

Amendment of Table C of Act No. 5 of 2009. "1. The number of shares with which the company proposes to be registered isbut the directors may from time to time register an increase of members."

MEMORANDUM OF OBJECTS AND REASONS

The Companies Act (Act No. 5 of 2009) was enacted primarily to provide for the registration and regulation of companies. Sierra Leone is part of the global market and in order for it to attract investments it was imperative that its laws and in particular company law is in line with global trends and best practices

Section 2 of the Companies Act, 2009 establishes a Corporate Affairs Commission. Following the setting up of the Commission, and consultation with key stakeholders, it was noted that amendments to the Act were necessary to ensure adequate regulation of companies while improving the doing business environment generally.

The amendments in this Bill seek to-

- (i) Improve provisions on extent of director's liabilities, extent of director's disclosure and shareholder's law suits to further protect investors;
(ii) Remove administrative barriers in the incorporation of companies;
(iii) Reduce the number of offences created in the Act and for minor defaults to be addressed by way of directives or fines ;
(iv) Clarify ambiguities in the Act; and
(v) Ensure that current market value of fines are reflected.

MADE this 28th day of May, 2014.

ALHAJI OSMAN BOIE KAMARA, Minister of Trade and Industry.

FREETOWN SIERRA LEONE MAY 2014

No.



Sierra Leone

2014

A BILL ENTITLED

THE COMPANIES (AMENDMENT) ACT, 2014 Being an Act to amend the Companies Act, 2009.

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ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART II—CORPORATE AFFAIRS COMMISSION

Amendment of section 13 of Act No. 5 of 2009.

1. Section 13 of the Companies Act 2009 is amended in subsection (2) by deleting the words “Attorney-General and substituting the words “Auditor-General.”

PART III—INCORPORATION OF COMPANIES AND INCIDENTAL MATTERS

Formation of Company

Amendment of section 15 Act No. 5 of 2009.

2. Section 15 of the Companies Act, 2009 is amended in subsection (1) by deleting the words “subject to subsection (2)”

Amendment of section 16 of Act No. 5 of 2009.

3. Section 16 of the Companies Act, 2009 is amended in subsection (3) by the repeal and replacement of that subsection with the following new subsection—

“(3) If at any time the number of a company, association or partnership exceeds 20 in contravention of this section and it carries on business for more than 14 days while the contravention continues, every person who is a member of the company, association or partnership during the time that it carries on business after those 14 days , shall be liable to a default fine of Le 850,000.00 for each day during which the default continues.”

Amendment of section 22 of Act No 5 of 2009.

4. Section 22 of the Companies Act 2009 is amended in subsection (2) by repealing and replacing that subsection with the following new subsection—

“(2) After the commencement of this Act, every company limited by guarantee shall be incorporated as a company limited by guarantee and not having a share capital and every existing company limited by guarantee and having a share capital shall not later than six months after the commencement of this Act, alter its memorandum so that it becomes a company limited by guarantee. Any company that fails to comply with this section shall be in default and shall be liable to a default fine not below Le 2,000,000 and not exceeding Le 5,000,000.00”

5. Section 23 of the Companies Act 2009 is amended as follows Amendment of section 23 of Act No 5 of 2009.

(a) by repealing and replacing paragraph (a) of subsection (2) with the following paragraph-

“(a) the memorandum in the case of a private company shall also state the amount of shares, 25 percent of which shall be taken by subscribers”

(b) by repealing subsection (5).

Name of Company

6. Section 27 of the Companies Act, 2009 is amended in— Amendment of section 27 of Act No 5 of 2009.

(a) subsection (3) by deleting the words “forwarded to “ and substituting the words “registered with “

(b) subsection (4) by repealing and replacing that subsection with the following new subsection—

“(4) If a company contravenes subsection (1), the company and any officer in default shall be liable to a daily default fine of Le 850,000.00 and any resolution passed in contravention of this section shall be void.”

7. Section 28 of the Companies Act is amended in subsection (2) by repealing and replacing paragraph (d) with the following new paragraph— Amendment of section 28 of Act No 5 of 2009.

