REPUBLIC OF VANUATU

CONSOLIDATION OF THE FRENCH AND ENGLISH TEXTS OF THE LAWS OF VANUATU ACT [CAP 295]

Approval of the English Text of the Companies Consolidation Edition 2025 Order No. 189 of 2025

In exercise of the powers conferred on me by subsection 9(1) of the Consolidation of the French and English Texts of the Laws of Vanuatu Act [CAP 295], I, the Honourable JOB SAM ANDY, Minister of Youth, Justice and Community Services, make the following Order:

1 Approval of the English Text of the Companies Consolidation Edition 2025

The English Text of the Companies Consolidation Edition 2025 is approved.

2 Appointed day

The appointed day for the coming into operation of the Companies Consolidation Edition 2025 is the day on which this Order is made.

3 Commencement

This Order commences on the day on which it is made.

Made at Port Vila this 27th **day of** August **, 2025.**

REPUBLIC OF VANUATU Ministry of Justice & Community Service MINISTER Ministère de la Justice et des Services du Communautaire REPUBLIQUE DE VANUATU

Honourable JOB SAM ANDY
Minister of Youth, Justice and Community Services

Commencement: 31 August 2015

COMPANIES ACT NO. 25 OF 2012

Act 25 of 2012
Act 6 of 2016
Act 32 of 2017
Act 27 of 2018
Act 24 of 2024

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COMPANIES ACT NO. 25 OF 2012

An Act to provide for the formation, registration and governance of companies in the Republic of Vanuatu

PART 1 – PRELIMINARY PROVISIONS

1. Interpretation

(1) In this Act, unless the context otherwise requires:

"accounting period", in relation to a company, means a year ending on a balance date of the company and, if as a result of the date of the registration of the company or a change of the balance date of the company, the period ending on that date is longer or shorter than a year, that longer or shorter period is an accounting period;

"allot" includes but is not limited to sell, issue, assign, and convey; and allotment has a corresponding meaning;

"arrangement" includes a reorganisation of the share capital of a 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;

"assignee" means the person to whom the benefit of a registered charge is assigned;

"balance date", in relation to a company, means the close of 31 March or of any other date that the directors of the company adopt as the company's balance date in accordance with any regulations made under this Act;

"beneficial owners" means a natural person who is the ultimate owner or ultimate controller of a company;

"board" and "board of directors", in relation to a company, means:

(a) directors of the company who number not less than the required quorum acting together as a board of directors; or

(b) if the company has only 1 director, that director;

"broadcasting" means any transmission of programmes, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus; but does not include any such transmission of programmes:

(a) made on the demand of a particular person for reception only by that person; or

(b) made solely for performance or display in a public place;

"company" means a company registered or reregistered under this Act;

"company limited by guarantee" means a company limited by guarantee referred to under section 4A;

"compromise" means a compromise between a company and its creditors, including a compromise:

(a) cancelling all or part of a debt of the company; or

(b) varying the rights of its creditors or the terms of a debt; or

(c) relating to an alteration of a company's rules that affects the likelihood of the company being able to pay a debt;

"court" means the Supreme Court of Vanuatu;

"court officer" means a constable or the Registrar or other officer of the Court;

"creditor":

(a) in Division 1 of Part 2 of the Companies (Insolvency and Receiverships) Act No. 3 of 2013 (compromises with creditors) includes:

(i) a person who, in a liquidation, would be entitled to claim that a debt is owing to that person by the company; and

(ii) a secured creditor;

(b) in Division 2 of Part 2 of the Companies (Insolvency and Receiverships) Act No. 3 of 2013 (liquidations):

(i) means a person who, in a liquidation, would be entitled to claim in accordance with Part 2 of Schedule 7 of the Companies (Insolvency and Receiverships) Act No. 3 of 2013 that a debt is owing to that person by the company; and

(ii) includes a secured creditor only:

(A) for the purposes of sections 18, 22, and 55 and clause 5 of Schedule 4 of the Companies (Insolvency and Receiverships) Act No. 3 of 2013; or

(B) to the extent of the amount of any debt owing to the secured creditor in respect of which the secured creditor claims under Part 2 of Schedule 7 of the Companies (Insolvency and Receiverships) Act No. 3 of 2013 as an unsecured creditor;

"debt security":

(a) means any interest in or right to be paid money that is, or is to be, deposited with, lent to, or otherwise owing by, any person (whether or not the interest or right is secured by a charge over any property); and

(b) includes:

(i) a debenture, debenture stock, bond, note, certificate of deposit, and convertible note; and

(ii) an interest or right that is declared by regulations to be a debt security for the purposes of this Act; and

(iii) a renewal or variation of the terms or conditions of any interest or right or of a security referred to in subparagraph (i) or (ii); but

(c) does not include any interest or right or a security referred to in paragraph (b)(i) or (iii) that is declared by regulations not to be a debt security for the purposes of this Act;

"director", in relation to a company:

(a) includes a person occupying the position of director of the company by whatever name called; but

(b) does not include a receiver;

"directors" has the same meaning as the definitions of board and board of directors;

"distribute" includes:

(a) make available, publish, and circulate; and

(b) communicate by letter, newspaper, broadcasting, sound recording, television, cinematographic film, video, or any form of electronic or other means of communication;

"distribution", in relation to a distribution by a company to a shareholder, means:

(a) the direct or indirect transfer of money or property, other than the company's own shares, to or for the benefit of the shareholder; or

(b) the incurring of a debt to or for the benefit of the shareholder,
in relation to shares held by that shareholder, whether by means of a dividend, a purchase, redemption or other acquisition of shares, a distribution of indebtedness, or some other means;

"document":

(a) means information in written or electronic form, or both; and

(b) includes anything from which information may be reproduced (with or without the aid of anything else);

"domestic regulatory authority" means a body or agency established by or under a law of Vanuatu that:

(a) grants or issues under that law or any other law licences, permits, certificates, registrations or other equivalent permissions; and

(b) performs any other regulatory function related to a matter referred to in paragraph (a), including developing, monitoring or enforcing compliance with standards or obligations prescribed by or under that law or any other law;

"electronic" includes electrical, digital, magnetic, optical, electromagnetic, biometric, and photonic;

"essential service" means:

(a) the retail supply of electricity;

(b) the retail supply of fuel and other similar consumable items necessary for the generation of electricity;

(c) the retail supply of gas;

(d) the supply of water;

(e) telecommunications services;

"equity security":

(a) means any interest in or right to a share in, or in the share capital of, a company; and

(b) includes:

(i) a preference share, and company stock; and

(ii) a security that is declared by regulations to be an equity security for the purposes of this Act; and

(iii) a renewal or variation of the terms or conditions of any interest or right or a security referred to in subparagraph (i) or (ii); but

(c) does not include any interest or right or a security referred to in paragraph (b) (i) or (iii) that is declared by regulations not to be an equity security for the purposes of this Act;

"Financial Intelligence Unit" means the Financial Intelligence Unit established under section 4 of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014;

"financial institution" has the same meaning as in section 1 of the Financial Institutions Act [CAP 254];

"financial statements", in relation to a company and a balance date, means:

(a) a statement of financial position for the company as at the balance date; and

(b) in the case of:

(i) a company trading for profit, a statement of financial performance for the company in relation to the accounting period ending at the balance date; and

(ii) a company not trading for profit, an income and expenditure statement for the company in relation to the accounting period ending at the balance date; and

(c) if required by regulations made under this Act, a statement of cash flows for the company in relation to the accounting period ending on the balance date; and

(d) any other financial statements in relation to the company or any group of companies of which it is the holding company as may be required by regulations made under this Act; and

(e) any notes or documents giving information relating to the statement of financial position and other statements

"foreign government agency" means:

(a) a body or agency established by or under a law of a foreign country; or

(b) an arm, ministry, department or instrumentality of the government of a foreign country; or

(c) a body or agency of a foreign country set up by administrative act for governmental purposes;

"foreign serious offence" means:

(a) an offence against a law of another country that, if the relevant act or omission had occurred in Vanuatu, would be an offence against the laws of Vanuatu, for which the maximum penalty is imprisonment for at least 12 months; or

(b) an offence prescribed by the Regulations;

"foreign tax evasion offence" means conduct that:

(a) amounts to an offence against a law of a foreign country; and

(b) relates to a breach of a duty relating to a tax imposed under the law of the foreign country (whether or not that tax is imposed under a law of Vanuatu); and

(c) would be regarded by the courts of Vanuatu as an offence of fraudulent evasion of tax for which the maximum penalty is imprisonment for at least 12 months, had the conduct occurred in Vanuatu;

"Government" has the same meaning as in the Interpretation Act [CAP 132];

"information" includes information (whether in its original form or otherwise) that is in the form of a document, a signature, a seal, data, text, images, sound, or speech;

"issuer" means in relation to an equity security or a debt security, the person on whose behalf any money paid in consideration of the allotment of the security is received;

"law enforcement agency" means:

(a) the Vanuatu Police Force; or

(b) the Office of the Public Prosecutor; or

(c) the department responsible for customs and inland revenue; or

(d) the department responsible for immigration; or

(e) such other persons prescribed for the purposes of this definition;

“liquidator” means a liquidator appointed under Division 2 of Part 2 of the Companies (Insolvency and Receiverships) Act 2013;

“major transaction” has the meaning set out in subsection 49(2);

“model rules” means the model rules of incorporation set out in Schedules 1, 2, 3 or, 4;

“money” includes money’s worth;

“Minister” means the Minister responsible for the administration of this Act;

“offer” includes an invitation, and any proposal or invitation to make an offer, and to offer has a corresponding meaning;

“onerous property” means:

(a) an unprofitable contract; or

(b) property of the company that is unsaleable, or not readily saleable, or which may give rise to a liability to pay money or perform an onerous act;

“overseas company” means a corporation that is incorporated outside Vanuatu, whether or not it is registered under Part 10;

“person” includes a corporation sole, a company or other body corporate (whether incorporated in Vanuatu or elsewhere), an unincorporated body of persons, a public body, and a Government department;

“preferential claim” means a claim referred to in Part 3 of Schedule 7 of the Companies (Insolvency and Receiverships) Act 2013 (except clause 15 of that Schedule);

“prescribed form” means a form prescribed by regulations or, if no form is prescribed by regulations, a form approved by the Registrar;

“private company” means a company that is registered as a private company on the Vanuatu register;

“property” includes:

(a) real and personal property; and

(b) an estate or interest in real or personal property; and

(c) a debt; and

(d) any thing in action; and

(e) any other rights, interests, and claims of any kind in relation to property;

“proponent” means a person who proposed a compromise in accordance with Division 1 of Part 2 of the Companies (Insolvency and Receiverships) Act No. 3 of 2013;

“public company” means a company that is registered as a public company on the Vanuatu register;

“public notice” means where, pursuant to this Act, public notice must be given of any matter affecting a company, that notice must be given by publishing a notice of the matter:

(a) in at least one issue of the Gazette; and

(b) on an Internet site maintained by or on behalf of the Registrar for a period of not less than 20 working days.

"receiver" means a receiver, or a manager, or a receiver and manager in respect of any property appointed:

(a) by or under any deed or agreement; or

(b) by the Court in the exercise of a power conferred on the Court or in the exercise of its inherent jurisdiction, whether or not the person appointed is empowered to sell any of the property in receivership, but does not include a mortgagee who, whether personally or through an agent, exercises a power:

(i) to receive income from mortgaged property; or

(ii) to enter into possession or assume control of mortgaged property; or

(iii) to sell or otherwise alienate mortgaged property; or

(c) an agent of any such mortgagee;

"registered document" means a document:

(a) that forms part of any of the registers referred to in section 188

(b) details of which have been entered in any device or facility referred to in subsection 188(2);

"registered office", in relation to a company, has the meaning set out in section 17;

"Registrar" means the Registrar of Companies appointed under section 170;

"Sanctions Secretariat" means the Sanctions Secretariat established under section 17 of the United Nations Financial Sanctions Act No. 6 of 2017;

"shareholder" means a person whose name is entered on the share register of a company as the holder of 1 or more shares in the company;

"signature" means either the name of a person affixed with his or her own hand on a document, or, in the case of a document submitted to the registry via electronic means, the name of the person affixed to the document by a method deemed acceptable by the Registrar;

"solvency test" means the solvency test referred to in section 5 of this Act;

"special resolution" means a resolution:

(a) approved in accordance with section 51; or

(b) approved at a meeting of shareholders called to consider that resolution on not less than 10 working days' notice:

(i) by a majority of 75% (or such higher majority as may be specified in the rules) of the votes of shareholders entitled to vote and voting on the question; and

(ii) in accordance with any additional requirements specified in the rules in respect of such resolutions;

"subscribe" includes purchase and contribute to, whether by way of cash or otherwise; and "subscription" and "subscriber" have corresponding meanings;

"subscriber" in relation to an offer of securities, means a person who subscribes for the securities;

"telecommunications services":

(a) means the conveyance by electromagnetic means from 1 device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction,

information, or intelligence of any nature, whether for the information of any person using the device or not; but

(b) does not include any conveyance that constitutes broadcasting;

"Vanuatu register" means the register kept by the Registrar under section 188;

"working day" means a day of the week other than:

(a) Saturday and Sunday; and

(b) a day that is defined as, or declared to be, a public holiday under the Public Holidays Act [CAP 114];

"writing" includes representing or reproducing words, figures, or symbols:

(a) in a visible and tangible form by any means and in any medium;

(b) in a visible form in any medium by electronic means that enables them to be stored in permanent form and be retrieved and read.

(2) For the purpose of the definition of "beneficial owner", ultimate owner and ultimate controller, includes circumstances where ownership or control is exercised:

(a) through a chain of ownership; or

(b) by means of indirect control that may not have legal or equitable force, or be based on legal or equitable rights.

2. Meaning of subsidiary

(1) For the purposes of this Act, a company is a subsidiary of another company if, but only if:

(a) that other company:

(i) controls the composition of the board of the company; or

(ii) is in a position to exercise, or control the exercise of, more than one-half the maximum number of votes that may be exercised at a meeting of the company; or

(iii) holds more than one-half of the issued shares of the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or

(iv) is entitled to receive more than one-half of every dividend paid on shares issued by the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or

(b) the company is a subsidiary of a company that is that other company's subsidiary.

(2) In subsection (1), company includes a corporation.

3. Meaning of holding company

(1) For the purposes of this Act, a company is another company's holding company if that other company is its subsidiary.

(2) In subsection (1), company includes a corporation.

4. Meaning of related company

(1) For the purposes of this Act, a company is related to another company if:

(a) the other company is its holding company or subsidiary; or

(b) more than half of the issued shares of the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital, is held by the other company and companies related to that other company (whether directly or indirectly, but other than in a fiduciary capacity); or

(c) more than half of the issued shares, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital, of each of them is held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or

(d) the businesses of the companies have been so carried on that the separate business of each company, or a substantial part of it, is not readily identifiable; or

(e) there is another company to which both companies are related;

and related company has a corresponding meaning.

(2) In subsection (1), company includes a corporation.

4A. Meaning of a company limited by guarantee

A company limited by guarantee may be:

(a) a company having the liability of its members limited by its memorandum of association to the amount, if any, unpaid on the shares respectively held by the members; or

(b) a company having the liability of its members limited by its memorandum of association to such amount as the members may respectively undertake to contribute to the assets of the company in the event of it being wound up.

