



Tuvalu

COMPANIES ACT

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Tuvalu

COMPANIES ACT

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Tuvalu

COMPANIES ACT

AN ACT TO PROVIDE FOR THE INCORPORATION AND REGULATION OF COMPANIES AND MATTERS CONNECTED THEREWITH¹

Commencement [2 April 1992]²

PART I - PRELIMINARY

1 Short title

This Act may be cited as the Companies Act.

2 Interpretation

The First Schedule applies for the purpose of the interpretation of this Act.

PART II - CONSTITUTION OF COMPANIES AND INCIDENTAL MATTERS

DIVISION 1 - FORMATION

3 Capacity to form a company

- (1) Subject to subsections (2) and (3), a company may be formed under this Act for any lawful purpose by one, or more than one, person.
- (2) A natural person —
 - (a) who is less than eighteen years of age;

- (b) who is of unsound mind and has been so found by a court in Tuvalu or elsewhere; or
 - (c) who is an undischarged bankrupt,
may not form, or join in the formation of, a company under this Act.
- (3) A corporation may not form, or join in the formation of, a proprietary company.

4 Formation of a company

- (1) Any person or persons wishing to form under this Act a company —
- (a) shall subscribe in the manner provided in subsection (2) to the Memorandum of Association of the proposed company;
 - (b) shall lodge, or cause to be lodged, the following instruments with the Registrar —
 - (i) the Memorandum of Association;
 - (ii) the statements required to be so lodged by sections 109(2) and 118(1);
 - (iii) if the company is to be incorporated as a proprietary company, a statement to that effect; and
 - (iv) in any case where section 58 applies, any report to be so lodged under subsection (2) of that section; and
 - (c) may lodge, or cause to be lodged, with the Registrar for registration, Articles of Association of the proposed company subscribed to in the manner provided in subsection (2).
- (2) A person wishing to subscribe to the Memorandum of Association or Articles of Association of a proposed company shall do so —
- (a) in the case of a natural person, by signing the Memorandum or, as the case may be, the Articles; or
 - (b) in the case of a corporation, by affixing the seal of the corporation to, or by causing a person duly authorised by the corporation to sign, the Memorandum or, as the case may be, the Articles,
- in the presence of at least one witness (not being another subscriber) who shall attest the signature or the fixing of the seal and add his address.
- (3) No subscriber to the Memorandum may take less than one share and each subscriber must write opposite to his name the number of shares he takes.
- (4) Any person registering a company who is not a citizen of Tuvalu and has a pecuniary interest in the company, or will be an officer or director of the company, shall complete such financial, character, and security information in such form as may be prescribed by the Minister.³

5 Types of Company

A company may be incorporated under this Act as a public company or as a proprietary company.

6 Company to have share capital

Every company incorporated under this Act shall be limited by shares, that is to say, be a company in respect of which the liability of every member is limited to the amount paid up on each share of which he is the holder.

7 Prohibition of partnership, etc., exceeding certain numbers

An association or partnership consisting —

- (a) in the case of an association or partnership formed for the purpose of carrying on the business of banking, of more than ten persons; or
- (b) in any other case, of more than twenty persons,

which has for its object the acquisition of gain by the association or partnership, or individual members thereof, shall not be formed unless it is formed under this Act or is formed in pursuance of some other enactment.

DIVISION 2 - MEMORANDUM AND ARTICLES

8 Contents of Memorandum

- (1) The Memorandum of a company shall set out in respect of the company —
 - (a) the name of the company;
 - (b) that the registered office of the company is to be situated in Tuvalu;
 - (c) the amount of share capital with which the company proposes to be registered and the division of that share capital into shares of a fixed amount;
 - (d) that the liability of the members is limited;
 - (e) the number of directors, or the minimum and maximum number of directors, of the company; and
 - (f) if section 58 applies, the matter required by that section to be stated in the Memorandum.
- (2) In the case of a proprietary company, the Memorandum of the company shall, in addition to meeting the requirements of subsection (1), meet the requirements of section 18.
- (3) It is not necessary to set out in the Memorandum of a company the objects of the company, but any restriction which is to be imposed on the capacity or powers of the company shall be set out in the Memorandum.

- (4) Nothing in this section operates to prevent the inclusion in the Memorandum of a company of provision with respect to any matter not required by this section to be included in the Memorandum.

9 Adoption and application of Articles in the Second Schedule

- (1) Articles of a company may —
- (a) in the case of a public company, adopt all or any of the Articles in Part I of the Second Schedule; or
 - (b) in the case of a proprietary company, adopt all or any of the Articles contained in Part II of that Schedule.
- (2) If Articles are not registered pursuant to section 12(1)(a), or if Articles are so registered, in so far as the Articles do not exclude or modify the Articles contained in Part I or Part II of the Second Schedule, as the case may be, those Articles shall, so far as applicable, be the Articles of the company in the same manner and to the same extent as if they were contained in duly registered Articles.

10 Effect of Memorandum of incorporation and Articles

Subject to this Act, the Memorandum and Articles of a Company bind the company and its members to the same extent as if they respectively had been signed by each member and contained covenants on the part of each member to observe the provisions of the Memorandum and Articles.

11 Amendment of Memorandum and Articles

- (1) Part I of the Third Schedule applies with respect to the amendment of the Memorandum of a company.
- (2) Part II of the Third Schedule applies with respect to the amendment of the Article of a company.

DIVISION 3 - REGISTRATION

12 Registration of Memorandum, etc.

Where, in respect of a proposed company, the instruments referred to in section 4(1)(b) are lodged with the Registrar, the Registrar shall, if he is satisfied that the requirements of this Act have been met, register the Memorandum and the Articles (if any) of the proposed company.

13 Effect of registration

- (1) Where the Memorandum of a company is registered pursuant to section 12, the Registrar shall issue under his hand in respect of the company a certificate of incorporation —
 - (a) stating the name of the company;
 - (b) stating whether the company is incorporated as a public or a proprietary company; and
 - (c) giving the date of the incorporation of the company, which shall be the same date as the date of the issue of the certificate.
- (2) A company comes into existence on the date so given in the certificate of incorporation issued in respect of the company.
- (3) A certificate issued in respect of a company under subsection (1) is conclusive evidence that the company was entitled to be incorporated and that the provisions of this Act have been complied with respect to its incorporation.

DIVISION 4 - NAMES OF COMPANIES**14 Items to be included in name of company**

- (1) The last item in the name of a company shall be the word “Limited or the abbreviation “LTD.”
- (2) The penultimate item in the name of a proprietary company shall be “Proprietary” or the abbreviation “PTY.”

15 Prohibited names

- (1) A company shall not be registered by a name which —
 - (a) contains any item that is prescribed;
 - (b) is identical with the name of an existing company or so clearly resembles such a name as to be likely to be mistaken for it;
 - (c) includes the word “Proprietary” or the abbreviation “PTY” unless it is being incorporated as, or converted to, a proprietary company; or
 - (d) does not comply with the requirements of section 14(1) or, in the case of a proprietary company, with the requirements of section 14(1) and (2).
- (2) Where, through inadvertence or otherwise, a company is registered by a name which contravenes or does not meet the requirements of subsection (1), the company —
 - (a) shall, as soon as may be after it becomes aware of that fact; or
 - (b) shall, on being required by the Registrar to do so within a reasonable period specified by him,

alter its name to a name approved by the Registrar.

- (3) A company which does not comply with subsection(2)(a), or with a requirement of the Registrar under subsection (2)(b), is guilty of an offence.

16 Approval of Registrar to change of name

- (1) Subject to subsection (3), a company shall not amend its Memorandum to change its name unless the Registrar has approved the proposed new name.
- (2) Where a company changes its name it shall notify the Registrar accordingly and the Registrar —
- (a) shall register the company by the new name; and
 - (b) shall re-issue the certificate of incorporation in respect of the company altered to meet the case.
- (3) This section does not apply in the case of a change of name necessary to enable a company to convert to a public company, or, as the case may be, a proprietary company.

17 Legal proceedings, etc., not affected by change of name

A change of its name does not affect the identity of a company or any rights or obligations of the company, and legal proceedings that might have been commenced or continued by or against the company in its former name may be commenced or continued by or against it in its new name.

DIVISION 5 - PROPRIETARY COMPANIES

18 Incorporation of proprietary company

A company may be incorporated as a proprietary company if its Memorandum —

- (a) limits to not more than twenty the number of its members;
- (b) restricts the right to transfer its shares;
- (c) prohibits any invitations to the public to subscribe for any shares in, or debentures of, the company;
- (d) prohibits any invitations to the public to deposit money with the company for fixed periods or payable at call, whether or not bearing any interest;
- (e) requires all the directors of the company to be members of the company; and
- (f) prohibits the issue of classes or shares.

19 Determining number of members of proprietary company

In determining the number of members of a proprietary company two or more persons who jointly hold shares shall be counted as one person.

20 Conversion of public company to proprietary company

- (1) Subject to subsection (2), a public company wishing to convert to a proprietary company may do so but in every such case the company shall lodge with the Registrar a notice of conversion in the prescribed form, accompanied by —
 - (a) a copy of a special resolution of the company —
 - (i) determining to convert to a proprietary company; and
 - (ii) amending its Memorandum in such manner as is necessary to enable it to so convert; and
 - (b) a statutory declaration by the directors of the company to the effect that no circumstance exists which —
 - (i) if the company were converted to a proprietary company on the date on which the declaration is lodged; and
 - (ii) if the special resolution making the amendments referred to in paragraph (a)(ii) had effect,would entitle the Court to make a determination under section 27(1) that the company had ceased to be a proprietary company.
- (2) A company which has ceased, pursuant to a determination made under section 27(1), to be a proprietary company, shall not thereafter convert to a proprietary company without the leave of the Court.

21 Conversion of proprietary company to public company

Subject to its Memorandum and Articles, a proprietary company wishing to convert to a public company may do so but in every such case the company shall lodge with the Registrar a notice of conversion in the prescribed form, accompanied by —

- (a) a copy of a special resolution of the company —
 - (i) determining to convert to a public company; and
 - (ii) amending its Memorandum to remove the word “Proprietary” or, as the case may be, the abbreviation “PTY” from its name; and
- (b) a statement in lieu of a prospectus which complies with the requirements of section 52.

22 Re-issue of certificate of incorporation on conversion

- (1) Subject to subsection (2), on compliance —

- (a) by a public company with the requirements of section 20; or
 - (b) by a proprietary company with the requirements of section 21,
- the Registrar shall re-issue the certificate of incorporation in respect of the company altered to meet the case.
- (2) The Registrar shall not re-issue a certificate of incorporation pursuant to subsection (1) until the expiration of the period of one month after the date on which the special resolution referred to in section 20(1)(a) or, as the case may be, in section 21(a), was passed.
 - (3) A company is converted to a proprietary company or, as the case may be, a public company from the date of re-issue pursuant to subsection (1) of the certificate of incorporation of the company.

23 Effect of re-issue of certificate of incorporation

- (1) Where a certificate is re-issued pursuant to section 22 —
 - (a) section 13(3) applies to the extent provided to the certificate so re-issued as it applies to a certificate issued under section 13; and
 - (b) the re-issued certificate is prima facie evidence that the company meets the requirements necessary, and was entitled, to convert to a proprietary company or, as the case may be, a public company.
- (2) The conversion of a company pursuant to section 22 does not affect the identity of the company or any right or obligation of the company or render defective any legal proceedings by or against the company, and any legal proceedings that could have been continued or commenced by or against it prior to the conversion may, notwithstanding any change, be continued or commenced by or against it after the conversion.

24 Right of pre-emption

- (1) In this section —
 - “**continuing member**”, in relation to a proprietary company, means a member of the company on the date on which the price, at which the shares of any outgoing member are to be acquired under this section, is determined in accordance with this section;
 - “**outgoing member**”, in relation to a proprietary company, means a member of the company in relation to whom a relevant event occurs;
 - “**relevant event**”, means an event of a kind referred to in subsection (2) .
- (2) This section applies in relation to a proprietary company when any of the following events occur, namely —
 - (a) a member of the company dies or is adjudged bankrupt;

- (b) an order made under section 25 is made in relation to a member and has effect;
 - (c) a member of the company resigns, is removed from office, or ceases to hold, a directorship of the company but does not cease to be a member; or
 - (d) a member of the company contracts to sell, or creates a derivative interest in, any of his shares in the company.
- (3) Where a relevant event occurs by virtue of which this section applies in relation to a proprietary company and the Memorandum or Articles of the company so provide, each continuing member of the company is entitled to acquire shares in the company of the outgoing member in accordance with the provisions of the Memorandum or, as the case may be, the Articles.

25 Expulsion of member

- (1) On application made by a member of a proprietary company the Court may, on any ground referred to in subsection (2), order that any other member of the company shall be an outgoing member for the purpose of the acquisition of his shares in the company pursuant to section 24.
- (2) The grounds on which the Court may make an order under subsection (1) in relation to a member of a proprietary company are —
- (a) that the member whose expulsion is sought —
 - (i) has been guilty of serious or persistent breaches of the provisions of this Act or of the Memorandum or Articles of the company;
 - (ii) has been guilty of conduct seriously detrimental to the interests of the company or its members as a whole; or
 - (iii) has an interest or holds a position in another corporation, firm or undertaking which is likely to cause him to act to the detriment of the company and to result in substantial harm to it; or
 - (b) that the member whose expulsion is sought is a director of the company and —
 - (i) has been guilty of serious breaches of duty as a director;
 - (ii) has been guilty of serious breaches of duty as a director of another corporation, or as a partner in a firm; or
 - (iii) has been convicted of a criminal offence involving dishonesty.
- (3) An order made under this section has effect for the period of three months following the date of the order, but without prejudice to the operation of any provision in the Memorandum or Articles of a company of a kind referred to in section 24.

26 Voting Agreements

No agreement by a member of a company with another person (whether a member or not) whereby that other person may require the member to vote in a particular manner at any meeting of the company, or whereby the member agrees to vote in a particular manner, or not to vote, at any such meeting, is valid.

27 Default by a proprietary company

- (1) Where a proprietary company is in default as provided in subsection (4), the Court in proceedings on an application under this section by the Registrar or a member or creditor of the company may by order determine that the company has ceased to be a proprietary company.
- (2) The Court may refuse to make an order under subsection (1) if satisfied that in all the circumstances of the case it is fair and reasonable to grant relief to the company concerned.
- (3) The Court may order that any person be joined as a party in proceedings on an application under subsection (1) if the Court thinks it is desirable to so order for the purpose of disposing of the application.
- (4) A proprietary company is in default for the purpose of this section —
 - (a) if default has been made in relation to the company in complying with a limitation, restriction, prohibition or requirement of a kind referred to in section 18;
 - (b) where the company has been convicted of an offence under section 29(1) or 163(7); or
 - (c) the Memorandum of the company have been so altered that they no longer include limitations, restrictions, and prohibitions of the kind referred to in section 18 or no longer satisfy the requirements of that section.

28 Effect of determination under section 27

- (1) Where the Court by order determines under section 27 that a company has ceased to be a proprietary company —
 - (a) the company is, with effect from the date of the order, a public company;
 - (b) the company shall be deemed to have changed its name on that date by the omission from it of the word “Proprietary” or, as the case may be, the abbreviation “PTY”; and
 - (c) the company shall, within thirty days after that date, lodge with the Registrar a statement in lieu of a prospectus which complies with the requirements of section 52.

- (2) Where default is made in complying with subsection (1)(c) the company is guilty of an offence.

29 Offences

- (1) Where default is made, in relation to a proprietary company, in complying with any prohibition of a kind referred to in paragraph (c) or (d) of section 18, the company and each director of the company who is in default is guilty of an offence.
- (2) Where the directors of a company make and lodge with the Registrar a statutory declaration for the purposes of section 22 and the declaration is false in a material particular, each director is guilty of an offence.
- (3) In proceedings for an offence under subsection (2) it is a defence for a person charged to prove —
 - (a) that he relied on information supplied to him by an officer of the company of which the person charged is or was a director when the declaration was made; and
 - (b) that the officer was in a position to supply the information and in the circumstances, it was reasonable to rely on it.
- (4) Where a company which is not a proprietary company uses as part of its name the word “Proprietary” or the abbreviation “PTY”, the company and each director of the company is guilty of an offence.

DIVISION 6 - MEMBERS AND SHAREHOLDERS OF COMPANY AND LIABILITY OF MEMBERS

30 Membership of company

- (1) A person who agrees to become a member of a company and whose name is entered in the company’s register of members is a member of the company.
- (2) A subscriber to the Memorandum of a company is deemed for the purposes of subsection (1) to have agreed to become a member of the company and, as soon as may be after its registration, his name shall be entered in the company’s register of members.
- (3) Every member shall be a shareholder of the company and shall hold at least one share and every holder of a share shall be a member of the company.
- (4) Membership of a company shall continue until a valid transfer of all the shares held by the member is registered by the company, or until all such shares are transmitted by operation of law to another person or forfeited or cancelled under this Act or the Memorandum or Articles of the company or until the member dies when the rights and obligations attached to membership shall pass to his estate.

- (5) In this Act, any reference to holders of shares is a reference to persons who are shareholders in respect of the shares, and any reference to holding shares shall be construed accordingly.
- (6) For the purposes of this Act, shares shall be considered as having been issued if any person is a shareholder in respect of them.

31 Liability of members

- (1) Subject to subsection (2), in the event of a company being wound up every present or past member is liable to contribute to the assets of the company to an amount sufficient for payment of its debts and expenses of the winding up, and for the adjustment of the rights of the members and past members among themselves.
- (2) Subsection (1) is subject to the following limitations, namely —
 - (a) a past member is not liable to contribute if he has ceased to be a member for a period of one year or more before the commencement of the winding up;
 - (b) a past member is not liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this section;
 - (c) no contribution is required from any member or past member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;
 - (d) a past member is not liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member; and
 - (e) any sum due from the company to a member or past member, in his character of member, by way of dividend or otherwise, shall not be set-off against the amounts for which he is liable to contribute in accordance with this section, but any such sum shall be taken into account for the purposes of final adjustment of the rights of the members and past members amongst themselves.
- (3) For the purposes of subsections (1) and (2), “past members” includes the estate of a deceased member and, where any person dies after becoming liable as a member, the liability is enforceable against his estate.
- (4) Except as provided in subsections (1) to (3), a member or a past member of a company is not liable as such for any of the debts or liabilities of the company.
- (5) In the event of a company being wound up, any instalment of the issue price of a share remaining to be paid shall, with effect from the commencement of the winding up, be treated as an amount unpaid on the share whether or not the due date for the payment of the instalment has occurred.

32 Minimum membership for carrying on business

If a company carries on business without having at least two members and does so for more than six months, a person who, for the whole or any part of the period that it so carries on business after those six months —

- (a) is a member of the company; and
- (b) knows that it is carrying on business with only one member,

is liable (jointly and severally with the company) for the payment of the company's debts contracted during the period or, as the case may be, that part of it.

PART III - PRE-INCORPORATION CONTRACTS AND CAPACITY AND POWERS OF COMPANY**33 Pre-incorporation contracts**

- (1) Except as provided in this section, a person who enters into a written contract in the name of or on behalf of a company before it comes into existence is personally bound by the contract and is entitled to its benefits.
- (2) A company may, within a reasonable time after it comes into existence, by any action or conduct signifying its intention to be bound thereby, adopt a written contract made before it came into existence in its name or on its behalf, and upon any such adoption —
 - (a) the company is bound by the contract and is entitled to the benefits thereof as if the company had been in existence at the date of the contract and had been a party thereto; and
 - (b) a person who purported to act in the name of or on behalf of the company ceases, except as provided in subsection (3), to be bound by or entitled to the benefits of the contract.
- (3) Except as provided in subsection (4), whether or not a written contract made before the coming into existence of a company is adopted by the company, a party to the contract may apply to the Court for an order fixing obligations under the contract as joint or joint and several, or apportioning liability between the company and a person who purported to act in the name of or on behalf of the company, and upon such application the Court may make any order it thinks fit.
- (4) A person who entered into a written contract in the name of or on behalf of a company before it came into existence is not bound by the contract or entitled to the benefits thereof in any event unless it is so provided in the contract.

34 Capacity and powers of company

- (1) Subject to this Act or to any other enactment restricting or having the effect of restricting its capacity or powers, a company by virtue of this section, has —
 - (a) unlimited capacity; and
 - (b) the rights, powers and privileges of a natural person of full age and capacity.
- (2) A company may hold land.
- (3) A company may, in pursuance of this section, carry on in any jurisdiction outside Tuvalu, any activity subject to the laws of the jurisdiction.

35 Effect of and reliance on restrictions in Memorandum of company

- (1) Where pursuant to section 8(3) there is set out in the Memorandum of a company any provision restricting the capacity or powers of the company of, the restriction may be relied on, and has effect, only in the circumstances referred to in subsection (2), and no —
 - (a) act of the company;
 - (b) agreement to which the company is a party; or
 - (c) conveyance or transfer of property by or to the company,is invalid by reason only of failure to comply with the restriction.
- (2) Subject to subsection (3), a restriction in the Memorandum of a company of a kind referred to in subsection (1) may be relied on and has effect for the purposes of —
 - (a) proceedings against the company —
 - (i) by a director or member of the company; or
 - (ii) where the company has issued debentures secured by a floating charge over all or any of the company's property, by the holder of any of the debentures or the trustee for the holders of the debentures;
 - (b) proceedings by the company or a member of the company against the present or former officers of the company for failure to observe any such restriction;
 - (c) proceedings by the Minister or a member of the company to wind up the company under the Companies (Winding Up) Act⁴; or
 - (d) proceedings for the purposes of section 210(1)(c).
- (3) A person may not, in proceedings referred to in subsection (2), rely on a restriction in the Memorandum of a company of a kind referred to in subsection (1), in any case where he voted in favour of, or otherwise, expressly or by conduct, agreed to, the doing of an act (including the entering into of an agreement) by the company or the conveyance by or to the

company of property, which, it is alleged in the proceedings, was or would be contrary to such a restriction.

36 Power of court to make orders in proceedings under section 35

- (1) Where, in proceedings of a kind referred to in section 35(2)(a), the Court makes an order restraining the doing of any act (including the entering of into an agreement) or the conveyance or transfer of any property, the Court may —
 - (a) in those proceedings; or
 - (b) in proceedings on an application under this subsection by the company concerned or any other interested person,make such orders as it thinks proper for declaring or adjusting rights and liabilities in connection with the act, conveyance or transfer, or any agreement relating thereto.
- (2) without limiting the generality of the power of the Court under subsection (1), the orders which may be made under that subsection include —
 - (a) an order for the payment or repayment of moneys;
 - (b) an order discharging any person from an obligation to pay moneys;
 - (c) an order setting aside or restraining the performance of any agreement;
 - (d) an order for the payment by any person of compensation to any other person for the loss suffered, or which may be suffered, by that or other person by reason of the Act, conveyance transfer concerned being restrained; and
 - (e) an order for payment of costs.
- (3) An order made —
 - (a) under subsection (2)(d) —
 - (i) may provide for the payment of compensation by or to the company concerned;
 - (ii) but shall not provide for the payment of compensation for loss of anticipated profits to be derived from, or as a result of, any act or the conveyance or transfer of any property; or
 - (b) under subsection (2)(e) may provide for payment of costs by or to the company concerned.
- (4) The Court —
 - (a) may order that any person be joined as a party in proceedings of a kind referred to in subsection (1); and
 - (b) shall not, in any such proceedings, make an order for the payment or repayment by any person of money or compensation unless that person is a party in the proceedings.

37 Authority of directors, officers and agents, etc.

- (1) A company, or a guarantor of an obligation of a company, may not assert against a person dealing with the company or with any person who has assumed rights from the company, that —
- (a) the Memorandum or Articles of the company have not been complied with;
 - (b) the person or persons named in the most recent notice lodged with the Registrar pursuant to section 126 is not the director or are not the directors of the company;
 - (c) the place named in the most recent notice lodged with the Registrar pursuant to section 109 is not the registered office of the company;
 - (d) a person held out by the company as an officer or agent of the company has not been duly elected or appointed or does not have the authority to exercise the powers or perform the duties customarily exercised or performed by the officer or agent of a company carrying on business of the kind carried on by the company or customarily exercised or performed by an officer or agent of the type concerned; or
 - (e) a document issued by an officer or agent of the company with actual authority, or who customarily would in the exercise or performance of his powers or duties have authority to issue the document, is not valid or is issued without authority, except where the person has actual knowledge of the matter sought to be so asserted or, if having regard to his position with, or relationship to, the company, he ought to have knowledge of that matter.
- (2) This section —
- (a) does not affect the operation of section 35 or 36; and
 - (b) shall not operate so as to allow any person to recover a debt from a company, or to enforce any liability against a company, or to treat any transaction as binding on a company if, in connection with the same matter, the person has been guilty of a fraud upon the company, or has participated or acquiesced in a fraud committed upon the company.

38 No constructive notice

Subject to this Act, no person is affected by, or is deemed to have a notice or knowledge of, the contents of a document concerning a company by reason only that the document has been registered by the Registrar or is available for inspection at an office of the company.

39 Notice of matters by company

A company shall be considered as having notice of a matter if notice of the matter is given to or received or obtained by any director of the company, other than a director who obtains the notice for the purpose of, or in the course of, committing a breach of duty as a director of the company, or a fraud or wrong upon the company.

40 Form of contract

- (1) A contract made according to subsection (2) on behalf of a company —
 - (a) is effectual in law in point of form and binds the company and the other party to the contract; and
 - (b) may be varied or discharged in the same manner in which it is authorised by subsection (2) to be made.
- (2) Subject to any enactment, a contract which —
 - (a) if made between private persons would, by law, be required to be in writing under seal, may be made on behalf of a company in writing under seal;
 - (b) if made between private persons would, by law, be required to be in writing or to be evidenced in writing signed by the parties to be charged thereby may be made or evidenced in writing and signed in the name or on behalf of the company; and
 - (c) if made between private persons would, by law, be valid although made by parol only and not reduced to writing, may be made by parol on behalf of the company by any person acting under its authority express or implied.

41 Bills of exchange and promissory notes

A bill of exchange or promissory note shall be deemed to have been made, accepted or endorsed, on behalf of a company, if made, accepted or endorsed in the name of the company or if expressed to be made, accepted or endorsed on behalf or on account of the company.

42 Powers of attorney

- (1) A company may, by writing under seal empower any person, either generally or in respect of any specified matter, as its attorney, to execute deeds on its behalf in any place within or outside Tuvalu.
- (2) A deed signed by a person empowered as provided in subsection (1) binds the company and has the same effect as it would have if it were the company's common seal.

43 Common seal and official seal for use abroad

- (1) A company shall have a common seal but, except where required by any enactment to use its common seal, the company —
 - (a) may use that seal; or
 - (b) may use any other form of seal other than its official seal.
- (2) A Company, if authorised by its Articles may have for use in any country other than, or in any district or place not situated in Tuvalu, an official seal which shall be facsimile of the common seal of the company, with the addition on its face of the name of the country, district or place where it is to be used.
- (3) Every document to which an official seal is duly affixed binds a company as if it had been sealed with the common seal of the company.
- (4) A company may, by instrument in writing under its common seal, authorise any agent appointed for that purpose to affix the official seal to any document to which the company is party in the country, district or place where the official seal may be used.
- (5) Any person dealing with an agent appointed pursuant to subsection (4) in reliance on the instrument conferring the authority is entitled to assume that the authority of the agent continues during the period, if any, mentioned in the instrument or, if no period is so mentioned, until that person has actual notice of the revocation or determination of the authority.
- (6) The person affixing an official seal shall, by writing under his hand, certify on the document to which the seal is affixed, the date on which and the place at which it is affixed.

PART IV - SHARES, DEBENTURES AND CHARGES**DIVISION 1 - PROSPECTUSES****44 Filing of prospectus**

- (1) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.
- (2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, shall be filed for registration with the Registrar on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration.

- (3) The Registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in a manner required by this section.
- (4) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.
- (5) Where a prospectus is issued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue of the prospectus, shall be guilty of an offence.

45 Specific requirements as to particulars of prospectus

- (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company must state —
 - (a) the contents of the Memorandum, with the names, descriptions and addresses of the signatories, and the number of shares subscribed for by them respectively and the number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company;
 - (b) the number of shares, if any, fixed by the Articles as the qualification of a director, and any provision in the Articles as to the remuneration of the directors;
 - (c) the names, descriptions and addresses of the directors or proposed directors;
 - (d) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share, and in the case of a second, or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, and the amount actually allotted and the amount, if any paid on the shares so allotted;
 - (e) the number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash and in the latter case the extent to which they are so paid up and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued;
 - (f) the names and addresses of the vendors of any property purchased or acquired by the company or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares or debentures to the vendor and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor;

Provided that where the vendors or any of them are a firm the members of the firm shall not be treated as separate vendors;

- (g) the amount (if any) paid or payable as purchase money in cash, shares or debentures for any such property, specifying the amount (if any) payable for goodwill;
- (h) the amount (if any) paid within the two preceding years or payable as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions for any shares in, or debentures of, the company, or the rate of any such commission:

Provided that it shall not be necessary to state the commission payable to sub-underwriters;

- (i) the amount or estimated amount of preliminary expenses;
- (j) the amount paid within the two preceding years or intended to be paid to any promoter and the consideration for any such payment;
- (k) the dates and parties to every material contract and a reasonable time and place at which any material contract or a copy thereof may be inspected:

Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or to any contract entered into more than two years before the date of issue of the prospectus;

- (l) the names and addresses of the auditors of the company;
 - (m) full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director or otherwise for services rendered by him or by the firm in connection with the promotion or foundation of the company; and
 - (n) where the company is a company having shares of more than one class, the right of voting at meetings of the company, conferred by the several classes of the shares respectively.
- (2) For the purposes of this section, every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company in any case where —
- (a) the purchase money is not fully paid at the date of issue of the prospectus; or
 - (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or

- (c) the contract depends for its validity or fulfilment on the result of that issue.
- (3) Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as if the expression “vendor” included the lessor, and the expression “purchase money” included the consideration for the lease, and the expression “sub-purchaser” included a sub-lease.
- (4) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus shall be void.
- (5) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum or the signatories thereto or the number of shares subscribed for by them.
- (6) In the event of non-compliance with any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance, if he proves that —
- (a) as regards any matter not disclosed, he was not cognisant thereof; or
- (b) the non-compliance arose from an honest mistake of fact on his part:
- Provided that in the event of non-compliance with the requirements contained in paragraph (m) of subsection (1), no director or other person shall incur any liability in respect of the non-compliance unless it be proved that he had knowledge of the matters not disclosed.
- (7) This section does not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe either for shares or debentures of the company, whether with or without the right to renounce in favour of other persons, but subject as aforesaid this section shall apply to any prospectus whether issued on or with reference to the formation of a company, or subsequently.
- (8) The requirements of this section as to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors or proposed directors and the amount or estimated amount of preliminary expenses shall not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business.
- (9) Nothing in this section shall limit or diminish any liability which any person may incur under the general law of this Act apart from this section.

46 Obligation of companies where no prospectus is issued

- (1) A company which does not issue a prospectus on or with reference to its formation shall not allot any of its shares or debentures unless before the first

allotment of either shares or debentures there has been filed with the Registrar a statement in lieu of prospectus complying with the requirements of section 52.

- (2) This section does not apply to a proprietary company.

47 Restriction on alteration of terms mentioned in prospectus, etc.

A company shall not previously to the annual general meeting, vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of the meeting.

48 Liability for statements in prospectus

- (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company —

- (a) every person who is a director of the company at the time of the issue of the prospectus; or
- (b) every person who has authorised the naming of him and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;
- (c) every promoter of the company; and
- (d) every person who has authorised the issue of the prospectus,

shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith, unless it is proved —

- (i) with respect to every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true;
- (ii) with respect to every untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement or was a correct and fair copy of or extract from the report or valuation:

Provided that the director, person named as director, promoter or person who authorised the issue of the prospectus shall be liable to pay such compensation if it is proved that he had no reasonable ground to believe that the person making the statement, report or valuation was competent to make it; and

- (iii) with respect to every untrue statement purporting to be a statement made by an official persona or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document;
or unless it is proved —
 - (iv) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus and that it was issued without his authority or consent;
 - (v) that the prospectus was issued without his knowledge or consent and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or
 - (vi) that after the issue of the prospectus and before allotment thereunder he, on becoming aware of any untrue statement therein, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor.
- (2) Where the prospectus contains the name of a person as a director of the company or as having agreed to become a director thereof and he has not consented to become a director or has withdrawn his consent before the issue of the prospectus and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnify the person so named against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or in defending himself against any action or legal proceedings brought against him in respect thereof.
- (3) Every person who, by reason of his being a director or named as a director or as having agreed to become a director or of his having authorised the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in the cases of contract, from any other person who if sued separately would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

DIVISION 2 - RESTRICTIONS ON ALLOTMENTS

49 Restriction as to allotment

- (1) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the following conditions have been complied with, namely —

- (a) the amount (if any) fixed by the Memorandum or Articles and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or
- (b) if no amount is so fixed and named, then the whole amount of the share capital so offered for subscription,

has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription, has been paid to and received by the company.