“(d) contains the word “Group”, “Holding” or “International”

Amendment of section 29 of Act No. 5 of 2009.

8. Section 29 of the Companies Act, 2009 is amended by repealing and replacing the section with the following new section—

Penalty for improper use of limited.

“29 Any person who trades or carries on business under a name or title of which “limited” or any contraction or imitation thereof is the last word, that person unless duly incorporated with limited, shall be in default and liable to a default fine of Le 850,000.00 for each day the default continues.”

Amendment of section 30 of Act No. 5 of 2009.

9. Section 30 of the Companies Act, 2009 is amended in subsection (4) by repealing and replacing that subsection with the following new subsection—

“(4) If a company defaults in complying with a direction of the Commission given under subsection (2), the company and any director of the company who is cognisant of the default shall be liable to a default fine of Le. 850,000.00 for each day that the default continues.”

Registration of Companies

Amendment of section 32 of Act No. 5 of 2009.

10. Section 32 of the Companies Act, 2009 is amended as follows—

(a) by repealing and replacing subparagraph (1) of paragraph (c) of subsection (2) with the following new subparagraph

“(i) the list, particulars together with valid identification and the consent of the persons who are to be the first directors of the company.”

(b) by inserting a new paragraph immediate after paragraph (f) of subsection (2) as follows—

“(g) a declaration that copies of valid Identification of subscribers have been submitted”

(c) by repealing and replacing subsection (3) with the following new subsection—

“(3) Where the Commission refuses a statutory declaration, it shall give, send to or otherwise inform the declarant of its refusal, giving reasons for the refusal.”

11. Section 33 of the Companies Act 2009 is amended by repealing and replacing subsection (2) with the following new subsection—

Amendment of section 33 of Act No. 5 of 2009.

“(2) Where the Commission refuses to register the memorandum and articles of association, it shall, within a reasonable period of time write to the applicant of its decision.”

Member’s right to copy of memorandum and articles

12. Section 38 of the Companies Act 2009 is amended by repealing and replacing subsection (2) with the following new subsection—

Amendment of section 38 of Act No. 5 of 2009.

“(2) If a company defaults in complying with subsection (1) and upon notification in writing to the Commission by a member, the company and every officer of the company would be in default and the Commission shall give a direction to the Company and its members for a copy of the memorandum and articles to be made available to the member within the period specified in the directive failing which the company and every member who is in default shall be liable to a default fine of Le85,000,000. 00" for each day that the default continues.

Alteration of memorandum and articles

13. Section 42 of the Companies Act, 2009 is amended by repealing and replacing subsection (12) with the following new subsection—

Amendment of section 42 of Act No. 5 of 2009.

“(12) If a company defaults in giving notice or delivering any document to the Commission as required by subsection (10) the company and every officer of the company who is in default shall be liable to a default fine not exceeding Le.3,000,000”

Amendment of section 43 of Act No. 5 of 2009.

14. Section 43 of the Companies Act 2009 is amended by repealing and replacing subsection (2) with the following new subsection—

“(2) Any alteration or addition made in the articles shall, be filed with the Commission subject to the provisions of this Act, and be as valid as if originally contained therein and be subject, in like manner, to alteration by special resolution.”

Re-registration of Companies

Amendment of section 47 of Act No. 5 of 2009.

15. Section 46 of the Companies Act 2009 is amended by repealing and replacing subsection (7) with the following new subsection—

“(7) If a company fails to deliver to the Commission a certified true copy of the order as required in subsection (6), the company and any officer of the company who is in default, shall be liable to a default fine not exceeding Le.5,000,000.00”

Company’s contracts

Amendment of section 58 of Act No. 5 of 2009

16. Section 58 of the Companies Act 2009 is amended by repealing and replacing paragraph (a) of subsection (1) with the following new paragraph—

“(a) any contract which if made between companies or a company and an individual would on the part of the company be required by law to be in writing under seal, or which could be varied, or discharged

only by writing under seal, may be made, varied or discharged, as the case may be, in writing under the common seal of the company;”

17. Section 60 of the Companies Act 2009 is amended by inserting the following new subsection.

Amendment of section 60 of Act No. 5 of 2009.