5. Solvency test

(1) For the purposes of this Act, a company satisfies the solvency test if:

(a) the company is able to pay its debts as they become due in the normal course of business; and

(b) the value of the company's assets is not less than the value of its liabilities.

(2) A person required to consider whether a company satisfies the solvency test in subsection (1) may have regard to:

(a) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; and

(b) valuations of assets or liabilities; and

(c) such other information in relation to the financial position of the company as is reasonable in all the circumstances.

(3) If the rules of a company provide for a solvency margin that must be maintained by the company, paragraph (1)(b) applies in relation to that company as if that solvency margin were a liability of the company, except where the surplus assets of the company are being distributed:

(a) in a liquidation; or

(b) before the removal of the company from the Vanuatu register.

PART 2 – INCORPORATING NEW COMPANIES

Division 1 – Method of Incorporation

6. Application for registration

(1) Any person may, either alone or together with another person, apply for registration of a company under this Act.

(2) An application for registration of a company must be made to the Registrar in the prescribed form.

(3) An application for registration of a company must specify:

(a) the name of the company, which must comply with section 10; and

(b) whether the company is a private company, a public company, a community company or a company limited by guarantee; and

(c) whether the rules of the company differ from the model rules set out in Schedule 1 (in the case of a private company) or Schedule 2 (in the case of a single shareholder company) or Schedule 3 (in the case of a public company) or Schedule 4 (in the case of a community company) or the model rules prescribed under subsection 9(6C)(in the case of a company limited by guarantee); and

(d) the full name, physical address and postal address of each director of the proposed company; and

(e) whether each person named as a director of the company has consented to act as a director of the company; and

(f) where a company is appointed as a director, the full name, physical address and postal address of each director; and

(g) the full name of every shareholder of the proposed company, and the number of shares to be issued to every shareholder; and

(ga) details of the nominators of nominee shareholders and nominee directors; and

(gb) details of the beneficial owners of the company; and

(h) the registered office of the proposed company; and

(i) the postal address of the company, which may be the registered office or any other postal address; and

(j) in the case of a community company, a statement describing the community interest.

(4) An application for registration must be accompanied by:

(a) a copy of the company rules if they differ from the model rules; and

(b) the prescribed fee.

7. Certificate of incorporation and register of incorporation

(1) Subject to subsection (2), as soon as the Registrar receives an application for registration that complies with section 6, the Registrar must:

(a) enter the company on the register; and

(b) issue a certificate of incorporation in respect of the company.

(2) In addition, the Registrar must grant a certificate of incorporation if he or she is satisfied:

(a) of the source of funds used to pay the capital for the company; and

(b) that the shareholder and beneficial owner is a fit and proper person.

(3) In assessing whether or not a key person satisfies the fit and proper criteria, the Registrar must consider the following matters:

(a) whether the person has been convicted of an offence or is subject to any criminal proceedings; and

(b) whether the person is listed on a United Nations Financial Sanctions list, or a financial sanctions list under the United Nations Financial Sanctions Act No. 6 of 2017 or a financial sanctions list under a law of any jurisdiction; and

(c) any other fit and proper criteria prescribed by the Regulations.

(4) For the purpose of this section, "key person" means a director, a beneficial owner or a shareholder.

7A. Registrar may require certain information or documents about beneficial owners or members

(1) Subject to subsection (2), the Registrar may, by notice in writing to a company, require the company to provide the Registrar with information or documents, or both, specified in the notice within the period set out in the notice.

(2) The information or documents must relate to:

(a) the beneficial owners of the company; and

(b) the details of the members of the company as contained in its Register of members; and

(c) the audited accounting records and the financial statements of the company.

(3) If the company:

(a) refuses or fails to give the Registrar the information or documents required by the Registrar; or

(b) knowingly or recklessly gives the Registrar information or documents that are false or misleading,

the company commits an offence punishable upon conviction to a fine not exceeding VT75 million.

(4) This section does not limit section 180A.

8. Effect of incorporation

(1) A certificate of incorporation of a company is conclusive evidence that:

(a) all the requirements of this Act as to incorporation have been complied with; and

(b) on and from the date of incorporation stated in the certificate, the company is incorporated under this Act.

(2) A company incorporated under this Act is a legal entity in its own right separate from its shareholders, and continues in existence until it is dissolved.

9. Registration as private company, public company or community company

(1) A company may be registered as a private company if:

(a) its rules prohibit it from offering its securities to the public; and

(b) its rules restrict the number of shareholders in the company to not more than 50; and

(c) it has not more than 50 shareholders.

(2) A company that is not registered as a private company or a community company is a public company.

(3) A public company may apply to the Registrar to be registered as a private company if:

(a) the company meets the requirements in subsection (1); and

(b) the application has been approved by shareholders by special resolution; and

(c) the company provides the Registrar with a copy of the company rules if they differ from the model rules.

(4) If a public company applies to the Registrar under subsection (3), the Registrar must:

(a) amend the registration of the company accordingly; and

(b) issue a new certificate of incorporation for the company in the prescribed form.

(5) A private company may apply to the Registrar to be registered as a public company, with the approval of shareholders by special resolution.

(6) A private company must apply to be registered as a public company if it ceases to meet the requirements in subsection (1).

(6A) A company may be registered as a company limited by guarantee if the liability of its members is limited to the amount each members undertake to contribute to the assets of the company at the time it is being wound up.

(6B) A company limited by guarantee must not be registered with shares and must not create or issue shares.

(6C) The model rules for a company limited by guarantee is to be prescribed by the Minister.

(7) The Registrar must register the company as a public company, and issue a new certificate of incorporation for the company in the prescribed form if:

(a) an application is made to the Registrar in accordance with subsections (5) or (6); or

(b) it comes to the Registrar's attention that a private company has ceased to satisfy the requirements of subsection (1); and

(c) the company provides the Registrar with a copy of the company rules if they differ from the model rules.

(8) A private company may be registered as a community company under this section where the company has as its principal objective the promotion of the community interest.

Division 2 – Names

10. Name of company

(1) The name of a company must end with the word "Limited" or "Ltd".

(2) If the company is a community company the name of the company must end with the words "Community Company Limited".

(3) The Registrar must not register a company with a name:

(a) that is identical or almost identical to the name of another company; or

(b) the use of which would contravene any enactment in relation to the use of names.

11. Change of name

(1) An application to change the name of a company must be:

(a) in the prescribed form; and

(b) signed by a director of the company; and

(c) accompanied by the prescribed fee.

(2) An application to change the name of a company is not an amendment of the rules of the company for the purposes of this Act.

(3) As soon as the Registrar receives a properly completed application under this section that complies with subsection (1) and with the requirements in section 10, the Registrar must:

(a) enter the new name of the company on the Vanuatu register; and

(b) issue an amended certificate of incorporation for the company recording the change of name of the company.

(4) A change of name of a company:

(a) takes effect from the date specified in the certificate issued under subsection (3); and

(b) does not affect rights or obligations of the company, or legal proceedings by or against the company.

(5) Legal proceedings that might have been continued or commenced against the company under its former name may be continued or commenced against it under its new name.

12. Direction to change name

(1) If the Registrar believes on reasonable grounds that a company has been registered under a name that contravenes section 10 at the time of registration, the Registrar may serve written notice on the company to change its name by a date specified in the notice that is not less than 20 working days after the date on which the notice is served.

(2) If the company does not change its name within the period specified in the notice, the Registrar may enter on the Vanuatu register:

(a) in the case of a private or public company, a new name for the company in the form “Number x Company Limited”; or

(b) in the case of a community company a new name for the company in the form “Number x Community Company Limited”,

where “x” is a unique number assigned to the company by the Registrar for this purpose.

(3) If the Registrar registers a new name under subsection (2):

(a) the Registrar must issue an amended certificate of incorporation for the company recording the new name of the company; and

(b) subsection 11(4) applies in relation to the registration of the new name as if the name of the company had been changed under section 11.

13. Use of company name

(1) A company must ensure that its name is clearly stated in:

(a) every written communication sent by, or on behalf of, the company; and

(b) every document issued or signed by, or on behalf of, the company that evidences or creates a legal obligation of the company.

(2) If:

(a) a document that evidences or creates a legal obligation of a company is issued or signed by or on behalf of the company; and

(b) the name of the company is not correctly stated in the document;

every person who issued or signed the document is liable to the same extent as the company if the company fails to discharge the obligation.

(3) Subsection (2) does not apply if:

(a) the person who issued or signed the document proves that the person in whose favour the obligation was incurred was aware at the time the document was issued or signed that the obligation was incurred by the company; or

(b) the Court is satisfied that it would not be just and equitable for the person who issued or signed the document to be so liable.

(4) If, within the period of 12 months immediately before a company gives public notice of any matter, the name of the company was changed, the company must ensure that the notice states:

(a) that the name of the company was changed in that period; and

(b) the former name or names of the company.

Division 3 – Company rules

14. Adoption and alteration of rules

(1) A company may adopt rules at the time of its incorporation by:

(a) in the case of model rules set out in Schedules 1, 2, 3, 4 or prescribed under subsection 9(6C) indicating in its application for incorporation that it wishes to adopt those model rules as its rules; or

(b) stating that a copy of the rules of the company, if they differ from the model rules, are held and are available for inspection at the company's registered office.

(2) Subject to any restrictions in its rules, a company may, by special resolution, adopt new rules or alter its rules.

(3) Within 10 working days of the adoption of new rules by a company, or the alteration of the rules of a company, as the case may be, the company must deliver a notice in the prescribed form to the Registrar for registration.

15. Model Rules

(1) The rules set out in Schedule 1 are the model rules of a private company.

(2) The rules set out in Schedule 1 are the model rules of a single shareholder company.

(3) The rules set out in Schedule 1 are the model rules of a public company.

(4) The rules set out in Schedule 1 are the model rules of a community company.

(5) The rules prescribed under subsection 9(6C) is a company limited by guarantee.

(6) Despite subsections (1), (2), (3), (4) and (5), a company may:

(a) adopts the model rules set out in any schedule or as prescribed by the Minster under subsection 9(6C); or

(b) adopts rules that exclude, or modify, or are inconsistent with, the model rules.

16. Contents and effect of rules

(1) The rules of a company may contain:

(a) matters contemplated by this Act for inclusion in the rules of a company:

(b) any other matters that the company wishes to include in its rules.

(2) Subject to subsection (3):

(a) the rules of a company have effect and may be enforced as if they constituted a contract:

(i) between the company and its shareholders; and

(ii) between the company and each director; and

(b) the shareholders and directors of a company have the rights, powers, duties, and obligations set out in the rules of the company.

(3) The rules of a company are of no effect to the extent that they are inconsistent with this Act.

Division 4 – Registered office and postal address

17. Registered office and postal address

(1) A company must always have a registered office and postal address in Vanuatu

(2) Subject to section 18,:

(a) the registered office of a company at a particular time is the place that is described as its registered office on the Vanuatu register at that time; and

(b) the postal address of a company at a particular time is the place that is described as its postal address on the Vanuatu register at that time.

(3) The description of the registered office of a company must indicate the location of the registered office in enough detail to enable the registered office to be readily identified for the purposes of this Act.

18. Change of registered office and postal address

(1) Subject to the company's rules and to subsection (3), the directors of a company may change the registered office and postal address of the company at any time.

(2) Notice in the prescribed form of the change must be given to the Registrar for registration.

(3) The change in the registered office or postal address, as the case may be, takes effect on the later of:

(a) the date that is 5 working days after the notice is received by the Registrar; or

(b) any date specified in the notice as the date on which the change is to be effective.

PART 3 – SHARES

Division 1 – General

19. Legal nature of shares

A share in a company is personal property.

20. No nominal value

(1) A share must not have a nominal or par value.

(2) Nothing in subsection (1) prevents the issue by a company of a redeemable share.

21. Minimum number of shares

A company must have at least 1 issued share.

22. Rights and powers attached to shares

(1) Subject to section 167 and the rules of the company and the terms on which it is issued, a share in a company confers on the holder:

(a) the right to 1 vote on a poll at a meeting of the company on any resolution, including any resolution to:

(i) appoint or remove a director or auditor;

(ii) adopt new rules;

(iii) alter the company's rules;

(iv) approve a major transaction;

(v) approve registration of a public company as a private company, or of a private company as a public company;

(vi) put the company into liquidation;

(vii) approve the transfer of registration of the company to another country;

(b) the right to an equal share in dividends paid by the company;

(c) the right to an equal share in the distribution of the surplus assets of the company in a liquidation.

(2) Subject to its rules, a company may issue different classes of shares.

(3) Without limiting subsection (2), shares in a company may:

(a) be redeemable; or

(b) confer preferential rights to distributions of capital or income; or

(c) confer special, limited, or conditional voting rights; or

(d) not confer voting rights.

23. Shares must not impose liabilities on holder

(1) A company must not issue a share that is partly paid, or that otherwise imposes any liability to make a payment to the company on its holder.

(2) Nothing in subsection (1):

(a) prevents a company from attaching conditions, limits, or restrictions to the rights and powers attached to the share; or

(b) prevents a company from issuing a share on credit terms that provide for a liability to make future payments to the company on the part of the person to whom it is first issued.

Division 2 – Issue of shares

24. Issue of initial shares

A company must immediately after the registration of the company, issue to any person named in the application for registration as a shareholder the number of shares specified in the application as being the number of shares to be issued to that person or those persons:

25. Issue of other shares

(1) A company may issue shares:

(a) in accordance with its rules; or

(b) with the approval of all shareholders under section 50.

(2) A company must deliver to the Registrar for registration, within 10 working days of the issue of any shares, a notice in the prescribed form of the issue of the shares by the company.

(3) If the rights attached to the shares are not set out in full in the rules, the notice must be accompanied by a document setting out the terms of issue of the shares.

(4) If a company fails to comply with subsection (2), the director of the company, or if the company has more than 1 director, each director is guilty of an offence punishable on conviction to a fine not exceeding VT25,000.

25A. Prohibition on issuing bearer shares and bearer share warrants

(1) Despite section 25, a company must not issue bearer shares or bearer share warrants.

(2) If a company contravenes subsection (1), the company is guilty of an offence punishable on conviction by a fine not exceeding VT 125 million.

26. Time of issue of shares

A share is issued when the name of the holder is entered on the share register.

Division 3 – Distributions—general

27. Distributions prohibited unless solvency test satisfied

Subject to Section 167 a company must not make a distribution to shareholders unless there are reasonable grounds for believing that, after that distribution is made, the company will satisfy the solvency test.

28. Recovery of improper distributions

(1) A distribution made to a shareholder in breach of sections 27, 29, or 30 may be recovered by the company from the shareholder unless:

(a) the shareholder received the distribution in good faith and without knowledge of the company's breach of sections 27, 29, or 30, as the case may be; and

(b) the shareholder has altered the shareholder's position in reliance on the validity of the distribution; and

(c) it would be unfair to require repayment in full or at all.

(2) If a distribution has been made in breach of section 27, any person who authorised the making of the distribution at a time when that person knew, or ought to have known, that the distribution did not comply with section 27 is liable to repay to the company so much of that distribution as is not reasonably recoverable from the recipients under subsection (1).

(3) If, in an action brought under this section, the Court is satisfied that the company could, by making a distribution of a lesser amount, have satisfied the requirements of section 27, the Court may permit a shareholder to retain, or excuse a person who

authorised the distribution from liability in respect of, an amount equal to the value of any distribution that could properly have been made.

