INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF UGANDA

REVIEW OF THE COMPANIES ACT No. 1 OF 2012

Proposals by ICPAU

SECTION	OBSERVATION	COMMENT
Section 14(1) **Adoption and application of Table F**	s.14 (1) provides for a mandatory adoption and application of Table F for public companies at the time of registration and an optional adoption and application of the same by a private company. Introduction of this section within the Act has come with a number of challenges including the following; (a) The provision in its current state gives an impression that the Code is not mandatory for companies that were incorporated before the Act came into force and one may wonder whether this was the intention; (b) Whereas the code is mandatory for all public companies that would or were registered at the time the Act was in force, some public companies in Uganda are subject to mandatory corporate governance standards and the code in table F is not aligned with those standards in relation to a number of issues such as mandatory committees, board structure, board remuneration among others. By implication such company codes are more elaborate than the Code as provided in the Act;	**Our proposal** Based on our observations, we propose that s.14 be amended by replacing it with the below: s.14- **Adoption and application of Corporate Governance Rules** (1) "Corporate governance", in relation to a public interest company, includes— (a) the nature, constitution or functions of the organs of the public company; (b) the manner in which organs of the public interest company conduct themselves; (c) the requirements imposed on organs of the public interest company; (d) the relationship between the different organs of the public interest company; (e) the relationship between the organs of the public interest company and its members or holders of the securities, if any; (f) The public interest company's relationship and obligations to the community, employees, suppliers, customers and others stakeholders; (g) The impact of the public interest company's operations on the community and the environment; and

SECTION	OBSERVATION	COMMENT
	(c) Some of the provisions of the code are ambiguous, unnecessary and not in conformity with current governance practices. (d) It is also important to note that corporate governance standards evolve quite rapidly. A mandatory code in a law such as the Companies Act will soon be out of date and not achieve the intended objective. Based on the above therefore, it is our firm believe that whereas having corporate governance guidance is fundamental, there is need to ensure that there is a desirable corporate governance framework within the Companies Act providing the basic framework for corporate governance. Other corporate governance standards may be introduced by regulation, such as for banks, insurance companies and capital markets intermediaries as well as listed companies. Codes are usually developed as independent standards and may be mandatory or voluntary. In cases where they are mandatory, there is always room for exceptions hence the "comply or explain" model of the UK or "adopt or explain model" of South Africa.	(h) The duty of the directors of a public interest company to promote the long term success of the company for the benefit of its members and other stakeholders. (2) For avoidance of doubt, in this section; a public Interest company shall include: (a) Companies whose debt or equity instruments are traded in a public market or stock exchange; (b) Companies that hold assets in a fiduciary capacity for a broad group of outsiders as one of its primary businesses. These include: (i) financial institutions; (ii) micro-finance deposit taking institutions; (iii) savings and credit cooperative organizations; (iv) tier 4 microfinance institutions; (v) insurance and re-insurance companies; (vi) Mutual funds, unit trusts and collective investment schemes; (vii) Pension and retirement benefit schemes. (c) Public organisations, in which the State owns the whole or part of the proprietary interest or which is otherwise controlled directly or indirectly by the State, including parastatals, state enterprises, commissions and authorities; and (d) Any other organizations as may be prescribed by the regulations made under the Act. (3) A public interest company shall file with the registrar an annual statement of compliance by the 31st day of December. (4) Where any person being a director of a company fails to take all reasonable steps to comply with this section, he or

SECTION	OBSERVATION	COMMENT
		she commits an offence and on conviction is liable to imprisonment not exceeding five years or a fine not exceeding one thousand currency points or both. (5) The Minister shall make shall make regulations for the purpose of implementing, enabling the implementation of or dealing with matters arising out of or related to, any obligation relating to the corporate governance of a public interest company. (6) The regulations herein referred to shall: (a) make reference to best corporate governance practices applicable from time to time; and (b) provide for an adequate transitional period of at least two (2) years for the existing public interest companies to comply with the said regulations. **Justification** To ensure that the provisions of corporate governance evolve with times.
Section 18 **Form for registration of a company**	Whereas s.18 intended to simplify the process of registration of a company whereby to register a company, all that is required is for one to file the form in schedule 2 to the Act. This section read in conjunction with s.19 seems to divest the most important documents needed at the time of registration that is the memorandum and articles of association among others. By principle, the process of registration and filing of key company documents (the memorandum and	**Our proposals** We thus propose to re-draft s.18to read as follows; "s.18 **- Registration of a company** **(1) A company shall be registered by delivering to the registrar the memorandum and articles together with a completed registration form in schedule 2 to this Act.** **(2) On delivering thememorandum and articles together with a completed registration form under sub-section (1), the registrar shall register the company and assign to it a registration number if the registrar is satisfied that the applicant has complied with the Act.**