“60 (2) Notwithstanding subsection (1), the common seal shall not be required for purposes of incorporation.”

Register of Members

18. Section 73 of the Companies Act 2009 is amended by repealing and replacing subsection (5) with the following new subsection—

Amendment of section 73 of Act No. 5 of 2009.

“(5) If an inspection required under this section is refused, or if a copy so required is not sent within the proper period, the company and every officer of it who is in default shall be liable in respect of each default to a fine not exceeding Le 5,000,000.00”

19. Section 76 of the Companies Act is amended as follows

Amendment of section 76 of Act No. 5 of 2009

(a) in subsection (1) by deleting the word “court” and substituting the word “Commission”

(b) by repealing and replacing subsection (2) with the following new subsection—

“(2) The Commission may either refuse the application or may give directive for rectification of the register.”

(c) in subsection (3) by deleting the word “court” and substituting the word “Commission”

- (d) by repealing and replacing subsection (4) with the following new subsection–

“(4) In the case of a company required by this Act to send a list of its members to the Commission, the Commission, when giving the directive for rectification of the register, shall by its directive require that notice of the rectification be filed with the Commission after the same is effected.”

Disclosure of beneficial interest in shares

- Amendment of section 83 of Act No. 5 of 2009. 20. Section 83 of the Companies Act 2009 is amended in subsection (3) by deleting the figure “14” and substituting the figure “7”

PART VI–SHARE CAPITAL

Minimum Share Capital

- Amendment of section 85 of Act No. 5 of 2009. 21. Section 85 of the Companies Act 2009 is amended as follows–

- (a) in subsection (2) by inserting the word “public” immediately after the word “No”
- (b) in subsection (3) by
- (i) inserting the word “public” immediately after the word “existing”
 - (ii) deleting the figure “30” and substituting the figure “15”
- (c) by repealing and replacing subsection (5) with the following new subsection–
- “(5) Where a company to which subsection (3) applies fails to comply with the applicable subsection, it shall be in default and liable to a default fine of Le 5,000,000 and every officer who is in default shall be liable to a default fine of Le.850,000.00 for each day during which the default continues.”

Alteration of share capital

22. Section 86 of the Companies Act 2009 is amended by repealing and replacing subsection (4) with the following new subsection–

Amendment of section 86 of Act No. 5 of 2009.

“(4) If default is made in complying with this section the company and every officer of the company who is in default shall be liable to a default fine of Le.850,000.00 for each day during which the default continues.

23. Section 87 of the Companies Act 2009 is amended in subsection (2) by deleting the figure “15” and substituting the figure “7”

Amendment of section 87 of Act No. 5 of 2009.

Reduction of share capital

24. Section 92 of the Companies Act 2009 is amended in subsection (1) b by inserting the words “in the case of public company” immediately after the word “capital”

Amendment of section 92 of Act No. 5 of 2009.

PART VII–SHARES

Nature of shares

25. Section 96 of the Companies Act 2009 is amended by repealing and replacing subsection (2) by the following new subsection–

Amendment of section 96 of Act No. 5 of 2009.

“(2) If a company contravenes any of the provisions of this section, the company and any officer in default shall be liable to a daily default fine of Le850,000.00 and any resolution passed in contravention of this section shall be void.”

Allotment of Shares

26. Section 108 of the Companies Act 2009 is amended in subsection (3) by deleting “Le3,000.000,00 and substituting “Le5,000,000.00”.

Amendment of section 108 of Act No. 5 of 2009.

Amendment of section 110 of Act No. 5 of 2009.

27. Section 110 of the Companies Act 2009 is amended as follows—

- (a) in sub paragraph (i) of paragraph (b) of subsection (1) by repealing and replacing the word “stamped” with the word “registered”.
- (b) in subsection (2) by deleting “Le500,000.00” and substituting “Le 850,000,.00”

Call on and payment of shares

Amendment of section 116 of Act No. 5 of 2009.

28. Section 116 of the Companies Act 2009 is amended in subsection (7) by deleting the words “a valuer” immediately after the words “an auditor”

Class of shares

Amendment of section 120 of Act No. 5 of 2009.