- (2) The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as the minimum subscription.
- (3) The amount payable on application on each share shall not be less than five per cent of the nominal amount of the share.
- (4) Where these conditions have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest and, if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per cent per annum from the expiration of the forty-eighth day:

Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.

- (5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.
- (6) This section, except subsection (3), shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.
- (7) In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription, that is to say —
 - (a) the amount (if any) fixed by the Memorandum or Articles and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment; or
 - (b) if no amount is so fixed and named, then the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid otherwise than in cash,

has been subscribed and an amount no less than five percent of the nominal amount of each share payable in cash has been paid to and received by the company.

- (8) Subsection (7) does not apply to a proprietary company.

50 Effect of irregular allotment

- (1) An allotment made by a company to an applicant in contravention of section 49 shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later and shall be so voidable notwithstanding that the company is in course of being wound up.
- (2) Any director of a company who knowingly contravenes or permits or authorises the contravention of any of the provisions of section 49 with respect to allotment shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby.
- (3) Proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

51 Restrictions on commencement of business

- (1) A company shall not commence any business or exercise any borrowing powers unless —
 - (a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription;
 - (b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription or, in case of a company which does not issue a prospectus inviting the public to subscribe for its shares, on the shares payable in cash;
 - (c) there has been filed with the Registrar a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with; and
 - (d) in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the Registrar a statement in lieu of prospectus.
- (2) The Registrar shall, on the filing of the statutory declaration, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled:

Provided that in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, the Registrar shall not give such a certificate unless a statement in lieu of prospectus has been filed with him.

- (3) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only and shall not be binding on the company until that date, and on that date it shall become binding.

- (4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.
- (5) Where any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention is, without prejudice to any other liability guilty of an offence.
- (6) Nothing in this section shall apply to a proprietary company.

52 Requirements as to statements in lieu of prospectus

- (1) To comply with the requirement of this Act a statement in lieu of prospectus lodged by or on behalf of a company —
 - (a) shall be signed by every person who is named therein as a proposed director of the company or by his agent authorised in writing;
 - (b) shall, subject to the provisions contained in Part III of the Fourth Schedule, be in the form of and state the matters specified in Part I of that Schedule and set out the reports specified in Part II of that Schedule;
 - (c) shall, where the persons making any report specified in Part II of that Schedule have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of that Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefore;
 - (d) shall, where appropriate, make the disclosure required by section 54(2) ; and
 - (e) shall, where appropriate, make the disclosure with respect to commission or brokerage required by section 54(4).
- (2) The Registrar shall not accept for registration any statement in lieu of prospectus unless it appears to the Registrar to comply with the requirements of this Act.
- (3) Where in any statement in lieu of prospectus there is any untrue statement or wilful non-disclosure, any director who signed the statement is guilty of an offence unless he proves either that he had reasonable grounds to believe and did, up to the time of the delivery for registration of the statement, believe that the untrue statement was true or the non-disclosure immaterial.

53 Return as to allotment

- (1) Where a company makes an allotment of its shares the company shall, within one month thereafter, lodge with the Registrar a return of the allotments stating —

- (a) the number of the shares comprised in the allotment
 - (b) the amount (if any) paid, deemed to be paid, or due and payable on the allotment of each share;
 - (c) if appropriate, the class of shares to which each share comprised in the allotment belongs; and
 - (d) the names and addresses of each of the allottees and the number and if appropriate, class of, shares allotted to him.
- (2) Where shares are allotted or deemed to have been allotted as fully or partly paid up otherwise than in cash, the company —
- (a) shall, if the allotment is made pursuant to a contract in writing, deliver, within one month after the allotment, to the Registrar the contract for registration; or
 - (b) shall, if the allotment is not so made, deliver, within one month after the allotment, to the Registrar particulars in the prescribed form of the contract evidencing the entitlement of the allottee for registration.
- (3) If shares are allotted or agreed to be allotted with a view to all or any of them being offered for sale (whether by the allottee or through another person or persons), this section applies as if the shares had been allotted by the company to the first holders of them who do not take them with a view to offering them for sale.
- (4) If default is made in complying with this section, the company and every officer of the company in default is guilty of an offence.

DIVISION 3 - FINANCIAL ASSISTANCE BY COMPANY IN ACQUISITION OF OWN SHARES, COMMISSION AND DISCOUNT

54 Financial assistance by company to acquire its own shares

- (1) Subject to this Division, where a person is acquiring or is proposing to acquire shares in a company, it is not lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of that acquisition before or at the same time as the acquisition takes place.
- (2) Subject to this Division, where a person has acquired shares in a company and any liability has been incurred (by that or any other person), for the purpose of that acquisition, it is not lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of reducing the liability so incurred.
- (3) A reference in this section to giving financial assistance includes a reference to doing so by means of the making of a loan, the giving of a guarantee, the provision of security, the making of a gift, the release of any obligation, the cancellation of a debt or otherwise.

- (4) Nothing in subsection (1) prohibits a company from giving financial assistance for the purpose of an acquisition of shares in it or its holding company if —
- (a) the company's principal purpose in giving that assistance is not to give it for the purpose of any such acquisition, or the giving of the assistance for that purpose is but an incidental part of some larger purpose of the company; and
 - (b) the assistance is given in good faith in the interests of the company.
- (5) Nothing in subsection (2) prohibits a company from giving financial assistance if —
- (a) the company's principal purpose in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in the company or its holding company, or the reduction or discharge of any such liability but is an incidental part of some larger purpose of the company; and
 - (b) the assistance is in good faith in the interests of the company.
- (6) Nothing in this section prohibits —
- (a) a distribution of a company's assets by way of a dividend lawfully made or a distribution made in the course of the company's winding up;
 - (b) the allotment of bonus shares;
 - (c) a reduction of capital confirmed by order of the Court under section 72;
 - (d) a redemption of shares made in accordance with section 66;
 - (e) anything done in pursuance of an order of the Court under section 196;
 - (f) anything done under arrangement made in pursuance of section 67 of the Companies (Winding Up) Act, 1991; or
 - (g) anything done under an arrangement made between a company and its creditors which is binding on the creditors by virtue of section 84 of the Companies (Winding Up) Act, 1991;
- (7) Nothing in this section prohibits —
- (a) where the lending of money is part of the ordinary business of the company, the lending of money by the company in the ordinary course of its business;
 - (b) the provision by a company in accordance with an employee share scheme authorised by special resolution of the company of money for the acquisition of fully paid up shares in the company or its holding company; or
 - (c) the making by a company of loans to persons (other than directors) employed in good faith by the company with a view to enabling those persons to acquire shares of the company, or of its holding company, to be held by them by way of beneficial ownership.

- (8) If a company contravenes subsection (1) or (2), each officer of the company who is in default is guilty of an offence.

55 Payment of commission

- (1) The directors of a company acting honestly and in good faith with a view to the best interests of the company may, subject to subsection (2), authorise payment by the company of commission to any person in consideration of his subscribing, or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolutely or conditionally, for any shares in the company.
- (2) No commission shall be paid by a company —
- (a) unless a payment of that kind is authorised by the Articles of the company;
 - (b) of any amount that exceeds ten per centum of the price at which the shares are issued or the amount or rate authorised by the Articles, whichever is the less;
 - (c) unless the amount or rate of the commission is —
 - (i) in the case of shares offered to the public for subscription, disclosed in the prospectus; and
 - (ii) in the case of shares not so offered, disclosed in the statement in lieu of prospectus and, where a circular or notice (not being a prospectus) inviting subscription for the shares is issued, also disclosed in that circular or notice; and
 - (d) the number of shares which persons have agreed for a commission to subscribe is disclosed in the manner required by paragraph (c).
- (3) Except as provided in subsection (1) or (2), no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, whether the shares or money are so applied by being added to the purchase money or any property acquired by the company or to the contract price of any work to be executed for the company, or the money is paid out of the nominal purchase money or contract price or otherwise.
- (4) Nothing in this section affects the powers of a company to pay brokerage (in addition to or instead of the commission referred to in subsection (1) as it has heretofore been lawful for a company to pay, but the amount or rate per centum of the brokerage paid or agreed to be paid by the company shall, in the case of shares offered to the public for subscription, be disclosed in the prospectus or, in the case of shares not offered to the public for subscription, be disclosed in the statement in lieu of prospectus and, where a circular or

notice (not being a prospectus) inviting subscription for the shares is issued, also disclosed in that circular or notice.

- (5) A vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have power to apply any part of the money or shares so received in payment of any commission the payment of which, if made directly by the company, would have been lawful under this section.

56 Statement in balance sheet as to commission

- (1) Where a company has paid any sum by way of commission in respect of any shares in the company, the amount so paid or so much thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off.
- (2) If default is made in complying with this section, the company and every officer of the company in default is guilty of an offence.

DIVISION 4 - PAYMENT FOR SHARES

57 Payment for shares issued for cash

- (1) Subject to section 59 and to this section, the issue price of shares issued by a company to be paid for in cash shall be paid to the company within one month after they are allotted and may be paid by instalments if the company so agrees.
- (2) If a shareholder fails to pay to a company an instalment of the issue price in respect of shares held by him within one month after the instalment becomes due, the company may serve a written notice on him stating —
 - (a) the amount due in respect of the shares;
 - (b) the date on which it became due; and
 - (c) that unless the amount is paid within one month after the notice is served, the shares will be forfeited, but without prejudice to the recovery after the forfeiture of any unpaid instalments,and if the amount is not so paid —
 - (d) the allotment of the shares shall become void and the shares shall be forfeited to the company;
 - (e) the company may recover any instalments of the issue price which are due but unpaid at the date the allotment is avoided; and
 - (f) the company is not accountable to the shareholder for instalments of the issue price which have been paid when the allotment of the shares is avoided.
- (3) Nothing in this section affects the liability of a shareholder under section 31.

58 Arrangement for issue of shares made before incorporation of company

- (1) Where, by an arrangement made before its incorporation, any shares of a company are to be paid for by a consideration other than cash, the Memorandum of the company shall state the nature of the consideration, the value of the consideration or its value in money terms, and the extent to which the shares to be issued in respect of it will be credited as paid up.
- (2) Subject to subsection (4) in such a case as is referred to in subsection (1) a report of a qualified accountant, valuer or surveyor to the effect that the consideration is worth at least the amount to be credited as paid up on the shares to be issued in respect of it shall be lodged with the Registrar when the Memorandum is so lodged.
- (3) A report shall not be treated as being a report for the purposes of subsection (2) if it is —
 - (a) made more than one month before the date on which it is so lodged with the Registrar; or
 - (b) made by a subscriber to the Memorandum of the company, a proposed director of the company, or a person who is to furnish any consideration in respect of which the report is required or an employee or partner of that person.
- (4) Subsection (2) does not apply when the consideration in question consists of services.
- (5) Subsection (2) does not apply in the case of an arrangement made before the incorporation of a company which is to be incorporated as a proprietary company.

59 Payment for shares issued for consideration other than cash

- (1) If shares are issued for a consideration other than cash, the shares shall not be allotted until —
 - (a) any services constituting the consideration have been performed; or
 - (b) any assets constituting consideration have been transferred to the company.
- (2) For the purposes of this section, assets shall be considered as transferred to a company —
 - (a) in the case of goods, when the ownership passes to the company or when they are delivered to it;
 - (b) in the case of negotiable instruments, when the company becomes entitled to enforce all the rights embodied in them in its own name without the concurrence of any other person; and

- (c) in any other case, when the ownership or lesser rights agreed to be vested in the company are legally vested in it

60 Shares issued to subscribers

Shares taken by a subscriber to the Memorandum of a public company in pursuance of an undertaking of his in pursuance of the Memorandum, and any premium on the shares, shall be paid for in cash.

61 Meaning of payment in cash

For the purposes of this Act, shares in a company are issued for a consideration other than cash, except when they are to be paid for wholly by legal tender or by a cheque, banker's draft or banker's cheque, or by setting off a debt which is owed by the company and is immediately payable; and in those excepted cases they are issued for a consideration in cash.

DIVISION 5 - SHARES

62 Nature of shares

Shares in a company are personal estate and are not of the nature of real estate, and a share is transferable in the manner provided in this Act.

63 Difference in calls and payments etc.

A company, if so authorised by its Articles, may —

- (a) make arrangements on the issue of shares for a difference between shareholders in the amounts and times of payment of calls on their shares;
- (b) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up; and
- (c) pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

64 Prohibition on allotment of shares at a discount

- (1) A company's shares shall not be allotted at a discount.
- (2) If shares are allotted in contravention of this section, the allottee is liable to pay the company an amount equal to the amount of the discount, with interest at the appropriate rate.

65 Application of share premium

- (1) If a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account called “the share premium account”.
- (2) The share premium account may be applied by the company in paying up issued shares to be allotted to members as fully paid bonus shares, or in writing off —
 - (a) the company’s preliminary expenses; or
 - (b) the expenses of, or the commission paid on discount allowed on, any issue of shares or debentures of the company,or in providing for the premium payable on redemption of debentures of the company.
- (3) Subject to this section, the provisions of this Act relating to the reduction of a company’s share capital apply as if the share premium account were part of the paid up share capital.

66 Redeemable shares

- (1) Subject to this section, a company if so authorised by its Articles, may issue shares which by the terms of the issue will be redeemed or, at the option of the company, or the shareholders, may be redeemed.
- (2) The redemption of shares so issued by a company shall be effected only on the terms and in the manner stipulated in the Articles of the company, and if shares are issued which may be redeemed at the option of the company, the Articles shall state the terms of the option and in particular —
 - (a) the earliest date on which the company may redeem the shares and the latest day by which it must redeem them if any such latest date is provided for; and
 - (b) the manner in which the company will exercise the option, whether by itself selecting shares for redemption or by drawings on ballot or otherwise.
- (3) Notwithstanding anything in the Articles of a company —
 - (a) no shares issued as provided in subsection (1) shall be redeemed except out of profits of the company which would otherwise be available for the payment of dividends, or out of the proceeds of a fresh issue of shares made for the purpose of the redemption;
 - (b) the minimum premium (if any) payable on redemption shall be provided out of profits of the company which would otherwise be available for the payment of dividends before the shares are redeemed, or out of the share premium account;

- (c) no shares issued as provided in subsection (1) shall be redeemed unless a statutory declaration is made by the directors of the company in accordance with this Act and lodged with the Registrar for registration, to the effect that there are no grounds for believing —
 - (i) that the company is, or would after payment be, unable to pay its liabilities as they become due; or
 - (ii) that the realisable value of the company's assets would, after the redemption, be less than the aggregate of its liabilities, and the amount required to pay the holders or shares that have a right to be paid on a redemption or in a winding up rateably with or prior to the holders of the shares to be redeemed; and
- (d) no shares issued as provided in subsection (1) shall be redeemed unless they are fully paid up.
- (4) Shares so issued by a company shall not be redeemed at a price which is in excess of the redemption price therefor stated in the Articles of the company or calculated in accordance with a formula so stated, but without prejudice to the payment of a premium on redemption.
- (5) The premium (if any) payable on redemption shall be provided for out of the share premium account.
- (6) Where redeemable preference shares are redeemed otherwise than out of the proceeds of a fresh issue of shares, there shall, out of profits that would otherwise have been available for dividends, be transferred to a reserve called the "capital redemption reserve" a sum equal to the nominal amount of the shares redeemed, and the provision of this Act relating to reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve were paid up share capital of the company.
- (7) Shares redeemed under this section shall be treated as cancelled on redemption, and the amount of the company's issue share capital shall be diminished by the nominal value of those shares accordingly; but the redemption of shares by a company is not to be taken as reducing the amount of the company's authorised share capital.
- (8) Without prejudice to subsection (7), where a company is about to redeem shares, it has power to issue shares up to the nominal value of the shares to be redeemed as if those shares had never been issued.
- (9) The capital redemption reserve may be applied in paying up un-issued shares of the company to be issued to members of the company as fully paid up bonus shares.
- (10) When a company redeems any redeemable preference shares, it shall, within thirty days after doing so, lodge with the Registrar a statement specifying the shares to be redeemed.
- (11) If default is made in complying with subsection (10), the company and every officer of the company who is in default is guilty of an offence.

67 Power of company to alter its share capital

- (1) A company may, if so authorised by its Articles, alter the conditions of its Memorandum in anyone or more of the following ways, that is to say —
 - (a) increase its share capital by new shares of such amount as it thinks expedient;
 - (b) consolidate and divide all or any of its share capital with shares of larger amount than its existing shares;
 - (c) convert all or any of its paid up shares into stock, and reconvert that stock into paid up shares of any denomination;
 - (d) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the Memorandum (but subject to subsection (2)); or
 - (e) cancel shares which, at the date of the passing of the resolution to cancel them, have not been taken or agreed to be taken by any person, and diminish the amount of the company's share capital by the amount of the shares so cancelled.
- (2) On any subdivision under subsection (1)(d) the proportion between the amount paid and the amount, if any, unpaid on each reduced share must be the same as it was in the case of the share from which the reduced share is derived.
- (3) The power conferred by this section must be exercised by a company in an annual general meeting and meet the relevant requirements of Part I of the Third Schedule.
- (4) A cancellation of shares under this section does not for the purposes of this Act constitute a reduction of share capital.

68 Notice to Registrar of consolidation of share capital, etc.

- (1) If a company has —
 - (a) consolidated and divided its share capital into shares of larger amount than its existing shares;
 - (b) converted any shares into stock;
 - (c) re-converted stock into shares;
 - (d) subdivided its shares or any of them;
 - (e) redeemed any redeemable shares; or (f) cancelled any shares, otherwise than in connection with a reduction of share capital under section 67,it shall within one month after so doing give notice thereof to the Registrar specifying, as the case may be, the shares consolidated, divided, converted, subdivided, redeemed or cancelled, or the stock reconverted.
- (2) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence.

69 Notice of increase of share capital

- (1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, it shall, within fifteen days after the passing of the resolution authorising the increase, give to the Registrar notice of the increase, and the Registrar shall record the increase.
- (2) The notice shall include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued, and there shall be forwarded to the Registrar of companies together with the notice a printed copy of the resolution authorising the increase.
- (3) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence.

70 Special resolution for reduction of share capital

- (1) Subject to confirmation by the Court, a company may, if so authorised by its Articles, by resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may —
 - (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;
 - (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid up share capital which is lost or unrepresented by available assets; or
 - (c) either with or without extinguishing or reducing liability on any of its shares, payoff any paid up share capital which is in excess of the wants of the company,

and may, if so far as is necessary, alter its Memorandum by reducing the amount of its share capital and of its shares accordingly.

- (2) A special resolution under this section is in this Act referred to as “a resolution for reducing share capital”.

71 Application to Court for confirming order

- (1) Where a company has passed a resolution for reducing share capital, it may apply to the Court for an order confirming the reduction.
- (2) Where the proposed confirming order involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid up share capital, and in any other case if the Court so directs, the following provisions shall have effect, subject nevertheless to subsection (3) —
 - (a) every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were commencement of

- the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction;
- (b) the Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction;
 - (c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the Court may direct, the following amount —
 - (i) if the company admits the full amount of the debt or claim, or, though not for admitting it, is willing to provide for it, then the full amount of the debt or claim; or claim;
 - (ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.
- (3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid up share capital, the Court may, if, having regard to any special circumstances of the case, it thinks proper so to do, direct that subsection (2) shall not apply as regards any class or any classes of creditors.

72 Order confirming reduction, object to etc.

- (1) The Court, if satisfied, with respect to every creditor of the company who under section 81 is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.
- (2) Where the Court makes any such order, it may —
 - (a) if for any special reason it thinks proper so to do, make an order directing that the company shall, during such period, commencing on or at any time after the date of the order, as is specified in the order, add to its name as the last words thereof the words “and reduced”; and
 - (b) make an order requiring the company to publish as the Court directs the reasons for reduction or such other information in regard thereto as the Court may think expedient with a view to giving proper information to

the public, and, if the Court thinks fit, the causes which led to the reduction.

- (3) Where a company is ordered to add to its name the words “and reduced”, those words shall, until the expiration of the period specified in the order, be deemed to be part of the name of the company.

73 Registration of order

- (1) The Registrar, on production to him of an order of the Court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute approved by the Court showing, with respect to the share capital of the company as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount, if any, at the date of the registration deemed to be paid up on each share, shall register the order and minute.
- (2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.
- (3) Notice of the registration shall be published in such manner as the Court may direct.
- (4) The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.
- (5) The minute when registered shall be deemed to be substituted for the corresponding part of the Memorandum, and shall be valid and alterable as if it had been originally contained therein.

74 Liability of members in respect of reduced shares

- (1) In the case of a reduction of share capital, a member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share as fixed by the minute and the amount paid, or the reduced amount, if any, which is to be deemed to have been paid, on the share, as the case may be:

Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act with respect to winding up by the Court, to pay the amount of his debt or claim, then —

- (a) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and
 - (b) if the company is wound up, the Court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.
- (2) Nothing in this section shall affect the rights of the contributories among themselves.

75 Penalty for concealing name of creditor

If any officer of the company —

- (a) wilfully conceals the name of any creditor entitled to object to the reduction;
- (b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or
- (c) aids, abets or is privy to any such concealment or misrepresentation as aforesaid,

is guilty of an offence.

76 Rights of certain holders of shares

- (1) If, in the case of a company the share capital of which is divided into different classes of shares, provision is made by the Memorandum or Articles for authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen per cent of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the Court to have the variation cancelled, and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the Court.
- (2) An application under this section must be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make

the application by such one or more of their number as they may appoint in writing for the purpose.

- (3) On any such application the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.
- (4) The decision of the Court on any such application is final.
- (5) The company shall within fifteen days after the making of an order by the Court on any such application forward a copy of the order to the Registrar.
- (6) If default is made in complying with subsection (5) the company and every officer of the company who is in default is guilty of an offence.
- (7) The expression “variation” in this section includes abrogation and the expression “varied” shall be construed accordingly.

77 Validation of shares improperly issued

Where a company has purported to issue or allot shares and the creation, issue or allotment of those shares was invalid by reason of any provision of this or any other enactment or of the Memorandum or Articles of the company or otherwise, or the terms of issue or allotment were inconsistent with or unauthorised by any such provision, the Court may, upon application made by the company or by a holder or mortgagee of any of those shares or by a creditor of the company, and upon being satisfied that in all the circumstances it is just and equitable to do so, make an order validating the issue or allotment of those shares or confirming the terms of issue or allotment thereof or both, and upon a copy of the order being lodged with the Registrar those shares shall be deemed to have been validly issued or allotted upon the terms of the issue or allotment thereof.

DIVISION 6 - DEBENTURES

78 Cases in which trust deed must be executed and contents of trust deed

- (1) Every corporation which offers in Tuvalu debentures to the public for subscription or purchase shall, before issuing any of the debentures, execute a debenture trust deed in respect of them and procure the execution of the deed by the trustees for the debenture holders appointed by the deed.
- (2) No debenture trust deed shall cover more than one class of debentures, whether or not the trust deed is required by this section to be executed.
- (3) Where a trust deed is required to be executed by this section but has not been executed, the Court, on the application of a debenture holder concerned, may —

- (a) order the corporation to execute a trust deed;
 - (b) direct that a person nominated by the Court shall be appointed to be trustee; and
 - (c) give such consequential directions as it thinks fit as to the contents of the trust deed and its execution by the trustee thereof.
- (4) For the purposes of this Act —
- (a) debentures belong to different classes if different rights attach to them in respect of —
 - (i) the rate of, or dates for, payment of interest;
 - (ii) the dates when, or the instalments by which, the principal of the debenture will be repaid, unless the difference is solely that the class of debentures will be repaid at different dates during that period of time and particular debentures will be repaid at different dates during that period according to selections made by the company or by drawings, ballot or otherwise.
 - (iii) any right to subscribe for or convert the debentures into shares in, or other debentures of, the corporation or any other company; or
 - (iv) the powers of the debenture holders to realise any security, and debentures further belong to different classes if they do not rank equally for payment when any security invested in the debenture holders under any trust deed —
 - (v) is realised; or
 - (vi) when the company is wound up,that is to say, if, in those circumstances, the subject matter of any such security or the proceeds thereof, or any assets available to satisfy the debentures, is or are not to be applied in satisfying the debentures strictly in proportion to the amount of principal, premiums and arrears of interest to which the holders of them are respectively entitled; and
 - (b) a debenture is covered by a trust deed if the holder of the debenture is entitled to participate in any money payable by the company under the deed, or is entitled to the benefit of any mortgage, charge or security created by the deed, whether alone or together with other persons.
- (5) The directors of a corporation who are in default are guilty of an offence if the corporation issues debentures in circumstances in which this section requires a debenture trust deed to be executed without such a deed having been executed in compliance with this section, or if the company issues debentures under a trust deed which covers two or more classes of debentures.
- (6) Every debenture trust deed, whether required by this section or not, shall state —
- (a) the maximum sum which the corporation may raise by issuing debentures of the same class;

- (b) the maximum discount which may be allowed on the issue or re-issue of the debentures, and the maximum premium at which the debentures may be made redeemable;
- (c) the nature of any assets over which a mortgage, charge or security is created by the trust deed in favour of the trustee for the benefit of the debenture holders equally, and except where such a charge is a floating charge or a general floating charge, the identity of the assets subject to it;
- (d) the nature of any assets over which a mortgage, charge or security has been or will be created in favour of any person other than the trustee for the benefit of the debenture holders equally, and except where such a charge is a floating charge or a general floating charge, the identity of the assets subject to it;
- (e) whether the corporation has created or will have to create any mortgage, charge or security for the benefit of some, but not all, of the holders of debentures issued under the trust deed;
- (f) any prohibition or restriction on the power of the corporation to issue debentures or to create mortgages, charges or any security on any of its assets ranking in priority to, or equally with, the debentures issued under the trust deed;
- (g) whether the corporation will have power to acquire debentures issued under the trust deed before the date for their redemptions and to re-issue the debentures;
- (h) the dates on which interest on the debentures issued under the trust deed will be paid and the manner in which payment will be made;
- (i) the date or dates on which the principal of the debentures issued under the trust deed will be repaid, and unless the whole principal is to be repaid to all the debenture holders at the same time, the manner in which redemption will be effected, whether by the payment of equal instalments of principal in respect of each debenture, or by the selection of debentures for redemption by the company, or by drawing, ballot, or otherwise;
- (j) in the case of convertible debentures, the dates and terms on which the debentures may be converted into shares and the amounts which will be credited as paid up on those shares, and the dates and terms on which the holders may exercise any right to subscribe for shares in right of the debentures held by them;
- (k) the circumstances in which the debenture holders will be entitled to realise any mortgage, charge or security invested in the trustee or any other person for their benefit (other than the circumstances in which they are entitled to do so by this Act);

- (l) the powers of the corporation and the trustee to call meetings of the debenture holders, and the rights of debenture holders to require the corporation or the trustee to call such meetings;
 - (m) whether the rights of debenture holders may be altered or abrogated and, if so, the conditions which must be fulfilled, and the procedure which must be followed, to effect such an alteration or abrogation; and
 - (n) the amount or rate of remuneration to be paid to the trustee and the period for which it will be paid, and whether it will be paid in priority to the principal, interest and costs in respect of debentures issued under the trust deed.
- (7) If debentures are issued without a covering debenture trust deed being executed, the statements required by subsection (6) shall be included in each debenture or in a note forming part of the same document or endorsed thereon, and in applying that subsection references therein to the debenture trust deed shall be construed as references to all or any of the debentures of the same class.
- (8) Subsection (7) does not apply if the debenture is the only debenture of the class to which it belongs which has been or may be issued, and the rights of the debenture holder cannot be altered or abrogated without his consent.
- (9) The directors of a corporation who are in default are guilty of an offence if they issue debentures under a trust deed which does not comply with subsection (6), or if they issue a debenture which should comply with subsection (7) but does not do so.
- (10) Every debenture which is covered by a debenture trust deed shall state either in the body thereof or in a note forming part of the same document or endorsed thereon —
- (a) the matters required to be stated in a debenture trust deed by subsection (6)(a), (b), (f), (h), (i), (j), (l) and (m);
 - (b) whether the trustee of the covering debenture trust deed holds the mortgages, charges and securities vested in him by the trust deed in trust for the debenture holders equally, or in trust for some only of the debenture holders, and if so, which debenture holders; and
 - (c) whether the debenture is secured by a general floating charge vested in the trustee of the covering debenture trust deed or in the debenture holders.
- (11) A debenture issued by a company shall state on its face in clearly legible print that it is unsecured if no mortgage, charge or security is vested in the holder of the debenture or in any other person for his benefit as security for payment of principal or interest.
- (12) The directors of a company who are in default are guilty of an offence if the company issues a debenture which should comply with subsection (10) or (11) but does not do so.

79 Disqualification for appointment as trustee of debenture trust deed

- (1) A person is not qualified for appointment as a trustee of a debenture trust deed if —
 - (a) he is an officer or an employee of the company which issues debentures covered by the trust deed or of a company in the same group of companies as the company so issuing debentures; or
 - (b) he is less than eighteen years of age, is of unsound mind and has been so found by a Court in Tuvalu or elsewhere or he is an undischarged bankrupt.
- (2) If a trustee becomes subject to any of the disqualifications mentioned in subsection (1), after he has been appointed, he shall immediately cease to be qualified to act as a trustee of the debenture trust deed.
- (3) Any person who acts as a trustee of a debenture trust deed is guilty of an offence if his appointment is invalid under subsection (1), or if he is disqualified to act under subsection (2).

80 Realisation of debenture holder's security

- (1) Debenture holders are entitled to realise any security vested in them or in any security vested in them or in any other person for their benefit if —
 - (a) the corporation fails to pay any instalment of interest, or the whole or part of the principal or any premium, owing under the debenture or the debenture trust deed covering the debentures, within one month after it becomes due;
 - (b) the corporation fails to fulfil any of the obligations imposed on it by the debentures or the debenture trust deed;
 - (c) any circumstances occur which by the terms of the debentures or debenture trust deed entitle the holders of the debentures to realise their security; or
 - (d) the corporation is wound up.
- (2) Debenture holders whose debentures are secured by a general floating charge vested in themselves or the trustee of the covering debenture trust deed or any other person shall additionally be entitled to realise their security if —
 - (a) any creditor of the corporation issues a process of execution against any of its assets or commences proceedings for winding up of the company by order of any court of competent jurisdiction;
 - (b) the corporation ceases to pay its debts as they fall due;
 - (c) the corporation ceases to carry on business;
 - (d) the corporation suffers, after the issue of debentures of the class concerned, losses or diminutions in the value of its assets which in the aggregate amount to more than one-half of the total amount owing in

- respect of debentures whose holders rank before them for payment of principal or interest; or
- (e) any circumstances occur which entitle debenture holders who rank for payment of principal or interest in priority to the debentures secured by the general floating charge to realise their security.
- (3) At any time after a class of debenture holders become entitled to realise their security, a receiver of any assets subject to a mortgage, charge or security in favour of the class of debenture holders or the trustee of the covering trust deed or any other person may be appointed —
- (a) by that trustee;
 - (b) by the holders of debentures in respect of which there is owing more than one-half of the total amount owing in respect of all the debentures of the same class; or
 - (c) by the Court on the application of any trustee or debenture holder of the class concerned.
- (4) A receiver appointed under this section has, subject to any order made by the Court, power to take possession of the assets subject to the mortgage, charge or security, and to sell those assets and, if the mortgage, charge or security extends to such property, to collect debts owed to the company, to enforce claims vested in the company, to compromise, settle and enter into arrangements in respect of claims by or against the corporation's business with a view to selling it on the most favourable terms, to grant or accept leases of land and licences in respect of patents, designs, copyright or trademarks, and to recover any instalment unpaid on the corporation's issued shares.
- (5) The remedies given by this section are in addition to, and not in substitution for, any other powers and remedies conferred on the trustee of the debenture trust deed or on the debenture holders by the debenture trust deed, and any power or remedy which is expressed in any instrument to be exercisable if the debenture holders become entitled to realise their security is exercisable on the occurrence of any of the events specified in subsection (1), or in the cases of a general floating charge, in subsection (1) and (2); but a manager of the business or of any of the assets of a company may not be appointed for the benefit of debenture holders unless a receiver has also been appointed and has not ceased to act.
- (6) No provision in any instrument which purports to exclude or restrict the remedies given by this section is valid.

81 Disqualification for appointment as a receiver or manager

- (1) A person may not be appointed to be a receiver or manager of any assets of a company, and may not act as such a receiver or manager, if the person —
- (a) is a corporation; or

- (b) is disqualified under section 79 from being a trustee of a debenture trust deed executed by the corporation or would be so disqualified if a debenture trust deed had been executed by the corporation.
- (2) If a person who was appointed to be a receiver or manager becomes disqualified from continuing to act under subsection (1) or under any provision contained in a debenture or debenture trust deed, another person may be appointed in his place by the persons who are entitled to make the appointment or by the Court, but a receivership shall not terminate or be interrupted by the occurrence of the disqualification.
- (3) Any person who acts as a receiver or manager of any assets of a company while disqualified by sub-section (1) is guilty of an offence.