Division 4 – Dividends

29. Dividends

(1) Subject to sections 27 and 167 and to subsection (2), a company may pay a dividend to shareholders if, and only if, that dividend is authorised:

(a) by all shareholders under section 50; or

(b) if the company's rules so provide, by the directors.

(2) A dividend authorised by the directors must comply with any conditions or restrictions set out in the rules.

(3) Subject to its rules and to the terms of issue of any share, a company must not pay a dividend:

(a) in respect of some, but not all, shares; or

(b) that is of a greater value per share in respect of some shares than of others.

(4) Subsection (3) does not apply if the payment of that dividend in that manner is approved by all shareholders under section 50.

(5) In this section, dividend means any distribution other than:

(a) a distribution by way of repurchase or redemption of shares; or

(b) a distribution of the surplus assets of the company in a liquidation.

Division 5 – Acquisition of own shares

30. Company may acquire its own shares

(1) A company may acquire its own shares only:

(a) in accordance with subsection (2) or section 54; and

(b) subject to section 27.

(2) A company may acquire its own shares by agreement with a shareholder:

(a) in accordance with its rules; or

(b) with the approval of all shareholders under section 50.

(3) A company must deliver to the Registrar for registration, within 10 working days of the acquisition of any shares, a notice in the prescribed form of the acquisition of the shares by the company.

(4) The notice required under subsection (3) must also be sent to each shareholder within 20 working days of the acquisition of the shares if an acquisition of shares by a company does not result from an offer made to all shareholders that:

(a) would, if accepted, leave unaffected relative voting and distribution rights; and

(b) affords a reasonable time for acceptance of the offer.

(5) If a company fails to comply with subsections (3) or (4), the director, or if the company has more than 1 director, each director is guilty of an offence punishable on conviction to a fine not exceeding VT25,000.

31. Cancellation of shares acquired by company

(1) If a company acquires its own shares, those shares are deemed to be cancelled immediately on acquisition unless the rules of the company expressly provide otherwise.

(2) If a company acquires its own shares and the rules provide that those shares are not cancelled on acquisition, the rights attached to those shares may not be exercised by or against the company at any time at which it would, apart from this section, be entitled to:

(a) exercise those rights; or

(b) give directions to the holder of those shares as to the manner in which any of those rights should be exercised.

(3) For the purposes of this section, a company acquires a share at the time at which it would, apart from this section, become entitled to:

(a) exercise the rights attached to that share; or

(b) give directions to the holder of that share as to the manner in which any rights attached to that share should be exercised.

32. Enforcement of contract to repurchase shares

(1) A contract with a company providing for the acquisition by the company of its shares is specifically enforceable against the company except to the extent that performance would breach section 27.

(2) The company has the burden of proving that performance of the contract would breach section 27.

(3) Until the company has fully performed a contract referred to in subsection (1), the other party to the contract retains the status of a claimant entitled to be paid as soon as the company is lawfully able to do so or, before the dissolution of the company, is to be ranked subordinate to the rights of creditors but in priority to the other shareholders.

Division 6 – Redeemable shares

33. Redeemable shares

(1) For the purposes of this Act, a share is redeemable if the rules or the terms of issue of the share make provision for the redemption of that share by the company:

(a) at the option of the company; or

(b) at the option of the holder of the share; or

(c) on a date specified in the rules or the terms of issue of the share,

for a consideration that is:

(d) specified; or

(e) to be calculated by reference to a formula; or

(f) required to be fixed by a suitably qualified person who is not associated with, or interested in, the company.

(2) To avoid doubt, the auditor of a company is not associated with, or interested in, the company for the purposes of paragraph (1)(f).

34. Redemption of redeemable shares

(1) A company must redeem a redeemable share in accordance with its rules and the terms of issue of the share, except to the extent that the company would, by doing so, breach section 27.

(2) The company has the burden of proving that redemption of a share would breach section 27.

(3) Until the company has fully redeemed a share in accordance with subsection (1), the former holder of the share retains the status of a claimant entitled to be paid as soon as the company is lawfully able to do so or, before the removal of the company from the Vanuatu register, to be ranked subordinate to the rights of creditors but in priority to the other shareholders.

(4) Redeemable shares are deemed to be cancelled immediately on the date on which the rules or their terms of issue provide for them to be redeemed, unless the rules or terms of issue provide otherwise.

(5) A company must deliver to the Registrar for registration, within 10 working days of the redemption of any shares, a notice in the prescribed form of the redemption of the shares by the company.

(6) If a company fails to comply with subsection (5), the director, or if the company has more than 1 director, each director is guilty of an offence punishable on conviction to a fine not exceeding VT5,000.

Division 7 – Assistance by company in purchase of its own shares

35. Financial assistance

Except in the case of a community company as described in Part 12 of this Act, a company may give financial assistance to a person for the purpose of, or in connection with, the purchase of a share issued or to be issued by the company, whether directly or indirectly, only if:

(a) the company gives the assistance in the normal course of its business and on usual terms and conditions; or

(b) the giving of the assistance is authorised by the directors or by all shareholders under section 50, and:

  (i) there are reasonable grounds for believing that, after providing the assistance, the company will satisfy the solvency test; and

  (ii) the company complies with any conditions or restrictions in its rules.

Division 8 – Cross-holdings

36. Cross-holdings

(1) Subject to this section, a subsidiary must not hold shares in its holding company.

(2) An issue of shares by a holding company to its subsidiary is void and of no effect.

(3) A transfer of shares in a holding company to its subsidiary is void and of no effect.

(4) If a company that holds shares in another company becomes a subsidiary of that other company, the subsidiary:

  (a) may, despite subsection (1), continue to hold those shares; but

  (b) may not exercise any voting rights or other rights attaching to those shares, other than rights to receive distributions and to receive notices and other information from the company.

(5) This section does not prevent a subsidiary holding shares in its holding company in its capacity as a personal representative or a trustee unless the holding company or another subsidiary has a beneficial interest under the trust other than an interest that arises by way of security for the purposes of a transaction made in the ordinary course of the business of lending money.

(6) This section applies to a nominee for a subsidiary in the same way as it applies to the subsidiary.

Division 9 – Transfer of shares and share warrants

37. Transfer of shares and share warrants

(1) Subject to any limitation or restriction on the transfer of shares or share warrants in the rules, a share or share warrant in a company is transferable.

(2) A share or share warrant is transferred by entry in the share register in accordance with section 39.

(3) The personal representative of a deceased shareholder or holder of a share warrant may transfer a share or share warrant even though the personal representative is not a shareholder or holder of a share warrant at the time of transfer.

(4) A company must deliver to the Registrar for registration within 10 working days of the transfer of any shares or share warrants, a notice in the prescribed from of the transfer of the shares or share warrants in the company.

(5) If a company fails to comply with subsection (4), the director, or if the company has more than 1 director, each director is guilty of an offence punishable on conviction to a fine not exceeding VT5,000.

38. Transfer of shares by operation of law

(1) Subject to subsection (2), shares in a company may pass by operation of law despite anything in the rules of the company.

(2) The rules of a company may provide that, if a share passes by operation of law, the voting rights attached to that share cease to be exercisable until it is transferred in accordance with the rules of the company.

Division 10 – Share register

39. Company to maintain share register

(1) A company must maintain a share register that records the shares and share warrants issued by the company and states:

(a) the names, alphabetically arranged, and the last known address of each person who is, or has within the last 7 years been, a shareholder or nominator of a nominee shareholder; and

(b) the number of shares of each class held by each shareholder within the last 7 years; and

(c) the date of any issue of shares to, repurchase or redemption of shares from, or transfer of shares by or to, each shareholder within the last 7 years, and in relation to the transfer, the name of the person to and from whom the shares were transferred; and

(d) the names, alphabetically arranged, and the last known address of each person who is, or has within the last 7 years been, the holder of a share warrant; and

(e) the date of any issue of share warrants to, repurchase or redemption of share warrants from, or transfer of share warrants by or to, each holder of a share warrant within the last 7 years, and in relation to the transfer, the name of the person to and from whom the share warrants were transferred.

(2) The share register must be kept:

(a) in a form permitted under section 114; and

(b) at the registered office of the company.

(3) The share register of the company may be maintained by an agent on behalf of the company.

(4) If a company fails to comply with the requirements of this section the company is guilty of an offence punishable on conviction by a fine not exceeding VT 25 million.

40. Share register as evidence of legal title

(1) Subject to section 41, the entry of the name of a person in the share register as holder of a share is evidence that legal title to the share vests in that person.

(2) A company must treat the registered holder of a share as the only person entitled to:

(a) exercise the right to vote attaching to the share; and

(b) receive notices; and

(c) receive a distribution in respect of the share; and

(d) exercise the other rights and powers attaching to the share.

41. Power of Court to rectify share register

(1) If the name of a person is wrongly entered in, or omitted from, the share register of a company, the person aggrieved, or a shareholder, may apply to the Court for rectification of the share register, or compensation for loss sustained, or both.

(2) The Court may, on an application under this section, order:

(a) rectification of the register; or

(b) payment of compensation by the company for any loss sustained; or

(c) rectification and payment of compensation.

(3) The Court may, on an application under this section, decide:

(a) a question relating to the entitlement of a person who is a party to the application to have his or her name entered in, or omitted from, the register; and

(b) a question necessary or expedient to be decided for rectification of the register.

42. Trusts not to be entered on register

No notice of a trust, whether express, implied, or constructive, may be entered on the share register.

43. Registration of personal representative or receiver of bankrupt

(1) Despite section 42, but subject to section 38, a personal representative of a deceased person whose name is registered in a share register of a company as the holder of a share in that company is entitled to be registered as the holder of that share as personal representative.

(2) Despite section 42, but subject to subsection 38(2), the receiver of the property of an insolvent natural person registered in a share register of a company as the holder of a share in that company is entitled to be registered as the holder of that share as the receiver of the property of that person.

(3) The registration of a trustee, executor, administrator, or of a receiver under this section does not constitute notice of a trust.

(4) For the purposes of this section, receiver means a person in whom the property of an insolvent natural person is vested pursuant to insolvency legislation applicable to that natural person.

Division 11 – Share certificates

44. Share certificates

(1) A shareholder may apply to the company for a share certificate relating to some or all of the shareholder's shares in the company.

(2) On receipt of an application for a share certificate under subsection (1), the company must, within 20 working days after receiving the application,:

(a) if the application relates to some but not all of the shares, separate the shares shown in the register as owned by the applicant into separate parcels; 1 parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares; and

(b) in all cases send to the shareholder a certificate stating:

(i) the name of the company; and

(ii) the class of shares held by the shareholder; and

(iii) the number of shares held by the shareholder to which the certificate relates.

(3) If a share certificate has been issued, a transfer of the shares to which it relates must not be registered by the company unless the form of transfer is accompanied by:

(a) the share certificate relating to the shares; or

(b) evidence as to its loss or destruction and, if required, an indemnity in a form required by the board.

(4) If shares to which a share certificate relates are to be transferred, and the share certificate is sent to the company to enable the registration of the transfer, the share certificate must be cancelled and no further share certificate issued except at the request of the transferee.

(5) If a company fails to comply with subsection 44(2) the company commits an offence and is liable on conviction to a fine not exceeding VT 5,000.

PART 4 – SHAREHOLDERS

Division 1 – General

45. Every company must have at least 1 shareholder

A company must, at all times, have at least 1 shareholder.

46. Liability of shareholders

(1) A shareholder is not liable for an obligation of the company by reason only of being a shareholder.

(2) The liability of a shareholder to the company is limited to:

(a) any liability to repay a distribution that is recoverable under section 28;

(b) any liability under section 72.

(3) This section does not affect the liability of a shareholder to a company under a contract (including a contract for the issue of shares) or liability incurred in any other capacity (including as a director of the company) or liability for any tort, or breach of a fiduciary duty, or other actionable wrong committed by the shareholder.

47. Decisions that must be made by shareholders

The following powers must be exercised by the shareholders of a company by special resolution, and may not be delegated under the rules or otherwise:

(a) the power to approve registration of a public company as a private company under subsection 9(3), or of a private company as a public company under subsection 9(5);

(b) the power to adopt new rules, or to amend the company's rules, under subsection 14(2);

(c) the power to approve a major transaction under subparagraph 49(1)(b)(i);

(d) the power to put the company into liquidation.

48. Decisions that may be made by shareholders

(1) Unless the rules provide otherwise, the shareholders have the following powers:

(a) the power to appoint or remove a director;

(b) the power to appoint or remove an auditor.

(2) The rules may provide for other matters to be decided by shareholders, or approved by shareholders.

(3) Unless the rules provide otherwise, the powers referred to in subsection (1), and any other powers conferred on shareholders under subsection (2), may be exercised:

(a) by ordinary resolution; or

(b) in accordance with section 50.

49. Shareholder approval of major transactions

(1) A company must not enter into a major transaction unless:

(a) the rules expressly authorise it to enter into that transaction, or transactions of that class; or

(b) entry into the transaction is approved by shareholders:

(i) by special resolution; or

(ii) in accordance with section 50; or

(c) the transaction is conditional on approval by shareholders in accordance with paragraph (b).

(2) In this section:

"assets" includes property of any kind, whether tangible or intangible;

"major transaction", in relation to a company, means:

(a) the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than half the value of the company's assets before the acquisition; or

(b) the disposition of, or an agreement to dispose of, whether contingent or not, assets of the company the value of which is more than half the value of the company's assets before the disposition; or

(c) a transaction that has, or is likely to have, the effect of the company acquiring rights or interests or incurring obligations or liabilities the value of which is more than half the value of the company's assets before the transaction.

(3) Nothing in paragraph (2)(c) relating to the definition of major transaction, applies by reason only of the company giving, or entering into an agreement to give, a charge secured over assets of the company the value of which is more than half the value of the company's assets for the purpose of securing the repayment of money or the performance of an obligation.

(4) This section does not apply to a major transaction entered into by a receiver appointed under a document creating a charge over property of a company.

50. Unanimous shareholder approval

(1) Except in the case of a community company as defined in Part 12 of this Act, if all the shareholders of a company consent to or concur in any action taken by the company or a director, the taking of that action is deemed to be validly authorised by the company despite:

(a) anything to the contrary in its rules; or

(b) the absence of express authority to take that action in its rules.

(2) The matters that may be authorised in accordance with subsection (1) include, but are not limited to, the following:

(a) the issue of shares;

(b) the making of a distribution;

(c) the repurchase of shares;

(d) giving financial assistance for the purpose of, or in connection with, the purchase of shares in the company;

(e) the payment of remuneration to a director, or the making of a loan to a director, or the conferral of any other benefit on a director;

(f) the making of a contract between the company and a director, or of any other contract in which a director has an interest;

(g) entry into a major transaction;

(h) the ratification after the event of any action that could have been authorised under this section.

(3) Subject to section 167 a company must not authorise a distribution under this section unless there are reasonable grounds for believing that, after that distribution is made, the company will satisfy the solvency test.

(4) Section 28 applies to a distribution made in breach of subsection (3) as if:

(a) the distribution had been made in breach of section 27; and

(b) the distribution was authorised by all shareholders.

51. Shareholder written resolutions

(1) Subject to subsection (3), a resolution in writing signed by shareholders who together hold not less than 75% of the votes entitled to be cast on that resolution at a meeting

of shareholders is as valid as if it had been passed at a meeting of those shareholders.