29. Section 120 of the Companies Act 2009, is amended by inserting the following new subsection—

“(2) Irrespective of the class of shares held by a member, any member holding 10% or less of the Companies shares or right to vote, shall have the right to inspect documents relating to any transaction of the Company whether or not intending to file a law suit. Where a company does not make available to the member documents as requested, upon notification in writing of the same to the Commission, the Commission shall issue a directive to the Company stating in such directive the period within which the documents shall be made available. Failure on the part of the Company to comply with this directive shall be a default and the Company shall be liable to a default fine not exceeding Le5,000,000 and Le 850,000 for every day the default continues.”

Share certificates

30. Section 122 of the Companies Act 2009 is amended as follows –

- (a) by repealing and replacing subsection (1) with the following new subsection –

“(1) Every company shall, within 1 month after the allotment of any of its shares and in the case of a share transfer within 1 month of the same being agreed at a general meeting and approved by the Commission, complete and have ready for delivery the certificates of all shares allotted or transferred, unless the conditions of issue of the shares otherwise provide.”

- (b) by repealing and replacing subsection (5) with the following new subsection—

“(5) If any company on which a notice has been served requiring it to make good any default in complying with the provisions of subsection (1) of this section fails to make good the default within 10 days after the service of the notice, the Commission may, on the application of the person entitled to have the certificate delivered to him, give a directive for the company and any officer of the company to make good the default within such time as may be specified in the directive; failure to comply with the directive shall constitute a default and the company and every officer of the Company shall be liable to a default fine of Le 850,000 per day for continued default”.

- (c) by repealing and replacing subsection (6) with the following new subsection –

(6) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine of Le 850,000.00 for each day during which the default continues.

(d) by deleting the word “stamped” and substituting it with the word “registered “ in subsection (7).

Transfer and transmission of shares and debentures

Amendment of section 126 of Act No 5 of 2009.

31. Section 126 of the Companies Act 2009 is amended in subsection (1) by repealing and replacing that subsection with the following new sub-section–

“(1) Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company, unless as in the case of transfer of shares the approval has been sought from and granted by the Commission and a proper instrument of transfer has been delivered to the company or the individual: but nothing in this section shall prejudice any power of the company to register as shareholder, any person to whom the right to any shares in the company has been transmitted by operation of law.”

Registration of charges with Commission

Amendment of section 172 of Act No. 5 of 2009.

32. Section 172 of the Companies Act 2009 is amended in subsection (3) by repealing and replacing that subsection with the following new subsection–

“(3) If any company defaults in sending to the Commission for registration, the particulars of any charge created by the company or of the issues of debentures of a series requiring registration, then, unless the registration has been effected on the application of some other person, the company and every officer of the company who is in default shall be liable to a default fine not exceeding Le 5,000,000.00”

Amendment of section 173 of Act No. 5 of 2009.

33. Section 173 of the Companies Act 2009 is amended in subsection (2) by repealing and replacing that subsection with the following new subsection–

“(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine not exceeding Le5,000,000.00”

34. Section 182 of the Companies Act 2009 is amended in subsection (8) by deleting the words “a decree” and substituting the words “an order”

Amendment of section 182 of Act No. 5 of 2009.

PART IX–MEETINGS AND PROCEEDINGS

Statutory meetings

35. Section 184 of the Companies Act 2009 is amended in subsection (1) by repealing and replacing that subsection with the following new subsection–

Amendment of section 184 of Act No. 5 of 2009.

“(1) Without prejudice to paragraph (b) of section 342, if a company fails to comply with the requirements of section 179 the company and any officer in default shall be liable to a default fine of Le 850,000 for each day during which the default continues.”

General meetings

36. Section 185 of the Companies Act is amended in subsection (7) by repealing and replacing that subsection with the following new subsection–

Amendment of section 185 of Act No. 5 of 2009.

“(7) Without prejudice to paragraph (b) of section 342, if a company fails to comply with the requirements of section 179 the company and any officer in default shall be liable to a default fine of Le 850,000 for each day during which the default continues”

Notice of meetings

37. Section 190 of the Companies Act 2009 is amended in subsection (3) by repealing and replacing that subsection with the following new subsection–

Amendment of section 190 of Act No. 5 of 2009.