82 Application to the Court

A receiver of assets of a corporation appointed under section 80(3) or under the powers contained in any instrument may apply to the Court for directions in relation to any particular matter arising in connection with the performance of his functions, and on any such application to the Court may give directions, in relation to any particular matter arising in connection with the performance of his functions, and on any such application to the Court may give directions, or may make such order declaring the rights of persons before the Court or otherwise, or may make such order directing any person to do or abstain from doing anything, as the Court thinks just or necessary in the circumstances.

83 Liability of receivers

- (1) A receiver of assets of a corporation under section 81(3) or under the powers contained in any instrument is personally liable on any contract entered into by him in the performance of his functions, except in so far as the contract otherwise provides, and is entitled in respect of that liability to an indemnity out of the assets of which he was appointed to be receiver; but nothing in this subsection shall be taken as limiting any right to an indemnity which he would have, apart from this subsection, or as limiting his liability on contracts entered into without authority, or as conferring any right to indemnity in respect of that liability.
- (2) Where the purported appointment of a receiver out of Court is invalid because the charge under which the appointment purported to be made is invalid or because, in the circumstances of the case, the powers of appointment under the charge were not exercisable, the Court may, on application being made to it —
 - (a) wholly or to such extent as it thinks fit, exempt the receiver from personal liability in respect of anything done or omitted to be done by him which, if the appointment had been valid, would have been properly done or omitted to be done; and

- (b) order that the person by whom the purported appointment was made, shall be personally liable to the extent to which such relief has been granted.

84 Notification of appointment of receiver or manager

- (1) Where a receiver or manager of any assets of a corporation has been appointed for the benefit of debenture holders, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or the liquidator of the company, being a document on or in which the name of the corporation appears, shall contain a statement that a receiver or manager has been appointed.
- (2) If default is made in complying with the requirements of this section, any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver, is guilty of an offence.

85 Power of Court to fix remuneration of receiver or manager

- (1) The Court may, on an application made by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under section 80(3) or under the powers contained in any instrument, has been appointed as receiver or manager of any assets of the corporation for the benefit of debenture holders.
- (2) The power of the Court under subsection (1) shall, where no previous order has been made with respect thereto under that subsection —
 - (a) extend to fixing the remuneration for any period before the making of the order or the application therefor;
 - (b) be exercisable notwithstanding that the receiver or manager has ceased to act before the making of the order; and
 - (c) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extend to requiring him to account for the excess or such part thereof as may be specified in the order,

but the power conferred by paragraph (c) shall not be exercised as respects any period before the making of the application for the order unless in the opinion of the Court there are special circumstances making it proper for the power to be so exercised.

- (3) The Court may, from time to time, on an application made whether by the liquidator or by the receiver or manager, vary or amend an order made under subsection (1).

- (4) This section does not apply if the receiver is appointed by the Court, and the Court fixes his remuneration by the order appointing him or by a subsequent order made on his application.

86 Statement of the company's affairs

- (1) Where a receiver of the whole, or substantially the whole, of the assets of a corporation (hereafter in this section and section 87 referred to as “the receiver”) is appointed under section 80(3), or under the powers contained in any instrument, for the benefit of the holders of any debentures of the company secured by a general floating charge, then subject to this section and section 87 —
- (a) the receiver shall forthwith send notice to the corporation of his appointment;
 - (b) there shall, within fourteen days after receipt of the notice, or such longer period as may be allowed by the receiver, be made out and submitted to the receiver in accordance with section 87 a statement in the prescribed form as to the affairs of the corporation;
 - (c) the receiver shall, within two months after receipt of that statement, send —
 - (i) to the Registrar and, if he was appointed by the Court, to the Court, a copy of the statement and of any comments he sees fit to make thereon, and in the case of the Registrar also a summary of the statement and of his comments (if any) thereon;
 - (ii) to the company, a copy of those comments or, if he does not see fit to make any comments, a notice to that effect;
 - (iii) to the trustee of the debenture trust deed covering the debentures in respect of which he was appointed, a copy of the statement and those comments (if any); and
 - (iv) to the holders of all debentures belonging to the same class as the debentures in respect of which he was appointed, a copy of that summary.
- (2) The receiver shall, within two months or such longer period as the Court may allow, after the expiration of the period of twelve months from the date of his appointment and of every subsequent period of twelve months, and within two months or such longer period as the Court may allow after he ceases to act as receiver of the assets of the corporation, send to the Registrar, to the trustee of the trust deed covering the debentures in respect of which he was appointed, and to the holders of all debentures belonging to the same class as the debentures in respect of which he was appointed, an abstract in the prescribed form showing his receipts and payments during that period of twelve months or, where he ceases so to act, and the aggregate amounts of his

receipts and of his payments during all preceding periods since his appointment.

- (3) Subsection (1) does not apply in relation to the appointment of a receiver to act with an existing receiver, or in place of a receiver dying or ceasing to act, except that, where that subsection applies to a receiver who dies or ceases to act before it has been fully complied with, the references in paragraphs (b) and (c) of that subsection to the receiver are, subject to subsection (4), deemed to include references to his successor and to any continuing receiver.
- (4) If the company is being wound up, this section and section 87 apply notwithstanding that the receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.
- (5) Nothing in subsection (2) shall be taken to prejudice the duty of the receiver to render proper accounts of his receipts and payments to the persons to whom, and at the times which, he may be required to do so apart from that subsection.
- (6) If the receiver fails to comply with this section, he is guilty of an offence.

87 Contents of statement of affairs, etc.

- (1) The statement as to the affairs of a corporation required by section 86 to be submitted to the receiver (or his successor) shall show as at the date of the receiver's appointment the particulars of the corporation's assets, debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed.
- (2) The statement of affairs shall be submitted by, and be verified by the signed declaration of, one, or more than one, person who is at the date of the receiver's appointment a director, and by the secretary or joint secretaries at that date of the corporation, or by such of the persons hereafter in this subsection mentioned, as the receiver (or his successor), subject to the direction of the Registrar, may require to submit and verify the statement, namely, persons who —
 - (a) are or have been officers of the corporation;
 - (b) have taken part in the formation of the corporation at any time within one year before the date of the receiver is appointment;
 - (c) are in the employment of the corporation, or have been in the employment of the corporation within that year, and are in the opinion of the receiver capable of giving the information required; or
 - (d) are or have been within that year officers of or in the employment of a corporation which is, or within the said year was, the holding corporation or a subsidiary of the corporation to which the statement relates.

- (3) Any person making or verifying the statement of affairs or any part of it shall be allowed, and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in and about the making or verifying of the statement as the receiver (or his successor) may consider reasonable, subject to an appeal to the Court.
- (4) Any person who, without lawful excuse, fails to comply with this section, is guilty of an offence.

88 Enforcement of receiver's duty to make returns

- (1) If any receiver of any assets of a corporation —
 - (a) having made default in filing, or making any return, account or other document or in giving any notice which a receiver is by law or by order of the Court required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so; or
 - (b) having been appointed under section 92(3) or under the powers contained in any instrument, has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to vouch the same and to pay over to the liquidator any amount shown by the accounts payable to him,the Court may, on an application made for the purpose, make an order directing the receiver to make good the default within such time as may be specified in the order.
- (2) In the case of any default such as is mentioned in paragraph (a) of subsection (1), an application for the purposes of this section may be made by any shareholder, member, creditor or debenture holder of the corporation or by the Registrar, and in the case of any default such as is mentioned in paragraph (b) of that subsection, the application shall be made by the liquidator, and in either case the order of the Court made on the application may provide that all costs of and incidental to the application shall be borne by the receiver.

89 Rights of debenture holders

- (1) The trustee of a debenture trust deed holds all contracts, stipulations and undertakings given to him and all mortgages, charges and securities vested in him in connection with the debentures covered by the deed, or some of those debentures, exclusively for the benefit of the debenture holders concerned (except insofar as the deed otherwise provides), and the trustee shall exercise due diligence in respect of the enforcement of those contracts, stipulations, undertakings, mortgages, charges and securities and the fulfilment of his functions generally.
- (2) A debenture holder may sue —

- (a) the corporation which issued the debentures he holds for payment of any amount payable to him in respect of the debentures; or
 - (b) the trustee of the debenture trust deed covering the debentures he holds for compensation for any breach of the duties which the trustee owes him, and in any such action it is not necessary for any other debenture holders of the same class, or if the action is brought against the company, the trustee of the covering trust deed, to be joined as a party.
- (3) This section applies notwithstanding anything contained in a debenture, debenture trust deed or other instrument but a provision in a debenture or debenture trust deed is valid and binding on all the debenture holders of the class concerned insofar as it enables a meeting of the debenture holders by a resolution supported by the votes of the holders of at least three-quarters in value of the debentures of that class in respect of which votes are cast on the resolution —
- (a) to release any trustee from liability for any breach of his duties to the debenture holders which he has already committed, or generally from liability for all such breaches (without necessarily specifying them) upon his ceasing to be a trustee;
 - (b) to consent to the alteration or abrogation of any of the rights, powers or remedies of the debenture holders and the trustee of the debenture trust deed covering their debentures (except the powers and remedies under section 80); or
 - (c) to consent to the substitution for the debentures by debentures of a different class issued by the corporation or any other corporation, or the cancellation of the debentures in consideration of the issue to the debenture holders of shares credited as fully paid in the corporation or any other corporation.
- (4) The trustee of a debenture trust deed shall comply with section 166(4) in the circumstances referred to therein.

DIVISION 7 - TITLES AND TRANSFERS

90 Transfer of shares and debentures

- (1) Shares in, or debentures of, a company may be transferred by a written instrument of transfer signed by the transferor and naming the transferee.
- (2) Where an instrument of transfer is prescribed in the Articles of a company, that instrument shall be used to transfer shares in, or debentures of, the company.
- (3) Subject to subsection (2), no particular form of words are necessary to transfer shares or debentures, provided that words are used which show with reasonable certainty that the person signing the transfer intends to vest the title to the shares or debentures in the transferee.

- (4) Subject to subsection (5), the beneficial ownership of shares in, or debentures of, a company passes to a transferee —
 - (a) on the delivery to him of the instrument of transfer signed by the transferor, and the transferor's share certificate or debenture; or
 - (b) on the delivery to him of an instrument of transfer signed by the transferor which has been certified by or on behalf of the company.
- (5) If the transferor concerned is not the member of the company in respect of the shares or, as the case may be, is not the registered holder of the debentures, subsection (4) has effect as if references to the transfer signed by the transferor included a reference to transfers signed by that member or, as the case may be, registered holder, and all holders of the shares or debentures intermediate between that member and all the holders of the shares or debentures intermediate between that member or registered holder and the transferor.
- (6) Notwithstanding subsection (4) or (5), a company and, in the case of debentures, the trustee of the covering trust deed shall not be bound or entitled to treat the transferee of shares or debentures as the owner of them until the transfer to him has been registered by the company or until the Court orders the company to register the transfer to him, and until the transfer is presented to the company for registration, the company shall not be treated as having notice of the transferee's interest thereunder or of the fact that the transfer has been made.
- (7) This section applies notwithstanding anything contained in the Memorandum or Articles of a company, and notwithstanding anything contained in any debenture trust deed or debentures or any contract or instrument.

91 Restriction on transfers

- (1) No restriction or condition in a debenture trust deed or in a debenture shall limit the right of any person to transfer a debenture held by him.
- (2) A restriction on the right of a share holder to transfer his shares in a company contained in the Memorandum or Articles of the company shall be invalid if its effect in any particular case is to limit the persons to whom, or the times or prices at which, the shareholder may transfer his shares so that there is no reasonable likelihood of the shareholder being able to sell them within a reasonable time at a fair price.
- (3) A transfer of the shares or debentures of a shareholder or debenture holder of a company made by his personal representative, trustee in bankruptcy, or by a receiver appointed by or for the benefit of debenture holders, or by a receiver or other person appointed by the Court to administer the estate of a person of unsound mind, or by the guardian of a minor, or by a person appointed by the Court to execute the transfer shall, although the person executing the transfer is not himself a member of the company or a registered holder of the

debentures, be as valid as if he had been such a member or registered holder at the time of the execution of the instrument of transfer.

- (4) Subsection (3) applies notwithstanding anything contained in the Memorandum or Articles of a company, and notwithstanding anything contained in any trust deed or debenture or any contract or instrument.
- (5) Subsection (1) and (2) of this section do not apply to a proprietary company.

92 Certification of transfers

- (1) A company is under a duty to certificate a transfer of shares or debentures on the presentation to it of a transfer signed by the holder thereof accompanied by delivery to it of the share certificate or debenture in respect of the shares or debentures; a certification shall consist of a statement signed on behalf of the company and written or endorsed on the transfer to the effect that the share certificate or debenture, as the case may be, has been delivered to or lodged with the company.
- (2) The certification by a company of any transfer of shares in, or debentures of, the company shall be taken as representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a prima facie title to the shares or debentures in the transferor named in the transfer, but not as a representation that the transferor has any title to the shares or debentures.
- (3) Where any person acts on the faith of a false certification by a company made fraudulently or negligently, the company is liable to compensate him for any loss he suffers in consequence thereof.
- (4) A company which has certificated a transfer is liable to compensate any person for loss which he suffers in consequence of the company subsequently releasing possession of the share certificate or debenture in respect of which the certificate was given, otherwise than on the surrender of the certified transfer.
- (5) For the purposes of this section —
 - (a) the certification of an instrument of transfer is deemed to be made by a company if —
 - (i) the person issuing the certification is a person authorised to issue certificated transfers on the company's behalf; and
 - (ii) the certification is signed by a person authorised to certificate transfers on the company's behalf, or by any other officer or servant either of the company or of a corporation so authorised;
 - (b) a certificate is deemed to be signed by any person —
 - (i) if it purports to be authenticated by his signature or initials (whether handwritten or not); and

- (ii) unless it is shown that the signature or initials was or were placed there neither by himself nor by any person authorised to use the signature or initials for the purpose of certifying transfers on the company's behalf.
- (6) If a company fails to certificate a transfer and to return it to the person requesting certification within seven days after receiving the transfer signed by the holder of the shares or debentures to which the transfer relates and the share certificate or debentures relating to such shares or debentures, the company and every officer of the company in default is guilty of an offence.

93 Issue of share certificate and debentures

- (1) Every company shall, within five weeks after the allotment of any of its shares or debentures, and within two months after the date on which a transfer of any such shares or debentures is presented to the company for registration, complete and have ready for delivery to the allottee or transferee a proper certificate or debenture for the shares or the debentures allotted or transferred to him.
- (2) If default is made in complying with this section, the company and every officer of the company in default is guilty of an offence.
- (3) For the purposes of this section, "transfer" means a transfer in proper form duly signed by the transferor and transferee and otherwise valid, and does not include a transfer which the company is for any reason entitled to refuse to register and does not register.

94 Registration of transfer

- (1) Notwithstanding anything in the Memorandum or Articles of a company or in any debenture, debenture trust deed or other contract or instrument, the company shall not register a transfer of shares in or debentures of the company unless a transfer in proper form and duly signed by the transferor and transferee has been delivered to the company, but nothing in this section shall prejudice any duty of the company to register as a member or debenture holder of the company any person to whom the ownership of any shares in or debentures of the company has been transmitted by operation of law.
- (2) On the application of the transferor of any share in, or debenture of, a company, the company shall enter in its register of members or debenture holders the name of the transferee in the same manner and subject to the same conditions as if the application for the entry was made by the transferee.
- (3) If a company refuses to register a transfer of any shares or debentures, the company shall, within five weeks after the date on which the transfer was lodged with the company, send to the transferor and the transferee notice of

the refusal setting out in the notice the facts which it considers justify the refusal.

- (4) Notwithstanding anything in the Memorandum or Articles of a company or in any debenture, debenture trust deed or other contract or instrument, a company (other than a proprietary company) shall register the trustee in bankruptcy, or the personal representative, of a member or debenture holder as a member in respect of the shares or as holder of the debentures of the bankrupt or, as the case may be the deceased person, in its register of members or debenture holders, as the case may be, within seven days after he produces to the company satisfactory evidence of his title and requests it to register him as a member or debenture holder.
- (5) If default is made in complying with this section, the company and every director of the company in default is guilty of an offence.

95 Effect on registration and share certificate

- (1) A certificate issued by a company and signed on its behalf stating that any shares in or debentures of, the company are held by any person is prima facie proof of the title of that person to the shares or debentures.
- (2) The registration of a person as a member or debenture holder of a company, on the issue of a share certificate or debenture, constitutes a representation by the company that the person so registered, or the person named in the share certificate or debenture as entitled to the shares or debentures mentioned therein, is entitled to the shares or debentures mentioned in the register or in the share certificate or debenture, and the company is not entitled to deny the truth of that representation as against a person who believes it to be true and contracts to acquire the shares or debentures or any interest therein in good faith and for money or money's worth.
- (3) It is no defence for a company to show for the purposes of subsection (1) or (2) that a registration of the issue of a share certificate or other document was procured by fraud or by the presentation to it of a forged document.

DIVISION 8 - REGISTRATION OF CHARGES

96 Registration of charges

- (1) Subject to this Division, where a charge to which this section applies is created by a company there shall be lodged with the Registrar for registration within twenty-eight days after the creation of the charge a statement of the particulars prescribed by subsection (4) and —
 - (a) the instrument (if any) by which the charge is created or evidenced; or
 - (b) a copy thereof together with a statutory declaration verifying the execution of the charge and also certifying the copy to be a true copy of the instrument,

and if this section is not complied with in relation to the charge the charge is, so far as any security on the company's property or undertaking is thereby conferred, void.

- (2) Nothing in subsection (1) shall prejudice any contract or obligation for repayment of the money secured by a charge and when a charge becomes void under this section the money received thereby shall immediately become payable.
- (3) This section applies to every charge created by a company, including a charge created by the company on shares in a subsidiary of the company and held by the company, except —
 - (a) any pledge of, or possessory lien on, goods; and
 - (b) any charge by way of pledge, deposit, letter of hypothecation or trust receipt, or bills of lading, dock warrants or other documents of title to goods, or of bills of exchange, promissory notes, or other negotiable securities for money.
- (4) Subject to subsections (5) and (6), a statement referred to in subsection (1) shall contain the following particulars, namely —
 - (a) the date of creation of the charge;
 - (b) the nature of the charge;
 - (c) the amount secured by the charge, or the maximum sum deemed to be secured by the charge in accordance with section 97;
 - (d) short particulars of the property charged;
 - (e) the persons entitled to the charge; and
 - (f) in the case of a floating charge, the nature of any restriction on the power of the company to grant further charges ranking in priority to, or equally with, the charge thereby created.
- (5) Where a series of debentures containing or giving by reference to any other instrument any charge to the benefit of which the debenture holders of that series are entitled equally is created by a company, it shall be sufficient if there is lodged with the Registrar for registration within twenty-eight days after the execution of the instrument containing the charge or, if there is no such instrument after the execution of the first debenture of the series, a statement containing the following particulars, namely —
 - (a) the total amount secured by the whole series;
 - (b) the dates of the resolutions authorising the issue of the series and the date of the covering instrument (if any) by which the security is created or defined;
 - (c) the name of the trustee (if any) for the debenture holders;
 - (d) the particulars specified in subsection (4)(b), (d) and (f), together with —

- (e) the instrument containing the charge; or
 - (f) a copy of the instrument and a statutory declaration verifying the execution of the instrument and certifying the copy of one of the debentures of the series and a statutory declaration certifying the copy to be a true copy.
- (6) For the purposes of subsections (1) and (5) a certified copy is a copy which has endorsed a certificate to the effect that it is a true and complete copy of the original, under the seal of the company or under the hand of some person interested therein otherwise than on behalf of the company.
- (7) This section does not affect the provisions of any other enactment relating to the registration of charges.
- (8) Where a charge requiring registration, under this section is created before the lapse of thirty days after the creation of a prior unregistered charge, and comprises all or any part of the property comprised in the prior charge, and the subsequent charge is given as a security for the same debt as is secured by the prior charge, or any part of that debt, then to the extent to which the subsequent charge is a security for the same debt or part thereof, and so far as respects the property comprised in the prior charge, the subsequent charge shall not be operative or have any validity unless it is proved to the satisfaction of the Court that it was given in good faith for the purpose of correcting some material error in the prior charge or under other proper circumstances and not for the purposes of avoiding or evading the provisions of this Division.

97 Charge to secure fluctuating amounts

- (1) When a charge, particulars of which require registration under section 96, is expressed to secure all sums due or to become due on other or fluctuating amount, the particulars required under section 96(4)(c) shall state the maximum sum deemed to be secured by the charge, being the maximum amount covered by the stamp duty paid thereon, and the charge is, subject to subsection (2), void, so far as any security on the company's property is conferred by the charge, as respects any excess over the stated maximum.
- (2) Where —
- (a) additional stamp duty is subsequently paid on a charge of a kind referred to in subsection (1); and
 - (b) at any time thereafter prior to the commencement of the winding up of the company amended particulars of the charge stating the increased maximum sum deemed to be secured by the charge, together with the original instrument by which the charge was created or evidenced, are lodged with the Registrar for registration,

then, as from the date on which it is so lodged, the charge, if otherwise valid, is effective to the extent of the increased maximum sum except as regards any

person who, prior to the date on which the charge is so lodged, has acquired any proprietary rights in, or a fixed or floating charge on, the property subject to the charge.

98 Charge on property acquired

- (1) Where a company acquires any property which is subject to a charge of any such kind as would if it had been created by the company after the acquisition of the property, have been required to be registered under this Division, the company shall cause —
 - (a) a statement of the particulars prescribed by section 96(4) and of the date of the acquisition of the property; and
 - (b) the instrument by which the charge was created or is evidenced or a copy thereof,accompanied by a statutory declaration as required by section 96, and certified as provided in subsection (6) of that section, to be lodged with the Registrar for registration within twenty-eight days after the date on which the acquisition is completed.
- (2) Failure to comply with this section does not affect the validity of the charge concerned.

99 Duty to register charges

- (1) Documents and particulars required to be lodged in the case of a requirement under —
 - (a) section 96, by the company concerned or by any person interested in the documents; and
 - (b) section 98, by the company concerned,but if default is made by the company concerned, in complying with the requirements under either of those sections the company and every officer of the company in default is guilty of an offence.
- (2) Any person (other than the company concerned) referred to in subsection (1)(a) who meets the requirements of section 96 may recover from the company the amount of any fees properly payable by the person on the registration.

100 Register of charges to be kept by Registrar

- (1) The Registrar shall keep a register of charges lodged for registration under this Division and shall enter in the register with respect to those charges the following particulars, namely —

- (a) in any case to which section 96(5) applies, such particulars as are required to be contained in a statement lodged under that subsection;
 - (b) in any case to which section 98 applies, such particulars as are required to be contained in a statement lodged under subsection (1)(a) of that section; and
 - (c) in any other case, such particulars as are required by section 96(4) to be contained in a statement lodged under that section.
- (2) The Registrar shall issue a certificate of every registration stating if applicable, the amount secured by the charge or, in a case referred in section 97, the maximum amount secured by the charge, and the certificate shall be conclusive evidence that the requirements as to registration have been complied with.

101 Endorsement of certificate of registration on debentures

- (1) A company shall cause to be endorsed on every debenture issued by the company —
- (a) a copy of the certificate of registration; or
 - (b) a statement that the registration has been effected and the date of the registration.
- (2) Subsection (1) does not apply to any debenture issued by a company before the charge was registered.
- (3) Every person who knowingly authorises or permits the delivery of any debenture which is not endorsed as required by subsection (1) is guilty of an offence.

102 Entries of satisfaction and release of property from charge

- (1) Where, with respect to any registered charge —
- (a) the debt for which the charge was given has been paid or satisfied in whole or in part; or
 - (b) the property or undertaking charged, or any part thereof, has been released from the charge or has ceased to form part of the company's property or undertaking,

the company may lodge with the Registrar in the prescribed form a memorandum of satisfaction in whole or in part, or of the fact that the property or undertaking or any part thereof has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, and the Registrar shall enter particulars of that memorandum in the register.

- (2) A memorandum of satisfaction must be supported by evidence sufficient to satisfy the Registrar of the payment, satisfaction, release or ceasing referred to in subsection (1).

103 Rectification of register

The Court, on being satisfied that the to register a charge within the time required or that the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient, order that the time for registration be extended or that the omission or mis-statement be rectified.

104 Copies of charges to be kept by company

- (1) Every company shall cause a copy of every instrument creating any charge requiring registration under this Division to be kept at the registered office of the company, but in the case of a series of debentures the keeping of a copy of one debenture of the series shall be sufficient for the purposes of this subsection.
- (2) Every company shall keep at the registered office of the company a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge and the names of the persons entitled thereto.

105 Inspection

The copies of instruments and the register of charges kept in pursuance of section 106 shall be open to the inspection of any creditor or member of the company without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee, not exceeding five dollars for each inspection, as is fixed by the company.

106 Default in complying with section 104

If default is made in complying with section 104, the company and every officer of the company in default is guilty of an offence.

107 Registration of enforcement of security

- (1) Where any person obtains an order for the appointment of a receiver of any of the property of a company or appoints such a receiver or enters into possession of such property under any powers contained in any charge, notice of the fact in the prescribed form shall, within ten days from the date of the order, appointment or entry into possession, be given by the Registrar who shall enter the fact in the register of the particulars of charges relating to the company.
- (2) Where any person appointed receiver of the property of a company ceases to act as such receiver or where any person having entered into possession goes out of possession, he shall, within ten days of so ceasing to act or to remain in possession, give notice to that effect in the prescribed form to the Registrar who shall enter the notice in the register of the particulars of charges relating to the company.
- (3) Any person (other than the Registrar) who makes default in complying with any duty imposed on him by subsection (1) or (2) is guilty of an offence.

108 Application to charges created by external company

Subject to section 226, this Division applies to charges on property in Tuvalu which are created, and to charges on property in Tuvalu which is acquired, after the commencement of this Act by an external company in the same way and with the same consequences as if the external company were a company registered under this Act.

PART V - MANAGEMENT AND ADMINISTRATION**DIVISION 1 - REGISTERED OFFICE AND NAME****109 Registered office of a company**

- (1) A company shall at all times have a registered office within Tuvalu to which all communications and notices may be addressed.
- (2) The intended situation of the registered office of a proposed company shall be specified in a statement lodged with the Registrar as part of the application with respect to the formation of the company.
- (3) Notice in the prescribed form of any change in the situation of a company's registered office shall be given to the Registrar within fourteen days of the change.
- (4) The Registrar shall record the new situation of a company's registered office notified to him under subsection (3).

- (5) If default is made in complying with subsection (1) or (3) the company and every officer of the company in default is guilty of an offence.

110 Publication of company's name

- (1) Every company —
- (a) shall display, and keep displayed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible;
 - (b) shall have its name mentioned in legible characters in all letters, communications, notices, advertisements, and other official publications of the company, and in all bills of exchange, cheques, promissory notes, endorsements, and orders for money or goods purporting to be signed by or on behalf of the company, and in all invoices, receipts, and letters of credit of the company; and
 - (c) shall have its name engraved in legible characters on its common seal.
- (2) If default is made in complying —
- (a) with subsection (1)(a), the company concerned and every officer of the company in default is guilty of an offence; and
 - (b) with subsection (1)(b) or (c), the company concerned is guilty of an offence.
- (3) If an officer of a company or any person on its behalf —
- (a) uses, or authorises the use of, any seal purporting to be the common seal of the company on which its name is not engraved as required by subsection (1)(c); or
 - (b) issues, or authorises the issue of, any business letter, communication, notice, advertisement, or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, cheque or other negotiable instrument or any endorsement, order, receipt or letter of credit wherein the name of the company is not mentioned as required by subsection (1)(b),
- he is guilty of an offence, and where he has signed, issued or authorised to be signed or issued on behalf of the company any bill of exchange, promissory note, or any negotiable instrument or any endorsement thereon or order wherein that name is not so mentioned, he is, in addition, liable to the holder of the instrument or order for the amount due thereon, unless it is paid by the company.

DIVISION 2 - REGISTERS OF MEMBERS AND OF DEBENTURE HOLDERS

111 Register of members and index

- (1) Every company shall keep a register of its members and enter therein —
 - (a) particulars of the names and addresses of the members and a statement of the shares held by each member, distinguishing each share by its number so long as the share has a number, and of the amount paid or agreed to be considered as paid on the shares of each member.
 - (b) the date at which the name of each person was entered in the register as a member;
 - (c) the date at which any person ceased to be a member; and
 - (d) the date of every allotment of shares to members and the number of shares comprised in each allotment,

not later than five weeks after the particulars of any matter required to be so entered are available to the company, but the validity of any entry is not affected

- (2) The matter referred to in subsection (1)(c) shall be entered in a separate part of the register which shall be so made up that the entries therein against the several names inscribed therein appear in chronological order.
- (3) Notwithstanding anything in subsection (1), but subject to subsection (2), a company may keep the names and particulars relating to persons who have ceased to be members of the company separately, and the names and particulars relating to former members need not be supplied to any person who applies for a copy of the register unless he specifically requests the names and particulars of former members.
- (4) Unless the register of members is in such form as to constitute in itself an index of the names inscribed in each part of the register, the company shall keep an index of the names kept in each part of the register which shall —
 - (a) in respect of each name, contain a sufficient indication to enable information inscribed against it to be readily found; and
 - (b) be kept in the same place as the register.
- (5) If default is made in complying with subsection (1), (2) or (4) the company and every officer of the company in default is guilty of an offence.

112 Where register is to be kept

- (1) The register of members of a company and index (if any) shall be kept at the registered office of the company, but —

- (a) if the work of making them up is done at another office of the company, within Tuvalu, they may be kept at that other office; or
 - (b) if the company arranges with some other person to make up the register and index (if any) on its behalf they may be kept at the office of that other person at which the work is done if that office is within Tuvalu.
- (2) A company shall, within seven days after the register of members of the company and index (if any) are first kept at an office or place other than the registered office of the company, lodge with the Registrar notice of the office or place where the register and index (if any) are kept and shall, within seven days, after any change in the office or place at which the register and index (if any) are kept lodge with the Registrar notice of the change.
- (3) If default is made in complying with this section the company and every officer of the company in default is guilty of an offence.

113 Inspection of register

- (1) The register of members of a company and the index shall be open to the inspection of any member of the company or the Registrar without charge and of any other person on payment of one dollar or such lesser sum as the company requires.
- (2) Any member of a company or other person may request the company to furnish him with a copy of the register of members, or any part thereof, on payment in advance of one dollar, or such lesser sum as the company requires, for every hundred words or fractional part thereof required to be copied.
- (3) Where a request is made to a company pursuant to subsection (2), the company shall cause any copy required by the person concerned to be sent to the person within the period of ten days commencing on the day next after the day on which the request is received by the company.
- (4) If default is made in complying with subsection (3), the company and every officer of the company in default is guilty of an offence.

114 Consequences of default by agent

Where, by virtue of section 112(1)(b), the register of members of a company is kept at the office of a person and not at an office of the company, and by reason of any fault of his the company fails to comply with section 112(1) or (2) or with section 113 or with any requirement of this Act as to the production of the register, that person is liable to be prosecuted for an offence, and on conviction to incur the same penalty, as if he were an officer of the company.

115 Trusts not to be entered in register of members or debenture holders

- (1) Except as provided in this section, no notice of any trust (express, implied or constructive) shall be entered by a company in its register of members or its register of debenture holders or be receivable by the Registrar, and no liabilities shall be affected by anything done in pursuance of subsections (2), (3) and (4) and the company concerned shall not be affected with notice of any trust by reason of anything so done.
- (2) Any personal representative of the estate of a deceased person who was registered in the register of members of a company as the holder of a share in the company may become registered as the holder of that share as personal representative of that estate.
- (3) Any personal representative of the estate of a deceased person who was equitably entitled to a share in a company, being a share registered in the register of members of the company may, with the consent of the company and of the registered holder of the share, become registered as the holder of the share as personal representative of that estate.
- (4) A personal representative registered pursuant to subsection (2) or (3) as the holder of a share is, in respect of that share, subject to the same liabilities (and no more) as he would have been subject to if the share had remained registered in the name of the deceased person concerned.
- (5) Shares in a company registered in its register of members and held by a trustee in respect of a particular trust may, with the consent of the company, be marked in the register in such a way as to identify them as being held in respect of the trust.

116 Register of debenture holders

- (1) Every corporation which issues, in Tuvalu, debentures shall keep a register of debenture holders and enter therein a statement of —
 - (a) the names and addresses of the debenture holders;
 - (b) the principal of the debentures held by each of them;
 - (c) the amount or the highest amount of any premium payable on redemption of the debentures;
 - (d) the issue price of the debenture and the amount paid up on the issue price;
 - (e) the date on which the name of each person was entered on the register as a debenture holder; and
 - (f) the date on which each person ceased to be a debenture holder.
- (2) Section 30(3) applies to debenture holders as it applies to shareholders, but with the substitution of references to debentures and debenture holders therein for references to shares and shareholders, with the substitution of register of

debenture holders for register of members, and with the substitution of registered debenture holders for the persons mentioned in paragraph (a) thereof.