(2) A resolution in writing is made in accordance with this Act or the rules of the company, as the case may be, if the resolution:

(a) relates to a matter that is required by this Act or by the rules to be decided at a meeting of the shareholders of a company; and

(b) is signed by the shareholders referred to in subsection (1).

(3) If, in respect of any matter, the rules of a company:

(a) require approval by a higher majority than 75% of those shareholders entitled to vote and voting, the reference in subsection (1) to 75% is taken to be a reference to that higher majority; and

(b) specify additional requirements for approval of such matters, those requirements must also be satisfied in order for the resolution to be valid.

(4) Within 5 working days of a resolution being passed under this section, the company must send a copy of the resolution to every shareholder who did not sign the resolution.

(5) A resolution may be signed under subsections (1) or (2) without any prior notice being given to shareholders.

(6) If a company fails to comply with subsection (4):

(a) the company commits an offence and is liable on conviction to a fine not exceeding VT5,000; and

(b) the director, or if the company has more than 1 director, each director is guilty of an offence punishable on conviction to a fine not exceeding VT5,000.

52. Shareholder meetings

(1) The rules of a company must include provisions:

(a) for holding meetings of shareholders of the company; and

(b) that govern proceedings at meetings of shareholders of the company.

(2) Meetings of the shareholders of a company must be held in accordance with the rules of the company.

(3) A special meeting of shareholders entitled to vote on an issue:

(a) may be called at any time by a director; and

(b) must be called by the directors on the written request of shareholders holding shares carrying together not less than 10% of the votes that may be cast on the issue.

Division 2 – Alteration of Shareholder Rights

53. Alteration of shareholder rights

(1) A company must not take action that affects the rights attached to shares unless that action has been approved by:

(a) a special resolution of each interest group; or

(b) all shareholders under section 50.

(2) For the purposes of subsection (1), the rights attached to a share include:

(a) the rights, privileges, limitations, and conditions attached to the share by this Act or the rules, including voting rights and rights to distributions; and

(b) the right to have any provisions of the rules in relation to the issue of further shares observed by the company; and

(c) the right to have the procedure set out in this section, and any further procedure required by the rules for the amendment or alteration of rights, observed by the company; and

(d) the right that a procedure required by the rules for the amendment or alteration of rights not be amended or altered.

(3) In this section:

"class" means a class of shares having attached to them identical rights, privileges, limitations, and conditions;

"interest group", in relation to any action or proposal affecting rights attached to shares, means a group of shareholders:

(a) whose affected rights are identical; and

(b) whose rights are affected by the action or proposal in the same way; and

(c) subject to paragraph (4)(b), who comprise the holders of 1 or more classes of shares in the company.

(4) For the purposes of this section and the definition of interest group:

(a) 1 or more interest groups may exist in relation to any action or proposal; and

(b) holders of shares in the same class may fall into 2 or more interest groups if:

(i) action is taken in relation to some holders of shares in a class and not others; or

(ii) a proposal expressly distinguishes between some holders of shares in a class and other holders of shares of that class.

54. Repurchase of dissenter's shares

(1) A shareholder is entitled to require the company to purchase shares in accordance with the procedure set out in Schedule 5 if:

(a) the shareholder is entitled to vote on the exercise of 1 or more of the powers set out in:

(i) paragraph 47(b) and the proposed alteration imposes or removes a restriction on the activities of the company; or

(ii) paragraph 47(c) or (d); and

(b) the shareholders resolve to exercise the power; and

(c) the shareholders cast all the votes attached to shares registered in the shareholder's name and having the same beneficial owner against the exercise of the power.

(2) A shareholder is entitled to require the company to purchase shares in accordance with the procedure set out in Schedule 5 if:

(a) an interest group of which the shareholder was a member has, under section 53, approved, by special resolution, the taking of action that affects the rights attached to those shares; and

(b) the company becomes entitled to take the action; and

(c) the shareholder cast all the votes attached to the shares registered in that shareholder's name and having the same beneficial owner against approving the action.

(3) If a resolution of shareholders or of an interest group is made in writing in accordance with section 51, subsections (1) and (2) apply as if references to a shareholder who cast all the votes attached to shares registered in the shareholder's name and having the same beneficial owner against the matter in question, were references to a shareholder who did not sign the written resolution in respect of those shares.

Division 3 – Disclosure to Shareholders

55. Annual report to shareholders

(1) Subject to subsection (2), the director of a company must, within 20 working days after the date on which the company is required to complete its financial statements under section 125:

(a) prepare an annual report on the affairs of the company during the accounting period ending on that date; and

(b) send a copy of that report to each shareholder.

(2) The rules of a private company may provide that the directors are only required to prepare an annual report in respect of an accounting period if a shareholder has given written notice to the company before the end of that accounting period requiring the annual report to be prepared.

(3) An annual report for a company must:

(a) be in writing and be dated; and

(b) include financial statements for the accounting period that comply with section 125; and

(c) if an auditor's report is required for the financial statements included in the report, include that auditor's report; and

(d) state the names of the persons holding office as directors of the company as at the end of the accounting period and the names of any persons who ceased to hold office as directors of the company during the accounting period; and

(e) contain any other information that may be required by:

(i) regulations made under this Act; and

(ii) the rules; and

(f) be signed on behalf of the directors by 2 directors of the company or, if the company has only 1 director, by that director.

(4) If the director of a company fails to comply with subsection (1), the director, or if the company has more than 1 director, each director is guilty of an offence punishable on conviction to a fine not exceeding VT25,000.

56. Inspection of company records by shareholders

A shareholder is entitled to inspect company records in accordance with section 116.

57. Request for information held by company

(1) A shareholder may, at any time, make a written request to a company for information held by the company.

(2) The request must specify the information sought in enough detail to enable it to be identified.

58. Company must provide requested information

Within 10 working days of receiving a request under section 57, the company must:

(a) provide the information; or

(b) agree to provide the information within a specified period; or

(c) agree to provide the information within a specified period if the shareholder pays a reasonable charge to the company (which must be specified and explained) to meet the cost of providing the information; or

(d) refuse to provide the information, specifying the reasons for the refusal.

59. Reasons for refusing information

Without limiting the reasons for which a company may refuse to provide information under section 58, a company may refuse to provide information if the:

(a) disclosure of the information would be likely to prejudice the commercial position of the company; or

(b) disclosure of the information would be likely to prejudice the commercial position of any other person, whether or not that person supplied the information to the company.

60. Shareholder may withdraw request

If the company requires the shareholder to pay a charge for the information, the shareholder may withdraw the request, and is deemed to have done so unless, within 10 working days of receiving notification of the charge, the shareholder informs the company that the shareholder:

(a) will pay the charge; or

(b) considers the charge to be unreasonable.

61. Court may order company to provide requested information

(1) The Court may, on the application of a person who has requested information, make an order requiring the company to provide the information within any time and on payment of any charge that the Court thinks fit if it is satisfied that:

(a) the company does not have sufficient reason to refuse to provide the information; or

(b) the period specified for providing the information is unreasonable; or

(c) the charge set by the company is unreasonable.

(2) If the Court makes an order under subsection (1), it may specify the use that may be made of the information and the persons to whom it may be disclosed.

(3) On an application for an order under this section, the Court may make any order for the payment of costs that it thinks fit.

62. Investigation at request of shareholder

(1) On the application of a shareholder of a company, the Court may make:

(a) an order authorising a person named in the order, at a time specified in the order, to inspect and to make copies of, or take extracts from, the records or other documents of the company, or any of the records or documents of the company specified in the order; and

(b) any ancillary order that it thinks fit, including an order that the accounts of the company be audited by that person.

(2) The Court may make an order under subsection (1) only if it is satisfied that:

(a) in making the application, the shareholder is acting in good faith and that the inspection is proposed to be made for a proper purpose; and

(b) the person to be appointed is a proper person for the task.

(3) A person appointed by the Court under subsection (1) must diligently carry out the inspection and, having done so, must make a full report to the Court.

(4) On receiving the report of an inspector, the Court may make any order in relation to the disclosure and use that may be made of the records and information obtained that it thinks fit.

(5) An order made under subsection (4) may be varied from time to time.

(6) The reasonable costs of the inspection must be met by the company unless the Court orders otherwise.

(7) A person may only disclose or make use of information or records obtained under this section in accordance with an order made under subsections (4) or (5).

(8) A person who discloses or makes use of information or records obtained under this section other than in accordance with an order made under subsections (4) or (5) commits an offence and is liable on conviction to a fine not exceeding VT25,000.

PART 5 – DIRECTORS

Division 1 – Powers and Duties

63. Management of company

Except to the extent that this Act or the company's rules provide otherwise:

(a) the business and affairs of a company must be managed by, or under the direction or supervision of, the directors of the company; and

(b) the directors of a company have all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.

64. Fundamental duties of directors

A director of a company must, when exercising powers or performing duties as a director, act:

(a) in good faith; and

(b) in a manner that the director reasonably believes to be in the interests of the company.

65. Duty of directors to comply with Act

A director of a company must not act, or agree to the company acting, in a manner that contravenes this Act.

66. Duty of directors to comply with rules

A director of a company must not act, or agree to the company acting, in a manner that contravenes the company's rules.

67. Interest of director in company transactions

(1) A director must not exercise any power as a director if the director is directly or indirectly materially interested in the exercise of that power, unless:

(a) this Act expressly authorises the director to exercise the relevant power despite that interest; or

(b) the director has reasonable grounds for believing that the company will satisfy the solvency test after that power is exercised, and either:

(i) the rules expressly authorise the director to exercise the relevant power despite that interest, following disclosure of the interest in accordance with subsection (2); or

(ii) the exercise of the power by the director has been approved by all shareholders under section 50, following disclosure of the nature and extent of the director's interest to all shareholders who are not otherwise aware of those matters.

(2) A director who is directly or indirectly materially interested in the exercise of any power may only be authorised by the rules to exercise that power if the rules require that, before the exercise of the power, the director discloses the nature and extent of that interest in writing:

(a) to the directors of the company, if there is at least 1 other director who is not directly or indirectly materially interested in the transaction or proposed transaction;

(b) to all shareholders other than the director, if paragraph (a) does not apply.

68. Use and disclosure of company information

A director of a company who has information in his or her capacity as a director or employee of the company, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except:

(a) in the interests of the company; or

(b) as required by law; or

(c) if there are reasonable grounds for believing that the company will satisfy the solvency test after the director takes that action and that action:

(i) is authorised by the rules; or

(ii) is approved by shareholders under section 50.

69. Standard of care of directors

Subject to the company's rules, a director of a company, when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances taking into account, but without limitation:

(a) the nature of the company; and

(b) the nature of the decision; and

(c) the position of the director and the nature of the responsibilities undertaken by him or her.

70. Obligations of directors in connection with insolvency

(1) A director of a company must call a meeting of directors within 10 working days to consider whether the directors should appoint a liquidator if the director:

(a) believes that the company is unable to pay its debts as they fall due in the normal course of business; or

(b) is aware of matters that would put any reasonable person on inquiry as to whether the company is unable to pay its debts as they fall due in the normal course of business.

(2) At a meeting called under this section, the directors must consider whether to appoint a liquidator or to continue to carry on the business of the company.

(3) A director is liable to any creditor to whom the company incurred an obligation after the time that the director failed to comply with subsection (1) if:

(a) at the time of that failure, the company was unable to pay its debts as they fell due in the normal course of business; and

(b) the company is later placed in liquidation.

(4) Each director who did not participate in the meeting and did not vote in favour of appointing a liquidator is liable to any creditor to whom the company incurred an obligation after the date of the meeting in accordance with subsection (5) if:

(a) at a meeting called under this section, the directors do not resolve to appoint a liquidator; and

(b) at the time of that meeting there were no reasonable grounds for believing that the company was able to pay its debts as they fell due; and

(c) the company is later placed in liquidation.

(5) A director who is liable to a creditor under subsections (3) or (4) in respect of an obligation of the company is liable to that creditor for the amount of any loss suffered by that creditor as a consequence of the company's failure to perform that obligation, unless the director establishes that the creditor:

(a) knew or ought to have known of the circumstances that called into question the solvency of the company; or

(b) otherwise assumed the risk of dealing with the company in those circumstances.

(6) If more than 1 director is liable to a creditor under this section, the liability of those directors is joint and several.

71. Effect of unanimous shareholder approval on certain duties of directors

If a director exercises any power or takes any other action in his or her capacity as a director with the consent or concurrence of shareholders under section 50:

(a) the director is deemed to be acting in accordance with the requirements of section 66; and

(b) if, at the time the director so acts, there are reasonable grounds for believing that the company is able to meet its debts as they fall due, the director is deemed to be acting in accordance with the requirements of sections 64 and 69.

Division 2 – Liabilities

72. Persons deemed to be directors for liability purposes

(1) A person (principal) in accordance with whose directions or instructions a director is required or is accustomed to act is liable under sections 64 to 70 to the same extent as that director, unless the principal shows that the director was not in fact acting in

accordance with the principal's directions or instructions in acting or failing to act in the manner giving rise to liability on the part of the director.

(2) A person who exercises, or who is entitled to exercise, or who controls or who is entitled to control the exercise, of powers that, apart from the rules of the company, would fall to be exercised by the directors, is liable under sections 64 to 69 in connection with the exercise of those powers as if that person were a director.

(3) Without limiting subsection (2), if the rules of a company confer a power on shareholders that would otherwise fall to be exercised by directors under this Act, any shareholder who exercises that power or who takes part in deciding whether to exercise that power is liable under sections 64 to 69 in connection with the exercise of that power as if that person were a director.

(4) A person to whom a power or duty of the directors has been directly delegated by the directors with that person's consent or acquiescence, or who exercises the power or duty with the consent or acquiescence of the directors, is liable under sections 64 to 69 in connection with the exercise of those powers or duties as if that person were a director.

(5) To avoid doubt, if any action is approved by all shareholders under section 50:

(a) no shareholder is liable under section 66 in respect of that action:

(b) if there are reasonable grounds for believing that the company is able to meet its debts as they fall due, no shareholder is liable under sections 64, 67, 68, or 69 in respect of that action.

73. Certain indemnities prohibited

(1) A company may not indemnify a director of the company or of any related company in respect of:

(a) any criminal liability; or

(b) any liability to the company or a related company for any act or omission in his or her capacity as a director of the company or of the related company, as the case may be; or

(c) any liability to any person arising out of a breach by that person of a duty to the company or related company, as the case may be, under any of sections 64 to 70.

(2) An indemnity given in breach of this section is void.

(3) In this section:

"director" includes:

(a) a person who is liable under any of sections 64 to 70 by virtue of section 72; or

(b) a former director;

"indemnify" includes relieve or excuse from liability, whether before or after the liability arises; and indemnity has a corresponding meaning.

74. Company may indemnify or insure directors

(1) Subject to subsection 73(1) a company may indemnify a director or may purchase insurance for a director against any liability other than criminal liability.

(2) If a company provides an indemnity or purchases insurance for a director of the company or of a related company it must be with the approval of the Board and in accordance with the rules of the company.

(3) The directors who vote in favour of purchasing insurance under subsection (1) must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the company.