“(3) In every case in which a member is entitled, pursuant to section 197, to appoint a proxy to attend and vote instead of him, the notice shall contain with reasonable prominence, a statement that the member has the right to appoint a proxy to attend and vote instead of him and that the proxy need not be a member of the company; and if default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be liable to a default fine not below Le 3,000,000 and not exceeding Le 6,000,000.00”

Amendment of section 195 of Act No. 5 of 2009.

38. Section 195 of the Companies Act is amended in subsection (1) by repealing and replacing that subsection with the following new subsection—

“(1) If for any reason it is impracticable to call a meeting of a company or of the board of directors in any manner in which meetings of that company or board may be called, or to conduct the meeting of the company or board in the manner prescribed by the articles or this Act the Commission may –

- (a) of its own motions, or
- (b) on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting; direct that a meeting of the company or board, as the case may be, to be called, held and conducted in such manner as the Commission thinks fit, and where any such directive is given may give such ancillary or consequential direction as it thinks expedient; and these may include a direction that one member of the company present in person or by proxy be deemed to constitute a meeting, either of its own motion or otherwise.”

Amendment of section 197 of Act No. 5 of 2009.

39. Section 197 of the Companies Act 2009 is amended in subsection (5) by repealing and replacing that subsection with the following new subsection—

“(5) If for the purpose of the meeting of the company invitations to appoint as proxy a person or one of a number of persons specified in the invitation are issued at the company’s expense to some only of the members entitled to be sent notice of the meeting and to vote by proxy at the meeting every officer of the company who knowingly and willfully authorises or permits their issue shall be in default and liable to a default fine not below Le 5,000,000 and not exceeding Le 10,000,000.00”

40. Section 202 of the Companies Act 2009 is amended in subsection (7) by repealing and replacing that subsection with the following new subsection—

Amendment of section 202 of Act No. 5 of 2009.

“(7) In the event of any default in complying with the provisions of this section, every officer of the company who is in default shall be liable to a default fine not exceeding Le 5,000,000.00”

41. Section 204 of the Companies Act 2009, is amended as follows—

Amendment of section 204 of Act No. 5 of 2009.

- (a) in subsection (1) by deleting the words “forwarded to “and substituting the words “registered with”
- (b) in subsection (5) by repealing and replacing that subsection with the following new subsection—

“(5) If a company fails to comply with subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a default fine not exceeding Le5,000,000.00.

42. Section 207 of the Companies Act 2009 is amended as follows

Amendment of section 207 of Act No. 5 of 2009.

- (a) in subsection (3) by repealing and replacing that subsection with the following new subsection-

“(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default shall be liable in respect of each default to a default fine not below Le 10,000,000 and not exceeding Le15,000,000. 00”

- (b) in subsection (4) by –

(i) deleting the word “court “ and substituting the word “Commission”

(ii) deleting the word “order” and substituting the word “directive”

PART X–DIRECTORS AND SECRETARIES OF COMPANY

Appointment of directors

Amendment of section 211 of Act No. 5 of 2009.

43. Section 211 of the Companies Act 2009 is amended as follows–

(a) in subsection (1) by inserting the word “public” immediately after the word “Every”

(b) in subsection (2) by inserting the word “public” immediately after the word “Any”

Amendment of section 215 of Act No. 5 of 2009.

44. Section 215 of the Companies Act is amended in subsection (5) by deleting the word “not”.

Powers and duties of director

45. Section 231 of the Companies Act, 2009 is amended by inserting the following new subsections immediately after subsection (6)-

Amendment of section 231 of Act No. 5 of 2009.

“(7) A director shall immediately disclose to members of the company and to directors of the board any conflict between his duty to the company and with his personal interest or his duties to others.

(8) Any transaction entered into or proposed to be entered into by a company in which a conflict of interest has been disclosed by a director to members of the Company and to directors of the board shall be published by the directors and notification of the same shall be filed with the Commission.”

46. Section 235 of the Companies Act 2009 is amended in subsection (1) by repealing and replacing that subsection with the following new subsection–

Amendment of section 235 of Act No. 5 of 2009.