- (3) The provisions of sections 111(3) and (4), and sections 112, 113 and 114 (with necessary modifications) apply with respect to the register of debentures and debenture holders as they apply with respect to the register of members and shareholders, and if default is made in complying with any of those provisions (as so applied) the company concerned and every officer of the company in default is guilty of an offence under any of those provisions which has effect with respect to such a default.
- (4) In its application for the purposes of this section, subsection (2) of section 113 shall be deemed to impose additionally an obligation (subject to the conditions in that subsection) on a company to furnish a debenture holder with a copy of any trust deed relating to or securing any issue of debentures.

DIVISION 3 - DIRECTORS AND OFFICERS

117 Minimum number of directors of company⁵

Every company shall have at least two directors.

118 Statement in relation to first directors

- (1) There shall be lodged with the Registrar as part of the application with respect to the formation of a company a statement in the prescribed form containing the names and relevant particulars of the persons who are to be the first directors.
- (2) The statement required to be delivered by this section shall be signed by or on behalf of the subscribers of the Memorandum of the company and shall contain a consent signed by the person, to act in the relevant capacity.
- (3) The persons named in the statement required by this section as the directors of the company are, on the incorporation of the company, deemed to have been respectively appointed as the first directors of the company and any appointment by the Memorandum of the company delivered to the Registrar of a person as director is void unless he is named as a director in the statement.

119 Appointment of directors of public company

- (1) Subject to this section, a director of a company may be appointed only by ordinary resolution passed at a general meeting of the company and for a period not exceeding five years, but a director may be re-appointed in like manner on any number of occasions for a period not exceeding five years on each re-appointment.

- (2) Subject to section 118, the Memorandum of a company may make provision with respect to the appointment of the first directors of the company.
- (3) The first directors of a company cease to hold office at the termination of the first annual general meeting of the company, but they are eligible for re-appointment under subsection (1) at that meeting.
- (4) If a casual vacancy occurs in the office of a director, the remaining director or directors may fill the vacancy, and the person filling the vacancy ceases to hold office at the termination of the next succeeding annual general meeting, but is eligible for re-appointment under subsection (1) at that meeting.
- (5) Subject to section 118 and to subsection (8), any provision in the Memorandum or Articles of a company by which a director may be appointed in any other manner than the manner provided by this section is void.
- (6) The Memorandum or Articles of a company or any trust deed, debentures, agreement or instrument may provide for the appointment of one director, or two or more directors (not exceeding in number one-third of the number of directors for the time being holding office) by any class of shareholder or by the debenture holders of the company or by the trustee of the covering debenture trust deed.
- (7) At a general meeting of a company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be made, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.
- (8) The Articles of a company may provide for the 1 automatic re-appointment of a director at the expiration of his term of office if no other person is appointed by a general meeting in his place, but such a director shall not be automatically re-appointed if an ordinary resolution for the re-appointment of the director is defeated.
- (9) This section does not apply to a proprietary company.

120 Appointment of directors of proprietary company

- (1) Subject to this section, a director of a proprietary company may be appointed only by instrument in writing signed by such a number, or proportion, of the members of the company as is prescribed in the Articles of the company.
- (2) Subject to sections 117 and 118, the Memorandum of a proprietary company may provide for the appointment of a person or persons to be the first directors of the company.
- (3) Subject to the Memorandum, a director of a proprietary company holds office for life unless he resigns the office of director, is removed from the office or ceases to hold office by reason of the operation of any provision of this Act.

- (4) A director of a proprietary company wishing to resign his office shall give notice in writing to that effect to the company, and the resignation shall have effect, unless withdrawn with the consent of the company, on the expiration of the period of one month after notice is so given.
- (5) A director of a proprietary company may be removed from office by instrument in writing signed by the same number, or proportion, of the members of the company who, under the Memorandum of the company, are empowered to appoint a director.

121 Application of section 119 or 120 where company converts under section 22 or 21

- (1) Where a public company converts under section 20 to a proprietary company any director or directors holding office immediately after the conversion is, or are, deemed to be the first director or directors of the proprietary company, and section 120 applies accordingly.
- (2) Where a proprietary company converts under section 21 to a public company, any director or directors holding office immediately after the conversion is, or are, deemed to be a first director or first directors of the public company and section 119 applies accordingly.
- (3) Where, in any case of a kind referred to in subsection (2), a single director only is deemed to be a first director by reason of the operation of that subsection, any other director or directors appointed to meet the requirements of section 117(a) is also deemed to be a first director of the company, and section 119 applies accordingly.

122 Disqualification for appointment as director

- (1) A person —
 - (a) who is less than eighteen years of age;
 - (b) who is of unsound mind and has been so found by a Court in Tuvalu or elsewhere;
 - (c) who is an undischarged bankrupt; or
 - (d) which is not an individual,shall not be appointed to be a director of a company
- (2) A person who is trustee of a debenture trust deed covering debentures issued by a company shall not be appointed to be a director of the company or of any company belonging to the same group of companies as the company.
- (3) Where a person is appointed to be a director of a company and after that appointment any matter arises which by reason of subsection (1)(b) or (c) or subsection (2) or (3) would disqualify him from being appointed to be a director of the company, he shall, subject to subsection (4), forthwith cease to

be a director, and in the case of a public company a casual vacancy in the directorship which he held shall occur.

- (4) The Court may, on application made under this subsection, permit a person disqualified by subsection (1)(c) from being appointed to be a director, or a person who would but for this subsection cease to be a director by reason of subsection (3), to be appointed to be a director of a particular company or to continue to be such a director, as the case may be, and if a person is permitted to be so appointed or to so continue he is deemed not to be so appointed or to have ceased to be a director by reason of subsection (3).
- (5) Subject to subsection (6), a person who —
 - (a) is disqualified under subsection (1) from being appointed as a director of a company and who acts as a director while so disqualified; or
 - (b) ceases by reason of subsection (3) to be a director of a company and who continues to act as a director,is guilty of an offence.
- (6) Subsection (5) does not apply to a person of a kind referred to in subsection (1)(a) or (b).
- (7) Where any person is disqualified under this section from being appointed as a director of a company, he shall not, while the disqualification continues, in any way, whether directly or indirectly, be concerned or take part in the management of a company.
- (8) Any person who contravenes subsection (7) is guilty of an offence.

123 Director's share qualification

- (1) Unless a company's Articles otherwise provide, a director of the company need not be a member of the company.
- (2) Every director who is by the Articles required to hold a specified share qualification and who is not already qualified shall obtain his qualification within two months after his appointment or such shorter period as is fixed by the Articles.
- (3) Unless otherwise provided by the Articles of a company, the qualification of any director of the company shall be held by him solely and not as one of several joint holders.
- (4) A director shall vacate his office if he has not within the period referred to in subsection (2) obtained his qualification or if after so obtaining it he ceases at any time to hold his qualification.
- (5) A person vacating his office under subsection (4) is incapable of being re-appointed as director until he has obtained his qualification.

- (6) A director who fails to vacate his office as required by subsection (4) is guilty of an offence.

124 Removal of directors of public company by resolution

- (1) Subject to this section, a company may by ordinary resolution remove a director of the company before the expiration of his period of office, notwithstanding any thing —
- (a) in its Memorandum or Articles; or
 - (b) in any agreement between the director and the company.
- (2) A resolution to remove a director may be passed at an annual general meeting or at an extraordinary general meeting, and it is immaterial whether the meeting is called by the directors, the Registrar or any other person or by order of the Court, or whether the proposed resolution is included in the notice of the meeting at the instance of the directors or any other person.
- (3) The directors who call, or the other person who calls, the general meeting shall give written notice of the proposal to the director whose removal is proposed at least one month before the general meeting concerned.
- (4) If the director whose removal is proposed makes written representations in respect of the proposal to the company and requires notification to be given to members of the company, the company shall, subject to subsection (5), unless the representations are received by it too late for it to do so —
- (a) in every notice or advertisement relating to the meeting at which the proposal is to be considered, state the fact of the representations having been made; and
 - (b) send a copy of the representations to every member, debenture holder or trustee for debenture holders of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company),

and if a copy of the representations is not so sent because they were received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.

- (5) Copies of representations of a kind referred to in subsection (4) need not be sent out and the representations need not be read out at a meeting, if, on the application either of the company or of any other person who claims to be aggrieved made within seven days after the receipt of the representations by the company, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter, and on any such application the Court may order the company's costs on the application to be paid in whole or in part by the director.

- (6) A vacancy created by the removal of a director under this section, if not filled at the meeting at which time he is removed, may be filled as a casual vacancy.
- (7) A person appointed director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed a director.
- (8) Subject to subsection (9), nothing in this section shall be taken as depriving a person removed under this section of compensation or damages payable to him in respect of the termination of his appointment as director, or of any appointment, office or employment under the company which terminates with his appointment as a director, or as derogating from any power to remove a director which may exist apart from this section.
- (9) The damages or compensation payable to a director, whether fixed as liquidated damages or compensation by any agreement entered into by him, and whether constituting damages or compensation for breach of any such agreement or a condition to be fulfilled by the company or any other person if his appointment is terminated, shall not exceed three times the average annual remuneration to which he has been entitled for his services as a director of the company or in any other capacity between the time of his appointment or most recent re-appointment as a director and the time of his removal.
- (10) If a company —
 - (a) fails to give written notice of a proposed resolution to remove a director to that director in compliance with subsection (3);
 - (b) fails in any notice or advertisement relating to the meeting at which the proposed resolution is to be considered to state that representations have been made by the director whose removal is sought (if that is the case); or
 - (c) fails to send a copy of any written representations made by the director whose removal is sought in respect of the proposed resolution to every member, debenture holder and trustee for debenture holders of the company to whom a notice of the meeting at which the proposal is to be made is sent, or to every shareholder or debenture holder or trustee for debenture holders who makes a written request for such a copy to be sent to the address given in the written request within two days after the request is received,the company and any officer of the company who is in default is guilty of an offence.
- (11) Where the holders of any class of shares in a company have exclusive right pursuant to section 132(6) to elect one, or more than one, director, a director so elected may be removed only by an ordinary resolution at a meeting of the shareholders of that class.

- (12) Where the holders of debentures, or the trustee of one, or more than one, trust deed have an exclusive right pursuant to section 119(6) to elect one, or more than one, director, a director so elected may be removed only by an ordinary resolution at a meeting of the debenture holders concerned.
- (13) For the purposes of this section, a person shall be deemed to hold an appointment, office or employment under a company if he holds it by virtue of a contract with the company, its holding company or subsidiary under a provision for the purpose contained in the articles of incorporation of any such company.
- (14) This section does not apply to a proprietary company.

125 Disclosure of interest in contracts

- (1) Subject to this section, every officer of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company shall disclose in writing to the company or request to have entered in the minutes of meetings of directors the nature and extent of his interest.
- (2) The requirements of subsection (1) do not apply in any case where the interest of the officer consists only of being a member or creditor of a company which is interested in a contract or proposed contract with the first-mentioned company if the interest of the officer may properly be regarded as not being a material interest.
- (3) An officer of a company shall not be deemed to be interested or to have been at any time interested in a contract or proposed contract by reason only —
 - (a) in a case where the contract or proposed contract relates to a loan to the company, that he has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan;
 - (b) in a case where the contract or proposed contract has been or will be made with, for the benefit of, or on behalf of, another company which is in the same group as the company of which he is an officer, that he is an officer of that other company; or
 - (c) that it relates to his remuneration as an officer, or employee of the company, or of a company belonging to the same group of companies as the company.
- (4) The disclosure required by subsection (1) shall be made, in the case of a director —
 - (a) at the meeting at which a proposed contract is first considered;
 - (b) if the director was not then interested in a proposed contract, at the first meeting after he becomes so interested;
 - (c) if the director becomes interested after the contract is made, at the first meeting after he becomes so interested; or

- (d) if a person who is interested later becomes a director at the first meeting after he becomes a director.
- (5) The disclosure required by subsection (1) shall be made, in the case of an officer who is not a director —
 - (a) forthwith after he becomes aware that the contract or proposed contract is to be, or has been, considered at a meeting of directors;
 - (b) if the officer becomes interested after a contract is made, forthwith after he becomes so interested; or
 - (c) if a person who is interested later becomes an officer, forthwith after he becomes an officer.
- (6) If a contract or proposed contract with a company is one that, in the ordinary course of the company's business, would not require approval by the directors or shareholders of the company, an officer shall disclose in writing to the company or request to have entered in the minutes of meetings of the directors the nature and extent of his interest forthwith after the officer becomes aware of the contract or proposed contract.
- (7) A director of a company referred to in subsection (1) shall not vote on any resolution to approve the contract or proposed contract in which he is interested.
- (8) For the purposes of this section, a general notice to the directors of a company by an officer of the company declaring that he is an officer (naming the office) of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with the specified company or firm is a sufficient declaration of interest in relation to any contract so made or proposed to be made.
- (9) Where an officer of a company fails to disclose an interest in a contract in accordance with this section in any case in which this section applies, the Court, upon the application of the company or a shareholder of the company, may set aside the contract on such terms as it thinks fit.

126 Register of directors

- (1) A company shall keep at its registered office a register of its directors.
- (2) The register kept by a company pursuant to subsection (1) shall contain with respect to each director of the company —
 - (a) a statement of his present forename and surname, any former forename or surname, his usual residential address and his business occupation (if any);
 - (b) particulars of other directorships held by the director; and
 - (c) who is, or who is to perform the functions of, a managing director, a statement to that effect.

- (3) The register kept by a particular company need not contain, pursuant to subsection (2)(b), particulars of directorships held by a director in any company of which the particular company is a wholly owned subsidiary.
- (4) The register kept by a company pursuant to subsection (1) shall be open to the inspection of a member of the company without charge, and of any other person on payment of one dollar, or such lesser sum as the company requires, for each inspection.
- (5) A company shall lodge with the Registrar within one month after a person ceases to be a director of the company or, except in the case of a person becoming a director of the company pursuant to section 118(3), becomes a director of the company, a return in the prescribed form notifying the Registrar of the change and containing, with respect to each person who is then a director of the company, the particulars required to be specified in the register in relation to him.
- (6) A director in respect of whom an entry is required to be made in the register shall notify the company in writing within seven days after the matter occasioning the requirement of the entry occurs or arises, and shall include in the notification the particulars which the company is required to enter in the register in respect of that matter.
- (7) A director is guilty of an offence —
 - (a) if he fails to comply with subsection (6); or
 - (b) if he gives false, misleading or incomplete information to any company with a view to it making an entry in its register.

127 Register of directors' holdings

- (1) A company shall keep a register showing the required particulars with respect to any interest in shares in, or debentures of, —
 - (a) the company;
 - (b) any company belonging to the same group of companies as the company; or
 - (c) any associated company of the company,which is vested in a director of the company or of any company belonging to the same group of companies as the company.
- (2) For the purposes of this section, an interest in shares or debentures is vested in a director if —
 - (a) the shares or debentures are registered in the director's name, or the names of the director and other persons jointly, or in the name of a nominee for him, or for him and them;
 - (b) the director has a derivative interest in the shares or debentures, or a right or power to acquire a derivative interest in them;

- (c) the director has a right to subscribe for the shares or debentures, or another person has a right to subscribe for them and the director has a right to acquire them after they have been allotted;
 - (d) the shares or debentures are the subject of a voting arrangement in favour of a director, that is to say, an arrangement (whether legally enforceable or not) by which the director may require the holder of the shares or debentures to vote, or not to vote, or to vote in a particular manner, at any general meeting of the company or at any meeting of a class of shareholders or debenture holders, or by which the director may require the holder of the shares or debentures to appoint the director or any other person to be his proxy with power to vote in respect of the shares or debentures at any such meeting.
- (3) For the purpose of this section, a company is the associated company of another company if —
- (a) the company holds, by itself or its nominee, shares in the other company which entitle the holder of the shares to exercise at least one fifth of the unrestricted voting rights exercisable at any general meeting of that other company, or if that other company holds, by itself or its nominees, shares in the company which entitle their holder to exercise the same fraction of voting rights at any of its general meetings; or
 - (b) the other company is the holding company or subsidiary of a third company which is an associated company of the company by virtue of paragraph (a).
- (4) For the purposes of subsection (1), the required particulars with respect to an interest in shares or debentures vested in a director are —
- (a) the number of classes of the shares and the number, classes and the amount of the principal and premiums payable to the holder of the debentures;
 - (b) the nature of the interest and its duration (if it is limited in duration);
 - (c) the date of the acquisition of the interest and the consideration (if any) given by the director or any other person for the acquisition; and
 - (d) the date of the disposal of the interest by the director or the date of its cessation (whichever first occurs) and the consideration (if any) received by him or any other person for such disposal or cessation.
- (5) A director in respect of whom any entry is required to be made in the register shall notify the company in writing within seven days after the matter occasioning the requirement of the entry occurs or arises, and shall include in the notification the particulars which the company is required to enter in the register in respect of that matter.
- (6) This section extends to interest in shares and debentures vested in a director at the time when he becomes a director, and subsection (5) applies in that case with the substitution of a period of seven days after the director becomes a

director for the period of seven days after the matter occasioning the requirement of an entry occurs or arises.

- (7) The register shall be so made up that entries in it against the several names recorded in the register appear in chronological order.
- (8) The entries which are required by this section to be made in the register shall not be removed from the register, notwithstanding the fact that the person in respect of whom they are required to be made ceases to be a director, but it shall not be necessary to make an entry in the register in respect of a matter which occurs or arises after he ceases to be a director.
- (9) Sections 112, 113 and 114 with the necessary modifications apply to the register kept under this section as they apply to the register of members.
- (10) This section does not apply to an interest of a director which is created by the Memorandum of a company if the interest is one which is conferred on all the shareholders of the company or on all the shareholders of the class concerned, on the same terms and conditions, as on the director, that is to say, strictly in proportion to the shares, or shares of that class, held by them respectively.
- (11) A company and every director of a company who is in default is guilty of an offence —
 - (a) if the company fails to make an entry required by this section to be made in the register within three days after written notification of the matter required to be registered is given to it or any of its directors (other than a person in respect of whom an entry is required to be made) acquires knowledge of the matter in relation to which an entry is required to be made (whichever is the earlier); or
 - (b) if the company makes a false, misleading or incomplete entry in relation to a matter which is required to be entered in the register.
- (12) A director of a company is guilty of an offence if he fails to give a written notice of any matter in compliance with subsection (5) or (6), within the time thereby limited, to every company which is required to make an entry in relation to the matter in the register, or if he gives false, misleading or incomplete information to any such company with a view to it making an entry in its register.
- (13) This section does not apply to a proprietary company.

128 Extension of section 127 to spouses and children

- (1) For the purposes of section 127 —
 - (a) an interest of the wife or husband of a director of a company (not being herself or himself a director thereof) in shares or debentures shall be treated as being the director's interest, and so shall an interest of an infant son or infant daughter of a director of a company (not being himself or herself a director thereof) in shares or debentures; and

- (b) a contract, assignment or right of subscription entered into, exercised or made by, or grant made to, the wife or husband of a director of a company (not being herself or himself a director thereof) shall be treated as having been entered into, exercised or made by, or as the case may be, as having been made to, the director, and so shall a contract, assignment or right of subscription entered into, exercised or made by, or grant made to, an infant son or infant daughter of a director of a company (not being himself or herself a director thereof).
- (2) A director of a company shall be under obligation to notify the company in writing of the occurrence, while he or she is director, of either of the following events, namely —
- (a) the grant to his wife or her husband or to his or her infant son or infant daughter, by the company, of a right to subscribe for shares in, or debentures of, the company; and
 - (b) the exercise by his wife or her husband or by his or her infant son or daughter of such a right as aforesaid granted by the company to the wife, husband, son or daughter,

stating, in the case of the grant of a right, the like information as is required by section 141 to be stated by the director on the grant to him by another company of a right to subscribe for shares in, or debentures of, that other company and, in the case of the exercise of right, the like information as is required by that section to be stated by the director on the exercise of a right granted to him by another company to subscribe for shares in, or debentures of, that other company; and an obligation imposed by this subsection on a director must be fulfilled by him before the expiration of the period of five days beginning with the day next following that on which the occurrence of the event that gives rise to it comes to his knowledge.

- (3) A person is guilty of an offence if he fails to give a written notice of any matter in compliance with subsection (2), within the time thereby limited, to the company concerned, or if he gives false, misleading or incomplete information to the company.
- (4) In this section, “son” or “daughter” includes an illegitimate son or daughter, and “wife” or “husband” includes a reputed wife or reputed husband.

129 Prohibition of loans to directors of public company

- (1) Subject to this section, no company shall, whether directly or indirectly, and whether by means of a loan guarantee or the provision of security or otherwise, give financial assistance —
- (a) to any officer of the company or of any company in the same group of companies as the company;
 - (b) to any corporation in which any director, or any of the directors collectively, hold, personally or by way of nominee, shares which

- entitle the director or, as the case may be, the directors to exercise at least fifty-one per centum of the unrestricted voting rights at any general meeting of that corporation;
- (c) to any subsidiary of a corporation such as is referred to in paragraph (b); or
 - (d) to an officer of a corporation such as is referred to in paragraph (b) or (c).
- (2) Nothing in subsection (1) shall be taken as prohibiting —
- (a) where section 54 applies, the giving of financial assistance to purchase or subscribe for shares when authorised to do so by that section;
 - (b) where lending money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business;
 - (c) anything done to provide any person with funds to meet expenditure incurred or to be incurred by him for the purposes of the company so providing those funds; or
 - (d) the giving of financial assistance to employees of a company (other than directors) to enable or assist them to purchase or erect living accommodation for their own occupation.
- (3) Where a company contravenes this section, any director of the company who authorised the making of the loan, the entering into of any guarantee, the provision of any security or the doing of any other thing, which constitutes the offence is guilty of an offence.
- (4) The prohibition in subsection (1) against giving financial assistance to an officer of a company or corporation extends to giving any such financial assistance to the family of an officer and, for that purpose —
- (a) the family of an officer includes the wife or husband (or reputed wife or husband), the parents and any children (whether legitimate or illegitimate), of the officer; and
 - (b) this section (with the necessary modifications) applies accordingly.
- (5) Nothing in this section operates to prevent a company from recovering the amount of any financial assistance given, for which the company became liable under any guarantee entered into or security given, contrary to this section.
- (6) This section does not apply in the case of financial assistance given by a proprietary company.

130 Prohibition of loans to directors of proprietary company, etc.

- (1) Subject to this section, no proprietary company shall, whether directly or indirectly and whether by means of a loan, guarantee or the provision of security or otherwise, give financial assistance to any officer of the company.
- (2) Nothing in subsection (1) shall be taken as prohibiting the giving of financial assistance to an officer of a proprietary company —
 - (a) if all the members of the company agree in writing to the company to do so or the giving of the financial assistance has been approved by a special resolution of the company; and
 - (b) there are reasonable grounds for believing that —
 - (i) the company would, after giving the loan or meeting any other liability which might be required to meet as a result of giving the financial assistance, be able to pay its liabilities as they become due; or
 - (ii) the realisable value of the company's assets would, notwithstanding the giving of the loan or the meeting of any other liability which it might be required to meet as a result of giving the financial assistance, be greater than the aggregate of its assets and stated capital.
- (3) Nothing in subsection (1) shall be taken as prohibiting the giving of financial assistance or the doing of anything in any of the circumstances referred to in section 129(2)(a), (c) or (d).
- (4) Where a proprietary company contravenes this section, any director of the company who authorised the making of the loan, the entering into of any guarantee, the provision of any security or the doing of any other thing, which constitutes the offence, is guilty of an offence.
- (5) The prohibition in subsection (1) against giving financial assistance to an officer of a proprietary company extends to the giving of any such financial assistance to the family of an officer, and for that purpose —
 - (a) the family of an officer includes the persons referred to in section 129(4)(a); and
 - (b) this section (with the necessary modifications) applies accordingly;
- (6) Nothing in this section operates to prevent a company from recovering the amount of any financial assistance given contrary to this section.

131 Directors' remuneration

- (1) Subject to subsection (2), no remuneration shall be paid to a director of a company unless the amount or rate thereof is specified in the Memorandum or Articles of the company or in a written service agreement between the

- company and the director which has been authorised or approved by a general meeting of the company.
- (2) If a written service agreement between a company and a director of the company is entered into without the authorisation of a general meeting, remuneration may be paid under the agreement to the director for a period not exceeding six months until the remuneration is approved by a general meeting, but if such approval is refused no remuneration for a period prior to the refusal is recoverable by the company.
- (3) No payment shall be made by a company as a pension or retirement benefit —
- (a) to an officer or former officer of the company as a pension or retirement benefit;
 - (b) to an officer or former officer of the company for loss of his office, or of any office in connection with the management of the company's affairs, or of any office in connection with the management of any subsidiary of the company, or as consideration for or in connection with his retirement from any such office;
 - (c) to a dependent of, or to a person nominated by, or to the estate of an officer or former officer of the company by way of a pension or a provision; or
 - (d) to any person in return for an undertaking to provide any benefit falling within the foregoing paragraphs, unless the payment is previously authorised by an ordinary resolution passed at a general meeting of the company or unless the payment is provided for by a written service agreement between the company and the officer or former officer and the term relating to the payment has been approved by an ordinary resolution passed at a general meeting before, or within six months after, the agreement is entered into.
- (4) No payment to which this section applies shall be made by a company free of income tax, or otherwise calculated by reference to, or varying with, the amount of income tax payable by any person or to or with any specified rate of income tax and the payment to be made shall be a gross sum subject to income tax equal to the net sum for which the Memorandum or Articles of the company or any resolution or contract in respect of the payment, actually provides.
- (5) In this section —
- “**dependent**” includes any person (whether related to an officer or former officer or not) who is entitled to any benefit or advantage under a contract, trust, scheme or arrangement to which the company is a party by reason of the person's connection with the officer or former officer;
- “**income tax**” means any tax imposed on, and calculated by reference to the amount of the income of, a person by the law of Tuvalu or any other country;

“**pension**” includes any superannuation allowance, superannuation gratuity or similar payment;

“**provision**” includes any payment of money to, or the conferment of any benefit on, the recipient whether on one occasion or on two or more successive occasions;

“**remuneration**” includes salary, fees, commission, share or percentage of profits, expenses allowance and any other form of emolument whether in cash or not, relating to services as a director of a company or any of its subsidiaries.

- (6) Nothing in this section operates to enable a company or any other person to recover any premium paid by a company to secure the provision of any benefit falling within paragraph (a), (b) or (c) of subsection (3), but any sum paid or the value of any benefit conferred under any of those paragraphs by the person to whom the premium is paid is recoverable by the company from the recipient if subsection (3) has not been complied with.

132 Compensation for loss of office by a director on transfer of company’s undertaking

- (1) A company shall not, in connection with the transfer of the whole or any part of the undertaking or property of the company, make any payment to a director or former director of the company by way of compensation for loss of his office, or of any office in connection with the management of the company’s affairs, or of any office in connection with the management of any subsidiary of the company, or as consideration for or in connection with his retirement from any such office, unless particulars with respect to the proposed payment (including the amount thereof) have been disclosed to the shareholders of the company and the proposal has been approved by the company by an ordinary resolution passed in a general meeting.
- (2) Where a payment which is prohibited by this section is made to a director or former director of a company, the amount received shall be deemed to have been received by the director or former director in trust for the company and may be recovered by it from the director as a debt immediately due and payable.
- (3) Particulars of a proposed payment to a director or former director within this section shall be sufficiently disclosed to shareholders of the company if the particulars are included in or accompany the notice calling the general meeting and any advertisement of the meeting published by the company.

133 Contravention of section 132

Where any person makes or receives a payment, or a director or former director of a company acquiesces in the making of a payment, which is prohibited by section 132, he is guilty of an offence.

134 Provisions supplementary to section 132

- (1) Where in proceedings for the recovery of any payment as having, by virtue of section 132, been received by a director or former director, or officer or former officer, in trust, it is shown —
 - (a) that the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question, or within one year before, or two years after, that agreement or the offer leading thereto was made; and
 - (b) the company or any person to whom the transfer was made was privy to that arrangement,the payment is deemed, unless the contrary is proved, to be one to which section 132 applies.
- (2) Where, in connection with a transfer such as is referred to in section 132, —
 - (a) the price to be paid to a director whose office is to be abolished, or who is to retire from office, for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of like shares in the company; or
 - (b) any valuable consideration is paid to any such director,the excess of the price or, as the case may be, the money value of the consideration is, for the purposes of section 132, deemed to have been a payment made by way of compensation for loss of office or as consideration for or in connection with his retirement from office.
- (3) References in sections 131 and 132 to payments made to any officer or former officer, or director or former director, of a company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office do not include bona fide payments by way of damages (not exceeding the amount specified in section 124(9)) or by way of pension in respect of past services; for the purposes of this subsection, “pension” includes any superannuation allowance, superannuation gratuity or similar payment.

135 Validity of acts of officers

An act of an officer of a company in the ordinary course of the business of the company is valid notwithstanding any defect in his election, appointment or qualification.

136 Duty of care of officers

- (1) The directors of a company are responsible for the management of the business and affairs of the company.
- (2) Every officer of a company in exercising his powers and performing his duties shall —
 - (a) act honestly and in good faith with a view to the best interests of the company;
 - (b) exercise the care, diligence and skill that reasonably prudent person would exercise in comparable circumstances; and
 - (c) comply with this Act, the Regulations and the Memorandum and Articles of the company.
- (3) No information about the business or affairs of a company shall be disclosed by an officer of the company except —
 - (a) for the purposes of the exercise or performance of his functions as an officer;
 - (b) for the purposes of any legal proceedings;
 - (c) pursuant to the requirements of any enactment; or
 - (d) when authorised by the company.
- (4) In determining in any case whether or not a director (other than a managing director or a director who performs executive functions) has complied with the requirements of subsection (2)(b), regard shall be had to his general knowledge and experience, and the reference in subsection (2)(b) to a reasonably prudent person shall, for that purpose, be taken to be a reference to a reasonably prudent person having that knowledge and experience.
- (5) The director or directors of a company shall be deemed to be acting in accordance with the requirement of subsection (2)(a) if, in the exercise of his or their powers, he or they make reasonable provision with respect to the welfare of employees, or former employees, of the company.

137 Directors' liability

- (1) Where shares in a company are allotted for a consideration other than cash, directors who voted for or consented to the resolution referred to in section 59(1)(a) passed in relation to those shares are jointly and severally liable to the company to make good any amount by which, to their knowledge, the consideration is less than the fair equivalent of the cash that the company would have received if the shares had been allotted for cash on the date of the resolution.
- (2) Directors of a company who vote for or consent to a resolution authorising —
 - (a) a commission contrary to section 55; or

- (b) financial assistance contrary to section 54, 129 or 130,
are jointly and severally liable to restore to the company any amounts so distributed or paid and not otherwise recovered by the company.
- (3) A director of a company who has satisfied a judgment rendered under this section is entitled to contributions from the other directors who voted for or consented to the unlawful act upon which the judgment was founded.
- (4) A director of a company liable under subsection (2) to restore any amount to the company may apply to the Court for an order compelling a shareholder or other recipient to pay or deliver to the director any money or property that was paid or distributed to the shareholder or other recipient contrary to section 63, 129 or 130.
- (5) In connection with an application under subsection (4), the Court may, if it is satisfied that it is equitable to do so, —
- (a) order a shareholder or other recipient to deliver to a director any money or property that was paid or distributed to the shareholder or other recipient contrary to section 129 or 130;
- (b) order a company to return or issue shares to a person from whom the company has purchased, redeemed or otherwise acquired shares; or
- (c) make any further order it thinks fit.
- (6) A director of a company is not liable under subsection (1) if he proves that he did not know and could not reasonably have known that the share was issued for a consideration less than the fair equivalent of the money which the company would have received if the share had been issued for cash.
- (7) An action to enforce a liability imposed by this section may not be commenced after two years from the date of the resolution authorising the action complained of.

138 Exemption from liability

- (1) Subject to subsection (2), any provision, whether contained in the Memorandum or Articles of a company, in any contract with a company or otherwise, or in any resolution of a company or purporting to exempt any officer, or the auditor of the company, or purporting to indemnify any such person against, liability in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company, is void.
- (2) Notwithstanding subsection (1), a company may, in pursuance of its articles of incorporation or otherwise, indemnify any officer or the auditor of the company against any liability incurred by him in defending any proceedings (whether civil or criminal) in which judgement is given in his favour or in which he is acquitted or in connection with any application in relation thereto in which relief is granted to him by the Court under this Act.

139 Limitation on exemption of director from liability

The resignation of a director of a company does not itself release the person from his duties as an officer of the company unless, in all the circumstances of the case, it is reasonable for the person to assume that, having notified the company of his resignation, the company will lodge with the Registrar the appropriate turn under section 126.

