public companies whose shares are registered on the stock exchange in Israel and on a stock exchange outside Israel, *inter alia* so as to prevent conflicts between foreign laws or between rules laid down in stock exchanges outside Israel, and the provisions of this Law.

Duties as to reporting

365. (a) A public company whose shares have been offered to the public outside Israel only or that are listed for trading on a stock exchange outside Israel only shall file reports with the Registrar of Companies as if they were private companies, with such alterations as the Minister may prescribe.
- (b) The Minister may, after consulting with the Securities Authority, prescribe that subsection (a) shall not apply to public companies referred to therein, in general or according to classes, as he may prescribe; where the Minister has so prescribed, the provisions of sections 142 to 145 shall apply to such companies.
- (c) The provisions of Chapter 4 shall apply to a public company to which the provisions of subsection (a) apply, as if it were a private company.

## **Chapter 6: Regulations**

Performance and regulations

366. (a) The Minister may make regulations for the implementation of this Law.
- (b) Regulations under this Law shall require the approval of the Constitution, Law and Justice Committee of the Knesset.

## Part X: Repeal, Transitional Provisions, Application and Commencement

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| Repeal of Companies Ordinance   | 367. | (a) | <p>The Companies Ordinance is repealed, with the exception of:</p> <p style="padding-left: 40px;">sections 164 to 201, 244 to 367, 370 to 382 and sections 1 and 394 to the extent that they relate to secured debentures, charges and winding up, both in respect of companies incorporated prior to the commencement of this Law and companies incorporated in accordance with this Law;</p> <p style="padding-left: 40px;">section 33, which shall continue to remain in force in respect of companies that received an exemption under section 32 prior to the commencement of this Law;</p> <p style="padding-left: 40px;">section 369, which shall continue to remain in force in respect of companies deleted in accordance with section 368 prior to the commencement of this Law;</p> <p style="padding-left: 40px;">the provisions and conditions regarding the amendment of the memorandum of association – in respect of a company to which section 24 of this Law applies.</p> |
|   |      | (b) | <p>The interpretation of the provisions specified in subsection (a) shall be effected, wherever possible, in light of the provisions of this Law.</p>   |
| Transitional provisions regarding application of provisions of standard articles of association | 368. | (a) | <p>The provisions of clauses 23 to 29, 51, 58 and 91 in the Second Schedule of the Companies Ordinance shall be deemed to have been included in the articles of association of a company incorporated prior to the commencement of this Law, if such provisions applied to such company immediately prior to the commencement of this Law under the provisions of sections 10 or 11 of the Companies Ordinance in the version that was in force, immediately prior to the commencement of this Law, for so long as the articles of association are not amended under section 20.</p>  |

- (b) The articles of association of a company incorporated prior to the commencement of this Law shall be deemed to include a provision stating that the chairman of the board of directors shall not have a casting vote as provided in section 107, unless otherwise provided in the articles of association, for so long as the articles of association are not amended under section 20.
- Transitional provisions regarding shares of the company if owned by subsidiary 369. (a) The provisions of section 309(b) shall not alter the voting rights by virtue of shares purchased by a subsidiary in its parent company or purchased by any other corporation controlled by the parent company prior to the commencement of this Law, to the extent that such voting rights are granted under any law.
- (b) Where shares have been purchased as provided in subsection (a) and following the commencement of this Law, a subsidiary or other corporation controlled by the parent company purchases additional shares of the same class and thereafter part of such shares are sold, for the purposes of voting rights by virtue of the remaining shares, it shall be considered as if the shares purchased after the commencement of this Law were sold first.
- Application to company limited by guarantee 370. A company that, immediately prior to the commencement of this Law was a company limited by guarantee, as defined in the Companies Ordinance, in the version that was in force immediately prior to the commencement of this Law, and did not have share capital, the provisions of this Law shall apply to it and its members shall be considered shareholders of a company having share capital with no nominal value.
- Transitional provisions regarding internal auditor 371. The person acting as internal auditor of a public company immediately prior to the commencement of this Law pursuant to an approval under section 3(b) of the Internal Audit Law, 5752-1992, may continue to act as internal auditor for such company.