“(1) Notwithstanding any provision in the company’s articles, a director shall not, without the consent of the members of the company place him in a position in which his duty to the company conflicts or may conflict with his personal interests or his duties to other persons, and in particular, without such consent a director shall not–”

47. Section 236 of the Companies Act, 2009 is amended by the insertion of the following new subsection immediately after subsection (2)–

Amendment of section 236 of Act No. 5 of 2009.

“(3) Where members deem it fit and agree at a general meeting, to enter into a transaction in which a conflict of interest has been disclosed, the approval of the Commission may be sought before entering into such transaction”.

Amendment of section 238 of Act No. 5 of 2009. 48. Section 238 of the Companies Act is amended in subsection (8) by inserting the words “filed with the Commission” immediately after the word “be”.

Amendment of section 240 of Act No. 5 of 2009. 49. Section 240 of the Companies Act 2009 is amended by inserting the figure “231” immediately after the word “sections”.

Amendment of section 241 of Act No. 5 of 2009. 50. Section 241 of the Companies Act 2009 is amended by inserting the figures “231, 233” immediately after the words “any duty under sections” .

Miscellaneous matters relating to directors

Amendment of section 247 of Act No. 5 of 2009. 51. Section 247 of the Companies Act 2009 is amended as follows–

(a) in subsection (4) by inserting the words “file with” immediately after the words “subsection (5)”

(b) in subsection (7) by repealing and replacing that subsection with the following new subsection–

“(7) If any inspection required under this section is refused, or if default is made in complying with subsections (1), (2), and (4), the company and every officer of the company in default shall be liable to a default fine not below Le 3,000,000 and not exceeding Le 6,000,000.00”

Amendment of section 248 of Act No. 5 of 2009. 52. Section 248 of the Companies Act 2009 is amended as follows–

(a) in subsection (9) by repealing and replacing that subsection with the following new subsection –

“(9) If default is made in complying with subsection (1) or (2), or if any inspection required under this section is refused, or any copy required thereunder is not filed within a reasonable time, the company and every officer of the company who is in default shall be liable to a default fine not exceeding Le5,000,000.00 and if default is made in complying with subsection (8) of this section the company and every officer of the company who is in default shall be liable to a default fine not below Le 3,000,000 and not exceeding Le6,000,000.00”

(b) in subsection (10) by deleting and substituting–

(i) the word “court” with the word “Commission”

(ii) the word “order” with the word “directive”

PART XI- PROTECTION OF MINORITY AGAINST ILLEGAL AND OPPRESSIVE CONDUCT

Action by or against company

53. Section 268 of the Companies Act 2009, is amended in subsection (1) by repealing and replacing that subsection with the following new subsection–

Amendment of section 268 of Act No. 5 of 2009.

“(1) The court may appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as shall be directed

(a) in the case of a company having a share capital on the application of members holding 10% or less of the shares issued;

- (b) in the case of a company not having a share capital, on the application of 10% or less of the persons on the company’s register of members; and
- (c) in any other case, on the application of the company.

PART XII–FINANCIAL STATEMENTS AND AUDIT

Accounting records

Amendment of section 288 of Act No. 5 of 2009. 54. Section 288 of the Companies Act 2009 is amended by inserting the following two new subsections immediately after subsection (5)–

“(6) The directors of every company shall ensure all financial statements prepared in respect of the financial year are audited.

(7) Notwithstanding Subsection (5), the financial statements of small companies shall not be required to be audited but are to be prepared in accordance with the requirements of this part.”