140 Relief from liability by order of the court

- (1) In proceedings in a Court to enforce against an officer any liability —
 - (a) under section 136 or 137 arising in respect of, or as a result of, anything done or omitted to be done by him; or
 - (b) in respect of any negligence, default, breach of duty or breach of trust, otherwise arising in relation to him as such an officer,the court may relieve the officer, either wholly or partly on such terms as the court thinks fit, of liability if the officer proves —
 - (c) in proceedings in respect of any liability referred to in paragraph (a), that in doing or omitting to do the thing concerned he honestly and reasonably relied —
 - (i) upon financial statements of the company or in a written report of the auditor of the company fairly to reflect the financial condition of the company; or
 - (ii) upon a report of an expert; or
 - (d) in proceedings in respect of any liability referred to in paragraph (b), that he acted honestly and reasonably and that, having regard to all the circumstances of the case (including those connected with his appointment), he ought fairly to be excused for the negligence, default or breach, as the case may be.
- (2) Where any officer of a company has reason to apprehend that any claim will, or may be, made against him in respect of any negligence, default or breach of duty (arising otherwise than under section 136 or 137) he may apply to the Court for relief, and the Court on the application has the same power to relieve him as it would have under this section in proceedings before the Court against the person for any such negligence, default or breach of duty.

DIVISION 4 - MEETINGS AND PROCEEDINGS**141 Annual general meeting**

- (1) Subject to subsection (2) and section 142, a company shall hold an annual general meeting —

- (a) not later than eighteen months after the company comes into existence; and
 - (b) thereafter, at least once in every calendar year and not later than fifteen months after the holding of the last preceding annual general meeting.
- (2) The Minister may on application made by a company in accordance with a resolution of the directors and signed by a director or secretary, on payment of the prescribed fee and subject to such conditions and directions as the Minister thinks fit to impose or give, —
- (a) extend the period of eighteen or fifteen months referred to in subsection (1); and
 - (b) permit an annual general meeting to be held in a calendar year other than the calendar year in which it would otherwise be required by subsection (1) to be held,
- and a company is not in default under subsection (1) if it holds an annual general meeting within the period so extended or in accordance with any such permission.
- (3) An application by a company for an extension of a period or for permission under subsection (2) shall be made before the expiration of the period or of the calendar year in which the annual general meeting would otherwise be required to be held, as the case may be.
- (4) Where in a calendar year (other than the year of its incorporation or the following year) a company does not hold an annual general meeting, an annual general meeting of the company shall, for the purposes of calculating the period within which the next annual general meeting is, under subsection (1), required to be held, be deemed to have been held on the thirty-first of December in that calendar year unless the Registrar otherwise directs or on such other date in that calendar year as the Registrar determines.
- (5) If default is made in holding an annual general meeting under this section or in complying with any conditions of the Minister under subsection (2) —
- (a) the company and every officer of the company in default is guilty of an offence; and
 - (b) the Minister may of his own motion or on the application of any member of the company order a general meeting to be held.
- (6) If default is made in complying with an order made under subsection (5)(b), the Court may, on the application of the Minister, order that company to be wound up.

142 Circumstances in which proprietary company need not hold annual general meeting

- (1) The Articles of a proprietary company may provide that it need not hold an annual general meeting in any year if —

- (a) copies of its balance sheet, profit and loss account, directors' annual report and auditors' report in respect of that year, are sent to every shareholder and debenture holder of the company at least eight weeks before the latest date by which the company is required by section 141 to hold an annual general meeting; and
 - (b) no shareholder or debenture holder has, at least four weeks before that latest date, served a written notice on the company requiring it to hold an annual general meeting.
- (2) Where a proprietary company, pursuant to its Articles and subsection (1), does not hold an annual general meeting, sections 141, 147, 149 to 154, 158, 166, and 176(3) do not apply in respect of the annual general meeting or the accounts and reports which this Act requires to be laid before the annual general meeting for the year in question.

143 Extraordinary general meetings and requisitions of meetings

- (1) A general meeting of the company which is not an annual general meeting is in this Act called an extraordinary general meeting.
- (2) The directors of a company, notwithstanding anything in its Memorandum or Articles shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of unrestricted voting rights at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.
- (3) The directors of a company, notwithstanding anything in its Memorandum or Articles, shall, on the requisition of shareholders holding at the date of the deposit of the requisition not less than one-tenth of all issued and outstanding shares of any class, forthwith proceed duly to convene a meeting of that class of shareholders.
- (4) The trustee of a debenture trust deed, notwithstanding anything contained therein or in any debenture or in any contract or instrument, shall, on the requisition of persons holdings at the date of the deposit of the requisition debentures covered by the trust deed which carry not less than one-tenth of the total voting rights attached to all the issued and outstanding debentures of that class, forthwith proceed duly to convene a meeting of that class of debenture holders.
- (5) The requisition shall state the objects of the meeting and shall be signed by the requisitionists and deposited at the registered office of the company and may consist of several documents in like form each signed by one or more requisitionists.
- (6) If the directors or trustee for debenture holders do not or does not within twenty-one days after the date of the deposit of the requisition proceed duly to convene a meeting to be held not later than twenty-eight days after the meeting is convened, anyone or more of the requisitionists may convene a

meeting to transact the business specified in the requisition, but any meeting so convened shall not be held after the expiration of six months from that date.

- (7) A meeting convened under this section by any one or more of the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.
- (8) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors or trustee for debenture holders duly to convene a meeting shall be paid to the requisitionists by the company by way of fees or other remuneration in respect of their services to such of the directors or trustees for debenture holders as were in default.
- (9) If the directors or trustee for debenture holders fail to convene a meeting in compliance with this section, each of them is guilty of an offence.

144 Ordinary and special resolutions

- (1) Business shall be transacted at general meetings of a company by ordinary resolution, unless this Act or the Articles of incorporation or by-laws of the company require a special resolution.
- (2) All business which cannot be transacted at a general meeting of a company by an ordinary resolution shall, subject to the provisions of this Act, be transacted by special resolution, and no provision in the Memorandum or Articles of the company requiring or permitting the business to be transacted in any other way is valid.
- (3) A resolution is passed as an ordinary resolution if it is proposed as such, and of the votes which are cast in favour of and against the resolution more votes are cast in favour of the resolution than are cast against it.
- (4) A resolution is passed as a special resolution if it is proposed as such and not less than three-quarters of the votes which are cast are cast in favour of it.
- (5) Nothing in this section affects any provision in the Articles of a proprietary company making the passing of any resolution, or the effectiveness of any resolution, or the doing of any act, conditional on one or more named persons consenting thereunto.

145 Provision allowing shorter notice void and place where meetings to be held

- (1) Any provision of a company's Memorandum or Articles is void in so far as it provides for the calling of a meeting of the company (other than an adjourned meeting) by a shorter notice than —
 - (a) in the case of the annual general meeting or a meeting for the passing of a special resolution, twenty-one days' notice in writing; and

- (b) in the case of any other meeting, fourteen days' notice in writing.
- (2) A meeting of the company (other than an adjourned meeting) shall, unless the Memorandum or Articles require longer notice, be called —
 - (a) in the case of the annual general meeting or a meeting called to pass a special resolution (with or without other business), by twenty-one days' notice in writing; and
 - (b) in the case of any other meeting, by fourteen days' notice in writing.
- (3) A meeting of a company shall, notwithstanding that it is called by shorter notice than that required by subsection (2) or the company's Memorandum or Articles, be deemed to have been duly called if it is so agreed —
 - (a) in the case of a meeting called as an annual general meeting, by all members entitled to attend and vote at the meeting; or
 - (b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than ninety-five per centum of the unrestricted voting rights exercisable at the meeting.
- (4) Subject to subsection (5), general meetings of a company shall be held at the place within Tuvalu provided in the Articles of the company or, in the absence of such provision, at the place within Tuvalu that the directors of the company determine.
- (5) A general meeting of a company may be held outside Tuvalu if all the shareholders or debenture holders entitled to attend and vote at the meeting so agree; and a shareholder or debenture holder who attends such a general meeting may not object except where he attends the meeting to object to the transaction at the meeting of business on the ground that it is not being lawfully held.

146 Power of Court to order meeting

- (1) If for any reason it is impracticable to a meeting of a company in any manner in which meetings of the company may be called or to conduct the meeting of the company in a manner prescribed by the Memorandum and Articles of the company or by this Act, the Court may, either on its own motion or on the application of any director or member of the company, of any debenture holder who would be entitled to vote at the meeting, order a meeting to be called, held and conducted in such manner as the Court thinks fit, and may give such ancillary or consequential directions as it thinks expedient, including a direction that one member present in person or by proxy shall be deemed to constitute a meeting.
- (2) Any meeting called, held and conducted in accordance with an order made pursuant to this section is for all purposes deemed to be a meeting duly called, held and conducted.

147 Contents of notice calling a meeting

- (1) Except in the case of the meeting called under section 146, the notice calling a meeting of a company shall contain in clearly legible print or type —
 - (a) a statement identifying the type of meeting involved and, in the case of a meeting of a class of shareholders or debenture holders, identifying that class;
 - (b) a statement of the time and place of the meeting;
 - (c) a statement of the business to be transacted at the meeting, in sufficient detail to permit a person entitled to attend and vote at the meeting to form a reasoned judgement thereon;
 - (d) the text of any resolution, other than a procedural resolution, to be proposed at the meeting and a statement whether the resolution will be proposed as an ordinary or special resolution;
 - (e) where applicable, a statement drawing attention to the proxy form sent pursuant to section 144(5) with the notice and indicating briefly the entitlement in relation to proxies;
 - (f) if the Memorandum or Articles of the company provide for or, in the case of a meeting of debenture holders permit, postal voting, a statement that any person entitled to attend and vote at the meeting may vote by post;
 - (g) a statement that all appointments of proxies and postal votes must be delivered to the company not later than forty-eight hours before the time at which the meeting will commence or, if they are to be effective at any adjournment of the meeting, not later than forty-eight hours before the time at which the adjourned meeting is to commence; and
 - (h) where applicable, a statement of any material interest of directors, or any director, (in whatever capacity) relevant to the resolution and the effect on that interest of the resolution in so far as the effect is different from the effect of the resolution on the interest of persons not having that material interest.
- (2) If a resolution incorporates the terms of any contract, arrangement or document as part thereof, the notice calling the meeting at which the resolution is proposed shall be accompanied by a copy of the contract, arrangement or document or by a statement of the terms of the contract or arrangement if it is not in writing.
- (3) For the purposes of this section, a procedural resolution is a resolution —
 - (a) declaring a dividend;
 - (b) approving or rejecting the annual accounts of the company or the directors' or auditors' report; or

- (c) to elect a chairman of a meeting, to adjourn or terminate a meeting, to terminate discussion on a proposed resolution or an amendment thereto, or to take a vote on any matter without further discussion.

148 Circulation of proposed resolutions, etc.

- (1) Subject to this section, a company shall, on the requisition in writing of such number of persons as is specified in subsection (2) and (unless the company otherwise resolves) at the expense of the requisitionists —
 - (a) give to members of the company notice of any resolution which may properly be moved and is intended to be moved at any general meeting;
 - (b) circulate to members any statement of not more than three thousand words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting;
 - (c) circulate to shareholders or debenture holders of any class a statement of not more than three thousand words with respect to the matter referred to in any resolutions to be proposed or the business to be dealt with, at any meeting of shareholders or debenture holders of that class, as the case may be.
- (2) The number of members, shareholders or debenture holders, as the case may be, necessary for requisitions under subsection (1) is —
 - (a) any number of members, shareholders or debenture holders, as the case may be, representing not less than one-twentieth of the total voting rights of all the members, shareholders or debenture holders, as the case may be, having at the date of the requisition a right to vote at the meeting to which the requisition relates;
 - (b) not less than ten per centum of the number of the shareholders or, in the case of a meeting of a class of shareholders, not less than ten per centum of the shareholders of that class, in the company;
 - (c) in the case of a meeting of a class of debenture holders, not less than twenty-five debentures of the class concerned on which there has been paid up an average sum, per debenture holder, of not less than three hundred dollars; or
 - (d) not less than ten per centum of the members, shareholders or debenture holders, as the case may be, holding shares in the company on which there has been paid up an average sum, per member, shareholder or debenture holder, as the case may be, of not less than three hundred dollars.
- (3) A company is not bound under this section to give notice of any resolution or to circulate any statement unless —

- (a) a copy of the requisition signed by the requisitionists (or two or more copies which between them contain the signatures of all the requisitionists) is deposited at the registered office of the company —
 - (i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting; and
 - (ii) in the case of any other requisition, not less than one week before the meeting; and
- (b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto;

but if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, a meeting of the kind to which the requisition relates is called for a date six weeks or less after the copy has been deposited, the copy though not deposited within the time required by this subsection shall be deemed to have been properly deposited for the purposes thereof,

- (4) The company is not bound under this section to circulate any statement if, on an application made within seven days after the deposit of the requisition, either by the company or by any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter, and the Court may order the company's or applicant's costs on an application under this section to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.
- (5) This section applies notwithstanding anything contained in the Articles of incorporation or by-laws or in a debenture trust deed or any debentures or in any other contract or instrument.
- (6) If default is made in complying with this section, the company and every officer of the company in default is guilty of an offence,

149 Persons to whom notice of meetings is to be given

- (1) Notice of all general meetings shall be given to every member of the company, whether he is entitled to attend and vote at the meeting or not.
- (2) Notice shall be given to the Registrar of all meetings of a public company at which accounts are to be considered.
- (3) Notice of all meetings of a class of shareholders or debenture holders shall be given to all shareholders or debenture holders of the class concerned.
- (4) A notice of a meeting and all documents required by sections 147(2) and (3) and 148(1) to be sent to a member, shareholder or debenture holder shall either be delivered to that person or sent to him by pre-paid post to his most recent address in Tuvalu appearing in the register of members or, as the case

may be, the register of debenture holders or to the most recent address in the Island supplied by him to the company for the giving of notices to him.

- (5) Where the Memorandum or Articles of a company, a debenture trust deed or debentures, or any other contract or instrument provide that a meeting may be valid, notwithstanding an omission to give notice of the meeting to a person entitled to receive it, any resolution passed at the meeting is voidable if notice was not given to so many persons that, if they had all voted at the meeting in support of the side which was defeated upon a vote taken upon the resolution, the result of the voting would have been different from the result declared by the person presiding at the meeting.
- (6) If default is made in complying with this section the company and every officer of the company in default is guilty of an offence.
- (7) This section applies notwithstanding anything contained in the Memorandum or Articles of a company, or in a debenture trust deed or any debentures or in any other contract or instrument.

150 Proxies

- (1) Subject to subsection (3), a member of a company entitled to attend and vote at a meeting of the company or at a meeting of any class of members of the company is entitled to appoint a proxy or, in the case of a member of a public company, one, or more than one, proxy, to attend and vote instead of the member at the meeting.
- (2) A proxy appointed pursuant to subsection (1) by a member of a company need not himself be a member of the company.
- (3) A member of a proprietary company is not entitled to appoint a proxy to attend and vote instead of the member at a general meeting of the company except —
 - (a) when authorised to do so by the by-laws of the company; or
 - (b) with the leave of the Court.
- (4) A proxy entitled to attend a meeting is also entitled to speak at the meeting, but not more than two proxies appointed by the same member have that right to speak.
- (5) There shall be sent with each notice calling a meeting of a company in relation to which a proxy may be appointed an instrument of proxy so draw as to enable a member to indicate, in respect of resolutions dealing with special business and set out in the notice, whether he wishes his proxy to vote for or against the resolution or to vote as the proxy thinks fit.
- (6) A proxy may not vote at a meeting or an adjournment thereof unless the instrument appointing him is deposited at the registered office of the company concerned not less than forty-eight hours before the time at which the meeting

is to commence or at which the adjournment thereof is to commence, as the case may be.

- (7) Where instruments appointing proxies have been deposited as provided in subsection (6), any person entitled to attend and vote at the meeting at which the proxy is to be used (whether in his own right or as proxy for another person so entitled to attend and vote) may, at any time during the business hours of the company prior to the conclusion of the meeting or the taking of the poll, but subject to such reasonable restrictions as the company may impose, inspect and take copies of any of those instruments of proxy.
- (8) The appointment of a proxy is terminated by the death or insanity of the appointer or by his revocation of the proxy; and the personal attendance of a member at a meeting or the later appointment of another proxy in respect of the same share is deemed to be a revocation.
- (9) A vote given in accordance with the terms of an instrument of proxy may be treated by a company as valid notwithstanding the termination of revocation pursuant to subsection (8) of the appointment so long as no intimation in writing of the termination or revocation or of the event giving rise thereto has been received by the company at its registered office or other place appointed for the deposit of instruments of proxy, before the commencement of the meeting or adjourned meeting or more than twenty-four hours before a poll.
- (10) For the purposes of subsection (5) “special business” means all business transacted at a meeting with the exception of declaring a dividend, the consideration of the accounts, balance sheets, and the reports of the directors and auditors, the election of directors in the place of those retiring and the fixing of the remuneration of the auditors.

151 Postal voting

- (1) If the Articles of a company permit postal voting at meetings of the company, this section applies with respect to general meetings and meetings of all classes of shareholders or debenture holders of the company.
- (2) Any person entitled to attend and vote at a meeting referred to in subsection (1) or a proxy appointed by him may vote at the meeting or at an adjournment thereof by delivering to the company, not later than forty-eight hours before the time when the meeting or, as the case may be, adjourned meeting is to commence, a written statement of the name of the person entitled to vote and his proxy (if any) and the manner in which he or his proxy wishes to vote on each or any of the resolutions set out in the notice calling the meeting.
- (3) A postal vote given by a proxy is valid only if the proxy could have voted at the meeting if he had attended personally.
- (4) A person or his proxy who gives a postal vote shall be counted toward a quorum, and his postal vote shall be dealt with, as if that person were

personally present at the meeting and personally voted in the manner expressed in his postal vote.

152 Method of taking votes

- (1) Subject to subsection (2), the chairman of a general meeting of a company or of a meeting of a class of shareholders or debenture holders shall take the vote on any resolution proposed at the meeting by a show of hands, unless the number of postal votes and proxy appointments indicating how the proxy is authorised to vote which have been delivered to the company show that the resolution or amendment will necessarily be passed or defeated, in which case the chairman shall so declare, and shall state the number of votes which have been so given, or which have been authorised to be so given, in favour of and against the resolution.
- (2) A shareholder, debenture holder or proxy may demand a poll either before or after any vote by show of hands.
- (3) The votes of a proxy shall be counted only if he attends the meeting at which he is authorised to vote and votes at the meeting.
- (4) A proxy may vote on a show of hands and on a poll taken on any resolution.
- (5) If a proxy appointment authorised a proxy to vote only in favour of, or only against, a resolution proposed at any meeting, his votes shall not be counted unless he votes in the manner in which he is authorised to vote.
- (6) On a poll taken at any meeting, a person entitled to more than one vote, or a proxy for one, or more than one, person entitled to more than one vote may cast some of his votes in one way and some in another and postal votes shall for this purpose be deemed to be votes given on a poll.

153 Declaration of the result of voting

- (1) The chairman of a meeting shall declare the result of the meeting on a poll, either at the meeting or at a continuation of the meeting if the meeting has been suspended for the purpose of taking a poll, and in the declaration he shall state the number of votes which have been cast for and against the resolution and for and against any amendment proposed thereto —
 - (a) by proxies authorised to vote only for or against the resolution or amendment;
 - (b) by postal votes; or
 - (c) in any other way,

and he shall also state the number of votes cast which have not been counted because the chairman considers them not to have been validly cast.

- (2) A chairman who does not comply with subsection (1) or who falsifies the result of a poll is guilty of an offence.
- (3) A continuation of a meeting which has been suspended for the purposes of making a poll shall not be considered, for the purposes of this Act or within the meaning of a company's Memorandum or Articles or of a debenture trust deed or a debenture, to be an adjournment of the meeting.

154 Written resolution

- (1) Subject to subsection (4), a resolution in writing signed by all the members entitled to attend and vote on the resolution at a general meeting or if the company has only one such member, that member, is as valid and effective for all purposes as if the same had been passed at a general meeting of the company duly convened and held; and if described as a special resolution is deemed to be a special resolution within the meaning of this Act.
- (2) A resolution in writing so signed is deemed to have been passed on the date on which the resolution was signed by the last member to sign, and where the resolution states a date as being the date of the signature of a member, the statement is prima facie evidence that the resolution was signed on that date by the member.
- (3) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the meetings of shareholders.
- (4) Subsection (1) does not apply to a resolution to remove an auditor or a director.

155 Resolutions passed at adjourned meetings

Where a resolution is passed at an adjourned meeting of a company by the holders of any class of shares or debentures in or of a company or the directors of a company, the resolution shall for all purposes be treated as having been passed on the date of the adjourned meeting and not on an earlier date.

156 Certain resolutions to be lodged with Registrar

- (1) This section applies to —
 - (a) special resolutions passed at a general meeting;
 - (b) resolutions agreed to by all the members of any class of shareholders, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members;

- (c) written resolutions passed pursuant to section 154;
 - (d) resolutions attaching rights to shares;
 - (e) resolutions imposing restrictions on the borrowing powers of directors; and
 - (f) resolutions passed at meetings of classes of debenture holders consenting to the alteration or abrogation of the rights, powers or remedies of the debenture holders, or of the trustee of the debenture trust deed under which the debentures were issued.
- (2) Subject to subsection (3), a printed or typewritten copy of every resolution to which this section applies shall, within the period of six weeks after the date on which the resolution was passed, be lodged by the company concerned with the Registrar.
- (3) If an application is made to the Court under section 157, a company is not required to deliver a copy of a resolution to which this section applies unless the Court confirms the resolution in whole or in part, and a copy of the resolution as so confirmed and a copy of the order of the Court shall be delivered by the company to the Registrar within fifteen days after the order of the Court is drawn up.
- (4) A copy of every resolution to which this section applies, for the time being in force, shall be embodied in, or annexed to, every copy of the Articles of the company concerned issued after the passing of the resolution or, in the case of resolutions referred to in subsection (1)(f), to every copy of the covering debenture trust deed issued after the passing of the resolution.
- (5) If a company fails to comply with subsection (2) or (3) the company and every officer of the company in default is guilty of an offence.
- (6) The reference in subsection (5) to “an officer of the company” is deemed to include a liquidator of the company.

157 Application to Court to declare that resolution was not passed or was not defeated

- (1) Within one month after a resolution has been declared to have been passed or defeated at a general meeting of a company or, at a meeting of a class of shareholders or debenture holders, any person aggrieved thereby may apply to the Court for a declaration that the resolution was not passed or was not defeated, as the case may be.
- (2) Without prejudice to the generality of the expression “aggrieved person”, a person shall be considered to be an aggrieved person —
- (a) if the resolution was proposed at a general meeting and the applicant is a shareholder of company; or

- (b) if the resolution was proposed at a meeting of a class of shareholders or debenture holders and the applicant is a shareholder or debenture holder of that class,
- but a person shall not be considered as aggrieved by the passing of a resolution in favour of which he or his proxy voted or by the defeat of a resolution against which he or his proxy voted.
- (3) An application may be made to the Court under this section on the grounds that —
- (a) the meeting was not properly convened;
 - (b) votes tendered at the meeting were improperly accepted or rejected by the chairman, and in consequence the resolution was wrongly declared to have been passed or defeated;
 - (c) the chairman's declaration of the number of votes cast in favour and against the resolution was incorrect, and in consequence the resolution was wrongly declared to have been passed or defeated;
 - (d) the resolution passed at the meeting (not being a resolution authorised by this Act to alter the Memorandum or Articles of a company or to alter or abrogate the rights of debenture holders) is inconsistent with the Memorandum or Articles of a company or with the terms of a debenture trust deed or a debenture; or
 - (e) the resolution passed at the meeting is voidable under any other provision of this Act.
- (4) The right to apply to the Court under this section is in addition to any other right conferred by this Act on the holders of a fraction of the shares in, or debentures of, a company to apply to the Court to cancel any resolution.
- (5) On the hearing of an application under this section the Court —
- (a) may confirm in whole or in part any resolution which has been declared to have been passed at a meeting or may declare such a resolution not to have been passed; or
 - (b) may declare a resolution which has been declared to have been defeated at a meeting to have been passed in whole or in part or may declare such a resolution to have been defeated.
- (6) The order of the Court shall be substituted for the declaration of the chairman at the meeting that the resolution was passed or defeated, and all persons shall act accordingly.
- (7) If an application to the Court is not made under this section or under any other provision of this Act which confers a right to make an application on the holders of the fraction of the shares in, or debentures of, a company, within one month after the declaration by the chairman of the meeting that the resolution in question has been passed or defeated, or such longer period as is specified in any such other provision of this Act, or if all applications made to

the Court are dismissed, it shall thereafter be conclusively presumed that the resolution was passed or defeated as declared by the chairman and, if he declared the resolution to have been passed, that the meeting at which it was passed was duly convened and held and that the resolution is valid.

- (8) This section does not apply to procedural resolutions as defined in section 147(3).

158 Minutes

- (1) Every company shall cause minutes of all proceedings of general meetings, meetings of classes of shareholders and debenture holders and meetings of the directors and committees of directors to be entered in books kept for that purpose.
- (2) The minutes of a general meeting or a meeting of a class of shareholders or debenture holders shall set out in full the declaration made by the chairman under section 153 in respect of each resolution voted on at the meeting.
- (3) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had or by the chairman of the next succeeding meeting, shall be evidence of the proceedings to which it relates.
- (4) Where minutes have been made in accordance with this section of the proceedings at any general meeting of a company, any meeting of a class of shareholders or debenture holders or, any meeting of the directors or a committee of directors, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened and all proceedings had at the meeting to have been duly had, and all resolutions declared by the chairman of the meeting to have been passed shall be deemed to be valid.
- (5) If a company fails to comply with subsection (1) or (2), the company and every officer of the company who is in default is guilty of an offence.

159 Inspection of minutes

- (1) The books containing the minutes of proceedings of any general meeting of a company, or any meeting of a class of shareholders or debenture holders, shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its by-laws or in general meeting impose, so that no less than two hours in each day be allowed for inspection) be open to the inspection of any shareholder or debenture holder of the company without charge.
- (2) Any shareholder or debenture holder of a company is entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any such minutes specified in subsection (1) at a charge not exceeding fifty cents for each hundred words copied.

- (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 is guilty of an offence.

160 Quorum

- (1) Unless the Articles of a company otherwise provide and subject to subsection (2), two or more persons present at a meeting constitute a quorum.
- (2) Where a company has —
 - (a) only one shareholder; or
 - (b) only one shareholder of any class of shares,he constitutes a quorum at any meeting or, as the case may be, at any meeting of shareholders of that class of shares.
- (3) If a quorum is present at the opening of a meeting, the persons present may, unless the Articles otherwise provide, proceed with the business of the meeting notwithstanding that a quorum is not present throughout the meeting.
- (4) If a quorum is not present at the opening of a meeting, the persons present may adjourn the meeting to a fixed time and place but may not transact any other business.

DIVISION 5 - ANNUAL RETURNS

161 Annual return to be made by Company

- (1) Subject to this section, every company shall, once at least in every year, make a return —
 - (a) in the prescribed form;
 - (b) made up —
 - (i) to the date of the annual general meeting of the company; or
 - (ii) in the case of a proprietary company which, pursuant to its Articles and section 142(1), does not hold an annual general meeting, to the latest date on which the company would have been required to hold an annual general meeting if its Articles had not provided that it need not hold an annual general meeting; and
 - (c) containing such particulars as may be prescribed.
- (2) A company is not required to make a return pursuant to subsection (1) —
 - (a) in the year of its incorporation; or
 - (b) in the following year if in that year the company is not required by section 141 to hold an annual general meeting.

- (3) The annual return signed by a director or the secretary of the company shall be lodged with the Registrar within forty-two days after the annual general meeting.
- (4) If a company fails to comply with this section, the company and every officer of the company who is in default is guilty of an offence.

162 Documents to be annexed to annual return

- (1) Subject to this Act, there shall be annexed to the annual return of a company —
 - (a) a written copy, certified both by a director and by the secretary of the company to be a true copy, of all balance sheets, profit and loss accounts and group accounts laid before the company in general meeting or circulated to members and registered debenture holders during the period to which the return relates; and
 - (b) a copy, so certified, of the reports of the auditors on, and of the reports of directors accompanying, all such accounts,

and where any such account or other document is in a foreign language there shall be annexed to that account or document a translation in English of the account or other document certified to be a correct translation.

- (2) If any such account or document did not comply with the requirements of the law, as in force at the date of the audit, with respect to the form of accounts or documents, as the case may be, there shall be made such additions to, and corrections in, the copy as would have been required to be made if the account or document were to comply with those requirements, and the fact that the copy has been so amended shall be stated thereon.
- (3) A company which —
 - (a) has not offered shares in, or debentures of, the company to the public; and
 - (b) is not a subsidiary of a company which has done so,may delete from any document or account annexed, pursuant to subsection (1)(a), to an annual return lodged with the Registrar —
 - (c) any information about the emoluments of the directors of the company included in the document or account pursuant to section 168; and
 - (d) any particulars included in the document or account with respect to turnover and rents recoverable and payable,

but the fact that the document or account has been amended by any such deletion shall be stated in the document or account.

- (4) For the purposes of section 161, the accounts and documents required by this section to be annexed to the annual return of a company are deemed to be part thereof.

- (5) This section does not apply to a proprietary company which delivers to the Registrar with its annual return the certificates required by section 163(1) and (2).

163 Provision as to proprietary companies

- (1) A proprietary company shall deliver to the Registrar with its annual return a certificate, signed by each of its directors and by its secretary, that the conditions required to be fulfilled for a company to be a proprietary company have been fulfilled in respect of it continuously and without exception since the date of its incorporation as, or conversion to, a proprietary company or the date of its last annual return, whichever is the later.
- (2) A proprietary company shall also deliver to the Registrar with its annual return —
- (a) a certificate of solvency signed by its auditor containing the statements and opinion by the auditor of the company required by subsection (3), and made with reference to the state of the company's assets and liabilities at the date on which the balance sheet of the company laid before an annual general meeting during the period to which the annual return relates (in this section referred to as "the company's last balance sheet"); and
 - (b) a certificate signed by each director and the auditor of the company that the certificate referred to in paragraph (a) agrees with the balance sheet and profit and loss account so laid.
- (3) A certificate of solvency shall —
- (a) state the amounts shown in the company's last balance sheet as the total values respectively of the company's fixed assets, current assets and investments;
 - (b) state the amount shown in the company's last balance sheet as the total amount of the company's debts and liabilities accrued due at, or accruing due within one year after, the date as at which the balance sheet is made out, and the amount so shown as the total amount of the company's other debts and liabilities; and
 - (c) state whether, in the opinion of the auditor of the company, the company was, at the date at which its last balance sheet was made out, able or unable to pay its debts and liabilities as they fall due.
- (4) If the company does not hold an annual general meeting in the year to which the annual return relates, the certificates required by subsection (3) shall be modified so as to refer to the balance sheet or the balance sheet and profit and loss account, as the case may be, copies of which were sent to the members of the company in compliance with section 142(1) during the period to which the annual return relates.

- (5) For the purpose of section 161, the certificates required by this section are deemed to form part of the annual report with which they should be lodged with the Registrar.
- (6) If the auditor of a company refuses to give or sign either of the certificates mentioned in subsection (2), the annual return shall contain a statement to that effect and have annexed thereto the documents specified in section 162(1); a company which delivers an annual return containing such a statement and having annexed to it the documents so specified is deemed to have complied with this section.
- (7) Where a proprietary company fails to comply with subsection (1) or (2) the company and every director of the company in default is guilty of an offence.

164 Offences in connection with annual returns

- (1) If —
 - (a) a director or secretary of a company signs an annual return lodged with the Registrar which contains any statement which is false, deceptive or misleading or which omits any matter required by this Act to be included therein;
 - (b) a director or secretary of a company lodges or concurs in the lodgement of any document with the Registrar with an annual return, and that document purports to be a copy of an account or document required by section 163 which contains a statement which is false, misleading or deceptive or an opinion which he has no reasonable ground to believe to be accurate,he is guilty of an offence.
- (2) It is a sufficient defence if the person charged with an offence under this section proves that up to the time of the delivery to the Registrar of the annual return, copy of an account or document, or certificate, as the case may be, he believed on reasonable grounds that section 161 and section 162 or, as the case may be, 163 had been complied with.