SECTION	OBSERVATION	COMMENT
	articles) are typically two separate processes. And where the law requires the memorandum and articles to be returned after registration, yet the current s.19 gives no guidance on the timelines for this to be done, a number of challenges may arise.	**(3) On registration of the company, the registrar shall issue a certificate signed by him or her that the company is incorporated and in the case of a limited liability company, that the company is limited.A company shall indicate its registration number on all its official documents."** **<u>Justification</u>** (a) The memorandum and articles are key governance documents and should not be divorced from the registration process. They provide critical information about the internal governance of a company and it is important to have these from the time the company is incorporated. (b) A simplified registration processes was driven by the desire to ease business registration. This can still be achieved by a registration process that requires filing of the memorandum and articles, particularly where standardized templates are provided.
Section 19 **<u>Registration of memorandum and articles</u>**	s.19 does not provide for a timeframe within which to file the memorandum and articles in order to avoid a situation, whereby after incorporation, companies either take long or do not file the memorandum and articles, and those transacting with companies would not be able to access critical information. Also by using the words 'if any' the section seems to imply that there may be situations where a company can or may be registered without the	**<u>Our proposals</u>** We thus propose to re-draft s.19 to read as follows: "s.19-**The memorandum and articles shall be registered by the registrar and he or she shall retain a copy."** We also propose to delete the words **<u>'if any'</u>** since by principle all companies should have memorandum and the articles. **<u>Justification</u>** To provide for registration and retention of the memorandum

SECTION	OBSERVATION	COMMENT
	memorandum and articles of association; And lastly, the section read in conjunction with that earlier section 18, seem to give an impression that a company will have to be assigned a registration number twice, that is, when the company completes the form under schedule 2 (section 18) and when the company delivers its memorandum and articles to the registrar. All these create confusion and hence challenges in implementing the law.	and articles by the registrar.
Section 34(1)<u>Objection to resolution under section 33</u>	s.34(1) makes reference to s.31, which we think is wrong. We believe the right reference should have been made to s.33.	**<u>Our Proposal</u>** We propose correcting the reference in the section. The new section 34(1) would then read as follows; s.34(1)**" Where a special resolution by a public company to be re-registered under section 33 as a private company has been passed, an application may be made to the registrar for the cancellation of that resolution."** **<u>Justification</u>** To correct the error.
Section 41(5) **<u>Power to dispense with "Ltd" or "Limited" in the name of charitable organizations and other companies</u>**	The section contains some kind of repetition, "The registrar may, <u>upon the recommendation of the registrar,</u>revoke a license under this section …." The same confusion extends to section 41(6)	**<u>Our Proposal</u>** We propose that the sub-section be amended to eliminate any confusion.

SECTION	OBSERVATION	COMMENT
Section 66(2)<u>Application of premium received on issue of shares</u>	The section carries a number of typographical errors particularly in relation to punctuation marks. This creates confusion in its interpretation.	**<u>Our Proposal</u>** We thus propose to re-draft the section following the example of the Indian Companies Acts of 1956 (section78(2)) and 2013 (section 52(2)) to give the section its right/intended interpretation. s.66(2) **"The share premium account may, notwithstanding anything in sub-section (1), be applied by the company—** **(a) in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares;** **(b) in writing off the preliminary expenses of the company;** **(c) in writing off the expenses of, or the commission paid, or discount allowed on, any issue of shares or debentures of the company;** **(d) in providing for the premium payable on redemption of any redeemable preference shares or of any debentures of the company".** **<u>Justification</u>** To ensure clarity
Section 69(4) <u>Power of a company to arrange for different amounts being paid on shares</u>	There is need to considergenerally accepted accounting principles as adopted by the Institute of Certified Public Accountants of Uganda (ICPAU) throughout the Act. This is intended to satisfy the prime objective of comparison of financial information among the respective companies, but also ensure harmony among laws since the Accountants Act mandates the ICPAU to adopt	**<u>Our Proposal</u>** The section should then read as follows: s.69(4) **"In determining whether a company has profits available for the payment of a dividend or other distribution, the directors of the company shall rely upon the accounts of the company which the directors reasonably**

SECTION	OBSERVATION	COMMENT
	standards for the Country.	**believe have been prepared in accordance with generally accepted accounting principles as adopted by the Institute of Certified Public Accountants of Uganda (ICPAU)".** **<u>Justification</u>** To ensure consistency and harmony among the laws.
Section 87 **<u>Transfer of shares in a single member company</u>**	The section provides for transfer of shares from a single member company to a private company not being a single member company. It does not provide for transfer of shares to another single member company.	**<u>Our Proposal</u>** We propose to also provide for transfer of shares from one single member company to another by deleting the words 'not being a single member company' as provided under s.87(1). The proposed amendment would then read as follows; s.87–**"A single member company may transfer or allot shares on the death of the single member or by operation of law or by a single member company converting into a private company."** **<u>Justification</u>** To provide for clarity.
	s.87(3)(a) of the Act specifically makes reference to a legal heir. Does this have the same meaning assigned to it as that in the Succession Act? There is need for clarity around the use of this term.	**<u>Our Proposal</u>** We propose that the words 'not being a single member company' be deleted and the word legal heir be replaced with legal representative under section 87(3). The proposed amendments would then read as follows; s.87(3) **"In case of death of single member, the company may either be wound up or be converted into a private company for which—**