75. Defences for directors

(1) It is a defence to a director charged with an offence in relation to a duty imposed on the directors of a company if the director proves that:

(a) the directors took all reasonable and proper steps to ensure that the requirements of that duty would be complied with; or

(b) the director took all reasonable and proper steps to ensure that the directors complied with the requirements of that duty; or

(c) in the circumstances, the director could not reasonably have been expected to take steps to ensure that the directors complied with the requirements of that duty.

(2) It is a defence to a director charged with an offence in relation to a duty imposed on the company if the director proves that:

(a) the company took all reasonable and proper steps to ensure that the requirements of that duty would be complied with; or

(b) the director took all reasonable steps to ensure that the company complied with the requirements of that duty; or

(c) in the circumstances, the director could not reasonably have been expected to take steps to ensure that the company complied with the requirements of that duty.

Division 3 – Prohibition and Disqualification of Directors

76. Persons prohibited from managing companies

(1) A person must not, during the period of 3 years after the conviction or the judgment, be a director or promoter of, or in any way, whether directly or indirectly, be concerned or take part in the management of, a company if the person has been convicted of an offence:

(a) in connection with the promotion, formation, or management of a company punishable by imprisonment for a term exceeding 2 years, whether or not a sentence of imprisonment was imposed; or

(b) under any of sections 196 to 199 of this Act or under the relevant sections of the Criminal Procedure Code [CAP 136].

(2) Subsection (1) does not apply if the person first obtains the leave of the Court, which may be given on any conditions that the Court thinks fit.

(3) A person who intends to apply for the leave of the Court under subsection (2) must give to the Registrar not less than 10 working days' notice of that person's intention to apply.

(4) Any persons that the Court thinks fit, may attend and be heard at the hearing of any application under this section.

(5) Every person who fails to comply with this section or any order made under this section, commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding VT500,000, or both.

(6) In this section, company includes an overseas company that carries on business in Vanuatu.

77. Court may disqualify directors

(1) The Court may make an order that a person must not, without the leave of the Court, be a director or promoter of, or in any way, whether directly or indirectly, be concerned or take part in the management of, a company for any period, not exceeding 5 years, that may be specified in the order if the person has:

(a) been convicted of any offence in connection with the promotion, formation, or management of a company punishable by imprisonment for a term exceeding 2 years, whether or not a sentence of imprisonment was imposed; or

(b) been convicted of an offence under any of sections 196 to 199 of this Act or under any relevant sections of the Criminal Procedure Code [CAP 136]; or

(c) committed an offence for which the person has been convicted under this Part; or

(d) while a director of a company and whether convicted or not:

(i) persistently failed to comply with this Act, or, if the company has failed to so comply, persistently failed to take all reasonable steps to obtain compliance; or

(ii) been guilty of fraud in relation to the company or of a breach of duty to the company or a shareholder; or

(e) been convicted of an offence in any other country that corresponds to the offences referred to in paragraphs (a) to (c); or

(f) been prohibited under the law of any other country from acting as a director of a company, or being concerned or taking part in the management of a company; or

(g) become of unsound mind.

(2) An order may be made under this section even though the person concerned may be liable in respect of the matters on the ground of which the order is to be made.

(3) The Registrar of the Court must, as soon as practicable after the making of an order under this section, give notice to the Registrar that the order has been made.

(4) Every person who fails to comply with an order under this section commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding VT500,000, or both.

(5) In this section and sections 78 and 79, company includes an overseas company.

78. Persons entitled to apply for order under section 77

(1) An application for an order under section 77 may be made by the liquidator of the company, or by a person who is, or has been, a shareholder or creditor of the company.

(2) The liquidator must appear and call the attention of the Court to any matters that seem to him or her to be relevant, and may give evidence or call witnesses on the hearing of an application for:

(a) an order under section 77 by the liquidator; or

(b) leave under section 77 by a person against whom an order has been made on the application of the liquidator.

79. Notice of application for order under section 77

(1) A person who intends to apply for an order under section 77 must give not less than 10 working days' notice of that intention to the person against whom the order is sought.

(2) On the hearing of the application, the person against whom the order is sought may appear and give evidence or call witnesses.

80. Application of section 81

Section 81 applies to a company:

(a) that has been put into liquidation because of its inability to pay its debts as and when they became due;

(b) the liquidation of which has been completed, whether or not the company has been dissolved;

(c) that has ceased to carry on business because of its inability to pay its debts as and when they became due;

(d) in respect of which execution is returned unsatisfied in whole or in part;

(e) in respect of the property of which a receiver, or a receiver and manager, has been appointed by a Court or pursuant to the powers contained in a document, whether or not the appointment has been terminated;

(f) in respect of which, or the property of which, a person has been appointed as a receiver and manager, or a judicial manager, or as a manager, or to exercise control, under an enactment, whether or not the appointment has been terminated.

81. Liability for contravening sections 76 or 77

A person who acts as a director of a company in contravention of section 76 or an order made under section 77 is, while that person was so acting, personally liable to:

(a) a liquidator of the company for every unpaid debt incurred by the company; and

(b) a creditor of the company for a debt to that creditor incurred by the company.

Division 4 – Office of the Director

82. Qualifications of directors

(1) A person may be appointed and hold office as a director of a company only if the person:

(a) is a natural person and is not disqualified from being a director under subsection (2); or

(b) is a company and at least one natural person is also appointed as a director.

(2) The following persons are disqualified from being a director of a company:

(a) a person who is under 18 years of age;

(b) a person who is an undischarged bankrupt;

(c) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under sections 76 or 77;

(d) in relation to any particular company, a person who does not comply with any qualifications for directors contained in the rules of that company.

(3) A person who is disqualified from being a director but who acts as a director is treated as a director for the purposes of any provision of this Act that imposes a duty or an obligation on a director of a company.

83. Appointment of directors

(1) A person named as a director in an application for registration or in an amalgamation proposal holds office as a director from the date of registration or the date the amalgamation proposal is effective, as the case may be, until that person ceases to hold office as a director in accordance with this Act.

(2) All subsequent directors of a company may, unless the rules of the company provide otherwise, be appointed by ordinary resolution.

(3) The appointment of a person as a director is not effective until that person has consented in writing to act as a director of the company.

(4) The company must, if required to do so by the Registrar, produce any consent specified in subsection (3).

(5) The company must ensure that at least one director must be a natural person who ordinarily resides in Vanuatu.

84. Director ceasing to hold office

(1) The office of a director of a company is vacated if the person holding that office:

(a) resigns in accordance with subsection (2); or

(b) is removed from office in accordance with subsection (4) or the rules of the company; or

(c) becomes disqualified from being a director under section 82(2); or

(d) dies; or

(e) otherwise vacates office in accordance with the rules of the company.

(2) A director of a company may resign by signing a written notice of resignation and delivering it to the registered office of the company.

(3) Subject to subsections (5) and (6), the notice is effective when it is received at that address or at a later time specified in the notice.

(4) Subject to the company's rules, a director may be removed by ordinary resolution.

(5) If a company has only 1 director, that director may not resign office:

(a) until that director has called a meeting of shareholders to receive notice of the resignation; or

(b) if the company has only 1 shareholder, until that director has given not less than 10 working days' notice of the resignation to that shareholder.

(6) A notice of resignation given by the sole director of a company does not take effect, despite its terms, until the earlier of the appointment of another director of the company or:

(a) the time and date for which a meeting of shareholders is called under paragraph (5)(a); or

(b) if the company has only 1 shareholder, 10 working days after notice of the resignation has been given to that shareholder.

(7) Despite the vacation of office, a person who held office as a director remains liable under the provisions of this Act that impose liabilities on directors in relation to acts and omissions and decisions made while that person was a director.

85. Notice of change of directors

(1) A company must ensure that the following notices in the prescribed form are delivered to the Registrar for registration:

(a) notice of a change in the directors of a company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both; and

(b) notice of a change in the name or the physical address or the postal address of a director of a company.

(2) A notice under subsection (1) must:

(a) specify the date of the change; and

(b) include the full name and physical address and postal address of every person who is a director of the company from the date of the notice; and

(c) be delivered to the Registrar within 20 working days of:

(i) the change occurring, in the case of the appointment or resignation of a director; or

(ii) the company first becoming aware of the change, in the case of the death of a director or a change in the name or physical address or postal address of a director.

(3) If a company fails to comply with this section:

(a) the company commits an offence and is liable on conviction to a fine not exceeding VT25,000; and

(b) the director, or if the company has more than 1 director, each director is guilty of an offence punishable on conviction to a fine not exceeding VT25,000.

85A. Registrar to maintain a register of directors

The Registrar must keep and maintain a register of directors containing up to date details of the directors of each company.

85B. Registrar to maintain a register of disqualified directors

The Registrar must keep and maintain a register of disqualified directors containing up to date details of the disqualified directors of each company.

86. Remuneration of directors

Directors may receive remuneration and other benefits from the company:

(a) in accordance with its rules; or

(b) with the approval of shareholders under section 50.

87. Proceedings of directors

(1) The rules of a company must include provisions:

(a) for holding meetings of directors of the company; and

(b) that govern proceedings at meetings of directors of the company.

(2) Meetings of the directors of a company must be held in accordance with the rules of the company.

PART 6 – ENFORCEMENT

88. Injunctions to require compliance with Act and rules

(1) Without limiting section 16(2) or this Part, the Court may, on an application under this section, make an order restraining a company that, or a director of a company who, proposes to engage in conduct that would contravene the rules of the company or this Act from engaging in that conduct.

(2) An application may be made by:

(a) the company; or

(b) a director or shareholder of the company.

(3) If the Court makes an order under subsection (1), it may also grant any consequential relief that it thinks fit.

(4) An order may not be made under this section in relation to conduct that has been completed.

(5) The Court may, at any time before the final determination of an application under subsection (1), make, as an interim order, any order that it is empowered to make under that subsection.

89. Leave to bring proceedings

Subject to section 93, the Court may, on the application of a person referred to in section 90, grant leave to that person to:

(a) bring proceedings in the name and on behalf of the company or any subsidiary of the company; or

(b) intervene in proceedings to which the company or any subsidiary company is a party for the purpose of continuing, defending, or discontinuing the proceedings on behalf of the company or subsidiary, as the case may be.

90. Who may apply for leave to bring proceedings

An application for leave to bring proceedings or to intervene in proceedings under section 89 may be made by:

(a) a director of the company; or

(b) a shareholder or shareholders representing not less than 10% of the voting rights of all shareholders entitled to vote on a resolution to amend the rules of the company.

91. Matters that Court must consider

Without limiting section 89, in determining whether to grant leave under that section, the Court must consider:

(a) the likelihood of the proceedings succeeding; and

(b) the costs of the proceedings in relation to the relief likely to be obtained; and

(c) any action already taken by the company or subsidiary to obtain relief; and

(d) the interests of the company or subsidiary in the proceedings being commenced, continued, defended, or discontinued, as the case may be.

92. When leave may be granted

Leave to bring proceedings or intervene in proceedings may be granted only if the Court is satisfied that either:

(a) the company or subsidiary does not intend to bring, diligently continue or defend, or discontinue the proceedings, as the case may be; or

(b) it is in the interests of the company or subsidiary that the conduct of the proceedings should not be left to the directors or to the determination of the shareholders as a whole.

93. Procedural matters

(1) Notice of the application must be served on the company or subsidiary.

(2) The company or subsidiary:

(a) must inform the Court whether or not it intends to bring, continue, defend, or discontinue the proceedings, as the case may be; and

(b) may appear and be heard.

(3) Except as otherwise provided, a shareholder is not entitled to bring or intervene in any proceedings in the name of, or on behalf of, a company or its subsidiaries.

(4) No proceedings brought or intervened in with leave of the Court may be settled or compromised or discontinued without the approval of the Court.

94. Powers of Court

The Court may, at any time, make any order that it thinks fit in relation to proceedings brought or intervened in with leave of the Court and, without limitation, may:

(a) make an order authorising the person to whom leave was granted or any other person to control the conduct of the proceedings; and

(b) give directions for the conduct of the proceedings; and

(c) make an order requiring the company or the directors to provide information or assistance in relation to the proceedings; and

(d) make an order directing that any amount ordered to be paid by a defendant in the proceedings must be paid, in whole or part, to former and present shareholders of the company or subsidiary instead of to the company or the subsidiary.

95. Costs of derivative action to be met by company

The Court must, on the application of the person to whom leave was granted, order that the reasonable costs of bringing or intervening in the proceedings, including any costs relating to any settlement, compromise, or discontinuance approved by the Court, must be met by the company unless the Court considers that it would be unjust or inequitable for the company to bear those costs, or to bear the whole of those costs.

96. Personal actions by shareholders against company

(1) A shareholder of a company may bring an action against the company for breach of a duty owed by the company to him or her as a shareholder.

(2) The Court may, on the application of a shareholder of a company, if it is satisfied that it is just and equitable to do so, make an order requiring the company to take any action that is required to be taken by the rules of the company or this Act, whether or not the company owes a duty to the shareholder to take that action.

(3) On making an order under this section, the Court may grant any consequential relief that it thinks fit.

97. Personal actions by shareholders against directors

(1) A shareholder or former shareholder may bring an action against a director for breach of a duty owed to him or her as a shareholder.

(2) An action may not be brought under subsection (1) to recover any loss in the form of a reduction in the value of shares in the company or a failure of the shares to increase in value by reason only of a loss suffered, or a gain forgone, by the company.

(3) The Court may, on the application of a shareholder of a company, if it is satisfied that it is just and equitable to do so, make an order requiring a director of the company to take any action that is required to be taken by the directors under the rules of the company or this Act, whether or not the director owes a duty to the shareholder to take that action.

(4) On making an order under this section, the Court may grant any consequential relief that it thinks fit.

98. Representative actions

(1) The Court may appoint a shareholder of a company to represent all or some of the shareholders having the same or substantially the same interest if:

(a) the shareholder brings proceedings against the company or a director; and

(b) other shareholders have the same, or substantially the same, interest in relation to the subject matter of the proceedings.

(2) In making an order under subsection (1), the Court may, for that purpose, make any other order that it thinks fit, including an order:

(a) as to the control and conduct of the proceedings; or

(b) as to the costs of the proceedings; or

(c) directing the distribution of any amount ordered to be paid by a defendant in the proceedings among the shareholders represented.

99. Prejudiced shareholders

(1) A shareholder or former shareholder of a company may apply to the Court for an order under subsection (2) if the shareholder considers that the affairs of a company have been, or are being, or are likely to be, conducted in a manner that is, or any act or acts of the company have been, or are, or are likely to be, oppressive, unfairly discriminatory, or unfairly prejudicial to him or her in that capacity or in any other capacity.

(2) If the Court considers that it is just and equitable to do so, it may make any order that it thinks fit, including an order:

(a) requiring the company or any other person to acquire the shareholder's shares; or

(b) requiring the company or any other person to pay compensation to a person; or

(c) regulating the future conduct of the company's affairs; or

(d) altering or adding to the company's rules; or

(e) appointing a receiver of the company; or

(f) directing the rectification of the records of the company; or

(g) putting the company into liquidation; or

(h) setting aside action taken by the company or the board in breach of this Act or the rules of the company.

(3) An order is not to be made against the company or any other person under subsection (2) unless the company or that person is a party to the proceedings in which the application is made.