PART VI - ACCOUNTS AND AUDIT

DIVISION 1 - ACCOUNTS

165 Accounts to be kept

- (1) Every company shall cause to be kept proper books of account with respect to —
 - (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

- (b) all goods and purchases of goods of the company; and
 - (c) the assets and liabilities of the company.
- (2) For the purposes of subsection (1), proper books of account are not deemed to be kept with respect to the matters referred to in that subsection if there are not kept such books as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.
 - (3) The books of account of a company shall be kept at the registered office of the company or at such other place as the directors of the company think fit and shall at all times be open to inspection by the director.
 - (4) Where books of account of a company are kept at a place outside Tuvalu there shall be sent to, and kept at a place in, Tuvalu and be at all times open to inspection by the directors of the company such accounts and returns with respect to the business dealt with in the books of accounts so kept as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding six months and will enable to be prepared in accordance with this Act the company's balance sheet, its profit and loss account, and any document annexed to any of those documents giving information which is required by this Act and is allowed by this Act to be so given.
 - (5) A director of a company who fails to secure compliance by the company with the requirements of this section or who has by his own act been the cause of any default by the company under this section, is guilty of an offence.
 - (6) In proceedings for an offence under this section consisting of a failure to secure compliance by a company with the requirements of this section, it is a sufficient defence if the person charged proves that he had reasonable grounds to believe and did not 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.
 - (7) A person convicted of an offence under this section shall not be sentenced to a term of imprisonment unless the Court before which he is convicted is satisfied that he knowingly or recklessly committed the offence.

166 Profit and loss account and balance sheet

- (1) Subject to subsection (2), the directors of a company shall cause to be made out and laid before the company at each annual general meeting a profit and loss account for the period since the date to which the last preceding meeting after the incorporation of the company, made up for a period ending on a date not earlier than six months before the date of the meeting and giving a true and fair view of the profit or loss of the company for that period.
- (2) Notwithstanding subsection (1), the Registrar may, on application made in accordance with a resolution of the directors of a company, and signed on

behalf of the company by a director or secretary, extend, subject to such conditions as the Registrar thinks fit, the period of six months referred to in subsection (1).

- (3) The directors shall cause to be made out in every calendar year, and to be laid before an annual general meeting, a balance sheet as at the date to which the profit and loss account is made up.
- (4) If a company fails to comply with this section, every director of the company is guilty of an offence.
- (5) In proceedings for an offence under this section, section 165(6) applies as it applies to proceedings for an offence under section 165.
- (6) Section 165(7) applies with respect to a person convicted of an offence under this section as it applies with respect to a person convicted of an offence under section 165.

167 Provisions as to contents and form of annual accounts

- (1) Subject to this section —
 - (a) every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of its financial year; and
 - (b) every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for its financial year.
- (2) Subject to this section, a company's balance sheet and profit and loss account shall comply with the requirements of the regulations with respect to matters to be specified or contained therein, so far as applicable thereto.
- (3) When a company has subsidiary companies accounts or statements (hereinafter called "group accounts") dealing with the financial position and profit or loss of the company and its subsidiaries shall also be prepared and included with both the said profit and loss account and balance sheet.
- (4) Save as expressly provided in the following provisions of this section, the requirements of subsection (2) are without prejudice to the requirements of subsection (1) or to any other requirements of this Act.
- (5) On the application or with the consent of the directors of a company, the Minister may modify, in relation to the company, the requirements of this Act as to the matters to be stated in any account of the company so as to adapt these requirements to the circumstances of the company, but without prejudice to the requirement of subsection (1).
- (6) It shall be the duty of every company which is a subsidiary of another company in respect of which group accounts have to be prepared and of the directors and auditors of that company to give to the directors of such other company and its auditors all such information and access to records as the

latter may reasonably require to enable group accounts to be properly prepared in accordance with this Act.

- (7) A director of a company who fails to take all reasonable steps as respects any accounts, or accounts laid before the company in general meetings, to secure compliance with the provisions of this section and with the other requirements of this Act as to matters to be stated in accounts is guilty of an offence.
- (8) In proceedings for an offence under this section, section 165(6) applies as it applies to proceedings for an offence under section 165.
- (9) Section 165(7) applies with respect to a person convicted of an offence under this section as it applies with respect to a person convicted of an offence under section 165.

168 Particulars of directors' emoluments, etc.

- (1) In the annual accounts of a company, or in a particulars statement annexed thereto, there shall, subject to and in accordance with this section, be shown —
 - (a) the amount of the emoluments of each director of the company;
 - (b) the aggregate amount of the pensions paid to individuals in their capacities as the directors or former directors of the company; and
 - (c) the aggregate amount of any compensation paid to or received by directors or former directors of the company in respect of loss of office.
- (2) The amounts to be shown under this section for any financial year shall be the sums receivable in respect of that year, whenever paid, or, in the case of sums not receivable in respect of a period, the sums paid during that year.
- (3) Where it is necessary to do so for the purposes of making any distinction required by this section in any amount to be shown thereunder, the directors of a company may apportion any payments between the matters in respect of which they have been paid or have yet to be paid in such manner as they think appropriate.
- (4) In the annual accounts of a company, or in a statement annexed thereto, there shall be shown the number of directors who have waived rights to receive emoluments to which this section would otherwise apply, and the aggregate amount of those emoluments.
- (5) Where any of the requirements of this section are not complied with in relation to any accounts, the auditors of the company shall include in their report, so far as they are reasonably able to do so, a statement giving the particulars necessary to meet those requirements.

DIVISION 2 - DIRECTORS' ANNUAL REPORTS**169 Duty to lay directors' annual report**

- (1) The directors of a company —
 - (a) shall lay before every annual general meeting of the company; or
 - (b) if pursuant in section 142 the company does not hold an annual general meeting, shall send in accordance with section 142(1)(a) to every shareholder and debenture holder of the company,
a report (in this Act called “the directors’ annual report”) with respect to —
 - (c) the affairs of the company; and
 - (d) if the company is a holding company, the affairs of its subsidiaries, unless the company is itself a wholly owned subsidiary.
- (2) The directors’ annual report shall state the names of the persons who, at any time during the financial year, were directors of the company and the principal activities of the company and of its subsidiaries in the course of that year and any significant change in those activities in that year, and also —
 - (a) if significant changes in the fixed assets of the company or of any of its subsidiaries have occurred in that year, give particulars of the changes and, if (in the case of those assets) the market or saleable value thereof (as at the end of that year) differs substantially from the amount thereof as shown in the balance sheet, give particulars of that difference;
 - (b) if, in that year, the company has issued any shares or debentures, state the reason for making the issue, the classes of shares or debentures, the number issued and the consideration received by the company for the issue;
 - (c) in respect of each person who has at any time during the year been a director of the company or of a company which at any time during that year belonged to the same group of companies as the company, or of a company which has at any time during that year been an associated company of the company, contain the entries required by section 141 to be made in the register of directors’ holdings kept by the company;
 - (d) state the directors’ proposals as to the application of the profits of the company shown in its profit and loss account, including its profits and revenue reserves carried forward from earlier financial years; and
 - (e) contain particulars of any other matters so far as they are material for the appreciation of the state of the company’s affairs by its members, shareholders or debenture holders, being matters which will not be harmful to the business of the company or of any company which belongs to the same group of companies as the company.
- (3) Where a company is a holding company (other than a wholly owned subsidiary of another company), the directors’ annual report shall also deal

with the matters specified in subsection (2) in relation to each of the company's subsidiaries.

- (4) If the directors of a company consider that disclosure of any matter required to be included in the directors' annual report by this section would be harmful to the company or to any company which belongs to the same group of companies as the company, they may with the consent of the Minister, omit that matter from the report.
- (5) If the directors' annual report does not contain a statement required by this section to be included in it or contains a statement which is false, deceptive, misleading or incomplete, the auditors of the company shall, so far as they are reasonably able to do so, include in their report on the accounts of the company under section 174 a statement or correction giving the information required by this section.
- (6) If the directors of a company fail to comply with this section, or if they send out to shareholders or debenture holders a directors' annual report which does not contain all the information required by this section or which contains false, deceptive or misleading information, each of the directors is guilty of an offence.
- (7) A director convicted of an offence under this section shall not be sentenced to a term of imprisonment unless the Court before which he is convicted is satisfied that he knowingly or recklessly committed the offence.

DIVISION 3 - AUDITORS

170 Appointment, removal and disqualification of auditors

- (1) Subject to subsection (13), a company shall, at each annual general meeting, appoint an auditor or auditors to hold office from the conclusion of the meeting until the conclusion of the next annual general meeting.
- (2) Subject to subsection (13), where at any annual general meeting no auditors are appointed or re-appointed, the Minister may appoint a person to fill a vacancy; and the company shall, within one week of the power under this subsection becoming exercisable, give the Minister notice of that fact.
- (3) The first auditors of a company may be appointed by the directors of a company at any time before the first annual general meeting of the company and auditors so appointed shall hold office until the conclusion of that meeting.
- (4) If the directors fail to exercise their powers under subsection (3), those powers may be exercised by the company in general meeting.
- (5) The directors, or the company in general meeting, may fill any casual vacancy in the office of auditor, but while any such vacancy continues, the surviving or continuing auditor or auditors, if any, may act.

- (6) A company may by ordinary resolution remove an auditor before the expiration of his term of office notwithstanding anything in any agreement between it and him; and where a resolution removing an auditor is passed at a general meeting of a company, the company shall within fourteen days give notice of that fact in the prescribed form to the Registrar.
- (7) The remuneration of the auditor of a company —
- (a) in the case of an auditor appointed by the directors or the Minister, may be fixed by the directors or, as the case may be, the Minister; or
 - (b) subject to paragraph (a), shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine,
- and for the purpose of this subsection, “remuneration” includes any sums paid by the company in respect of the auditor’s expenses.
- (8) Nothing in subsection (6) shall be taken as depriving a person removed thereunder of compensation or damages payable to him in respect of the termination of his appointment as auditor or of any appointment terminating with that as auditor.
- (9) Where, pursuant to section 141, a company does not hold an annual general meeting, the company —
- (a) is deemed for the purposes of this section to have held such a meeting at the latest date which, by section 141, it would otherwise have been required to hold such a meeting; and
 - (b) is deemed, subject to subsection (13), to have re-appointed the auditors at the meeting so deemed to have been held.
- (10) Subject to subsection (2), none of the following persons is qualified for appointment as auditor of a company namely —
- (a) an officer or servant of the company;
 - (b) a person who is a partner of or in the employment of an officer or servant of the company; or
 - (c) a corporation.
- (11) If two or more persons carry on practice as accountants in Tuvalu, anyone or more of them may be appointed to be an auditor or auditors of a company notwithstanding that one or more of them is an officer or servant, or are officers or servants, of the company so long as the number of those of them who are appointed to be auditors of the company exceeds the number of those of them who are officers or servants of the company.
- (12) A person is not qualified to be appointed as an auditor of a particular company if he is, by virtue of subsection (10), disqualified for appointment as an auditor of any other company which belongs to the same group of companies as the particular company.

- (13) A proprietary company need not comply with subsection (1) if at, or not more than fourteen days before, the annual general meeting concerned, all the members of the company agree that they do not require an auditor or auditors to be appointed, but, in that event —
- (a) the company shall, within fourteen days of the members so agreeing, lodge with the Registrar a notice —
 - (i) stating that the members have so agreed; and
 - (ii) certifying that the company has complied, and is continuing to comply, with section 165(1); and
 - (b) the annual return of the company shall state that no such appointment was made at the annual general meeting concerned.
- (14) If a company fails to give any such notice as is mentioned in subsection (2) or (6), or to comply, where appropriate, with subsection (13)(a) or (b), the company and every officer of the company in default is guilty of an offence.

171 Supplementary provisions relating to appointment and removal of auditors

- (1) Subject to this section, special notice is required for a resolution at a general meeting of a company —
- (a) appointing as auditor a person other than a retiring auditor;
 - (b) filling a casual vacancy in the office of auditor;
 - (c) re-appointing as auditor a person who was appointed to fill a casual vacancy; or
 - (d) removing an auditor before the expiration of his term of office.
- (2) On receipt of notice of such an intended resolution as is mentioned in subsection (1), the company shall forthwith send a copy thereof —
- (a) to the person proposed to be appointed or removed, as the case may be;
 - (b) in a case within subsection (1)(a) to the retiring auditor; and
 - (c) where, in a case within subsection 1(b) or (c), the casual vacancy was caused by the resignation of an auditor, to the auditor who resigned.
- (3) Where notice is given of such a resolution as mentioned in subsection 1(a) or (d) and the retiring auditor or, as the case may be, the auditor proposed to be removed makes with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall (unless the representations are received by it too late for it to do so) —
- (a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and

- (b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.
- (4) If a copy of any such representations as are mentioned in subsection (3) are not sent out as required by that subsection because they were received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.
- (5) Copies of the representations need not be sent out and representations need not be read out at the meeting if, on the application of either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the Court may order the company's costs on an application under this subsection to be paid in whole or in part by the auditor, notwithstanding that he is not party to the application.
- (6) An auditor of a company who has been removed shall be entitled to attend —
 - (a) the general meeting at which his term of office would otherwise have expired; and
 - (b) any general meeting at which it is proposed to fill the vacancy caused by his removal,and to receive all notices of, and other communications relating to, any such meeting which any member of the company is entitled to receive and to be heard at any such meeting which he attends on any part of the business of the meeting which concerns him as former auditor of the company.
- (7) This section does not apply in any case where, pursuant to section 170(9) an auditor is deemed to have been re-appointed.

172 Resignation of auditors and right to attend meetings

- (1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the registered office of the company; and any such notice shall operate to bring his term of office to an end on the date on which the notice is deposited or on such later date as may be specified therein.
- (2) An auditor's notice of resignation is not effective unless it contains either —
 - (a) a statement to the effect that there are no circumstances connected with his resignation which he considers should be brought to the notice of the members or creditors of the company; or
 - (b) a statement of any such circumstances as aforesaid.
- (3) Where a notice having effect under this section is deposited at a company's registered office, the company shall within fourteen days send a copy of the notice —
 - (a) to the Registrar; and

- (b) if the notice contained a statement under subsection (2)(b), to every member of the company.
- (4) The company or any person who claims to be aggrieved may, within fourteen days of the receipt by the company of a notice containing a statement under subsection (2)(b), apply to the Court for an order under subsection (5).
 - (5) If the Court, on an application under subsection (4), is satisfied that the auditor is using the notice to secure needless publicity for defamatory matter, it may by order direct that copies of the notice need not be sent out; and the Court may further order the company's costs on this application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.
 - (6) The company shall, within fourteen days of the Court is decision, send to the persons mentioned in subsection (3) —
 - (a) if the Court makes an order under subsection (5), a statement setting out the effect of the order; or
 - (b) if the Court does not make an order under that subsection, a copy of the notice containing the statement under subsection (2)(b) .
 - (7) If default is made in complying with subsection (3) or (6), the company and every officer of the company in default is guilty of an offence.
 - (8) Where an auditor's notice of resignation contains a statement under subsection (2)(b), there may be deposited with the notice a requisition signed by the auditor calling on the directors of the company forthwith duly to convene an extraordinary general meeting of the company for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.
 - (9) Where an auditor's notice of resignation contains a statement under subsection (2)(b), and the auditor requests the company to circulate to its members —
 - (a) before the general meeting at which his term of office would otherwise have expired; or
 - (b) before any general meeting at which it is proposed to fill the vacancy caused by his resignation or convened on his requisition, a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation, the company shall (unless the statement is received by it too late for it to do so) —
 - (c) in any notice of the meeting given to the members of the company, state the fact of the statement having been made; and
 - (d) send a copy of the statement to every member of the company to whom notice of the meeting is or has been sent.
 - (10) If the directors do not within twenty-one days from the date of the deposit of a requisition under this section proceed duly to convene a meeting for a day

not more than twenty-eight days after the date on which the notice convening the meeting is given, every director who failed to take all reasonable steps to ensure that a meeting was convened as mentioned is guilty of an offence, and if a copy of any such statement as is mentioned in subsection (9) is not sent out as required by that subsection because it was received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the statement shall be read out at the meeting.

- (11) Copies of a statement need not be sent out and the statement need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the Court may order the company's costs on an application under this subsection to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.
- (12) An auditor of a company who has resigned his office is entitled to attend any such meeting as is mentioned in subsection (9)(a) or (b) and to receive all notices of, and other communications relating to, any such meeting which any member of the company is entitled to receive and to be heard at any such meeting which concerns him as former auditor of the company.

173 Power of auditors in relation to subsidiaries

- (1) Where a company ("the holding company") has a subsidiary, then —
 - (a) if the subsidiary is a company incorporated in Tuvalu, it shall be the duty of the subsidiary and its auditors to give to the auditors of the holding company such information and explanation as those auditors may reasonably require for the purposes of their duties as auditors of the holding company; and
 - (b) in any other case, it shall be the duty of the holding company, if required by its auditors to do so, to take all such steps as are reasonably open to it to obtain from the subsidiary such information and explanation as aforesaid.
- (2) If a subsidiary or holding company fails to discharge any duty under subsection (1) the subsidiary or holding company and every officer thereof in default is guilty of an offence; and if an auditor fails without reasonable excuse to discharge his duty under paragraph (a) of that subsection he is guilty of an offence.

174 Auditors' report and right of access to books and to attend and be heard at meetings

- (1) The auditors of a company shall make a report to the members on the accounts examined by them and on every balance sheet, every profit and loss

account and all group accounts laid before the company in general meeting during their tenure of office.

- (2) The auditors' report shall be read before the company in general meeting and shall be open to inspection by any members.
- (3) The report shall state whether in the auditors' opinion the company's balance sheet and profit and loss account and (if it is a holding company submitting group accounts) the group accounts have been properly prepared in accordance with the provisions of this Act, and whether in their opinion a true and fair view is given —
 - (a) in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year;
 - (b) in the case of the profit and loss account (if it be not framed as a consolidated profit and loss account), of the company's profit or loss for its financial year; and
 - (c) in the case of group accounts submitted by a holding company, of the state of affairs and profit or loss of the company and its subsidiaries dealt with thereby, so far as concerns members of the company.
- (4) It shall be the duty of the auditors of a company, in preparing their report under this section, to carry out such investigations as will enable them to form an opinion as to the following matters, that is to say —
 - (a) whether proper books of account have been kept by the company and proper returns adequate for their audit have been received from branches not visited by them; and
 - (b) whether the company's balance sheet and (unless it is framed as a consolidated profit and loss account) profit and loss account are in agreement with the books of accounts and returns,

and if the auditors are of the opinion that proper books of accounts have not been kept by the company or that proper returns adequate for their audit have not been received from branches not visited by them, or if the balance sheet and (unless it is framed as a consolidated profit and loss account) profit and loss account are not in agreement with the books of accounts and returns, the auditors shall state that fact in their report.

- (5) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company and shall be entitled to require from the officers of the company such information and explanation as he thinks necessary for the performance of the duties of the auditors.
- (6) If the auditors fail to obtain all the information and explanations which, to the best of their knowledge and belief are necessary for the purposes of their audit, they shall state that fact in their report.
- (7) The auditors of a company shall be entitled to attend any general meeting of the company and to receive all notices of, and other communications relating

to, any general meeting which any member of the company is entitled to receive, and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

175 Offence in relation to statements made to auditors

- (1) An officer of a company who knowingly or recklessly makes a statement which —
 - (a) is misleading, false or deceptive in a material particular; and
 - (b) is a statement to which this subsection applies,is guilty of an offence.
- (2) Subsection (1) applies to any statement made to the auditors of the company (whether orally or in writing) which conveys, or purports to convey, any information or explanation which they require, or are entitled to require, as auditors of the company.

DIVISION 4 - SIGNING AND CIRCULATION OF ACCOUNTS AND REPORTS

176 Signing and circulation of accounts, etc.

- (1) A company's annual accounts and the directors' annual report shall be approved by the directors of the company and signed by the chairman before copies of such accounts or reports are sent to the members or debenture holders of the company and before any advertisement of such accounts or report is published.
- (2) If any directors of a company refuse to approve the company's annual accounts or the directors' annual report, subsection (1) is deemed to have been complied with if every copy of the account or report so sent or advertised contains a statement in clearly legible print of the name of the directors who refuse and the fact of their refusal.
- (3) A copy of the company's annual accounts, the directors' annual report and report of the auditors on the accounts of the company under section 174 shall not less than twenty-one days before the date of the annual general meeting before which they are to be laid, be sent to every shareholder and debenture holder of the company and to the auditors of the company.
- (4) If an annual general meeting is called by less than twenty-one days' notice and is deemed to have been duly called by virtue of section 145(3), subsection (3) is deemed to have been complied with if the company's annual accounts, the directors' annual report and the auditors' report are sent to every person mentioned in subsection (3) before or at the same time as the meeting is called.

- (5) Any shareholder or debenture holder of a company is, on making a written request, entitled to be supplied by a company without charge with a copy of the company's most recent annual accounts, directors' annual report and auditors' report, but no one person is entitled to be supplied with more than one copy of each of those documents.
- (6) If a company fails to comply with any provision of this section, every officer of the company in default is guilty of an offence.

DIVISION 5 - DIVIDENDS

177 Dividends

- (1) Subject to this section, a company may, in general meeting, declare dividends in respect of any year or other period.
- (2) Where the recommendation of the directors of a company with respect to the declaration of a dividend is rejected or varied by the company in general meeting, a statement to that effect shall be included in the relevant directors' annual report and in the relevant annual return.
- (3) No dividend shall be payable to the shareholders of a company except out of profits or pursuant to section 65.
- (4) Every director or officer of a company who wilfully pays or permits to be paid any dividend out of what he knows is not profits except pursuant to section 65 is guilty of an offence.
- (5) In addition to any liability under subsection (4), a director or officer of a company, is liable to the creditors of the company, for the amount of the debts due by the company to them respectively to the extent by which the dividend so paid have exceeded the profits and the amount may be recovered by the creditors or the liquidators suing on behalf of the creditors.
- (6) In this section, "dividend" includes bonus and payments by way of bonus.

PART VII - INSPECTIONS AND INVESTIGATIONS

DIVISION 1 - GENERAL

178 Interpretation

- (1) In this Part —
"company" includes an external company carrying on business within Tuvalu;
"inspector" means —
 - (a) in Division 2, an inspector appointed under section 179; and

- (b) in Division 3, an inspector appointed under section 192;
- “**interested person**”, in relation to a company, means —
- (a) a person who is or was an officer of the company;
- (b) a person who acts or has at any time acted as banker, attorney-at-law, auditor or in any other capacity for the company; or
- (c) a person who —
- (i) has, or has at any time had, in his possession any property of the company;
- (ii) is indebted to the company; or
- (iii) is capable of giving information concerning the affairs of the company; and
- (d) where an inspector has reasonable grounds for suspecting or believing that a person is a person of a kind referred to in paragraph (c), that person.
- (2) Where an inspector is appointed to investigate a company he has power to investigate any other company which belongs or has, at any time, belonged to the same group of companies as the company if he considers it necessary to do so for the purpose of investigating the company in relation to which he was appointed.
- (3) Section 219 applies to determine for the purpose of this Part whether or not an external company is carrying on business within Tuvalu.

DIVISION 2 - APPOINTMENTS BY THE MINISTER

179 Appointment of Inspector by Minister

- (1) An application for the appointment of one, or more than one, inspector to investigate —
- (a) affairs of the company;
- (b) shareholding in, or trading in the shares of, a company;
- (c) compliance or non-compliance with the requirements of this Act relating to disclosure of shareholding in a company; or
- (d) such of the affairs of a company as are specified in the application,
- may be made to the Minister by instrument in writing.
- (2) Where an application is made under this section the applicant shall furnish such information in connection with the application as the Minister reasonably requires to enable him to determine whether there are reasonable grounds for appointing one, or more than one, inspector.
- (3) Where it appears to the Minister whether on his own motion or as a result of an application made under subsection (1) that —

- (a) it is desirable for the protection of the public or members or creditors of a company or of holders of debentures of a company;
 - (b) it is in the public interest because fraud, misfeasance or other misconduct by a person who is or has been concerned with the affairs of a company is alleged; or
 - (c) in any case it is in the public interest,
- to appoint one, or more than one, inspector to make an investigation of a company, he may by instrument in writing appoint one, or more than one, inspector.
- (4) The Minister shall, in the instrument appointing any inspector specify full particulars of the appointment, including —
 - (a) the matters in which the investigation is to be made;
 - (b) the period in respect of which the investigation is to be made; and
 - (c) the terms and conditions of the appointment including terms and conditions relating to remuneration.
 - (5) The Minister may by notice in writing given to an inspector terminate his appointment at any time.

180 Notice of Appointment, etc., to be published

Notice of the appointment, and notice of the termination of the appointment, of an inspector shall be published in the Gazette.

181 Powers of inspectors

- (1) An inspector may require an interested person in relation to a company being investigated by notice in writing in accordance with the prescribed form given in the prescribed manner —
 - (a) to produce to the inspector such books of the company and other books relating to the affairs of the company as are in the custody or under the control of the interested person;
 - (b) to give to the inspector all reasonable assistance in connection with the investigation; and
 - (c) to appear before the inspector for examination on oath.
- (2) An inspector may administer the oath referred to in subsection (1)(c).
- (3) Where books are produced to an inspector under this Division, the inspector may take possession of the books for such period as he considers necessary for the purposes of the investigation, and during that period he shall permit a person who would be entitled to inspect anyone or more of those books, if they were not in the possession of the inspector, to inspect at all reasonable times such of those books as that person would be so entitled to inspect.

182 Examination of interested persons

- (1) Where a company is being investigated under this Division, an interested person in relation to the company who —
 - (a) refuses or fails to comply with a requirement under section 181 to the extent to which he is able to comply with it;
 - (b) in purported compliance with such a requirement knowingly or recklessly furnishes information that is false or misleading in a material particular; or
 - (c) when appearing before an inspector for examination in pursuance of such a requirement —
 - (i) makes a statement that is false or misleading in a material particular; or
 - (ii) refuses or fails to take an oath,is guilty of an offence.
- (2) An attorney-at-law acting for an interested person in relation to a company —
 - (a) may attend the examination; and
 - (b) may, to the extent that the inspector permits —
 - (i) address the inspector; and
 - (ii) examine the officer, in relation to matters in respect of which the inspector has questioned the interested person.
- (3) An interested person is not excused from answering a question put to him by the inspector on the ground that the answer might tend to incriminate him but, where the interested person claims, before answering the question, that the answer might tend to incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings other than proceedings under subsection (1) or in relation to a charge of perjury in respect of the answer.
- (4) A person who complies with the requirements of an inspector under section 181 shall not incur any liability to any person by reason only of that compliance.
- (5) A person required to attend for examination under this Division is entitled to such allowances and expenses as are from time to time prescribed.
- (6) Regulations for the purposes of subsection (5) may be made by reference to a scale of expenses for witnesses who attend before the Court.

183 Interested person failing to comply with requirements of this Division

- (1) Where an interested person in relation to a company fails to comply with a requirement of an inspector appointed to investigate the company, the

inspector may, unless the interested person proves that he had a lawful excuse for his failure, apply to the Court for an order under subsection (2).

- (2) Where an inspector applies to the Court under subsection (1), the Court may inquire into the case and —
 - (a) order the interested person concerned to comply with the requirement of the inspector within such period as is fixed by the Court; or
 - (b) if the Court is satisfied that the interested person failed without lawful excuse to comply with the requirement of the inspector, punish him in like manner as if he had been guilty of contempt of Court and, if it sees fit, also make an order pursuant to paragraph (a).

184 Inspectors' reports

- (1) An inspector may, and if so directed by the Minister shall, make interim reports to the Minister, and on the conclusion of the investigation shall make a final report to the Minister.
- (2) Any such reports shall be written or printed, as the Minister directs.
- (3) The Minister shall cause —
 - (a) a copy of any final report made by an inspector to be forwarded to the registered office of the company concerned; and
 - (b) a copy of the report to be furnished, on request and on payment of the prescribed fee to any person who is a member, shareholder, debenture holder or creditor of the company or of any other company dealt with in the report by virtue of section 178(2), and may also cause the report to be printed and published.

185 Proceedings on inspectors' reports

If from any report made under section 215 it appears to the Minister that an offence may have been committed by any person and that the case is one in which a prosecution ought to be instituted, the Minister shall refer the matter to the Attorney General for consideration of the question whether a prosecution should be instituted.

186 Expenses of investigation

- (1) Subject to subsection (2), the expenses of an investigation shall be borne by the State.
- (2) Where, following on a reference under section 185, a person is prosecuted for and convicted of an offence, the Court before which that person is convicted may, on the application of the prosecutor, order that person to reimburse the State, pursuant to subsection (1), in respect of the investigations which lead to the report giving rise to that reference.

187 Orders may be made by the Minister

- (1) Where an investigation into a company is being made under this Division and it appears to the Minister that facts concerning shares in, or debentures of, the company or rights relating to the issue of shares by the company cannot be ascertained because an interested person in relation to the company has failed or refused to comply with a requirement of an inspector under section 185, the Minister may, by order published in the Gazette, make one, or more than one, of the following orders, namely —
 - (a) an order restraining a person from disposing of any interest in shares in, or debentures of, the company;
 - (b) an order restraining a person from acquiring shares in, or debentures of, the company;
 - (c) an order restraining the exercise of any voting or other rights attached to shares in the company;
 - (d) an order directing a person who is registered as the holder of shares in respect of which an order under this section is in force to give notice in writing of that order to any person whom he knows to be entitled to exercise a right to vote attached to those shares;
 - (e) an order directing the company not to make payment, except in the course of winding up, of any sum due from the company in respect of shares in, or debentures of, the company;
 - (f) an order directing the company not to register the transfer or transmission of shares in, or debentures of, the company; or
 - (g) an order directing the company not to issue shares to a person who holds shares in the company by reason of his holding shares in the company nor in pursuance of an offer made to such a person by reason of his holding shares in the company.
- (2) A copy of an order under subsection (1) and of any order by which it is rescinded, revoked, altered or varied shall be served on the company to which it refers.
- (3) Where an order under subsection (1) is in force a person aggrieved by the order may apply to the Court for revocation or variation of the order and the Court may, if it is satisfied that it is reasonable to do so, revoke or vary the order and any order by which it has been altered or varied.
- (4) A person who contravenes an order made under subsection (1) is guilty of an offence.
- (5) Where an offence under subsection (4) is committed by a company, every officer of the company in default is guilty of an offence.

188 Application for winding-up

- (1) Where a report of an investigation under this Division has been made by an inspector in respect of a company, application may be made to the Court by the Minister for the winding up of the company under The Companies (Winding Up) Act.
- (2) Upon the making of the application, the provisions of this Act shall, with such adaptations as are necessary, apply as if —
 - (a) in the case of a company not being an external company carrying on business within Tuvalu, proceedings for the winding up has been commenced by the company; and
 - (b) in the case of an external company carrying on business within Tuvalu, proceedings for an order for the affairs of the company so far as its assets in Tuvalu are concerned to be wound up in Tuvalu had been commenced in the Court by a creditor of the company in the place in which it is incorporated or formed.

189 Privilege

Any oral or written statement or report made by an inspector in an investigation under this Division has absolute privilege.

190 Attorney-client privilege

Nothing in this Division shall be construed to affect the privilege that exists in respect of an attorney-at-law and his client.

DIVISION 3 - APPOINTMENT BY THE COURT**191 Application to Court**

- (1) A shareholder of a company or the Registrar may apply, *ex parte* or upon such notice as the Court may require, to the Court for an order directing an investigation to be made of the company.
- (2) An application under subsection (1) shall give particulars of the ground (being a ground referred to in subsection (3)) on which an order is sought.
- (3) If, upon an application in relation to a company under subsection (1), it appears to the Court that —
 - (a) the business of the company is or has been carried on with intent to defraud any person;
 - (b) the business or affairs of the company is or has been, or are or have been, carried on or conducted, or the powers of the directors are or have been exercised in a manner that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, a shareholder;

- (c) the company was formed for a fraudulent or unlawful purpose or is to be wound up for a fraudulent or unlawful purpose; or
- (d) persons concerned with the formation, business or affairs of the company have in connection therewith acted fraudulently or dishonestly,

the Court may order an investigation to be made of the company.

- (4) Where a shareholder of a company makes an application under subsection (1) he shall give the Registrar reasonable notice of the application, and the Registrar is entitled to appear and be heard in person or by an attorney-at-law in proceedings on the application.
- (5) An applicant under this section is not required to give security for costs.
- (6) An *ex parte* application under this section shall be heard in camera.
- (7) No persons may publish anything relating to *ex parte* proceedings under this section except with the authorisation of the Court or the written consent of the company in relation to which the application is made.

192 Powers of Court

- (1) In connection with an investigation under this Division, the Court may make any order it thinks fit including, without limiting the generality of the foregoing —
 - (a) an order to investigate;
 - (b) an order appointing an inspector, who may be the Registrar, fixing the remuneration of an inspector, and replacing an inspector;
 - (c) an order determining the notice to be given to any person having an interest or dispensing with notice to any person;
 - (d) an order authorising an inspector to enter any premises in which the Court is satisfied that there might be any relevant information and to do all or any of the following, namely, seize, examine or make copies of any documents or records found on the premises;
 - (e) an order requiring any person to produce documents or records to the inspector;
 - (f) an order authorising an inspector to conduct a hearing, administer oaths and examine any person on oath and prescribing rules for the conduct of the hearing;
 - (g) an order requiring any person to attend a hearing conducted by an inspector and to give evidence on oath;
 - (h) an order giving directions to an inspector or any interested person on any matter arising in the investigations;

- (i) an order requiring an inspector to make an interim and final report to the Court;
 - (j) an order determining whether a report of an inspector should be published and, if so, ordering the Registrar to publish the report in whole or in part or to send copies to any person whom the Court identifies;
 - (k) an order requiring an inspector to discontinue an investigation; and
 - (l) a final order as to the costs of the investigation.
- (2) Where, pursuant to an order of a kind referred to in subsection (1)(d), records or documents of a company are seized the company and its officers shall be offered reasonable access thereto while they remain in the custody of the inspector concerned.