SECTION	OBSERVATION	COMMENT
		(a) the nominee director shall transfer the shares in the name of the legal representatives of the single member within thirty days;……." **Justification** To provide for clarity.
Section 132(1) **Annual return to be made by a company having a share capital**	s.132(1) provides for the format of the annual return. This format is contained in the third schedule of the Act and not the fourth schedule as indicated in the section.	**Our Proposal** We propose to amend the section to correct the mis-reference for the section to read as follows; s.132 -**"A company having a share capital shall, once at least in every year, make a return containing with respect to the registered office of the company, registers of members and debenture holders, shares and debentures indebtedness, past and present members and directors and secretary, the matters specified in Part I of the third Schedule to this Act and the return shall be in the form and shall be made up to the dateset out in Part IIof that Schedule or as near to it as circumstances admit."** **Justification** To rectify the referencing
Section 134 **Time for completion of the annual return**	s.134 of the Act provides that the annual return of a company shall be completed within forty-two days after the annual general meeting for the year and the company shall forward to the registrar a copy within that period.The annual return form however provides for the date of filing and preparing the return as fourteen days after the annual general meeting.	**Our Proposal** We thus propose to re-draft s.134(1) to read as follows: s.134 (1**) "Every company including a foreign company shall file with the registrar a copy of the annual return signed both by a director and by the secretary of the company; within forty two days from the date on which the annual general meeting is held or where no annual general meeting is held, in any year within forty two days from the date on**

SECTION	OBSERVATION	COMMENT
	There is need therefore to streamline the above provisions of the law with the prescribed forms so that the number of days within which to file the annual return is harmonized in the Act and the annual return form. The section also provides that the annual return should be filed after every annual general meeting. However, s.138 of the Act mandates only Public Companies to hold annual general meetings, while a private company and a single member company is not required to hold an annual general meeting. This means that the time for filing an annual return is not clear in the Act especially for companies such as private companies that are not mandated to hold annual general meetings. There is a need to harmonise sections 134 and 138 of the Act so that the time for preparing and filing the annual return is clear. There is also need to determine whether the filing and preparing of the annual return is determined by the holding of an annual general meeting or not.	**which the annual general meeting should have been held had the company not been a single member company.** **For avoidance of doubt where a company other than a single member company does not hold the annual general meeting, the company shall file a copy of the return required in 134(1) above together with the statement specifying the reasons for not holding the annual general meeting."** N.B – **The provision of the annual return form should be amended to read forty two days instead of fourteen days.** **<u>Justification</u>** To ensure clarity and consistence
Section 138 **<u>Annual general meeting</u>**	s.155 of the Act requires directors at least once in every year to lay before the company in a general meeting, a profit and loss account and a balance sheet. This means that the company is required to hold a general meeting at least once in every year so that the directors can report to the shareholders on the performance of the company.	**<u>Our Proposal</u>** We thus recommend that s.138 be amended for the section to read as follows: s.138 -**"Every company other than a single member Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not**

SECTION	OBSERVATION	COMMENT
	s.138 of the Act however only mandates public companies to hold a general meeting once every year. This requirement does not extend to the private companies.	**more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next."** **<u>Justification</u>** To make it mandatory for every company other than a single member company to hold the annual general meeting to enable the directors discharge their stewardship role and report to the shareholders on the performance of the company.
Section 154 **<u>Accounts and Audit</u>**	We observe that this particular section makes reference to a number of terminologies which keep changing in practice but remain unchanged under the Act.	**<u>Our Proposal</u>** We wish to re-draft the same to read as below; s.154 (1) Every company **including a foreign company** shall cause to be kept in the English language accounting records. s.154 (2) For purposes ofsubsection (1), accounting records, are proper only if they — (a) show and explain the transactions of the -company; (b) disclose with reasonable accuracy, (i) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place; (ii) all sales and purchases of goods by the company; and (iii) the assets and liabilities of the company, except that in respect of an existing company the requirement that the books of account shall be kept in the English language shall not have effect until after the expiration of a period of two years from the

SECTION	OBSERVATION	COMMENT
		date of the commencement of this Act. s.154 (3) **In particular a company shall ensure that its accounting records** (a) contain (i) entries, from day to day of all amounts of money received and, spent **by** the, company and the matters in, respect of which the receipt and, expenditure takes place; and- (ii) a record of the assets, and, liabilities of the company; and (iii) comply with the prescribed financial reporting standards as adopted by the Institute of Certified Public Accountants of Uganda. s.154(4) **A** parent company that has a subsidiary undertaking in relation to which the above requirements do not apply, shall take reasonable steps to ensure that the undertaking keeps such accounting records as will enable the directors of the parent company to ensure that every financial statement required to be prepared under this Part complies with the requirements of this Act. s.154 (5) The accounting records shall be kept at the registered office of the company or at such other place in Uganda as the directors think fit and shall at all times be open to inspection by the directors. s.154 (6) A company shall preserve its accounting records for not less than seven years from and including the date on which they were created.