100. Certain conduct deemed prejudicial

Failure to comply with any of the following sections of this Act is conduct that is deemed to be unfairly prejudicial for the purposes of section 99:

(a) subsection 25(1) (which relates to the issue of shares); or

(b) section 29 (which relates to dividends); or

(c) section 30 (which relates to acquisitions of its own shares by a company); or

(d) section 33 (which relates to redeemable shares); or

(e) section 35 (which relates to the provision of financial assistance by a company to purchase its own shares); or

(f) section 49 (which relates to major transactions); or

(g) section 53 (which relates to the alteration of shareholder rights).

101. Alteration to rules by Court

(1) Despite anything in this Act, but subject to the order, if the Court makes an order under section 99 altering or adding to the rules of a company, the rules must not, to the extent that they have been altered or added to by the Court, again be altered or added to without the leave of the Court.

(2) An alteration or addition to the rules of a company made by an order under section 99 has the same effect as if it had been made by the shareholders of the company under section 14, and this Act applies to the rules as altered or added to.

(3) Within 10 working days of the making of an order under section 99 altering or adding to the rules of a company, the company must ensure that a copy of the order and a copy of the rules as altered or added to are delivered to the Registrar for registration.

(4) If a company fails to comply with subsection (3):

(a) the company commits an offence and is liable on conviction to a fine not exceeding VT25,000; and

(b) the director, or if the company has more than 1 director, each director is guilty of an offence punishable on conviction to a fine not exceeding VT25,000.

102. Effect of arbitration clause in rules

A shareholder is entitled to apply to the Court for relief under sections 88 to 97 and 99 despite any provision in the rules of a company requiring disputes relating to the affairs of the company to be referred to arbitration, or otherwise seeking to prohibit the shareholder from making the application.

PART 7 – ADMINISTRATION OF COMPANIES

Division 1 – Dealings with Third Parties

103. Authority to bind company

(1) A contract or other enforceable obligation may be entered into by a company as follows:

(a) an obligation that, if entered into by a natural person, is, by law, required to be by deed, may be entered into on behalf of the company in writing and signed under the name of the company by:

(i) 2 or more directors of the company; or

(ii) in the case where the company has only 1 director, by that director; or

(iii) if the rules of the company so provide, a director, or other person or class of persons; or

(iv) 1 or more attorneys appointed by the company under section 104;

(b) an obligation that, if entered into by a natural person, is, by law, required to be in writing, may be entered into on behalf of the company:

(i) in the manner specified in paragraph (a); or

(ii) in writing by a person acting under the company's express or implied authority;

(c) an obligation that, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the company by a person acting under the company's express or implied authority.

(2) Subsection (1) applies to a contract or other obligation whether or not:

(a) that contract or obligation was entered into in Vanuatu; and

(b) the law governing the contract or obligation is the law of Vanuatu.

(3) Subsection (1) does not prevent a company from affixing its common seal, if it has one, to a contract or document.

(4) Despite anything in the rules of the company, the absence of a seal does not affect the enforceability of an obligation entered into in accordance with subsection (1).

104. Attorneys

(1) Subject to its rules, a company may, by an instrument in writing, executed in accordance with paragraph 103(1)(a), appoint a person as its attorney either generally or in relation to a specific matter.

(2) An act of the attorney in accordance with the instrument binds the company.

105. Validity of dealings with third parties

(1) Subject to sections 107 and 108, the validity of a transaction entered into by a company is not affected by:

(a) a failure to comply with this Act (except section 103); or

(b) a failure to comply with the company's rules; or

(c) the absence of express authority to enter into the transaction in the company's rules; or

(d) a failure by the company or its directors to take any steps required by the company's rules to authorise entry into the transaction; or

(e) the fact that the transaction is not in the interests of the company; or

(f) a breach of duty by a director in connection with entry into the transaction.

(2) Subsection (1) does not limit:

(a) section 88, which relates to injunctions to restrain conduct by a company that would contravene its rules; or

(b) sections 89 to 95, which relate to derivative actions; or

(c) section 96, which relates to actions by shareholders against a company; or

(d) section 97, which relates to actions by shareholders against directors; or

(e) the obligations and the liabilities of directors of a company in respect of any contract or other obligation, or transfer of property to or by the company.

(3) In this section and sections 107 to 109:

transaction:

(a) includes any contract or other obligation entered into by a company, or any transfer of property to or by a company; but

(b) does not include:

(i) a distribution to shareholders; or

(ii) an indemnity provided to a director under section 74; or

(iii) remuneration or other benefits given to a director in accordance with section 86.

106. Assumptions that may be made by third parties

(1) Without limiting section 105, neither;

(a) a company nor any person claiming under or through a company; or

(b) a guarantor of an obligation of a company,

may assert against a person dealing with the company or against a person who has acquired property, rights, or interests from the company that:

(i) a person named as a director of the company in the most recent notice received by the Registrar under section 85 or in the most recent annual return delivered to the Registrar:

(A) is not a director of the company; or

(B) has not been duly appointed; or

(C) does not have authority to exercise a power that a director of a company carrying on business of the kind carried on by the company customarily has authority to exercise;

(ii) a person held out by the company as a director, employee, or agent of the company:

(A) has not been duly appointed; or

(B) does not have authority to exercise a power that a director, employee, or agent of a company carrying on business of the kind carried on by the company customarily has authority to exercise;

(iii) a person held out by the company as a director, employee, or agent of the company with authority to exercise a power that a director, employee, or agent of a company carrying on business of the kind carried on by the company does not customarily have authority to exercise, does not have authority to exercise that power;

(iv) a document issued on behalf of a company by a director, employee, or agent of the company with actual or usual authority to issue the document is not valid or not genuine,

unless the person has, or ought to have, by virtue of his or her position with or relationship to the company, knowledge of the matters referred to in any of subparagraphs (i) to (iv).

(2) Subsection (1) applies even though a person of the kind referred to in that subsection acts fraudulently or forges a document that appears to have been signed on behalf of the company, unless the person dealing with the company or with a person who has acquired property, rights, or interests from the company has actual knowledge of the fraud or forgery.

(3) A person is not affected by, or deemed to have notice or knowledge of the contents of, the rules of, or any other document relating to, a company merely because the rules or document are:

(a) registered on the Vanuatu register; or

(b) available for inspection by that person under Division 2 of this Part.

107. Transactions in which directors are interested

(1) A transaction entered into by a company in which a director is directly or indirectly materially interested is voidable at the option of the company, unless:

(a) this Act or the company's rules expressly authorise entry into the transaction despite such an interest; or

(b) the transaction has been entered into with the approval of shareholders under section 50 following disclosure of the nature and extent of the director's interest to all shareholders who were not otherwise aware of those matters; or

(c) the other party to the transaction is a person other than the director or a person associated with the director and either:

(i) that person did not know of the interest of the director; or

(ii) the company received fair value under the transaction.

(2) For the purposes of this section and section 108, a person is associated with a director if the director:

(a) is the parent, child, or spouse of that person; or

(b) is a director, employee, or trustee of that person; or

(c) has a material financial interest in that other person.

108. Transactions entered into by directors in breach of certain duties

A transaction entered into by a company as the result of action taken by a director in breach of section 64, 65, or 66 is voidable at the option of the company if:

(a) the other party to the transaction is the director or a person associated with the director; or

(b) the other party to the transaction is a person with knowledge of the circumstances giving rise to the breach of section 64, 65, or 66, and the company did not receive fair value under the transaction.

109. Effect on third parties

The setting aside of a transaction under section 107 or 108 does not affect the title or interest of a person in or to property that the person has acquired if the property was acquired:

(a) from a person other than the company; and

(b) for valuable consideration; and

(c) without knowledge of the circumstances that entitle the company to set aside the transaction under which the property was acquired from the company.

110. Pre-incorporation contracts may be ratified

(1) For the purposes of this section and sections 111 and 112:
pre-incorporation contract means:

(a) a contract purporting to be made by a company before its incorporation; or

(b) a contract made by a person on behalf of a company before, and in contemplation of, its incorporation.

(2) Despite any enactment or rule of law, a pre-incorporation contract may be ratified by the company within any period that may be specified in the contract, or if no period is specified, within a reasonable time after the incorporation of the company in the name of which, or on behalf of which, it has been made.

(3) A pre-incorporation contract that is ratified is as valid and enforceable as if the company had been a party to the contract when it was made.

(4) A pre-incorporation contract may be ratified by a company in the same manner as a contract may be entered into on behalf of a company under section 103.

(5) Despite any other Act, if a pre-incorporation contract has not been ratified by a company, or validated by the Court under section 112, the company may not enforce it or take the benefit of it.

111. Warranties implied in pre-incorporation contracts

(1) Despite any enactment or rule of law, in a pre-incorporation contract, unless a contrary intention is expressed in the contract, there is an implied warranty by the person who purports to make the contract in the name of, or on behalf of, the company:

(a) that the company will be incorporated within the period specified in the contract or, if no period is specified, within a reasonable time after the making of the contract; and

(b) that the company will ratify the contract within the period specified in the contract or, if no period is specified, within a reasonable time after the incorporation of the company.

(2) The amount of damages recoverable in an action for breach of a warranty implied by subsection (1), is the same as the amount of damages that would be recoverable in an action against the company for damages for breach by the company of any unperformed obligations under the contract, if the contract had been ratified.

(3) If, after its incorporation, a company enters into a contract in the same terms as, or in substitution for, a pre-incorporation contract (not being a contract ratified by the company under section 110), the liability of a person under subsection (1) (including any liability under an order made by the Court for the payment of damages) is discharged unless a contrary intention is expressed in the pre-incorporation contract.

112. Failure to ratify

(1) A party to a pre-incorporation contract that has not been ratified by the company after its incorporation may apply to the Court for an order:

(a) directing the company to return to that party, property of any kind acquired by the company from that party by virtue of the contract; or

(b) for any other relief in favour of that party relating to the property.

(2) The Court may, if it considers it just and equitable to do so, make any order or grant any relief that it thinks fit and may do so whether or not an order has been made under subsection 111(2).

Division 2 – Company Records

113. Company records

(1) A company must keep the following documents at its registered office:

(a) the rules of the company;

(b) minutes of all meetings and resolutions of shareholders within the last 7 years;

(c) minutes of all meetings and resolutions of directors and directors' committees within the last 7 years;

(d) a consent by each person named as a director to act as a director of the company in the prescribed form as well as the full names and physical and postal addresses of the current directors and the current nominators of any nominee directors;

(e) copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports;

(f) the accounting records required under section 124 for the current accounting period and for the last 7 completed accounting periods of the company;

(g) copies of all financial statements required to be completed under section 125 for the last 7 completed accounting periods of the company;

(h) the share register.

(2) The references in paragraphs (1)(b), (c), and (e) to 7 years and the references in paragraphs (1)(f) and (g) to 7 completed accounting periods, include any lesser periods that the Registrar may approve by notice in writing to the company.

(3) The company records referred to in this section may be kept at a place in Vanuatu other than the company's registered office, provided that notice of that place is given to the Registrar in accordance with subsection (4).

(4) If any company records are not kept at the registered office of the company, or the place at which they are kept is changed, the company must ensure that within 10 working days of their first being kept elsewhere or moved, as the case may be, the Registrar must be given notice of the place where the records are kept.

(5) If a company fails to comply with subsection (1) or (4), the company commits an offence and is liable on conviction to a fine not exceeding VT 25 million.

114. Form of records

(1) The records of a company must be kept:

(a) in written form; or

(b) in a form or in a manner that allows the records to be readily accessible so as to be usable for subsequent reference, and convertible into written form.

(2) The directors must ensure that adequate measures in place in order to:

(a) prevent the records being falsified; and

(b) detect any falsification of them.

115. Inspection of records by directors

(1) Subject to subsection (2), a director of a company is entitled, on giving reasonable notice, to inspect the records of the company:

(a) in written form; and

(b) without charge; and

(c) at a reasonable time specified by the director.

(2) The Court may, on application by the company, direct that the records need not be made available for inspection or limit the inspection of them in any manner it thinks fit if it is satisfied that:

(a) it would not be in the company's interests for a director to inspect the records; or

(b) the proposed inspection is for a purpose that is not properly connected with the director's duties.

116. Inspection of records by shareholders

(1) A company must keep the following records available for inspection in the manner prescribed in section 118 by a shareholder of the company, or by a person authorised in writing by a shareholder for the purpose, who serves written notice of intention to inspect on the company:

(a) minutes of all meetings and resolutions of shareholders;

(b) copies of written communications to all shareholders or to all holders of a class of shares during the preceding 7 years, including annual reports and financial statements;

(c) the records that must be available for public inspection under section 117.

(2) If a company fails to comply with subsection (1):

(a) the company commits an offence and is liable on conviction to a fine not exceeding VT25,000; and

(b) the director, or if the company has more than 1 director, each director is guilty of an offence punishable on conviction to a fine not exceeding VT25,000.

117. Inspection of records by public

(1) A company must keep the following records available for inspection in the manner prescribed in section 118 by any person who serves written notice of intention to inspect on the company:

(a) the certificate of incorporation or registration of the company;

(b) the rules of the company, if they differ from the model rules;

(c) the share register;

(d) the full names and physical addresses of the directors;

(e) details of the registered office of the company and of its postal address, if different from the registered office.

(2) If a company fails to comply with subsection (1), the company commits an offence and is liable on conviction to a fine not exceeding VT25000.

118. Manner of inspection

(1) Documents that may be inspected under section 116 or 117, must be available for inspection at the place at which the company's records are kept between the hours of 10.00 am and 4.00 pm on each working day during the inspection period.

(2) For the purposes of this section:

"inspection period" means the period commencing on the third working day after the day on which notice of intention to inspect is served on the company by the person or shareholder concerned and ending with the eighth working day after the day of service.

(3) A person may require a copy of, or extract from, a document that is available for inspection by him or her under section 116 or 117, to be sent to him or her:

(a) within 5 working days after he or she has made a request in writing for the copy or extract; and

(b) if he or she has paid a reasonable copying and administration fee prescribed by the company.

(4) If a company fails to provide a copy of, or extract from, a document in accordance with a request under subsection (3), the company commits an offence and is liable on conviction to a fine not exceeding VT5,000.

Division 3 – Documents to be Sent to Registrar and Shareholders

119. Annual returns

(1) The directors of a company must ensure that there is delivered to the Registrar each year, for registration, during the month allocated to the company for the purpose, an annual return:

(a) in the prescribed form; and

(b) containing the prescribed information; and

(c) accompanied by the prescribed annual return fee.

(2) The annual return must be dated as at a day within the month during which the return is required to be delivered to the Registrar, and the information required to be contained in it must be compiled as at that date.

(3) The annual return must be signed by a director of the company or by a solicitor or public accountant authorised for that purpose.

(4) On registration of a company under Part 2, the Registrar must allocate a month to the company for the purposes of this section.

(5) The Registrar may, by written notice to a company, alter the month allocated to the company under subsection (4).

(6) Despite subsection (1):

(a) a company does not need to make an annual return in the calendar year of its incorporation; and

(b) a subsidiary may, with the written approval of the Registrar, make an annual return during the month allocated to its holding company instead of during the month allocated to it.

(7) Different forms of annual return may be prescribed by the Registrar in respect of different classes of companies.

(8) If the director of a company fails to comply with subsections (1) or (2), the director, or if the company has more than 1 director, each director is guilty of an offence punishable on conviction to a fine not exceedingVT25,000.