193 Powers of inspector

- (1) An inspector has and may exercise the powers set out in the order appointing him.
- (2) An inspector shall, upon request, produce to any person having an interest a copy of the order appointing him.

194 Hearing to be in camera

- (1) Any person having an interest may apply to the Court for an order that a hearing conducted by an inspector be heard in camera and for directions on any matter arising in the investigation.
- (2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector has a right to be represented by an attorney-at-law.

195 Application of certain provisions

Sections 188, 189 and 190, (with the necessary modifications) apply in relation to an investigation pursuant to this Division as they apply in relation to an investigation pursuant to Division 2.

PART VIII - ARRANGEMENTS AND RECONSTRUCTION

196 Power to compromise with creditors and members

- (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or

any class of them, the Court may, on the application of the company or of any creditor or member of the company, or, in the case of a company being wound up of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the Court directs.

- (2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors or the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.
- (3) An order made under subsection (2) has no effect until a copy of the order has been lodged with the registrar for registration, and a copy of every such order shall be annexed to every copy of the Memorandum of the company issued after the order has been made or, in the case of a company not having a Memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.
- (4) If a company makes default in complying with subsection (3) the company and every officer of the company in default is guilty of an offence.
- (5) In this section and in section 197, “company” means any company liable to be wound up under The Companies (Winding Up) Act., and the expression “arrangement” includes a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

197 Information as to compromises with creditors and members

- (1) Where a meeting is summoned under section 196 there shall —
 - (a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement in particular stating any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon, of the compromise or arrangement, in so far as it is different from the affection the like interests of other persons; and
 - (b) in every notice summoning the meeting which is given by advertisement, be included either such a statement or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement.
- (2) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement shall give the like explanation with respect to

the trustee of any deed for securing the issue of the debentures as, under subsection (1), a statement is required to give with respect to the directors.

- (3) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application, in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.
- (4) Each director and each trustee for debenture holders shall give notice to the company of such matters relating to the company as may be necessary for the purposes of this section.
- (5) Where a company makes default in complying with any requirements of this section, the company and every officer of the company in default is guilty of an offence.
- (6) For the purposes of subsection (5), the liquidator of the company and any trustee for debenture holders is deemed to be an officer of the company.
- (7) A person is not guilty of an offence under this section if that person shows that the default was due to the refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to his interests.

198 Provisions for facilitating reconstruction and amalgamation of companies

- (1) Where an application is made to the Court under section 196 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as “a transferor company”) is to be transferred to another company (in this section referred to as “the transferee company”), the Court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters, namely —
 - (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;
 - (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

- (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
 - (d) the dissolution, without winding up, of any transferor company;
 - (e) the provision to be made for any persons, who within such time and in such manner as the Court directs, dissent from the compromise or arrangements; or
 - (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.
- (2) Where an order made under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, free from any charge which is by virtue of the compromise or arrangement to cease to have effect.
- (3) Where an order is made under this section, every company in relation to which the order is made shall cause a copy thereof to be lodged with the Registrar for registration within seven days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company in default is guilty of an offence.
- (4) In this section the expression “property” includes property, rights and powers of every description, and the expression “liabilities” includes duties.

199 Power to acquire shares of shareholders dissenting from scheme or contract approved by majority

- (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as “the transferor company”) to another corporation (in this section referred to as the transferee company”), has, within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than ninety per centum in number of the shares whose transfer is involved (other than shares held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary), the transferee company may, at any time within two months after the expiration of that four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and when such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company.
- (2) Where shares in the transferor company of the same class or classes as the shares whose transfer is involved are already held as provided in subsection

- (1) to a number greater than ten per centum of the aggregate of their number and that of the shares (other than those already so held) whose transfer is involved, the provisions of subsection (1) do not apply unless —
- (a) the transferee company offers the same terms to all holders of the shares (other than those already so held whose transfer is involved, or, where those shares include shares of different classes, of each class of them; and
 - (b) the holders who approve the scheme or contract, besides holding not less than ninety per centum in number of the shares (other than those already so held) whose transfer is involved, are not less than three-fourths in number of the holders of those shares.
- (3) Where, in pursuance of any such scheme or contract, shares in a company are transferred to another company or its nominee, and those shares together with any other shares in the first mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer comprise or include ninety per centum in number of the shares in the first mentioned company or of any class of those shares, then —
- (a) the transferee company shall, within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement), give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract; and
 - (b) any such holder may within three months from the giving of the notice to him require the transferee company to acquire the shares in question,
- and where a shareholder gives notice under paragraph (b) with respect to any shares, the transferee company is entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed or as the Court on the application of either the transferee company or the shareholder thinks fit to order.
- (4) Where a notice has been given by the transferee company under subsection (1) and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

- (5) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.
- (6) In this section, “dissenting shareholder” includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.
- (7) In relation to an offer made by the transferee company to shareholders of the transferor company before the commencement of this Act, this section shall have effect —
 - (a) with the substitution, in subsection (1), for the words “the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary)”, of the words “the shares affected”;
 - (b) with the omission of subsections (2) and (3) ; and
 - (c) with the omission, in subsection (4) of the words “together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company”.
- (8) Where the shares in a company are not divided into two or more classes, those shares are for the purposes of this section deemed to constitute a class.

PART IX - REMEDIES AND OFFENCES

DIVISION 1 - INTERPRETATION

200 Meaning of “complainant”

- (1) In this Part “complainant”, in relation to a company, means —
 - (a) a shareholder of the company or of any company belonging to the same group of companies as the company;
 - (b) an officer of the company or of any company belonging to the same group of companies as the company;
 - (c) the Registrar; or
 - (d) any other person who, in the opinion of the Court, is a proper person to bring an action, or make an application, under this Part in relation to the company.

- (2) In any case in which a Division in this Part applies in relation to an external company, the reference in subsection (1) to a company includes an external company.

DIVISION 2 - DERIVATIVE ACTIONS

201 Commencing derivative action

- (1) Subject to subsection (2), a complainant in relation to a company may apply to the Court for leave —
- (a) to bring an action in the name and on behalf of the company or any of its subsidiaries; or
 - (b) to intervene in any action to which the company or any of its subsidiaries is a party;
- for the purpose of prosecuting, defending or discontinuing the action.
- (2) The Court shall not give leave under subsection (1) to a complainant in relation to a company unless the Court is satisfied —
- (a) that the complainant has, before making application under subsection (1), given to the directors of the company or its subsidiary reasonable notice of his intention to so apply if the directors do not diligently bring or, as the case may be, prosecute, defend or discontinue the action in question;
 - (b) that the complainant is acting in good faith; and
 - (c) that it appears to be in the interest of the company or of its subsidiary that the action in question be brought, or as the case may be, prosecuted, defended or discontinued.

202 Power of Court

Where, pursuant to section 201, an action is brought or intervened in by a complainant in relation to a company, the Court may at any time make any order it thinks fit in connection with the action, including —

- (a) an order authorising the complainant or any other person to control the conduct of the action;
- (b) an order giving directions with respect to the conduct of the action;
- (c) an order directing that any amount adjudged payable by a defendant in the action shall be paid in whole or in part, directly to present and former shareholders of the company or of its subsidiary, instead of to the company or its subsidiary; or
- (d) an order requiring the company or its subsidiary to pay reasonable legal costs incurred by the complainant in connection with the action.

DIVISION 3 - PROTECTION FROM OPPRESSION

203 Application

- (1) This Division applies in relation to an external company carrying on business within Tuvalu as it applies in relation to a company.
- (2) Section 219 applies to determine for the purpose of subsection (1) whether or not an external company is carrying on business within Tuvalu.

204 Meaning of “interested person” and “oppression”

- (1) For the purposes of this Division, “interested person”, in relation to a company, means —
 - (a) a complainant in relation to the company;
 - (b) a creditor or debenture holder of the company; or
 - (c) the trustee in bankruptcy or personal representatives of a bankrupt or deceased shareholder, debenture holder or creditor of the company.
- (2) An interested person in relation to a company who alleges that the affairs of the company are being conducted in a manner oppressive to one, or more than one, interested person (including himself, except in a case referred to in subsection (3)) may apply to the Court for an order under section 205.
- (3) Following a report by an inspector under Part VII to the effect that the affairs of a company are being conducted as provided in subsection (2), the Minister may apply under that subsection to the Court as if he were an interested person in relation to the company.
- (4) The affairs of a company shall be treated as being conducted in a manner oppressive to an interested person in relation to the company if —
 - (a) any act or omission of the company or of any company belonging to the same group of companies as the company effects a result;
 - (b) the business or affairs of the company or of any company belonging to the same group of companies as the company has or have been carried on or conducted in a manner; or
 - (c) the powers of the directors of the company or of any company belonging to the same group of companies as the company have been exercised in a manner,

that is oppressive or unfairly prejudicial to, or that unfairly disregards, the interests of the interested person.
- (5) It is not necessary to establish a course of conduct by a company, or of any company belonging to the same group of companies as the company, in order to establish under subsection (4)(a) or (c) that the affairs of the company are being conducted in a manner oppressive to an interested person.

205 Powers of Court

- (1) Where, on an application made under section 204, the Court is of opinion that the affairs of a company are being or have been, conducted in a manner oppressive to an interested person in relation to a company, the Court may, with a view to ending the oppression or ensuring that it is not repeated —
 - (a) make an order restraining the conduct complained of;
 - (b) make an order to regulate the company's affairs by amending its Memorandum or Articles;
 - (c) make an order directing an issue or exchange of shares;
 - (d) make an order appointing directors in place of, or in addition to, all or any of the directors of the company then in office;
 - (e) make an order directing the company, subject to subsection (7), or any other person, to purchase shares of a shareholder;
 - (f) make an order directing the company, subject to subsection (7), or any other person, to pay to a shareholder any part of the moneys paid to him for shares;
 - (g) make an order varying or setting aside a transaction or contract to which the company is a party and compensating the company or any other party to the transaction or contract;
 - (h) make an order directing rectification of the registers or other records of the company;
 - (i) make an order that the company be wound up;
 - (j) make an order directing that an investigation be held under Division 3 of Part VII; or
 - (k) make an order giving leave to the bringing of an action by the interested person in the name of the company against a third party.
- (2) Where an order is made pursuant to subsection (1)(b) then, notwithstanding anything in any other provision of this Act, but subject to the provisions of the order —
 - (a) the company concerned shall not have power without the leave of the Court to make any further alteration in or addition to the Memorandum or Articles of the company inconsistent with the provisions of the order; and
 - (b) subject to paragraph (a), any amendment made by the order shall be of the same effect as if duly made by resolution of the company.
- (3) For the purposes of an order made pursuant to subsection (1)(h), section 207 applies as if the application under this section were an application under section 206.
- (4) Where an order that the company be wound up is made pursuant to subsection (1)(i), the provisions of this Act relating to the winding up of a company shall,

with such adaptations as are necessary, apply as if the order had been made in proceedings in the Court commenced by the company.

- (5) For the purposes of an order made pursuant to subsection (1)(j), Part VII applies as if the application under this section were an application under section 191.
- (6) Where the Court makes an order made pursuant to subsection (1)(k) then, subject to the provisions of the order, section 202 and Division 7 apply in relation to any action brought as if the action were brought pursuant to section 201.
- (7) A company shall not make a payment to a shareholder pursuant to an order made under subsection (1)(e) or (f) if there are reasonable grounds for believing that —
 - (a) the company is or would after making that payment be unable to meet its liabilities as they become due; or
 - (b) the realisable value of the company's assets would thereby be less than the aggregate of its liabilities.

DIVISION 4 - RECTIFICATION OF RECORDS

206 Application to Court to rectify records

- (1) If the name of a person is alleged to be or has been wrongly entered or retained in, or wrongly deleted or omitted from, the registers or other records of a company —
 - (a) the company;
 - (b) a shareholder or debenture holder of the company; or
 - (c) an aggrieved person,may apply to the Court for an order that the registers or records be rectified.
- (2) An applicant under subsection (1) shall give to the Registrar notice of the application and the Registrar is entitled to appear and be heard in proceedings on the application either alone or by attorney-at-law.

207 Powers of Court

On an application under section 206, the Court may make any order it thinks fit, including —

- (a) an order requiring the register or records of the company to be rectified;
- (b) an order restraining the company from calling or holding a meeting of the company or paying a dividend before the registers or records have been rectified;

- (c) an order determining the right of a party to the proceedings to have his name entered or retained in, or deleted or omitted from, the registers or records of the company, whether the issue arises between —
 - (i) two or more shareholders or alleged shareholders;
 - (ii) two or more debenture holders or alleged debenture holders; or
 - (iii) the company and shareholders or debenture holders, or alleged shareholders or debenture holders; or
- (d) an order compensating a party to the proceedings who has suffered a loss.

DIVISION 5 - MISCELLANEOUS PROVISIONS WITH RESPECT TO REGISTRAR

208 Notice of refusal by Registrar

- (1) This section does not apply in any case where express provision is made for an appeal from, or reference to the Court as a result of, any refusal of the Registrar to file any instrument or other document lodged with him, or where any such refusal is expressed to be, or is by implication, final.
- (2) If the Registrar refuses to file any instrument or document required by this Act to be filed by him before the instrument or document becomes effective, he shall, within twenty days after the instrument or document is lodged with him, give written notice of his refusal to the person who lodged the instrument or document, giving reasons for the refusal.
- (3) If the Registrar refuses to file any article or document referred to in subsection (1) and does not give notice of that refusal in accordance with that subsection, any person aggrieved by the refusal may apply to the Court for an order requiring the Registrar to change his decision, and upon such an application the Court may make any order it thinks fit.

209 Application for directions, etc.

- (1) The Registrar may apply to the Court for directions in respect of any matter concerning his duties under this Act, and on any such application the Court may give such directions and make such further order as it thinks fit.
- (2) The Registrar may make enquiries of any person relating to compliance with this Act.

DIVISION 6 - RESTRAINING OR COMPLIANCE ORDER**210 Application for directions, etc.**

- (1) Where a company or any officer, employee, liquidator or agent of the company fails, in relation to the company, to comply with any requirement of —
 - (a) this Act or any rules or regulations made under this Act;
 - (b) a unanimous resolution passed by the company; or
 - (c) the Memorandum or Articles of the company, a complaint in relation to, or a creditor or debenture holder of, the company, or the trustee of a debenture trust deed covering debentures of the company, may apply to the Court for an order directing the company or any such person to comply with, or to refrain from acting in breach of, the requirement.
- (2) Subject to section 35(1), in an application under subsection (1) the Court may make any order it thinks fit, including any order which the Court is empowered to make under section 36 in proceedings of a kind referred to in section 35(2)(a).
- (3) The right of any person under subsection (1) with respect to any failure to comply with a provision of a kind referred to in that subsection is in addition to any other right which the person may have with respect to the failure.

DIVISION 7 - GENERAL**211 Evidence of shareholder approval not decisive**

- (1) An application made, or an action brought or intervened in, under or pursuant to any provision in this Part shall not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to a company or its subsidiary has been, or may be, approved by the shareholders of the company, but evidence of any such approval may be taken into account in making an order under section 202 or 205.
- (2) An application made, or an action brought or intervened in, under or pursuant to any provision in this Part shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the Court given upon such terms as the Court thinks fit, and if the Court determines that the interests of any complainant or any person of a kind referred to in section 204(1)(b) or (c) may be substantially affected by any such stay, discontinuance, settlement or dismissal, the Court may order any party to the application or action to give notice to the complainant or person of a kind so referred to.

212 No security for costs

- (1) A complainant or a person of a kind referred to in section 204(1)(b) or (c) is not required to give security for costs in any application made; or action brought or intervened in, under or pursuant to any provision in this Part.
- (2) In an application made, or action brought or intervened in, under or pursuant to any provision in this Part the Court may at any time order the company concerned or its subsidiary to pay to the complainant or a person of a kind referred to in section 204(1)(b) or (c) interim costs, including legal fees and disbursements, but the complainant or a person so referred to is accountable for those interim costs so paid upon the final disposition of the application or action.

DIVISION 8 - OFFENCES**213 False and misleading statements**

- (1) Every person who in any return, report or certificate or in accounts or in any other document required by or for the purposes of this Act —
 - (a) makes or authorises the making of a statement which is false or misleading in a material particular; or
 - (b) omits or authorises the omission of any matter or thing without which the return, report, certificate, accounts or other document is misleading in a material particular;is guilty of an offence.
- (2) For the purposes of subsection (1), where a person at a meeting votes in favour of the making of a statement referred to in paragraph (a) of that subsection he is deemed to have authorised the making of the statement.
- (3) It is a sufficient defence if a person charged with an offence under subsection (1) proves that he did not know and could not by the exercise of reasonable diligence have known that the statement concerned was false and misleading or, as the case may be, that the matter or thing concerned had been omitted.
- (4) Where an action or omission constitutes an offence under any other provision of this Act and under this section no person shall be convicted under this section of that offence, but he may be charged with the offences in the alternative.

214 False reports

An officer of a corporation who, with intent to deceive, makes or furnishes, or knowingly authorises or permits the making or furnishing of, any false or misleading statement or report to —

- (a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation; or
- (b) in the case of a corporation that is a subsidiary, an auditor of the holding company,

relating to the affairs of the corporation is guilty of an offence.

215 Fraudulent inducements to invest in shares or debentures

- (1) Any person who by any statement, promises or forecast which he knows to be false or misleading, or by recklessly making any statement, promise or forecast which is false or misleading, induces or attempts to induce another person to enter into, or to offer to enter into, an agreement to subscribe for, underwrite, sell, purchase, exchange or surrender shares or debentures, or to create any derivative interest in shares or debentures, is guilty of an offence.
- (2) For the purposes of this section, a statement, promise or forecast is made recklessly if —
 - (a) it is made without belief that it is true, or in the case of a promise or forecast, that it is unlikely to be fulfilled; or
 - (b) if a reasonable man who had the same knowledge of the surrounding circumstances as the accused person, would not have believed that the statement was true, or that a promise or forecast was likely to be fulfilled.

216 Order to comply

Where a person is convicted of an offence under any provision of this Act or of any rules or regulations made under this Act, the Court before which the person is convicted may, in addition to any penalty imposed by it, order the person to comply with the provision, the failure to comply with which constituted the offence.

217 Limitation

Subject to any express provision in this Act to the contrary, a prosecution for an offence under this Act shall be commenced not later than two years after the completion of the act or omission which constitutes the offence.

218 Saving

A conviction for an offence under this Act does not affect any right to pursue a civil remedy in respect of the act or omission constituting the offence.

219 Penalties

- (1) A company which commits an offence under this Act is liable on conviction to a fine of up to \$5000.
- (2) A director or officer of a company or any other person who commits an offence under this Act is liable on conviction to a fine of up to \$3000.

PART X - EXTERNAL COMPANIES**DIVISION 1 - EXTERNAL COMPANIES CARRYING ON BUSINESS IN
TUVALU****220 External companies to which this Division applies**

- (1) This Division applies to an external company carrying on business within Tuvalu.
- (2) An external company carries on business within Tuvalu —
 - (a) if business of the company is regularly transacted from an office in Tuvalu established or used for the purpose;
 - (b) if the company establishes or uses a share transfer or share registration office in Tuvalu;
 - (c) if the company enters into two or more contracts with persons resident in Tuvalu, or with companies incorporated under this Act, being contracts which —
 - (i) are entered into in connection with the business of the company; and
 - (ii) by their express or implied terms are to be wholly or substantially performed in Tuvalu, or may be so performed at the option of any party to the contract;
 - (d) if the company appoints an agent who resides or has a place of business in Tuvalu to represent the company in connection with the making or performance of two or more contracts of a kind referred to in paragraph (c), or in connection with the transactions in Tuvalu of the company generally, whether the appointment is made for a fixed period of time or not; or
 - (e) if the company owns, possesses or uses assets situated in Tuvalu for the purpose of carrying on or pursuing its business, if it obtains or seeks to obtain from those assets, directly or indirectly, profit or gain, whether realised in Tuvalu or not.

221 Documents to be delivered to Registrar by external company, etc.

- (1) Every external company shall, within one month after it commences to carry on business in Tuvalu, lodge with the Registrar for registration —
 - (a) a certified copy of the charter, statutes, regulations, articles of incorporation or bylaw, or other instrument constituting or defining the constitution of the company;
 - (b) a statement in duplicate in the prescribed form giving the following particulars regarding the company, namely —
 - (i) its name;
 - (ii) the nature of its business or other main objects;
 - (iii) the present forenames and surname and any former forename or surname, and the address and business occupations of the person or persons authorised to manage the business in Tuvalu of the company;
 - (iv) if the company has shares, the number and the nominal value, if any, of its authorised and issued shares, the amount paid up thereon and the amount remaining payable thereon, distinguishing between the amounts paid and payable in cash and the amounts paid and payable otherwise than in cash;
 - (v) the address of its registered office or principal place of business in its country of incorporation or origin;
 - (vi) the address of its principal place of business in Tuvalu or if the company has no place of business in Tuvalu, a statement to that effect; and
 - (vii) the name and address in Tuvalu of a person authorised by the company to accept service of process and other documents on behalf of the company;
 - (c) a list of the company's directors containing similar particulars with respect to its directors as are by this Act required to be contained in the register of directors of a company incorporated under this Act; and
 - (d) such particulars and copies of any charges on the property of the company as are required to be delivered for registration in accordance with section 226 or, if there are no such charges, a statement to that effect in the prescribed form.
- (2) Where any change or alteration is made in —
 - (a) the charter, statutes, articles of incorporation or by-laws of the external company, or other instrument lodged with the Registrar ;,
 - (b) the directors of the external company;
 - (c) the managing agent or agent appointed to accept service on behalf of the external company;

- (d) the address of its registered office or principal place of business in its country of incorporation;
- (e) the address of its principal place of business in Tuvalu; or
- (f) the name of the external company,

the external company shall, within twenty-eight days or within such further period as the Registrar in special circumstances allows after the change or alteration, lodge with the Registrar particulars of the change and such documents as may be prescribed in the regulations.

- (3) If an external company increases its authorised share capital, within twenty-eight days or within such further period as the Registrar in special circumstances allows after such increase, lodge with the Registrar notice of the amount from which and of the amount to which it has been so increased.
- (4) If an external company not having a share capital increases the number of its members beyond the registered number it shall, within twenty-eight days or within such further period as the Registrar in special circumstances allows after the increase was resolved or took place, lodge with the Registrar notice of the increase.
- (5) Where notice of any change or alteration is lodged with the Registrar pursuant to subsection (2) he shall, as soon as conveniently possible thereafter, cause a notice giving short particulars of the change or alteration to be published and published in the Gazette.
- (6) If any document to be lodged with the Registrar under this section is not in the English language, there shall be annexed to it a certified translation.

222 Power of external company to hold land

Subject to any enactment an external company registered under this Division may hold land in Tuvalu.

223 Restriction on the use of certain names

- (1) Except with the consent of the Minister, an external company shall not be registered by a name that, in the opinion of the Registrar, is undesirable or is a name, or a name of a kind, that the Minister has directed the Registrar not to accept for registration.
- (2) Except with the consent of the Minister, any change in the name of an external company shall not be registered, if in the opinion of the Registrar, the new name is undesirable or is a name, or a name of a kind, that the Minister has directed the Registrar not to accept for registration, notwithstanding that particulars of the change have been lodged in accordance with section 220.
- (3) In any case such as is referred to in subsection (1) or (2) the Registrar may direct the external company to take an alternative name approved by the

Registrar for the purpose of carrying on business in Tuvalu and the company shall, within such period as the Registrar allows, notify the Registrar whether or not it accepts the direction.

- (4) If the external company accepts a direction given pursuant to subsection (3), the Registrar shall register the company by the name contained in the direction.
- (5) No external company to which this Part applies shall use, in Tuvalu, any name other than that under which it is registered under this Part.

224 Accounts of company carrying on business in Tuvalu

- (1) Subject to this section, every external company shall in every calendar year make out a balance sheet and profit and loss account and, if the company is a holding company, group accounts in such form, and containing such particulars and including such documents, as under the provisions of this Act it would, if it had been a public company incorporated under this Act, have been required to make out and lay before the company in general meeting, and lodge a copy of those documents with the Registrar for registration.
- (2) The annual accounts of an external company shall, in addition to such matters as may be prescribed, contain the following particulars, namely —
 - (a) the fixed assets and current assets of the company, and its assets which are neither fixed nor current shall be separately identified and classified, and any such assets situated in Tuvalu shall be distinguished from any such assets situate elsewhere;
 - (b) the amount of the company's cash held by banks, and any amount held by banks licensed to carry on business of banking under any law in force in Tuvalu relating to banking shall be distinguished from cash held by other banks;
 - (c) the amount of bank loans and overdrafts made or extended to the company, and any such amount so made or extended, by banks so licensed shall be distinguished from bank loans and overdrafts made by other banks;
 - (d) the aggregate amount of the company's debts and liabilities to persons resident in Tuvalu or to companies incorporated under this Act shall be shown, and there shall also be shown the amount of such debts and liabilities which —
 - (i) are already due or will become due within twelve months after the date as at which the annual accounts of the company are made out;
 - (ii) will become due more than twelve months after that date; and
 - (iii) will become due more than thirty-six months after that date; and

- (e) the aggregate amount of the company's debts and liabilities which are secured by a mortgage, charge, or lien on movable or immovable property situated in Tuvalu.
- (3) For the purposes of subsection (2) —
- (a) a debt is deemed to be due on the earliest date on which the creditor could require payment to be made;
 - (b) the whole of a debt is deemed to be due when any instalment of it falls due; and
 - (c) an external company is deemed to be indebted to debenture stockholders and loan stockholders for the principal amount and any arrears or interest in respect of the debenture stock or loan stock held by them.
- (4) The Minister may by order exempt any external company from compliance with subsection (1) or (2), or from both those subsections, on such terms and conditions as he thinks fit if —
- (a) he is satisfied that the company has, and will maintain, in Tuvalu, sufficient cash and readily realisable assets to satisfy its debts as they fall due;
 - (b) a company (whether an external company or not) which is the holding company of the external company has delivered to the Registrar a written undertaking to pay all the present and future debts and liabilities of the company to persons resident or companies incorporated in Tuvalu; or
 - (c) he is satisfied that the company is substantially the same as a proprietary company.
- (5) A written undertaking in respect of the debts and liabilities of an external company delivered under subsection (4) shall be enforceable —
- (a) by any creditor of the external company who was resident in Tuvalu at the time that the debt or liability to him was incurred, or which is a company incorporated in Tuvalu, as though the undertaking were a written guarantee of the amount payable to the creditor and given to him by the holding company for valuable consideration; and
 - (b) in the winding up of the external company as though the company were an unlimited company and the holding company were its only member, but without prejudice to the liability (if any) of the other members, shareholders, or contributories of the external company under this Act.
- (6) The Minister may at any time revoke an exemption granted by him under subsection (4), and thereupon any undertaking delivered by a holding company under that subsection shall cease to have effect, but without prejudice to the liability of the holding company in respect of debts and liabilities of the external company incurred to persons acting in good faith without notice of the revocation before it is advertised under subsection (7).

- (7) The Minister shall advertise the revocation under this section by notice and in the Gazette as soon as conveniently possible after the revocation takes place.
- (8) Upon the advertisement of revocation under subsection (7), subsections (1) and (2) apply to the external company as though it were thereby required to deliver copies of its annual accounts to the Registrar as from the date of the advertisement of the revocation, and it shall deliver copies of its annual accounts for its financial year ending last before that date within three months after that date.
- (9) If any document delivered to the Registrar under this section is not written in the English language, there shall be annexed to it a certified translation thereof.

225 Publication of name, etc., of external companies

- (1) Every external company shall —
 - (a) conspicuously exhibit on every place where it carries on business in Tuvalu the name of the company and the country in which the company is incorporated or formed;
 - (b) cause the name of the company and of the country in which the company is incorporated or formed to be stated in legible characters in all notices, advertisements and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills or parcels, invoices, receipts and letters of credit of the company; and
 - (c) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters in all notices, advertisements and other official publications of the company in Tuvalu and to be affixed on every place where it carries on its business.
- (2) Where the name of an external company is in a language other than English, the requirements of subsection (1) relating to the name of the company is deemed to be fulfilled by exhibiting and stating a translation thereof in English.
- (3) The fact that the word “limited”, or its equivalent in a language other than English, forms part of an external company’s name shall not be deemed a sufficient compliance with the obligation imposed by subsection (1)(c).

226 Publication of name of managing agent of external company

- (1) Subject to subsection (2), every external company shall, in all trade circulars and business letters on or in which the company’s name appears and which are dispatched in Tuvalu by or on behalf of the company, state in legible

characters with respect to each person authorised to manage the business of the company in Tuvalu —

- (a) his present forenames and surname; and
 - (b) any former forenames or surname.
- (2) The Registrar may in special circumstances, subject to such conditions as he may impose, exempt an external company from compliance with subsection (1).

227 Application of certain provisions to external companies

- (1) For the purposes of the application, pursuant to section 108, of Divisions 7 and 8 of Part IV in the cases of an external company to charges on property in Tuvalu —
 - (a) particulars of charges created on property in Tuvalu prior to the date when the external company carried on business in Tuvalu; and
 - (b) particulars of charges created prior to the commencement of this Act,are deemed to be duly registered if particulars thereof are lodged with the Registrar in accordance with section 220(1)(d).
- (2) The Registrar shall cause to be published in the Gazette particulars of any charge registered pursuant to this section.
- (3) A failure to register a charge of a kind referred to in subsection (1)(a) or (b), or to publish particulars pursuant to subsection (2), does not affect the validity of a charge.

228 Service on external company

- (1) Any process or notice required to be served on an external company is sufficiently served if addressed to any person whose name has been delivered to the Registrar under this Division and left at or sent by post to the address which has been so delivered but —
 - (a) where any such company makes default in delivering to the Registrar the name and address of a person resident in Tuvalu who is authorised to accept on behalf of the company service of process or notices; or
 - (b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason cannot be served,a document may be served on the company by leaving it at or sending it by post to any place of business established by the company in Tuvalu.
- (2) Where —
 - (a) subsection (1)(a) or (b) applies; and

- (b) the company concerned has no place of business in Tuvalu, any process or notice required to be served on the company is sufficiently served if addressed to the company and left at or sent by post to any place of business of the company in the country of its incorporation.

229 Removing company's name from register

- (1) If any external company ceases to carry on business in Tuvalu it shall, within twenty-eight days of so ceasing, give notice of the fact to the Registrar and as from the date on which notice is so given to obligation of the company to deliver any document to the Registrar shall cease.
- (2) In any case where the Registrar is satisfied by any other means that the company has ceased to carry on business in Tuvalu he may close the file of the company and thereupon the obligation of the company to deliver any document to the Registrar shall cease.
- (3) Where a company gives notice as provided in subsection (1) or the Registrar is satisfied as provided in subsection (2), he shall cause a notice stating that the company has ceased to carry on business in Tuvalu to be published and published in the Gazette.

230 Recognition of winding up in designated state

- (1) The Minister may make rules with respect to the recognition and the giving effect to in Tuvalu of any order in the nature of a winding-up order made in a designated state in relation to an external company incorporated or formed in the designated state.
- (2) Without limiting the generality of the power of the Minister under subsection (1), rules made under that subsection may provide —
 - (a) for the exercise in Tuvalu of the powers of a liquidator in a designated state;
 - (b) for the application with or without modification, of any of the provisions of The Companies (Winding Up) Act, 1991; and
 - (c) for the dissolution of an external company and the disposal of its assets in Tuvalu.
- (3) Rules made under this section shall have effect notwithstanding anything to the contrary in this Act.
- (4) For the purposes of this section, “designated state” means any country designated under subsection (5).
- (5) Where it appears to the Minister that an enactment in force in any country contains provisions similar to the provisions of this section, he may, by order

published in the Gazette, designate the country for the purposes of this section.

231 Offences

If an external company fails to comply with any provision of this Division with which an external company is required to comply, every officer of the company, every person authorised to manage the business in Tuvalu of the company, and every person whose name has been delivered to the Registrar for the purposes of section 218, who knowingly authorises or permits the default is guilty of an offence.

DIVISION 2 - PROVISIONS APPLICABLE TO ALL EXTERNAL COMPANIES

232 Application

- (1) This Division applies to an external company whether or not it carries on business within Tuvalu.
- (2) Subject to this Division, the provisions of Division 1 of Part IV and the Fourth Schedule apply to an external company (whether incorporated or to be incorporated) to its shares or debentures and to its officers, as they apply to a company or a proposed company, to its shares or debentures and to its officers.