SECTION	OBSERVATION	COMMENT
		s.154 (7) If the company is in liquidation, sub-section (6) is subject to any rules in force relating to companies that are in liquidation. s.154 (8) Where any person being a director of a company fails to take all reasonable steps to secure compliance by the company with the requirements or has by his or her own willful act been the cause of any default by the company of any provision of this section, he or she commits an offence and is liable on conviction to imprisonment not exceeding twelve months or to a fine not exceeding one hundred currency points or both. s.154 (9) Subject to sub-section (8)— (a) in any proceedings against a person in respect of an offence under this section consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defense to prove that he or she had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that duty; and (b) a person shall not be sentenced to imprisonment for an offence under subsection (4) unless in the opinion of the court, the offence was committed willfully. **Justification** To ensure that the requirement applies to all companies operating in the Country.

SECTION	OBSERVATION	COMMENT
Section 156 <u>General provisions as to contents and form of accounts</u>	s.156(2)(3) requires accounts to comply with the format provided in the fourth schedule. The section however makes reference to the fifth schedule of the Act. The 2014 World Bank Report on the Observance of Standards and Codes for Uganda made the following observations: ***"The Companies Act 2012**: This new Act provides for accounting and auditing requirements for all private and public companies and replaces the Companies Act Cap 110 (1961).* *The Companies Act 2012 does not prescribe any financial reporting framework except complying with the Fifth Schedule of the Act which is a disclosure and presentation guide. ICPAU adopted IFRS. Given the rate of changes in new and existing IFRS, gaps may exist between the requirements of IFRS and those of the Fifth Schedule, which is fairly static.* *The Companies Act 2012 requires consolidation where a company holds more than halve the nominal value of the equity share capital of another company. This is not necessarily consistent with the new concept of "control" in IFRS10-Consolidated Financial Statements when deciding whether to consolidate an investment or not,*	**<u>Our Proposal</u>** We propose to amend the section to eliminate the reference of the section to the Fifth Schedule for the section to read as follows; s.156(2) - **General provisions as to contents and form of accounts.** A company's balance sheet and profit and loss account shall comply with the prescribed financial reporting standards as adopted by the Institute of Certified Public Accountants of Uganda. s.156(3) - Except as expressly provided in the following provisions or in Part III of the Fourth Schedule to this Act, the requirements of subsection (2) and the Fourth Schedule shall be without prejudice either to the general requirements of subsection (1) or to any other requirements of this Act. **<u>Justification</u>** To rectify the referencing and make reference to financial reporting standards issued by ICPAU.

SECTION	OBSERVATION	COMMENT
	"Control", rather than percentage holding is the deciding factor under IFRS 10. *The Companies Act 2012 does not embrace the concept of Public Interest and differential reporting. The Act requires all companies irrespective of size and their situation and circumstances to comply with the requirements of the Fifth Schedule. The Act does not distinguish financial reporting frameworks under IFRS, IFRS for SMEs and Micro-entities. Effective financial reporting requirements should be proportionate; structured such that public interest entities, (typically regulated companies, state owned enterprises and large private companies) are subjected to more stringent reporting requirements while SMEs and Micro-entities are subjected to few and less stringent requirements."*	
Section 158 **<u>Form of group accounts</u>**	We observe that Section 158 does not conform to the generally accepted accounting standards on group accounting.	**<u>Our Proposal</u>** s.158 (4) - The group accounts shall be prepared in accordance with the prescribed financial reporting standards as adopted by the Institute of Certified Public Accountants of Uganda
Section 159 **<u>Contents of group accounts</u>**	We observe that the current section 159(3) makes reference to the fifth schedule, whose content may require amendment every time there is change in applicable standards. Also, the provision that gives lee way for an entity to apply equivalent information to the content in	**<u>Our Proposal</u>** We propose to the delete the words 'requirements of the Fifth Schedule to the Act, so far as applicable and if not so prepared shall give the same or equivalent information' and re-write the section to read as follows: s.159 (3) Without prejudice to subsection (1), the group

SECTION	OBSERVATION	COMMENT
	the fifth schedule defeats the growing global purpose of having and applying uniform standards for accounting. As such, it introduces difficulties as each group entity may end up applying what it would deem to be 'equivalent information' yet incomparable.	accounts, if prepared as consolidated accounts shall comply with prescribed financial accounting standards as adopted by the Institute of Certified Public Accountants of Uganda relating to- (i) the form and content of the consolidated balance sheet and consolidated profit and loss account; and (ii) additional information to be provided as notes to the statement. With the above proposed amendment,s.159(4) is rendered redundant and hence should be deleted. **Justification** To ensure that group accounts resonate with the required international standards for them to achieve the objective of comparability, but also avoid instances where each board prescribes a format of accounts to follow.
Section 163A Requirements for audited financial statement	We observe that whereas sections 154 – provide for Accounts and Audit, elements of audit are introduced within the Act by mention of the auditor's report. In practice, the auditor's report is an output of the audit process. The Act in its present state seems not to succinctly provide for how and who is eligible for audit.	**Our Proposal** We thus propose to insert a new section to provide guidance on audit and this section should read as below: s.163A (1) The directors of a company shall ensure that the company's annual financial statements for a financial year are audited in accordance with this Part unless the company is exempt from audit under section 163A(2) or 163A(5). s.163A(2)(a) A company that complies with the conditions of subsection (2)(b) in respect of a financial year is exempt from the requirements of this Act relating to the audit of accounts