120. Registrar may send annual return form to company

(1) The Registrar may send to a company an annual return form that sets out the prescribed information as it appears on the Vanuatu register:

(a) for approval in accordance with subsection 119(3), if the information set out in the form is current as at a date in the month in which the return is required to be made; or

(b) for such correction as may be required, and approval of the corrected information in accordance with subsection 119(3).

(2) If the annual return contains:

(a) an address of the registered office of the company; or

(b) a postal address of the company,

that is different from the address of the registered office or the postal address of the company entered on the Vanuatu register, the Registrar may alter the Vanuatu register accordingly.

(3) For the purposes of this section the Registrar may make provision for electronic submission of the annual return.

121. Special Annual Return

(1) The directors of a company must ensure that there is delivered to the Registrar a special annual return:

(a) in the prescribed form or in a form approved by the Registrar by public notice; and

(b) containing the prescribed information.

(2) The special annual return must be filed on the occurrence of any of the following circumstances:

(a) the adoption of new rules by a company, or the alteration of the rules of a company, under section 14;

(b) a change in the registered office or postal address of the company under section 18;

(c) the issue of shares by the company, under section 25;

(d) the acquisition by the company of its own shares under section 30;

(e) the redemption of a share under section 34;

(f) the transfer of shares under section 37

(g) a change in the directors of the company, or of a change in the name or physical address of a director, under section 85;

(h) the making of an order under section 99 altering or adding to the rules of a company;

(i) any documents requested by the Registrar under section 176.

122. Annual report to shareholders

An annual report must be sent to shareholders in accordance with section 55.

123. Other documents to be sent to shareholders

In addition to any annual report required under section 55, a company must send all the following documents to shareholders:

(a) notice of any repurchase of shares to which subsection 30(4) applies;

(b) notice of a written resolution approved under section 51;

(c) financial statements required to be sent under section 125;

(d) a written statement by an auditor under section 131;

(e) a report by an auditor under section 133.

Division 4 – Accounting and Audit

124. Accounting records to be kept

(1) The directors of a company must ensure all accounting records of the company are kept, and that these records:

(a) correctly record and explain the transactions of the company; and

(b) will at any time enable the financial position of the company to be determined with reasonable accuracy; and

(c) will enable the directors to ensure that the financial statements of the company comply with section 125 and with any regulation made under this Act; and

(d) will enable the financial statements of the company to be readily and properly audited.

(2) Without limiting subsection (1), the accounting records must contain the following:

(a) entries of money received and spent each day and the matters to which it relates; and

(b) a record of the assets and liabilities of the company; and

(c) if the company's business involves dealing in goods:

(i) a record of goods bought and sold, and relevant invoices; and

(ii) a record of stock held at the end of the financial year together with records of any stocktakings during the year; and

(d) if the company's business involves providing services, a record of services provided and relevant invoices.

(3) If a company sells goods or provides services for cash in the ordinary course of carrying on a retail business:

(a) invoices need not be kept in respect of each retail transaction for the purposes of subsection (2); and

(b) a record of the total money received each day in respect of the sale of goods or provision of services, as the case may be, is sufficient to comply with subsection (2) in respect of those transactions.

(4) Accounting records must be kept in a form specified under section 114.

(5) If the director of a company fails to comply with the requirements of this section, the director, or if the company has more than 1 director, each director is guilty of an offence punishable on conviction to a fine not exceeding VT25,000.

125. Financial statements to be prepared

(1) The directors of every public or community company must ensure that:

(a) within 4 months after the balance date of the company, or within any extended period applicable under subsection (4) - financial statements that comply with subsection (3) are completed in relation to the company and that balance date; and

(b) within 20 working days of the date on which the financial statements must be completed under paragraph (a), those financial statements are sent to all shareholders.

(2) The requirement under paragraph (1)(b) may be satisfied by sending the financial statements to shareholders in an annual report in accordance with section 55.

(3) The financial statements of a company must:

(a) give a true and fair view of the matters to which they relate; and

(b) comply with any applicable regulations made under this Act; and

(c) be dated and signed on behalf of the directors by 2 directors of the company or, if the company has only 1 director, by that director.

(4) The period within which a public or community company must comply with the requirements of paragraph (1)(a) may be extended by special resolution to a period not greater than 7 months.

(5) The following periods must not exceed 15 months:

(a) the period between the date of incorporation of a company and its first balance date;

(b) the period between any 2 balance dates of a company.

126. Application

(1) This section and sections 127 to 129 apply to a company in respect of an accounting period if:

(a) it is registered as a public company at any time during that accounting period; or

(b) the company's rules require it to appoint an auditor in respect of that accounting period; or

(c) a shareholder or shareholders holding shares that together carry the right to receive more than 20% of distributions made by the company give written notice to the company before the end of the accounting period requiring the financial statements of the company for that period to be audited: or

(d) it is registered as a community company at any time during that accounting period; or

(e) is a private company in which the Government of Vanuatu has a shareholding; or

(f) is a private company with an annual turnover exceeding VT50 million.

(2) If this section and sections 127 to 129 apply to a company in respect of an accounting period, but do not apply in respect of a subsequent accounting period, then:

(a) the financial statements of the company for the accounting period in respect of which this section applies must be audited; and

(b) the directors may give notice to all shareholders within 4 months of the commencement of a subsequent accounting period that this section and sections 127 to 129 no longer apply to the company, and that the auditor will cease to hold office unless a notice is given by shareholders under subsection (1) (c) by a date specified in the notice, which must be not less than 30 working days from the date on which the notice is given; and

(c) if a notice has been given under paragraph (b), and no notice under subsection (1)(c) is received by the company by the date specified in that notice, the auditor ceases to hold office on the later of:

(i) the date specified in the notice; or

(ii) the date on which the audit of the financial statements of the company for the previous accounting period is completed.

127. Appointment of auditor

(1) A company to which this section applies must appoint an auditor:

(a) to hold office as auditor until the auditor ceases to hold office under section 128; and

(b) to audit the financial statements of the company.

(2) A company must appoint an auditor:

(a) within 60 working days of the date on which this section first applies to the company;

(b) within 60 working days of any vacancy arising in the office of auditor.

128. When auditor ceases to hold office

An auditor ceases to hold office if he or she:

(a) ceases to hold office under subsection 126(2); or

(b) resigns by delivering a written notice of resignation to the registered office of the company not less than 20 working days before the date on which the notice is expressed to be effective; or

(c) becomes disqualified from being the auditor of the company under section 130; or

(d) is replaced as auditor by an ordinary resolution appointing another person as auditor in his or her place, following notice to the auditor in accordance with subsection 131(2); or

(e) dies.

129. Court may appoint auditor on request of shareholder

(1) The Court may, at the request of any shareholder, appoint an auditor if:

(a) this section applies to a company; and

(b) the company has neglected or failed to appoint an auditor.

(2) If the Court appoints an auditor, the Court may determine the fees to be paid by the company to the auditor.

(3) Any fees determined by the Court may be recovered as if they were provided for in a contract between the company and the auditor.

130. Qualifications of auditor

(1) A person must not be appointed or act as an auditor of a company unless:

(a) the person is entitled to practise as an accountant in Vanuatu, and meets any further requirements in respect of practice as an auditor in Vanuatu that may be prescribed by regulations made under this Act; or

(b) if the audit is to be carried out outside Vanuatu, the person meets all requirements to act as an auditor in the country, state, or territory in which the audit is to be carried out, and:

(i) the person is a member, fellow, or associate of an association of accountants constituted outside Vanuatu; or

(ii) the person has been approved for the relevant period for the purposes of this section by the Registrar by public notice.

(2) The following persons must not be appointed or act as auditor of a company:

(a) a director or secretary or employee of the company, or any other person responsible for keeping the accounting records of the company;

(b) a person who is a partner, or in the employment, of a person referred to in paragraph (a);

(c) a liquidator or a person who is a receiver in respect of the property of the company;

(d) a corporation;

(e) a person who, by virtue of any of paragraphs (a) to (c), may not be appointed or act as auditor of a related company.

(3) For the purposes of this Act, the Auditor General is deemed to be qualified as an auditor of a company.

131. Statement by auditor in relation to resignation or removal

(1) If an auditor resigns from office, the directors must, if requested to do so by that auditor,:

(a) distribute to all shareholders, at the expense of the company, a written statement of the auditor's reasons for resigning; or

(b) permit the auditor or his or her representative to explain at a shareholders' meeting the reasons for the resignation.

(2) A company must not appoint a new auditor in the place of an auditor who is qualified to hold that office, unless:

(a) at least 20 working days' written notice of a proposal to do so has been given to the auditor; and

(b) the auditor has been given a reasonable opportunity to make representations to the shareholders on the appointment of another person either in writing or by the auditor or his or her representative speaking at a shareholders' meeting (whichever the auditor may choose).

(3) An auditor is entitled to be paid reasonable fees and expenses by the company for making the representations to shareholders referred to in subsections (1) or (2).

132. Auditor to avoid conflict of interest

An auditor of a company must ensure, in carrying out the duties of an auditor under this Part, that his or her judgment is not impaired by reason of any relationship with, or interest in, the company or any related company.

133. Auditor's report

The auditor of a company to which sections 126 to 129 apply, must make a report to the shareholders on the financial statements audited by him or her that states:

(a) the work done by the auditor; and

(b) the scope and limitations of the audit; and

(c) the existence of any relationship (other than that of auditor) that the auditor has with, or any interests that the auditor has in, the company or any related company; and

(d) whether the auditor has obtained all information and explanations that he or she has required; and

(e) whether, in the auditor's opinion, as far as appears from an examination of them, proper accounting records have been kept by the company; and

(f) whether, in the auditor's opinion and having regard to any information or explanations that may have been added by the company, the financial statements:

(i) give a true and fair view of the matters to which they relate; and

(ii) comply with any applicable regulations made under this Act,

and, if they do not, the respects in which they fail to give such a view or comply with such requirements, as the case may be; and

(g) any other matter prescribed for the purposes of this section by regulations made under this Act.

134. Access to information

(1) The director of a company must ensure that the auditor of the company has access at all reasonable times to the accounting records and other documents of the company.

(2) An auditor of a company is entitled to require from a director or employee of the company such information and explanations that he or she thinks necessary for the performance of his or her duties as auditor.

(3) If the director of a company fails to comply with subsection (1), the director, or if the company has more than 1 director, each director is guilty of an offence punishable on conviction to a fine not exceeding VT25,000.

(4) A director or employee who fails to comply with subsection (2) commits an offence and is liable on conviction to a fine not exceeding VT25,000.

(5) It is a defence to an employee charged with an offence under subsection (4) if the employee proves that:

(a) he or she did not have the information required in his or her possession or under his or her control; or

(b) by reason of the position occupied by him or her or the duties assigned to him or her, he or she was unable to give the explanations required.

135. Auditor's attendance at shareholders' meeting

(1) A director of a company must ensure that an auditor of the company:

(a) is permitted to attend a meeting of shareholders of the company; and

(b) receives the notices and communications that a shareholder is entitled to receive relating to meetings and resolutions of shareholders; and

(c) may be heard at a meeting of shareholders that he or she attends on any part of the business of the meeting that concerns him or her as auditor.

(2) If the director of a company fails to comply with subsection (1), the director, or if the company has more than 1 director, each director is guilty of an offence punishable on conviction to a fine not exceeding VT25,000.

PART 8 – AMALGAMATIONS

136. Amalgamations

With the exception of a Community Company incorporated under this Act, any 2 or more companies may amalgamate and continue to operate as 1 company, in accordance with Schedule 6.

PART 9 – OFFERS OF SECURITIES TO THE PUBLIC

137. Meaning of advertisement

In this Part , unless the context otherwise requires,

"advertisement" means a form of communication:

(a) that:

(i) contains or refers to an offer of debt or equity securities to the public; or

(ii) is reasonably likely to induce persons to subscribe for debt or equity securities of an issuer, being securities to which the communication relates and that have been, or are to be, offered to the public; and

(b) that is authorised or instigated by, or on behalf of, the issuer of the debt or equity securities or prepared with the co-operation of, or by arrangement with, the issuer of the securities; and

(c) that is to be, or has been, distributed to a person.

138. Misleading or deceptive conduct generally

(1) A person must not engage in conduct in relation to any advertisement and generally for any debt and equity securities or any dealings in debt and equity securities that is misleading or deceptive or likely to mislead or deceive.

(2) To avoid doubt, this section applies to all dealings in debt and equity securities including trading.

(3) A person who contravenes this section is guilty of an offence punishable on conviction by imprisonment for not more than 5 years, or a fine not exceeding VT500,000, or both.

(4) A person who suffers loss or damage as a result of a contravention of this section, may apply to the Court for a civil remedy in damages as against the issuer, or the company and the directors jointly and severally at the time of the promulgation of the advertisement.

PART 10 – REMOVAL OF COMPANIES FROM REGISTER

139. Removal from register

A company is removed from the Vanuatu register when a notice signed by the Registrar stating that the company is removed from the Vanuatu register is registered under this Act.

140. Grounds for removal from register

(1) Subject to section 142, the Registrar must remove a company from the Vanuatu register if:

(a) the company fails to file its annual return within a period of 6 months after the date allocated; or

(b) the company has been put into liquidation, and the prescribed documents confirming that the liquidation of the company has been completed have not been sent or delivered to the Registrar within 6 months after the completion of the liquidation; or

(c) there is sent or delivered to the Registrar a request that the company be removed from the Vanuatu register on either of the grounds specified in section 141 made by:

(i) a shareholder or any other person authorised to make the request by a special resolution of shareholders entitled to vote and voting on the question; or

(ii) a director or any other person, if the rules of the company so require or permit; or

(d) a liquidator sends or delivers to the Registrar the prescribed documents confirming that the liquidation of the company has been completed.

(2) The Registrar may remove a company from the Vanuatu register if the company fails to comply with a requirement of this Act or the Regulations.

141. Request for company to be removed from register

A request that a company be removed from the Vanuatu register under paragraph 140(1)(c) may be made on the grounds that the company:

(a) has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with its rules and this Act; or

(b) has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court for an order putting the company into liquidation.

142. Requirement to be met before company must be removed from register

The Registrar must remove a company from the Vanuatu register under paragraph 140(1)(c), or (d), only if the Registrar is satisfied that no person has objected to the removal under section 144.

143. Notice of intention to remove

(1) If a company is to be removed from the Vanuatu register under paragraph 140(1)(b) or subsection 140(2), the Registrar must give public notice.

(2) If a company is to be removed from the Vanuatu register under paragraph 140(1)(c) or (d), the applicant, or the liquidator, as the case may be, must give public notice.

144. Objection to removal from Vanuatu register

(1) If a notice is given of an intention to remove a company from the Vanuatu register, any person may apply to the Court, not later than the date specified in the notice, and lodge a notice of objection to the removal on any 1 or more of the following grounds:

(a) that the company is still carrying on business or there is other reason for it to continue in existence;

(b) that the company is a party to legal proceedings;

(c) that the company is in receivership, or liquidation, or both;

(d) that the person is a creditor, or a shareholder, or a person who has an undischarged claim against the company;

(e) that the person believes that there exists, and intends to pursue, a right of action on behalf of the company under Part 6;

(f) that, for any other reason, it would not be just and equitable to remove the company from the Vanuatu register.