233 *repealed by Act 5 of 1996*

234 Modification of provisions for the purpose of application to external company

For the purposes of its application pursuant to section 231(2) to an external company, incorporated or formed or to be incorporated or formed, section 45(1) shall have effect as if it included a requirement, in relation to a prospectus, that it contains particulars with respect to —

- (a) the instrument constituting or defining the constitution of the company;
- (b) the enactment, or provisions having the force of an enactment, by or under which the incorporation or formation was or is to be effected;
- (c) an address in Tuvalu where such instruments, enactments or provisions or certified copies thereof may be inspected;
- (d) the date on which and the place where the company was or is to be incorporated or formed; and
- (e) whether the company has established a place of business in Tuvalu and, if so, the address of its principal office in Tuvalu.

PART XI - MISCELLANEOUS

235 Registrar of Companies

There shall be a Registrar of Companies who may be a public officer, or a person who is not a public officer appointed by the Minister.

236 Fixing record date

- (1) For the purposes of determining shareholders or debenture holders of a company —
 - (a) entitled to receive payment of a dividend or any interest under a debenture;
 - (b) entitled to participate in a distribution pursuant to the winding up of the company; or
 - (c) for any other purpose except the right to receive notice of or to vote at a meeting,

the directors of the company may fix in advance a date as the record date for determination of shareholders or debenture holders, but a record date so fixed shall not precede by more than fifty days the particular action to be taken.

- (2) Where a record date is fixed under subsection (1), notice thereof shall, not less than fourteen days before the date fixed, be given by advertisement by notice and in the Gazette.

237 Fees

There shall be paid to the Registrar —

- (a) the fees specified in the Fifth Schedule; and
- (b) such other fees as are prescribed.

238 Regulations

The Minister may make regulations for or with respect to —

- (a) the keeping of registers by the Registrar and the lodging or registration of documents and the time and manner of submission of documents for lodging or registration and the requirements with which documents lodged or to be lodged with the Registrar must comply;
- (b) prescribing forms for the purposes of this Act;
- (c) prescribing fees, not in any case exceeding one hundred dollars, to be paid to the Registrar in respect of matters or things not provided for in

- the Fifth Schedule in respect of any document required to be lodged, filed, registered with or issued by the Registrar under this Act;
- (d) prescribing the manner in which, and the persons by whom, and the directions or requirements in accordance with which, the forms prescribed for the purposes of this Act, or any of them, shall or may be signed, prepared or completed and in general regulating and signing, preparation and completion of those forms or any of them;
 - (e) the preservation of registers, records or documents and their destruction and the presumptions which may be made with respect to entries in registers;
 - (f) the disclosure of corporate activities to employees or employees' representatives and the method and content of any such disclosure; and
 - (g) all matters or things which by this Act are required or permitted to be prescribed, otherwise than by rules, or which are necessary or expedient to be prescribed for giving effect to this Act.

239 Documents

A document lodged with the Registrar for registration —

- (a) shall be in durable form;
- (b) shall be so prepared as to be legible but need not be printed; and
- (c) shall not be in manuscript.

240 Amendment

The Companies and Business Registration Act is amended in section 2A by the deletion of “External Companies (Registration and Control) Act 1987” and by the substitution therefor of “Companies Act, 1991” and inserting a full stop after the word “applies” and deleting the words thereafter.

241 Repeal

- (1) The External Companies (Registration and Control) Act, 1987, is hereby repealed.
- (2) An external company which at the commencement of this Act is registered under the Act repealed by subsection (1) shall be deemed to have been registered under this Act and the provisions of this Act shall apply accordingly.

FIRST SCHEDULE

(Sec.2)

1 Definition

In this Act, unless the context otherwise requires —

“**accounts**”, includes the group accounts of a corporation;

“**annual general meeting**”, in relation to a company, means a meeting of the company held for any year under section 141;

“**annual return**”, in relation to a company, means the return required to be made by section 161;

“**articles**”, in relation to a company means Articles of Association of the company from time to time in force;

“**associated company**” has the meaning assigned by section 127(3);

“**company**”, means a company incorporated pursuant to this Act;

“**contributory**”, in relation to a company, has the meaning assigned by section 5 of the Companies (Winding Up) Act, 1991.

“**corporation**” means a company, or other body corporate wherever or however incorporated, but does not include —

- (a) a corporation sole; or
- (b) a body corporate, or body corporate belonging to a class, that is prescribed;

“**Court**”, means the High Court;

“**debenture**” includes debenture stock, bonds, notes and any other securities of a corporation whether constituting a charge on the assets of the corporation or not;

“**debenture trust deed**” means a deed executed by a company and the trustee appointed by the deed in connection with the issue of debentures, together with any supplemental deed, resolution or scheme of arrangement modifying the terms thereof, and any deed substituted therefor;

“**director**” includes any person occupying the position of director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act;

“**document**” includes a summons, order and other legal process, and a notice or register;

“**equity share**” means a share other than a preference share;

“**expert**” includes an engineer, a valuer, an accountant and any other person whose profession or reputation gives authority to a statement made by him;

“**external company**” means an incorporated or unincorporated body, formed under the laws of a country other than Tuvalu which has as its object, or one of its objects, the acquisition or gain by it or its members, but does not include a partnership or limited partnership some or all of whose members are liable for its debts without any limit and the shares in which are not transferable free from any restrictions;

“**extraordinary general meeting**”, in relation to a company, means a meeting of the company held under section 143;

“**financial year**”, in relation to a corporation, means the period in respect of which any profit and loss account is made up, whether or not that period is a year;

“**group of companies**” means two or more corporations one of which is the holding company of the other or others;

“**manager**”, in relation to a company, means the principal executive officer of the company for the time being by whatever name called and whether or not he is a director;

“**member**” has the meaning assigned by section 30;

“**Memorandum**”, in relation to a company, means Memorandum of Association of the company from time to time in force;

“**officer**”, in relation to a corporation, includes —

- (a) any director, secretary, manager or employee (by whatever name called) performing the like functions of a manager;
- (b) any receiver and manager of the undertaking of the corporation appointed under a power contained in any instrument; or
- (c) any liquidator of a company appointed in a voluntary winding up,

but does not include —

- (d) any receiver who is not also a manager; (e) any receiver and manager appointed by the Court; or
- (f) any liquidator appointed by the Court or by the creditors;

“**ordinary resolution**” has the meaning assigned by section 144(3);

“**preference share**” means a share which carries the right to payment of a dividend of a fixed amount, or not exceeding a fixed amount, in priority to payment of a dividend on another class or other classes of shares, whether with or without other rights;

“**promoter**”, in relation to a prospectus issued by or in connection with a company, means a promoter of the company who was a party to the

preparation of the prospectus or of any relevant portion thereof, but does not include any person by reason only of his acting in a professional capacity;

“**proprietary company**” means —

- (a) a company incorporated as a proprietary company by virtue of section 18; and
- (b) a company converted into a proprietary company pursuant to section 21;

“**prospectus**” means any prospectus, notice, circular, advertisement or invitation inviting application or offers from the public to subscribe for or purchase or offering to the public for subscription or purchase any shares in or debentures of or any units of shares in or units of debentures of a company or proposed company;

“**public company**” means a company other than a proprietary company;

“**Registrar**” means the Registrar of Companies;

“**share**” means a share in the capital of a company;

“**shareholder**” has the meaning assigned by section 30(3);

“**special resolution**” has the meaning assigned by section 144(4);

2 Meaning of “the Minister”

In this Act the expression “the Minister” means the Minister from time to time responsible for the administration of this Act or, if more than one Minister is so responsible, the Minister so responsible with respect to the provisions in which the expression occurs.

3 Directors

For the purposes of this Act, a person shall not be regarded as a person in accordance with those directions or instructions the directors of a company are accustomed to act by reason only that the directors act on advice given by him in a professional capacity.

4 When statement untrue

For the purposes of this Act, a statement included in a prospectus or statement in lieu of prospectus is deemed to be untrue if it is misleading in the form and context in which it is included.

5 When statement included in prospectus

For the purposes of this Act, a statement is deemed to be included in a prospectus or statement in lieu of prospectus if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

6 Provisions as to what constitutes an offer to the public

- (1) Any reference in this Act to offering shares or debentures to the public includes, unless the contrary intention appears, a reference to offering them to any section of the public, whether selected as clients of the person issuing the prospectus or in any other manner, and references in this Act or in a company's articles of incorporation to invitations to the public to subscribe for shares or debentures shall, unless the contrary intention appears, be similarly construed.
- (2) Sub-paragraph (1) shall not be taken as requiring any offer or invitation to be treated as made to the public if it can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving it, and in particular —
 - (a) a provision in a company's Memorandum or Articles prohibiting invitations to the public to subscribe for shares or debentures shall not be taken as prohibiting the making to members or debenture holders of an invitation which can properly be so regarded; and
 - (b) the provisions of this Act relating to proprietary companies shall be construed accordingly.

7 Provisions with respect to meaning of offer for subscription or purchase

For the purposes of this Act, a reference to an offer or offering of shares or debentures for subscription or purchase is deemed to include an offer of shares or debentures by way of barter or exchange.

8 Definition of subsidiary and holding company

- (1) For the purposes of this Act, a corporation is deemed to be a subsidiary of another corporation if —
 - (a) that other corporation —
 - (i) holds more than half of the agreed equity shares in the first mentioned corporation; or

- (ii) is entitled to appoint or prevent the appointment of more than half the directors of the first mentioned corporation; or
 - (b) the first mentioned corporation is a subsidiary of any corporation which is that other corporation's subsidiary.
- (2) A reference to this Act to the holding company of another corporation is a reference to a corporation of which that last mentioned corporation is a subsidiary.

SECOND SCHEDULE

(Sec.9)

ARTICLES**PART I - ARTICLES FOR PUBLIC COMPANY****1 Commission**

The company may exercise the power under section 85 of the Act of paying commission.

2 Lost share certificate etc .

When a share certificate or debenture is lost, destroyed or defaced it may be renewed on payment of a fee of one dollar and on such terms (if any) as to evidence and indemnity and the payment of the expenses of the company of investigating evidence as the directors think fit.

3 Lien

- (1) The company shall have a first and paramount lien on every share (not being a fully paid share) for all moneys (whether presently due or not) payable in respect of that share, and the company shall also have a first and paramount lien on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company, but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this paragraph; the company's lien, if any, on a share shall extend to all dividends payable thereon.
- (2) The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.
- (3) To give effect to any such sale the directors may authorise some person to transfer the shares sold to the purchaser thereof; the purchaser shall be registered as the holder of the shares comprised in any such transfer, and he

shall not be bound to see the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

- (4) The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists or is presently payable, and the residue, if any, shall (subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.
- (5) For the purposes of this paragraph, a share is not a fully paid share if any instalment of the issue price remains to be paid.

4 Payment of issue price

The directors may, if they think fit, receive from any person willing to advance the same, all or any part of the moneys not yet due upon any shares or debentures held by him, and upon all or any of the moneys so advanced may (until the same would, but for such advance, become payable) pay interest at such rate not exceeding (unless the company in general meeting shall otherwise direct) five per centum per annum, as may be agreed upon between the directors and the person paying that sum in advance.

5 Transfer of shares or debentures

- (1) An instrument of transfer of shares or debentures shall name the transferee, shall state the number or principal amount of the shares or debentures transferred, and shall be signed by the transferor. As regards the company the transferor shall be deemed to remain the holder of the shares or debentures until the name of the transferee is entered in the register of members or debenture holders except so far as the Act otherwise provides or the Court otherwise orders.
- (2) The directors may decline to register —
 - (a) the transfer of a share (not being a fully paid share) to a person of whom they shall not approve;
 - (b) the transfer of a share on which the company has a lien; or
 - (c) the transfer of a share to a person who is an infant or who is of unsound mind and has been so found by a court in Tuvalu.
- (3) The directors may decline to recognise any instrument of transfer of shares or debentures unless —
 - (a) a fee of (one dollar), or such lesser sum as the directors may from time to time require, is paid to the company in respect thereof;
 - (b) the instrument of transfer is accompanied by the certificate of the shares or debentures to which it relates, and such other evidence as the

- directors may reasonably require to show the right of the transferor to make the transfer; and
- (c) the instrument of transfer is in respect of only one class of shares or debentures.
- (4) The registration of transfers may be suspended at such times and for such periods as the directors may from time to time determine provided that such registration shall not be suspended for more than thirty days in any year.
- (5) The company shall be entitled to charge a fee not exceeding one dollar on the registration of every probate, letters of administration, certificate of appointment of a trustee in bankruptcy, power of attorney, notice of interest, charging order, or other instrument.

6 Transmission of shares and debentures

- (1) In case of the death of a member or debenture holder the survivor or survivors where the deceased was a joint holder, and the legal personal representative of the deceased where he was a sole holder, shall be the only person recognised by the company as having any title to his shares or debentures; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.
- (2) Any person becoming entitled to shares or debentures in consequence of the death or bankruptcy of a member, or debenture holder may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the shares or debentures or to have some person nominated by him registered as the transferee thereof, but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the shares or debentures by that member or debenture holder before his death or bankruptcy, as the case may be.
- (3) A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company; but the directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share, and, if the notice is not complied with within ninety days the directors may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

7 Forfeiture of shares

- (1) If a shareholder fails to pay any instalment of the issue price of a share on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of the instalment remains unpaid, exercise the powers to forfeit and reissue the share and to recover the unpaid instalment conferred on the company by section 59 of the Act.
- (2) A statutory declaration in writing that the declarant is a director or the secretary of the company and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share; the company may receive the consideration (if any) given for the share on the re-issue thereof and may, issue a share certificate to the person to whom the share is re-issued, and he shall thereupon be registered as the holder of the share and shall not be bound to see the application of the consideration (if any) nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

8 Omission to give notice of meeting

The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

9 Proxies

- (1) In accordance with section 150 of the Act any member entitled to attend and vote at a meeting of the company shall be entitled to appoint another person, whether a member of the company or not, as his proxy to attend and vote instead of him and the proxy shall, subject to that section, have the same rights as the member to speak at the meeting.
- (2) An instrument appointing a proxy, shall be in the following form or a form as near thereto as circumstances admit:

NAME OF COMPANY

“I/We,of,in
the island of, being a member,
members of the above-named company hereby appoint of
....., or failing him, of,
....., as my/our proxy to

vote for me/us on my/our behalf at the annual OR extraordinary (as the case may be) general meeting of the company to be held on theday of 20....., and at any adjournment thereof.

Signed thisday of 20"

10 Chairman of meetings

- (1) The Chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act the directors present shall elect one of their number to be chairman of the meeting.
- (2) If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for the holding of the meeting, the members present shall choose one of their number to be chairman of the meeting.
- (3) The chairman may, with the consent of any meeting at which a quorum is present, (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place, when a meeting is adjourned for eight days or more, notice of the adjourned meeting shall be given as in the case of an original meeting but in any other case it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

11 Postal voting

Postal voting is permitted at meetings and section 151 of the Act applies accordingly.

12 Classes of shares

Where, at any time the shares of the company are divided into different classes, paragraphs 8 to 11 and the provisions of the Act relating to general meetings shall apply to meetings of any class of members in like manner as they apply to general meetings.

13 Voting of members

Subject to any rights or restrictions for the time being attached to any class of shares and which may be validly attached thereto pursuant to the Act —

- (a) on a show of hands each member and each proxy lawfully present at the meeting shall have one vote, and on a poll each member present in person or by proxy shall have one vote for each share held by him;
- (b) in the case of postal voting each person entitled to attend and vote at the meeting shall have one vote for each share held by him;

14 Remuneration of directors

The remuneration payable to any director shall be determined or approved by the members in general meeting.

15 Powers and duties of directors

- (1) The directors may pay all expenses incurred in promoting and registering the company.
- (2) The directors may exercise all such powers of the company, including power to borrow money and to mortgage or charge its property and undertaking of any part thereof and to issue debentures, as are not by the Act or these by-laws required to be exercised by the members in general meeting.
- (3) Subject to compliance with section 139 of the Act, a director may enter into any contract with the company and the contract or any other contract of the company in which a director is in any way interested shall not be liable to be avoided nor shall a director be liable to account for any profit made thereby by reason of the director holding the office of director or of the fiduciary relationship thereby established.
- (4) A director may act by himself or his firm in a professional capacity for the company, except as auditor, and he and his firm shall be entitled to proper remuneration for professional services as if he were not a director.

16 Proceedings of Directors

- (1) The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit.
- (2) Questions arising at any meeting shall be decided by a majority of votes and in case of an inequality of votes, the chairman shall have a second or casting vote.
- (3) A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.
- (4) It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Tuvalu.
- (5) The quorum necessary for the transaction of the business of the directors may be fixed by the directors and, unless so fixed, shall be two, providing that in

- no case shall the quorum be less than a majority of the total number of directors.
- (6) The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to these by-laws as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.
 - (7) The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.
 - (8) The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors.
 - (9) A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting the members present may choose one of their number to be chairman of the meeting.
 - (10) A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and, in the case of an equality of votes, the chairman shall have a second or casting vote.
 - (11) All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be valid as if every such person had been duly appointed and was qualified to be a director.
 - (12) A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

17 Managing Director

- (1) Subject to the provisions of the Act, the directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment. A managing director's appointment shall be automatically determined if he ceases for any cause to be a director.

- (2) The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and may from time to time, withdraw, alter or vary all or any of such powers.

18 Secretary

A secretary or joint secretaries may be appointed by the directors for such term, at such remuneration and upon such other conditions as they may think fit; and the appointment of any secretary may be terminated by them.

19 Seal

The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of the directors authorised by the directors in that behalf; and every instrument to which the seal shall be affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for that purpose.

20 Dividend

- (1) The company may by ordinary resolution declare dividends in respect of any year or other period but no dividend shall exceed the amount recommended by the directors.
- (2) The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.
- (3) The right to declare or pay a dividend is subject to section 177.

21 Power to set aside sums

The directors may, before recommending any dividends, set aside out of the profits or income surplus of the company such sums as they think proper in order to provide for a known liability, including a disputed or contingent liability, or as a depreciation or replacement provision and may carry forward any profits or income surplus which they may think prudent not to distribute.

22 Form of Dividend

- (1) All dividends shall be declared and paid as a fixed sum per share and not as a proportion of the amount paid in respect of a share.

- (2) The directors may deduct from a dividend payable to a shareholder all sums of money presently payable by the shareholder to the company in respect of his shares.

23 Payment of Dividend

- (1) Any dividend payable in cash may be paid by cheque or warrant sent by post to the registered address of the shareholder or, in the case of joint holders to that one who is first named on the register of members, or to such person and to such address as the holder or joint holders may in writing direct.
- (2) Every such cheque shall be made payable to the order of the person to whom it is sent.
- (3) Anyone of two or more joint holders may give effectual receipts for any dividends.
- (4) Every dividend payment shall be accompanied by a statement showing the gross amount of the dividend, and any tax deducted or deemed to be deducted therefrom.
- (5) No dividend shall bear interest against the company.

24 Non cash dividends and bonus shares

The company, upon the recommendation of the directors may exercise the powers conferred by article 20 —

- (a) to direct that payment of a dividend shall be wholly or partly by distribution of fully paid up shares in another corporation;
- (b) to resolve to make a capitalisation issue of shares; or
- (c) to issue shares by way of bonus,

and the directors shall do all acts and things required to give effect to the direction or resolution.

25 Officers and agents

- (1) The directors may from time to time appoint officers and agents and may appoint any corporation, firm or body of persons, whether nominated directly or indirectly, by the directors, to be the attorneys-at-law of the company for such purposes and with such powers, authorities and discretions, not exceeding those vested in or exercisable by the directors under these by-laws, and for such period and subject to such conditions as they may think fit.
- (2) Any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors

may think fit and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

26 Notices

- (1) A notice may be given by the company to any member, shareholder or debenture holder either personally or by sending it by post to him or to his registered address, or, if he has no registered address within Tuvalu, the address (if any) within Tuvalu supplied by him to the company for the giving of notice to him; where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre-paying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 24 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.
- (2) A notice may be given by the company to the joint holders of a share or debenture by giving the notice to the joint holder first named in the register of members or debenture holders in respect of the share or debenture.
- (3) A notice may be given by the company to the persons entitled to a share or debenture in consequence of the death or bankruptcy of a member or debenture holder by sending it through the post in a prepaid letter addressed to them by name, or by the title of the representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address (if any) within Tuvalu supplied for the purpose by the persons claiming to be so entitled, or until such an address has been so supplied by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.
- (4) Notice of every general meeting shall be given in any manner so authorised to —
 - (a) every member except those members who, having no registered address within Tuvalu, have not supplied to the company an address within Tuvalu for the giving of notices to them;
 - (b) every person upon whom the ownership of a share devolves by reason of his being a legal personal representative or a trustee in bankruptcy of a member, where a member but for his death or bankruptcy would be entitled to receive notice of the meetings; and
 - (c) the auditor for the time being of the company, and no other person shall be entitled to receive notices of general meetings.

27 Winding up

- (1) If the company is wound up, the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Act, divide

amongst the members in specie or kind the whole or any part of the assets of the company (whether they consist of property of the same kind or not) and may, for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members.

- (2) The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the members or shareholders as the liquidator with the like sanction thinks fit.
- (3) Notwithstanding anything in this paragraph, no member or shareholder shall be compelled to accept any shares or other securities on which there is any liability.

28 Indemnity

Every director, managing director, agent, auditor, secretary and other officer for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgement is given in his favour, or in which he is acquitted, or in connection with any application under Section 155 of the Act in which relief is granted to him by the Court.

29 Interpretation

- (1) In these Articles, unless the context otherwise requires —
 - “**the act**” means the Companies Act;
 - “**the seal**” means the common seal of the company.
- (2) In these Articles, unless the context otherwise requires —
 - (a) words or expressions shall have the same meaning as in the Act;
 - (b) references to Sections of the Act shall mean those Sections as modified or re-enacted from time to time.

PART II - ARTICLES FOR PROPRIETARY COMPANY

1 Application of Part I

The Articles set out in Part I of the Second Schedule to the Companies Act, 1991, shall be deemed to be incorporated with these Articles and shall apply to the company.

2 Duty of members

It shall be the duty of members of the company and all persons claiming under them not to do or abstain from doing any act whereby the company may cease to be a proprietary company (except by voting for the conversion of the company into a public company), and if for any reason other than such a conversion, the company ceases to be a proprietary company, every member and all persons claiming under him shall do all acts in their power to enable the company to become a proprietary company again.

THIRD SCHEDULE

(Sec. 11)

PART I - AMENDMENT OF MEMORANDUM OF COMPANY**1 Amendment by special resolution**

Subject to this Part, a company may by special resolution amend its Memorandum —

- (a) to change its name;
- (b) to add, change or remove any restriction upon the capacity or powers of the company;
- (c) to add, change or remove any provision that is required under section 20 to be included in the Memorandum of a proprietary company;
- (d) to add, change or remove any matter permitted but not required to be included in the Memorandum; or
- (e) to alter its share capital as provided in section 67, or to reduce its share capital as provided in section 70.

2 Limitation

This Part is subject to section 205(2)(a).

3 Certain provision may not be amended

The provision included in the articles of incorporation of a company pursuant to section 8(1)(b) may not be amended.

4 Meetings to pass resolutions

- (1) Notice of a meeting called to pass the special resolution or, as the case may be, the ordinary resolution to amend the Memorandum of a company shall be given to all shareholders and debenture holders of the company and to the trustee of any debenture trust deed covering debentures issued by the company in like manner as it is given to members of the company.
- (2) A notice referred to in sub-paragraph (1) shall set out the terms of the proposed amendment.

5 Proposal for amendment

A proposal for an amendment of the Memorandum of a company may be made by the directors of the company or a shareholder of the company.

6 Amendment affecting classes of shares

- (1) No amendment of a kind referred to in section 67 shall be made in the Memorandum of a company unless not earlier than one month before the alteration is made, a meeting of the holders of shares of the class in question is held and a resolution approving the alteration is passed at the meeting by a majority comprising at least three-quarters of the votes cast.
- (2) The provisions of this Act and the Articles of the company concerned relating to general meetings apply to a meeting held pursuant to sub-paragraph (1), except that shareholders of the class in question who are not members of the company shall be deemed to be members for the purpose of the meeting, and the quorum for such a meeting shall be one, or more than one, person present in person or by proxy, holding at least three-quarters of the issued shares of the class in question.
- (3) If the Articles of the company concerned provide for postal voting at general meetings, postal votes may be given at a meeting held under this paragraph.
- (4) This paragraph does not apply to —
 - (a) a class of shares none of which has been issued; or
 - (b) a class of shares all of which have either been transferred to or redeemed by the company, or are held by the company or by a nominee for it, and none of which has been re-issued.

7 Revocation of amendment

When authorised in a resolution effecting an amendment of the Memorandum of a company, the directors of the company may, without further approval, revoke the resolution before it is acted upon.

8 Time when amendment takes effect

- (1) Subject to this paragraph, an amendment of the Memorandum of a company does not take effect until the expiration of one month after it is made.
- (2) Subject to sub-paragraph (3), sub-paragraph (1) does not apply to an amendment of the Memorandum of a company to amend its name.
- (3) Where a company amends its Memorandum so as to enable it to convert to a public company or, as the case may be, a proprietary company, any amendment necessary for that purpose does not have effect unless and until

the Registrar re-issues pursuant to section 22(1) the certificate of incorporation relating to the company.

9 Amendment not to affect any cause of action, etc.

- (1) No amendment of the articles of incorporation of a company affects an existing cause of action or claim, or liability to prosecution in favour of or against the company or its directors or officers, or any civil or criminal action or proceedings to which the company is, or its directors or officers are, a party.
- (2) Where, but for this paragraph, an amendment of the Memorandum of a company —
 - (a) would require a member of the company to take or subscribe for more shares than the number held by him at the date on which the amendment is made; or
 - (b) would in any way increase his liability as at that date to contribute to the share capital of, or otherwise to pay money, to the company,the member is not bound by the amendment unless, either before or after the amendment is made, he agrees to be bound by it.
- (3) Sub-paragraph (1) is in addition to and not in substitution for section 17.

PART II - AMENDMENT OF ARTICLES

10 Amendment of by-laws by directors

The directors of a company may, subject to this Part and the Memorandum of the company, amend the Articles of the company by altering or adding to them.

11 Amendment of Articles subject to this paragraph

- (1) An amendment of the Articles of a company does not have effect unless the requirements of this paragraph are satisfied.
- (2) An amendment of the Articles of a company does not have effect —
 - (a) until the expiration of one month after it is made; and
 - (b) until it is approved by ordinary resolution at a meeting of the company.

12 Effect of amendment

- (1) An amendment of the Articles of a company that has effect is, subject to this Act, as valid as if originally contained in the Articles and is subject in like manner to amendment.

- (2) Paragraph 9 applies to an amendment of the Articles of a company as it applies to an amendment of the Memorandum of a company.

FOURTH SCHEDULE**STATEMENT IN LIEU OF PROSPECTUS (SEC. 52)****PART I****Statement in Lieu of Prospectus Lodged For Registration by***(Insert the name of the company.)*

The Share Capital of the company.	Shares
Divided into	Shares
Amount (if any) of above capital which consists of redeemable shares.	Shares
The date on or before which these shares are, or are liable, to be redeemed.	
Names, descriptions and addresses of directors or proposed directors.	
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the right in respect of capital and dividend attached to the several classes of shares, respectively.	
Number of Shares and debentures issued within the two years preceding the date of this statement or proposed or agreed to be issued otherwise than in cash.	1. Shares 2. Debentures
The consideration for the issue or intended issue of those shares and debentures.	3. Consideration
Number and description of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.	1. Shares and debentures
Period during which option is exercisable.	2. Until
Minimum price to be paid for shares or debentures subscribed for or acquired under option.	3. \$

Consideration for option or right to option.	4. Consideration
Persons to whom option or right to option was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.	5. Names and addresses:
Names and addresses of vendors of property purchased or acquired, or acquired by the company except where the contract for its purchase or acquisition was entered into in the ordinary course of the business intended to be carried on by the company or the amount of the purchase money is not material.	
Amount (in cash, shares, or debentures) payable to each separate vendor.	Total purchase price \$
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Cash \$ Shares \$ Debentures \$ Goodwill \$
Short particulars of any transaction relating to any such property which was compiled within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director, or proposed director of the company had any interest direct or indirect.	
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or	Amount paid: \$ Amount payable: \$
Rate of the Commission	Per cent
Amount or rate of brokerage	
The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.	
Amount or estimated amount of preliminary expenses.	\$
By whom those expenses have been paid or are payable	

Amount paid or intended to be paid to any promoter.	Name of promoter: Amount: \$
Consideration for the payment.	Consideration:
Any other benefit given or intended to be given to any promoter.	Name of promoter Nature and value of benefit:
Consideration for giving of benefit.	Consideration:
Dates of, parties to, and general nature of every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the delivery of this statement).	
Time and place at which the contracts or copies thereof or (1) in the case of a contract not reduced into writing a memorandum giving full particulars thereof, and (2) in the case of a contract wholly or partly in a foreign language, a copy of a translation in English or embodying a translation in English or embodying a translation in English of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation may be inspected.	
Names and addresses of the auditors of the company (if any).	
Full particulars of the nature and extent of the interest of every director, and of every expert, in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director or expert consists in being a partner in a firm, the nature and extent of the interest of the firm with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person (in the case of a director) either to induce him to become, or to qualify him as, a director, or otherwise for service rendered by him or by the firm in connection with the promotion or formation of the company or (in the case of an expert) for services rendered by him or the firm in connection with the promotion or formation of the company.	

And also, in the case of a statement to be lodged by a proprietary company on becoming a public company, the following items:	
Rates of dividends (if any) paid by the company in respect of each class of shares in the company in each of the five financial years immediately preceding the date of this statement or since the incorporation of the company, whichever period is the shorter.	
Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.	

PART II

Reports to be Set Out

1. Where it is proposed to acquire a business, a report by accountants (who shall be named in the statement) with respect to —
 - (a) the profits or losses of the business in respect of each of the five financial years immediately preceding the lodging of the statement with the Registrar; and
 - (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.
2.
 - (1) Where it is proposed to acquire shares in a corporation which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report by accountants (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other corporation in accordance with subparagraph (2) or (3), as the case requires, indicating how the profits or losses of the other corporation dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.
 - (2) If the other corporation has no subsidiaries, the report referred to in subparagraph (1) shall —
 - (a) So far as regards profits and losses, deal with the profits or losses of the other corporation in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar; and

- (b) so far as regards assets and liabilities, deal with the assets and liabilities of the other corporation at the last date to which the accounts of the corporation were made up.
- (3) If the other corporation has subsidiaries, the report referred to in subparagraph (1) shall —
- (a) so far as regards profits and losses, deal separately with the other corporation's profits or losses as provided by subparagraph (2), and in addition deal as aforesaid either —
- (i) as a whole with the combined profits or losses of its subsidiaries;
or
- (ii) individually with the profits or losses of each subsidiary,
or instead of dealing separately with the other corporation's profits or losses, deal as aforesaid as a whole with the profits or losses of the other corporation and with the combined profits or losses of its subsidiaries; and
- (b) so far as regards assets and liabilities, deal separately with the other corporation's assets and liabilities as provided in subparagraph (2), and, in addition, deal as aforesaid either —
- (i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other corporation's assets and liabilities; or
- (ii) individually with the assets and liabilities of each subsidiary,

and shall indicate as respects the profits or losses and the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

NOTE: Where a company is not required to furnish any of the reports referred to in this Part, a statement to that effect giving the reasons therefor should be furnished.

Signatures of the persons above named as the directors or proposed directors or of their agents authorised in writing)

Date:

PART III

Provisions Applying to Parts I and II of this Schedule

3. In this Schedule the expression "vendor" includes any person who is a vendor for the purpose of the Fourth Schedule, and the expression "financial year" has the meaning assigned to it in Part III of that Schedule.
4. If in the case of a business which has been carried on or of a corporation which has been carrying on business, for less than five years, the accounts of the business or corporation have only been made up in respect of four years,

three years, two years or one year, Part II of this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

5. Any report required by Part II of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

FIFTH SCHEDULE

(Sec.237)

FEES

Registration of a Company	\$ 100
Change of name of a Company	\$ 30
Conversion to proprietary or public company	\$ 50
Filing of prospectus or statement in lieu of prospectus	\$ 50
Lodging any instrument or document or statement or notice or resolution or report	\$ 10
Registration of any order	\$ 20
Registration of a charge or enforcement of security	\$ 25
Lodging of annual return	\$ 20
Registration of an external company	\$ 75
Lodging of annual accounts of external company	\$ 25

ENDNOTES

¹ Act 13 of 1991

Amended by Act 5 of 1996, commencement 1 September 1996 (LN 8/1996)

² LN 6/1992

³ Inserted by Act 5 of 1996

⁴ Cap 40.16

⁵ Amended by Act 5 of 1996 (repealed subsections (2), (3) and (4))