SECTION	OBSERVATION	COMMENT
		for that year. s.163A(2)(b) The conditions are — (i) that its turnover in that year is not equal to or more than twenty five currency points; and (ii) that the value of its net assets specified in its balance sheet as at the end of that year is not equal to or more than twenty five currency points. s.163A(3)(a) The members of a company that would otherwise be entitled to exemption from audit under any of the provisions referred to in section 163A(2)(b) may by notice under this section require it to obtain an audit of its financial statements for a financial year. s.163A(3)(b) Such a notice is effective only if it is given by — (a) members holding not less in total than ten percent in nominal value of the company's issued share capital, or any class of it; or (b) if the company does not have a share capital, not less than ten percent in number of the members of the company. (c) The notice is not effective if it is given before the financial year to which it relates or later than one month before the end of that year. s.163A(4) A company is not entitled to the exemption conferred by Section 163A if it was a public interest company as per Section 14, at any time within the relevant financial year. s.163A(5) A company is exempt from the requirements of this Act relating to the audit of financial statements in respect of a

SECTION	OBSERVATION	COMMENT
		financial year if- (i) it has been dormant since its formation; or (ii) it has been dormant since the end of the previous financial year s.163A(6) A company is not entitled to the exemption conferred by Section 163A(5) if it was at any time within the relevant financial year a company that was of public interest as per section 14. For avoidance of doubt, in this section; (a) annual financial statement", in relation to a company, means the company's individual financial statement for a financial year, and includes any group financial statement prepared by the company for that year. (b) Reference in this Part to a company's annual financial statement, or to a balance sheet or profit and loss account, includes notes to the statement, or balance sheet or profit and loss account that- (i) give information required by a provision of this Act or the prescribed financial accounting standards; and (ii) are required or permitted by the provision to be given in a note to a company's financial statements. **Justification** To provide for audit, thresholds of audit and the audit exemption to specific companies
Section 165(1)Directors' report to be attached to the balance sheet	s.165(1) makes reference to the fifth schedule of the Act, instead of the fourth schedule.	**Our Proposal** We propose to amend the section to correct the mis-reference.

SECTION	OBSERVATION	COMMENT
Section 170(1)Auditors' report and right of access to books and to attend and be heard at general meetings	s.170(1) provides for the contents of the auditor's report, which are entailed in the fifth schedule. However, the section inadvertently makes reference to the sixth schedule to the Act.	**Our Proposal** We propose to amend the section to correct the mis-reference.
Section 185 Number of directors	s.185 of the Act provides for the minimum number of directors required for a company. However, the way the section is worded is confusing and needs to be made clear. We recommend that the section is amended to give a clear minimum number of directors required for a public company as 2 and for a private company as 1 director.	**Our Proposal** Our suggested amendment is as follows: s.185 – **"Every public company shall have at least two directors and every private company shall have at least one director."** **Justification** To ensure clarity
Section 196 Minimum age for appointment of directors and retirementof directors over the age limit	s.196 provides for a minimum age for appointment of directors and retirement of directors over the age limit. We note however, that there was no mention of the age limit.	**Our proposal** We propose that the age limit also be included in the Act, as was done with the minimum age. We thus propose to amend section 196 to read as follows: s.196 (1)-**"A person shall not be capable of being appointed a director of a company if at the time of appointment he or she has not attained the age of eighteen years or if he or she is above the age seventy five years."** s.196 (2) – **"An appointment made in contravention of sub-section (1) is void."** **Justification** To provide for clarity.

SECTION	OBSERVATION	COMMENT
Section 228 (5) - <u>Register of directors and secretaries</u>	s.228(5) of the Act and Regulation 26(2) of the Companies General Regulations, 2016 require a company to file a notification of appointment of directors indicating the first name and surname, residential and postal address, nationality and nationality of origin if any, business occupation and the date of birth. Information such as name, nationality, date of birth, address and occupation are deemed personal information under the Data Protection and Privacy Act, 2019, because such information can be used to identify an individual. According to the Data Protection and Privacy Act, consent of an individual Director is required before such personal information is collected. Regulation 26(1) of the Companies General Regulation 2016 requires that consent be obtained from a person before he/she can act as director. However, in practice, use of the form has been excluded and companies are required to only file form 20 (notification of appointment of directors). In view of the requirements of the Data Protection and Privacy Act, we recommend that s.228 of the Act be amended to include a requirement for a person being appointed as a director to give consent to his/her personal appointment and to his/her personal data being collected for purposes of compliance with the law.	<u>**Our proposal**</u> We thus propose to amend section 228(5) to read as follows: s.228(5) – **"The company shall, within the periods respectively mentioned in sub-section (6), send to the registrar** **(a) a return in the prescribed form containing the particulars specified in the register** **(b) a notification in the prescribed form of any change among its directors or in its secretary or in any of the particulars contained in the register, specifying the date of the change; and** **(c) a written consent in the prescribed form by that director to act in that capacity."** And because of the above recommendation, we propose that sub-section 6 be amended by inserting sub-section 6(c) to read as follows: s.228(6) a…… b…… **"(c) the period within which the consent is to be signed and sent shall be fourteen days from the appointment of the directors of the company."** <u>**Justification**</u> To re-introduce the requirement for consent by Directors signing form 19, which was earlier on in force and this should be filed along with form 20 at the Companies Registry.