- Director from the public 372. A director from the public appointed pursuant to the provisions of section 96B of the Companies Ordinance, in the version that was in force immediately prior to the commencement of this Law, shall be considered for the purpose of Chapter 1 of Part VI to be an outside director, however, the provisions of the Companies Ordinance, in the version that was in force immediately prior to the commencement of this Law, shall apply in respect of the term of office and renewal thereof.
- Amendment of Securities Law – No. 18. 373. In the Securities Law, 5728-1968:
- In section 36, the following shall be inserted after subsection (a):
- “(a1) the duty to file reports or notices, as provided in subsection (a), to the Registrar, shall not apply to a public company as defined in the Companies Law, 5759-1999.”;
- (2) Chapter 9-1 is hereby repealed;
- (3) The following shall replace section 56(d):
- “(d) the Minister of Finance shall prescribe, in accordance with a proposal by the Authority, in consultation with the Minister of Justice and with the consent of the Finance Committee of the Knesset, regulations regarding:
- (1) an offer of purchase of securities in a registered company;
- the disclosure to be made of the details of an allotment of securities in a registered company offered otherwise than to the public, including the powers of the Authority in respect of such disclosure;
- the disclosure to be made of the details of an act or transaction of a company requiring approval under sections 275 or 320(c) of the Companies Law, 5759-1999. including powers of the Authority in respect of such disclosure.”
- Amendment of Securities (Amendment No. 11) Law – No. 5 374. In the Securities (Amendment No. 11) Law, 5751-1990<sup>18</sup>, section 14, subsection (d) is hereby repealed.

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<sup>18</sup> *Sefer Hachukim*, 5751, p. 22.

Amendment of  
Joint Trust  
Investments Law  
– No. 6.

375. In the Joint Investment Trust Law, 5754-1994<sup>19</sup>:

in section 16:

(a) in subsection (a), in place of “Article B of Chapter 4 of the Companies Ordinance” the words “sections 239 to 249 of the Companies Law, 5759-1999, regarding the appointment of outside directors, *mutatis mutandis*” shall be inserted;

(b) the following shall be inserted after subsection (a):

“(a1) the outside directors shall be appointed by the manager of the fund after the trustee has examined and confirmed that the conditions of fitness set out in section 240 of the Companies Law, 5759-1999 exist in respect of them; the trustee shall report to the Registrar and to the Securities Authority, and in a closed fund, to the stock exchange as well, as to the results of his examination.”;

(2) In section 41, in place of “Chapter 9-1 of the Securities Law” the words “Article B of Chapter 3 of Part V of the Companies Law, 5759-1999” shall be inserted.

Amendment of  
National  
Insurance Law –  
No. 35.

376. In the National Insurance Law [Consolidated Version], 5755-1995<sup>20</sup>, the following shall be inserted after section 6:

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<sup>19</sup> *Sefer Hachukim*, 5754, p. 308.

<sup>20</sup> *Sefer Hachukim*, 5755, p. 210.

“Insured persons who are members or office holders in a corporation

- 6A. (a) The Minister, with the approval of the Labor and Welfare Committee, may prescribe by order that insured persons who are members of a corporation or office holders in a corporation, as defined in the order, shall be considered, for the purposes of this Law, as employees or as independent employees or as persons who are neither employees nor independent employees.
- (b) An order under subsection (a) shall be made, taking into account, *inter alia*, the scope of the business of the corporation, the identity of the members and office holders thereof, and their activities in the corporation, and the other circumstances of the case.
- (c) The provisions of section 6(b) and (c) shall apply to an order under this section.
- (d) In this section:
- (1) “members of a corporation” which is a company – shareholders, including a shareholder in a company that has one shareholder;
- (2) the terms herein shall be interpreted in accordance with the meanings attributed to them in the Companies Law, 5759-1999, or in accordance with the law applying to such corporation, to the extent that they have no special meaning under this Law.”

Commencement 377. This Law, with the exception of the sections set out below, shall come into force on 25 Shevat 5760 (1 February 2000):

- (1) Sections 87 to 89 shall come into force after the publication of regulations for their implementation, on the date prescribed in such regulations;
- (2) Sections 143 and 145 shall come into force at the end of three years after the date of promulgation of this Law or on such earlier date as shall be determined by the Minister and the Minister of Finance, provided that regulations have been made under section 144(1); the date on which sections 143 and 145 shall come into force shall be published in advance in *Reshumot*;
- (3) Section 36(a1) of the Securities Law, as worded in section 373 of this Law, shall come into force on the date of entry into force of sections 143 and 145 of this Law, as provided in paragraph (2).

Promulgation      378.      This Law shall be published in *Reshumot* within 45 days from the date it is passed by the Knesset.

Ezer Weizman  
President of the State

Binyamin Netanyahu  
Prime Minister

Dan Tichon  
Speaker of the  
Knesset

Tzahi Hanegbi  
Minister of Justice