PART XIII–ANNUAL RETURNS

Amendment of section 320 of Act No. 5 of 2009. 55. Section 320 of the Companies Act 2009 is amended as follows–

- (a) by repealing and replacing subsection (5) with the following new subsection–

“(5) If a company fails to comply with this section or sections 317, 318 or 319 the company and every officer of the company who is in default shall be liable to a daily default fine of Le 850,000.00”

- (b) by repealing subsection (6)

Amendment of section 321 of Act No. 5 of 2009. 56. Section 321 of the Companies Act 2009 is repealed and replaced by the following new section–

“321. A private company shall file with the Commission the annual returns required under section 318 a certificate signed by a director or secretary of the company that the company has not, since the last return or in the case of a first return, since the date of the incorporation of the company, issued, any invitation to the public to subscribe for any shares or debentures of the company; and where the annual return discloses the fact that the number of members of the company exceeds 50 also a certificate so signed that the excess consist wholly of persons who, under this Act, are not to be included in reckoning the number of 50”

57. Section 351 of the Companies Act 2009 is amended in subsection (1) a by deleting a fine not below Le 3,000,000 and not exceeding “Le 5,000,000” substituting it with
 Amendment of section 351 of Act No. 5 of 2009.

PART XVI–WINDING-UP

Voluntary winding-up

58. Section 403 of the Companies Act 2009 is repealed and replaced by the following new section–
 Amendment of section 403 of Act No. 5 of 2009.

Notices of resolutions to wind up voluntarily. “403 (1) When a company has passed a resolution for voluntary winding-up, it shall, within 14 days after the passing of the resolution, file a copy of the resolution with the Commission and give notice of the resolution, by advertisement in the Gazette and also in a local newspaper, if any, circulating in the district where the registered office of the company is situated.

(2) If default is made in complying with any requirement under subsection (1), the company and every officer of the company who is in default shall be liable to a default fine of Le 5,000,000 each, and for the purposes of this sub-section the liquidator of the company shall be deemed to be an officer of the company.”

Provisions as to dissolutions

Amendment of section 474 of Act No. 5 of 2009. 59. Section 474 of the Companies Act 2009 is amended in subsection (1) by inserting the words “or deliver“ immediately after the word “post”.

PART XVIII—COMPANIES INCORPORATED OUTSIDE SIERRA LEONE AND CARRYING ON BUSINESS WITHIN SIERRA LEONE

Amendment of section 492 of Act No. 5 of 2009. 60. Section 492 of the Companies Act is amended as follows
(a) by repealing and replacing subsection (1) with the following new subsection—

“(1) Unless otherwise provided in this Act, if any company to which this Part applies fails to comply with any of the provisions of this Part the company, and every officer or agent of the company shall be guilty of an offence and be liable to a fine not below Le 45,000,000 and not exceeding Le 50,000,000 or, in the case of a continuing offence Le.5,000,000 for each day during which the default continues”

(b) by repealing and replacing subsection (2) with the following new subsection—

“(2) Notwithstanding the requirements of registration under section 485, a company incorporated outside of Sierra Leone which is a part to a contract ordinarily to have been performed in Sierra Leone, with rights under or arising out of any contract shall be enforceable by action or other legal proceedings.”

Insertion of new section. 61. The Companies Act 2009 is amended by inserting the following new section immediately after section 492—

Penalties. “492A. All fines and penalties stated in Companies Act 2009 unless otherwise amended herein shall be read as follows:

Le500,000	–	Le 850,000
Le 2,000,000	–	Le 3,500,000
Le3,000,000	–	Le 5,000,000
Le 5,000,000	–	Le 8,000,000
Le 10,000,000	–	Le 13,000,000

PART XX –MISCELLANEOUS

62. The Companies Act 2009 is amended by inserting the following new section immediately after section 531– Insertion of new section.

Fines “531A. All default fines levied by the Commission under the Companies Act 2009 shall be payable to the Commission within 30 days of it being levied.

(2) A Company that fails to comply with subsection (1) shall incur the following additional penalties–

How late penalties are paid	Penalty –Private Company	Public Company
Not more than one month	Default fine x 2	Default fine x 3
More than one month but not more than three months	Default fine x 3	Default fine x 4
More than three months but not more than six months	Default fine x 4	Default fine x 5
More than six months	Default fine x 5	Default fine X 6

(3) A Company that fails to comply with the penalties after six months from the date the fine is due shall face legal action to recover the fine and shall be struck off the register thereafter”

SCHEDULE

63. Paragraph (1) of Table C of the First Schedule of the Companies Act 2009, entitled Articles of association to accompany memorandum of association of company limited by shares is amended by repealing and replacing that paragraph with the following new paragraph–