SECTION	OBSERVATION	COMMENT
Section 237 **<u>Amalgamations</u>**	s.237 of the Act provides that two or more companies may amalgamate and continue as one company which may be one of the amalgamating companies or may be a new company. A company under the Act is defined as a company formed and registered under this Act or an existing or a re-registered company under this Act. The definition of a company implies that only companies incorporated or registered under theCompanies Act, 2012 may amalgamate, and does not provide for a foreign company incorporated outside Uganda that is desirous of merging with a company incorporated under the Act. With businesses no longer limited by borders, cross-border amalgamations present significant opportunities for economic gain and increased shareholder or investor value. Various factors including the ever-increasing need of companies to tap new markets and set up global operations, cost reduction and the need to secure natural resources influence cross-border amalgamations. Cross-border amalgamations are also supported by technological advancements, low cost financing arrangements and robust market conditions, which are good and necessary for business success. We are of the view that consideration be made to include cross-border amalgamation provisions in the Companies Act because they have the potential to	**<u>Our Proposal</u>** We thus propose to amend s.237 by including the word **<u>"foreign company"</u>** immediately after, for the section to read as follows: s.237 **"Subject to any restrictions in their respective incorporation documents and to sections 238, 239, 240 and 241, two or more companies; which may include a <u>foreign company</u> or companies, may amalgamate and continue as one company, which may be one of the amalgamating companies or may be a new company."** **<u>Justification</u>** To extend provisions of amalgamation to foreign companies.

SECTION	OBSERVATION	COMMENT
	improve investments in Uganda.	
Section 265A **<u>Striking off a company at the initiation of the registrar, the company and third parties</u>**	Whereas s.259 provides for cessation of business by a foreign company and striking it off the register,there is no similar applicable provision to a company locally incorporated. We recommend that the Companies Act, 2012 be amended to allow the registrar, the company and third parties to apply for striking of a dormant/defunct company. This recommendation is based, with modification, on the provision under s.343(4) of the repealed Companies Act Cap 110 which gave the registrar powers to strike off a dormant company from the register of companies. A redress should equally be provided such as the provisions of s.343(7) of Cap 110.	**<u>Our proposal</u>** We propose to insert a new section 265A immediately after the current section 265 to read as follows: "s.265A - **Cessation of business by a company other than a foreign company and striking it off the Register** (1) **If the registrar reasonably believes that a company is not carrying on business or is not in operation, the registrar may send to the company by post, a letter inquiring whether the company is carrying on business or is in operation.** (2) **If the registrar does not within one month after sending the letter receive any answer to it, the registrar shall, within fourteen days after the end of that month send to the company by post, a registered letter referring to the first letter, and stating-** (a) **that no answer to it has been received; and** (b) **that, if no answer is received to the second letter within one month after its date, a notice will be published in the *Gazette* with a view to striking the name of the company off the Register.** (3) **If the registrar-** (a) **receives an answer to the effect that the company is not carrying on business or is not in operation; or** (b) **does not within one month after sending the second letter receive an answer to it, the registrar may publish in the *Gazette*, and send to the company by post, a notice that, at the end of the period of three months from the date of the notice, the name of the**

SECTION	OBSERVATION	COMMENT
		company referred to in it will, unless cause is shown to thecontrary, be struck off the Register and the company will be dissolved. (4) At the end of the period specified in the notice sent under sub-section (3), the registrar may, unless cause to the contrary is previously shown by the company, strike the name of the company off the Register. (5) As soon as practicable after striking the name of the company off the Register, the registrar shall publish in *the Gazette* a notice to the effect that the name of the company has been struck off the register. (6) On the publication of the notice in the *Gazette*, the company is dissolved. (7) However— (a) the liability (if any) of every director, managing officer and member of the company continues and may be enforced as if the company had not been dissolved, and (b) nothing in this section affects the power of the court to wind up a company the name of which has been struck off the Register." "s.265 B - Duty of the registrar to act in case of company that has been liquidated or no liquidator is acting (1) If, in the case of a company that is in liquidation — (a) the Registrar reasonably believes — (i) that the affairs of the company are fully wound up; or (ii) that no liquidator is acting; and (b) the returns required to be made by the liquidator in

SECTION	OBSERVATION	COMMENT
		respect of the company have not been made for six consecutive months, the registrar shall publish in the *Gazette*, and send to the company or the liquidator (if any), a notice that at the end of three months from the date of the notice the name of the company will, unless cause is shown to the contrary, be struck off the Register and the company will be dissolved. (2) At the end of the period specified in the notice, the registrar may, unless cause to the contrary is shown by the company, strike the company's name off the Register. (3) As soon as practicable after striking the name of the company off the Register under sub-section (2), the registrar shall publish in the *Gazette* a notice to the effect that the name of the company has been struck off the Register. (4) On publication of the notice in accordance with sub-section (3), the company is dissolved. (5) Despite sub-section (4)— (a) the liability (if any) of every officer and member of the company continues and may be enforced as if the company had not been dissolved; and (b) nothing in this section affects the power of the Court to liquidate a company the name of which has been struck off the Register." "s.265 C- Additional provisions as to service of letter or notice (1) A letter or notice to be sent to a company under s.265A or 265B may be addressed to the company at the

SECTION	OBSERVATION	COMMENT
		registered office of the company or, if no office has been registered, to the care of an officer of the company. **(2) If there is no officer of the company whose name and address are known to the registrar, the letter or notice may be sent to each of the persons who subscribed the memorandum, if their addresses are known to the registrar.** **(3) A notice to be sent to a liquidator under s.265B may be addressed to the liquidator at the liquidator's place of business last known to the registrar."** "s.265 D – **Voluntary striking off** **(1) On application by a company, the registrar may strike the name of the company off the Register.** **(2) Such an application is effective only if it-** **(a) is made on behalf of the company by its directors or by a majority of them; and** **(b) is in a prescribed form and contains such information (if any) as is prescribed by the regulations.'** **(3) The registrar may not strike the name of a company off the Register under this section until after three months from the date of the publication by the registrar in *the Gazette* of a notice —** **(a) stating that the registrar may exercise the power under this section in relation to the company; and** **(b) inviting any person to show cause why the name of the company should not be struck off.** **(4) As soon as practicable after striking the name of the company off the Register, the registrar shall publish in *the Gazette* a notice that the company's name has been**

SECTION	OBSERVATION	COMMENT
		struck off the Register and the date of the striking off. **(5) On publication of the notice, the company is dissolved.** **(6) Despite sub-section (5)—** **(a) the liability (if any) of each director, managing officer and member of the company continues and may be enforced as if the company had not been dissolved; and** **(b) nothing in this section affects the power of the Court to liquidate a company the name of which has been struck off the Register .** **(7) An application made under s.256 D on behalf of a company may not be made (or, if made, may not be dealt with) at a time when —** **(a) an application to the Court under Part XXXIV has been made on behalf of the company for the sanctioning of a compromise or arrangement and the matter has not been finally concluded;** **(b) a voluntary arrangement in relation to the company has effect under the laws relating to insolvency, or has been proposed under that Part and the matter has not been finally concluded;** **(c) the company is under administration;** **(d) the company is in liquidation (whether voluntary or by the Court), or an application for the liquidation of the company liquidated by the Court has been made but has not been finally disposed of or been withdrawn; or** **(e) in any other circumstances prescribed by the regulations for the purpose of this section."**

SECTION	OBSERVATION	COMMENT
		"s.265E - **Restoration of companies to the Register** **(1) An application may be made to the registrar to restore to the Register a company that has been struck off the Register under section 265A - 265Dr** **(2) An application under this section may —** **(a) be made whether or not the company has in consequence been dissolved;** **(b) be made only by a former director or former member of the company; and** **(c) not be made after the expiry of six years from the date on which the company was dissolved.** **(3) For purposes of this section, an application is made when it is received by the registrar.** **(4) On an application made under s.265E(1), the registrar shall restore the company to the Register if (but only if);** **(a) the company was carrying on business or in operation at the time of its striking off, and** **(b) the applicant has lodged withthe registrar for registration such documents relating to the company as are necessary to bring up to date the records kept by the registrar.** **(5) As soon as practicable after receiving an application for the administrative restoration of a company to the Register, the registrar shall determine the application and notify the applicant in writing of the determination.** **(6) If the application is refused, the registrar shall include in the determination the reasons for the refusal.** **(7) If the registrar determines that the company should be restored to the Register, the restoration takes effect**

SECTION	OBSERVATION	COMMENT
		from the date on which notice of the determination is sent to the applicant. **(8) As soon as practicable after making a determination under sub-section (1), the registrar shall-** **(a) enter on the Register a note of the date from which the restoration of the company to the Register takes effect; and** **(b) publish the notice of the restoration in the *Gazette*.** **(9) The registrar shall include in the notice of restoration —** **(a) the name of the company or, if the company is restored to the Register under a different name, that name and its former name;** **(b) the registered number of the company; and** **(c) the date from which the restoration of the company to the Register takes effect.** **(10) The effect of the restoration of a company to the Register is that the company is taken to have continued in existence as if it had not been dissolved or struck off the Register.** **(11) An application may be made to the Court to restore to the Register a company —** **(a) that has been dissolved after being liquidated under the law relating to insolvency;** **(b) that is taken to have been dissolved following administration under that Act; or** **(c) that has been struck off the Register-** **(i) under section 265A or 265B; or** **(ii) under section 265D, whether or not the company has in consequence been dissolved."**

SECTION	OBSERVATION	COMMENT
Section 294(2) Regulations	This section provides for altering or adding to the requirements of this Act as to matters to be stated in a company's balance sheet, profit and loss accounts and group accounts in particular the requirements of the Fifth Schedule of this Act. We note however, that these requirements are provided for in the Fourth Schedule of the Act and not the Fifth Schedule as erroneously referenced in this section.	**Our proposal** We propose to amend the subsections as below; • Section 294(2)(a) -substitute Seventh Schedule with Second Schedule. • Section 294(2)(b)-substitute Second Schedule with Third Schedule. • Section 294(2)(c)- substitute Fifth Schedule with Fourth Schedule. **Justification** To correct the error.
Other Schedule referencing errors	We note a number of mis-matches in schedule referencing	We thus propose the following changes; • Section 17 – substitute Second Schedule with Third Schedule. • Section 66(4) – it should refer to Fourth Schedule and not Fifth Schedule. • Section 132(1) – substitute the words Fifth Schedule with Fourth Schedule. • Section 132(2)(b) – substitute the words Fourth Schedule with Third Schedule. We further recommend that section 132(2)(b) of the Act should be rephrased by deleting the word 'list' after the word 'stock' to give the section clearer meaning. • Section 132(5) – Part II of the Third Schedule and not Part I of the Fourth Schedule. • Section 159(3) – substitute the words Fifth Schedule with Fourth Schedule.

SECTION	OBSERVATION	COMMENT
		• Section 170(1) – substitute the words Sixth Schedule with Fifth Schedule. • Section 266(1) – substitute the words Seventh Schedule with Sixth Schedule. • Section 276 – substitute the words Eighth Schedule with Seventh Schedule. • Section 170(1) -substitute fifth Schedule with Sixth Schedule. We further recommend that paragraphs 5 – 16 of the Fifth Schedule should be moved to the Fourth Schedule because they relate to preparation of financial statements and not matters of an independent audit. • Section 296(2)(a) – substitute Seventh Schedule with Sixth Schedule
Second Schedule	There is a repetition of number 2 under the names of subscribers.	**Our proposal** We propose that the number be changed to number 3.
Table F(9)	Table F makes reference to the phrase "Deadlines in securities".	**Our proposal** We propose to correct wording so that the phrase reads as follows; **"…….dealings in securities".**
Fifth Schedule	The 1st page of the fifth schedule (paragraphs 1 to 4) are okay. However, we note that the rest (paras 5 to 26) seem to be misplaced. They refer to accounting matters that have nothing to do with the auditor's report. These have already been covered in paras 3 to 26 of the fourth schedule which deals with accounts. It appears as if the contents of the fourth	**Our proposal** We propose that the said paragraphs be deleted from the fifth schedule.

SECTION	OBSERVATION	COMMENT
	schedule were mistakenly carried to the fifth schedule.	
Other Considerations		
Statement in lieu of a prospectus	The repealed Companies Act (Cap 110) provided for a statement in lieu of a prospectus under s.31 upon a private company becoming public.	**Our proposal** We propose that the provision be re-introduced in the amendment, and be included under s.24 which contains the requirements for re-registration of a private company as a public company.
Take over and Acquisitions	The Act is silent with regard to the concept of mergers and acquisition therefore leaving companies that want to undertake such business combinations to look to common law and practice as the law applicable. We recommend that the Act be amended to provide for the concept of mergers and acquisitions, the circumstances under which it is permissible, the board and shareholder authorizations required, among others.	**Our proposal** We thus propose that we borrow a leaf from the UK Companies Act 2006 and the Kenyan Companies (**Part XXIV)** that provide elaborately on this concept.
Share Buy Back	The Act is silent on a company buying back its own shares, so the only options available to a company which wants to return excess share capital to a shareholder is to petition the High Court to reduce its share capital. s.77 of the Act provides that where a company has	**Our proposal** We therefore recommend that the Act be amended to include share buy back as another option for buying shares from shareholders such as investors who want to exit a company after achieving the objectives of a particular investment. It may also be an opportunity for a dissenting shareholder to

SECTION	OBSERVATION	COMMENT
	passed a resolution for reducing share capital, it shall petition to the court for an order confirming the reduction and shall in the meantime cause the resolution to be published in the *Gazette* and in the newspaper having national wide circulation. The process of petitioning court and getting an outcome is generally a lengthy and expensive process, which in turn limits the shareholders to transfer the shares to other shareholders or third parties. In cases where other shareholders or third parties are not willing to buy shares from a shareholder who wants to exit a company the only remaining option available is petitioning High Court for reduction of share capital.	exit a company. This is especially relevant where a company has excess capital which it does not need. We should borrow a leaf from the new Companies Act of Kenya, the Indian Companies Act, etc which, have provisions for share buy backs.
Document Retention and Disposal	We also recommend that the Companies Act be amended to provide for document retention and disposal which were provided for in the repealed Act (section 336 of Cap 110). Whereas the Companies (General) Regulations, 2016 contain a regulation on the retention period under Regulation 35, the substantive provision should be inserted in the main law. Otherwise as a matter of known legal drafting, the Regulation may be attacked for lack of validity since it is not cited within the main Act as part of the clauses that would call for elaboration in the subsequent Regulations.	