(2) For the purposes of paragraph (1)(d):

(a) a claim by a creditor against a company is not an undischarged claim if:

(i) the claim has been paid in full; or

(ii) the claim has been paid in part under a compromise entered into under Division 1 of Part 2 of the Companies (Insolvency and Receiverships) Act No. 3 of 2013 or by being otherwise compounded to the reasonable satisfaction of the creditor; or

(iii) the claim has been paid in full or in part by a receiver or a liquidator in the course of a completed receivership or liquidation; or

(iv) a receiver or a liquidator has notified the creditor that the assets of the company are not sufficient to enable any payment to be made to the creditor; and

(b) a claim by a shareholder or any other person against a company is not an undischarged claim if:

(i) payment has been made to the shareholder or that person in accordance with a right under the company's rules to receive a share in the company's surplus assets; or

(ii) a receiver or liquidator has notified the shareholder or that person that the company has no surplus assets.

145. Powers of Court

On an application for an order under section 144, the Court may make an order that the company is not to be removed from the Vanuatu register if the Court is satisfied that the company should not be removed from the Vanuatu register on any of those grounds stated in subsection 144(1).

146. Property of company removed from register

(1) Any property that has not been distributed or disclaimed immediately before the removal of a company from the Vanuatu register, vests in the Government with effect from the removal of the company from the Vanuatu register.

(2) For the purposes of this section, property of the former company includes other rights vested in or held on trust for the former company but does not include leasehold property.

(3) Despite subsection (2), property of a former company does not include property held by the former company on trust for any other person.

(4) The Minister must, immediately, upon becoming aware of the vesting of the property, give public notice of the vesting, setting out the name of the former company and details of the property.

(5) If property is vested in the Government under this section, a person who would have been entitled to receive all or part of the property, or payment from the proceeds of its

realisation, if it had been in the hands of the company immediately before the removal of the company from the Vanuatu register, or any other person claiming through that person, may apply to the Court for an order:

(a) vesting all or part of the property in that person; or

(b) for payment to that person by the Government of compensation of an amount not greater than the value of the property.

(6) On an application made under subsection (5), the Court may:

(a) decide any question concerning the value of the property, the entitlement of any applicant to the property or to compensation, and the apportionment of the property or compensation among 2 or more applicants; or

(b) order that the hearing of 2 or more applications be consolidated; or

(c) order that an application be treated as an application on behalf of all persons, or all members of a class of persons, with an interest in the property; or

(d) make an ancillary order.

(7) Compensation ordered to be paid under subsection (5) must be paid out of the Vanuatu Government Account without further appropriation than this section.

147. Disclaimer of property by Government

(1) The Minister may, by notice in writing, disclaim the Government's title to property vesting in the Government, if the property is onerous property.

(2) The Minister must immediately give public notice of the disclaimer.

(3) Property that is disclaimed under this section is deemed not to have vested in the Government.

(4) Subject to a Court order, the Minister may not disclaim property unless:

(a) the property is disclaimed within 12 months after the vesting of the property in the Government first comes to the notice of the Minister; or

(b) before the expiry of that 12 month period, any person gives notice in writing to the Minister requiring the Minister to elect, before the close of such date as stated in the notice, not being a date that is less than 60 working days after the date on which the notice is received by the Minister, whether to disclaim the property, the property is disclaimed before the close of that date.

(5) A statement in a notice disclaiming property under this section that the vesting of the property in the Government first came to the notice of the Minister on a specified date is, in the absence of proof to the contrary, evidence of the fact stated.

(6) For the purposes of this section, onerous property means:

(a) an unprofitable contract; or

(b) property of the company that is unsaleable, or not readily saleable, or which may give rise to a liability to pay money or perform an onerous act.

148. Effect of disclaimer

(1) A disclaimer under section 147:

(a) brings to an end on and from the date of the disclaimer the rights, interests, and liabilities of the Government in relation to the property disclaimed; and

(b) does not, except so far as necessary to release the Government from a liability, affect the rights or liabilities of any other person.

(2) A person suffering loss or damage as a result of a disclaimer under section 147 may:

(a) claim as a creditor of the company for the amount of the loss or damage, taking account of the effect of any order made by the Court under paragraph (2)(b); or

(b) apply to the Court for an order that the disclaimed property be delivered to or vested in that person.

(3) The Court may make an order under paragraph (2)(b) if it is satisfied that it is just that the property should be vested in the applicant.

149. Liability of directors, shareholders, and others to continue

The removal of a company from the Vanuatu register does not affect the liability of any former director or shareholder of the company or any other person in respect of any act or omission that took place before the company was removed from the Vanuatu register and that liability continues and may be enforced as if the company had not been removed from the Vanuatu register.

150. Restoration of removed company to Vanuatu register

(1) The Registrar may, on the application of a person referred to in subsection (3), restore a company that has been removed from the Vanuatu register under paragraph 140(1)(a).

(2) The Court may, on the application of a person referred to in subsection (3), order that a company that has been removed from the Vanuatu register be restored to the Vanuatu register if it is satisfied that,:

(a) at the time the company was removed from the Vanuatu register:

(i) the company was still carrying on business or other reason existed for the company to continue in existence; or

(ii) the company was a party to legal proceedings; or

(iii) the company was in receivership, or liquidation,; or

(iv) the applicant was a creditor, or a shareholder, or a person who had an undischarged claim against the company; or

(v) the applicant believed that a right of action existed, or intended to pursue a right of action, on behalf of the company under Part 6; or

(b) for any other reason that it is just and equitable to restore the company to the Vanuatu register.

(3) The following persons may make an application under subsection (1) or (2):

(a) a person who, at the time the company was removed from the Vanuatu register:

(i) was a shareholder or director of the company; or

(ii) was a creditor of the company; or

(iii) was a party to any legal proceedings against the company; or

(iv) had an undischarged claim against the company; or

(v) was the liquidator, or a receiver of the property of, the company;

(b) the Registrar;

(c) with the leave of the Court, any other person.

(4) Before the Court makes an order restoring a company to the Vanuatu register under this section, it may require any provisions of this Act or any other Act or any regulations made under this Act or under any other Act, being provisions with which the company had failed to comply before it was removed from the Vanuatu register, to be complied with.

(5) The Court may give any directions or make any orders that may be necessary or desirable for the purpose of placing the company and any other persons as nearly as possible in the same position as if the company had not been removed from the Vanuatu register.

151. Restoration to register

(1) A company is restored to the Vanuatu register when a notice signed by the Registrar stating that the company is restored to the Vanuatu register is registered under this Act.

(2) A company that is restored to the Vanuatu register is deemed to have continued in existence as if it had not been removed from the register.

152. Vesting of property in company on restoration to register

(1) Subject to this section, property of a company that is, at the time the company is restored to the Vanuatu register, vested in the Government pursuant to section 146, vests in the company on its restoration to the Vanuatu register as if the company had not been removed from the Vanuatu register.

(2) Subsection (1) does not apply to any property vested in the Government under section 146, if the Court has made an order for the payment of compensation to a person under paragraph 146(4)(b) in respect of that property.

(3) Subsection (1) does not apply to land or any estate or interest in land that is vested in the Government, if transmission to the Government of the land or that estate or interest in land has been registered under the Land Leases Act [CAP 163] or the Strata Titles Act [CAP 266].

(4) If transmission to the Government of land or any estate or interest in land that is vested in the Government under section 147 has been registered under the Land Leases Act [CAP 163] or the Strata Titles Act [CAP 266], the Court may, on the application of the company, make an order:

(a) for the transfer of the land or the estate or interest to the company; or

(b) for the payment by the Government to the company of compensation:

(i) of an amount not greater than the value of the land or the estate or interest as at the date of registration of the transmission; or

(ii) if the land or the estate or interest has been sold or contracted to be sold, of an amount equal to the net amount received or receivable from the sale.

(5) On an application under subsection (4), the Court may decide any question concerning the value of the land or the estate or interest.

(6) Compensation ordered to be paid under subsection (4) must be paid out of the Vanuatu Government Account without further appropriation than this section.

PART 11 – OVERSEAS COMPANIES

153. Meaning of carrying on business

For the purposes of this Part:

(a) a reference to an overseas company carrying on business in Vanuatu includes a reference to the overseas company:

(i) establishing or using a share transfer office or a share registration office in Vanuatu; or

(ii) administering, managing, or dealing with property in Vanuatu as an agent, or personal representative, or trustee, and whether through its employees or an agent or in any other manner;

(b) an overseas company does not carry on business in Vanuatu merely because in Vanuatu it:

(i) is or becomes a party to a legal proceeding or settles a legal proceeding or a claim or dispute; or

(ii) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs; or

(iii) maintains a bank account; or

(iv) effects a sale of property through an independent contractor; or

(v) solicits or procures an order that becomes a binding contract only if the order is accepted outside Vanuatu; or

(vi) creates evidence of a debt or creates a charge on property; or

(vii) secures or collects any of its debts or enforces its rights in relation to securities relating to those debts; or

(viii) conducts an isolated transaction that is completed within a period of 30 working days, not being one of a number of similar transactions repeated from time to time; or

(ix) invests its funds or holds property.

153A. Application of this Part to public private partnerships

For the purposes of this Part, an overseas company that is a private partner under a public private partnership in Vanuatu as defined under the Public Private Partnerships Act No. 23 of 2024 is taken to be carrying on business in Vanuatu.

154. Name must comply with section 10

(1) An overseas company must not carry on business in Vanuatu on or after the commencement of this Act under a name that could not be registered under section 10.

(2) If an overseas company contravenes this section, the company commits an offence and is liable on conviction to a fine not exceeding VT25,000.

155. Overseas companies to register under this Act

(1) An overseas company that, on or after the commencement of this Act, commences to carry on business in Vanuatu must:

(a) comply with any requirements under the laws of Vanuatu; and

(b) apply for registration under this Part in accordance with section 157 within 20 working days of commencing to carry on business.

(2) An overseas company that, immediately before the commencement of this Act, was carrying on business in Vanuatu and, on the commencement of this Act, continues to carry on business in Vanuatu, is deemed to be registered under this Part.

(3) An overseas company that changes its name must send or deliver to the Registrar a notice in the prescribed form of the change of name within 10 working days of the change of name.

(4) If an overseas company fails to comply with this section, the overseas company commits an offence and is liable on conviction to a fine not exceeding VT25,000.

156. Validity of transactions not affected

A failure by an overseas company to comply with sections 154 or 155 does not affect the validity or enforceability of any transaction entered into by the overseas company.

157. Application for registration

(1) An application for registration of an overseas company under this Part must be delivered to the Registrar and must be:

(a) in the prescribed form; and

(b) signed by or on behalf of the overseas company.

(2) Without limiting subsection (1), the application must:

(a) state the name of the overseas company; and

(b) state the full names and physical addresses and postal addresses of the directors and the nominators of any nominee directors of the overseas company at the date of the application; and

(ba) state the full name of any shareholder, the full name of the nominator of any nominee shareholder, and the number and class of shares issued to any shareholder; and

(c) state the full address of the place of business in Vanuatu of the overseas company or, if the overseas company has more than 1 place of business in Vanuatu, the full address of the principal place of business in Vanuatu of the overseas company; and

(d) state the postal address in Vanuatu of the overseas company; and

(e) have attached evidence of incorporation of the overseas company, and, if not in English or French, a certified translation of that document; and

(f) state the full name of one or more persons resident or incorporated in Vanuatu who are authorised to accept service in Vanuatu of documents on behalf of the overseas company, and the postal address and physical or business address of each those persons; and

(g) have attached any other documents which may be required under the laws of Vanuatu.

158. Registration of overseas company

(1) If the Registrar receives a properly completed application for registration under this Part of an overseas company, the Registrar must immediately register the overseas company on the Vanuatu register.

(2) If the Registrar receives a notice of a change of name of an overseas company in accordance with subsection 155(3), the Registrar must register the change of name on the Vanuatu register.

159. Use of name by overseas company

An overseas company that carries on business in Vanuatu must ensure that its full name, and the name of the country where it was incorporated, are clearly stated in:

(a) written communications sent by, or on behalf of, the company; and

(b) documents issued or signed by, or on behalf of, the company that evidence or create a legal obligation of the company.

160. Further information to be provided by overseas company

(1) An overseas company that carries on business in Vanuatu must ensure that, within 20 working days of the change, notice in the prescribed form is given to the Registrar of:

(a) a change in the directors or in the names or physical addresses or postal addresses of the directors or the nominators of any nominee directors of the overseas company; or

(aa) a change in the shareholders, the nominators of any nominee shareholders or the number or class of shares issued to a shareholder of the overseas company; or

(b) a change in the address of the place of business or principal place of business of the overseas company; or

(c) a change in the postal address in Vanuatu of the overseas company; or

(d) a change in any person or in the postal address or physical or business address of any person authorised to accept service in Vanuatu of documents on behalf of the overseas company.

(2) If an overseas company fails to comply with subsections (1), the overseas company commits an offence and is liable on conviction to a fine not exceeding VT 25 million.

161. Annual return of overseas company

(1) An overseas company that carries on business in Vanuatu must ensure that the Registrar receives each year, during the month allocated to the overseas company for the purposes of this section, an annual return in the prescribed form confirming that the information on the Vanuatu register in respect of the overseas company referred to in the return is correct at the date of the return.

(2) The annual return must be dated as at a day within the month during which the return is required to be received by the Registrar.

(3) On registration of an overseas company under this Part, the Registrar must allocate a month to the company for the purposes of this section.

(4) The Registrar may, by written notice to an overseas company, alter the month allocated to the company under subsection (3).

(5) Despite subsection (1), an overseas company that is deemed to be registered under this Part does not need to make an annual return in the calendar year of its registration under this Part.

(6) If an overseas company fails to comply with subsections (1) or (2), the company commits an offence and is liable on conviction to a fine not exceeding VT25,000.

162. Overseas company ceasing to carry on business in Vanuatu

(1) An overseas company that intends to cease to carry on business in Vanuatu must:

(a) give public notice of that intention; and

(b) give notice to the Registrar in the prescribed form stating the date on which it will cease to carry on business in Vanuatu.

(2) The Registrar must remove an overseas company from the Vanuatu register as soon as practicable after:

(a) the date specified in the notice given in accordance with paragraph (1)(b); or

(b) receipt of a written notice given by a liquidator that the liquidation of the assets in Vanuatu of the overseas company has been completed.

163. Attorneys of overseas companies

A declaration endorsed on or annexed to a document appointing, or appearing to appoint, an attorney of an overseas company, made or appearing to be made by one of the directors before a person authorised to take a sworn statement for use in Vanuatu, in the country concerned, to the effect that:

(a) the company is incorporated under the name stated in the document in accordance with the law of the country in which it is so incorporated, the name of which is stated in the declaration; and

(b) the document has been executed, and the powers appearing to be conferred on the attorney are authorised to be conferred under the constitution of the company, or under the Act or document under which the company is incorporated, or by any other document constituting or defining the constitution of the company; and

(c) the person making the declaration is a director of the company:

is conclusive evidence of those facts.

164. Exemption from requirements of this Part

The Minister, may by Order make regulations to:

(a) provide for any class or classes of overseas company to be exempted from the application of any or all of the requirements of this Part; or

(b) modify the application of this Part to any class or classes of overseas companies, on the terms and conditions as may be prescribed in the regulations.

164A. Continuation

(1) A company incorporated under:

(a) the laws of a jurisdiction other than Vanuatu which does not prohibit the continuation of companies outside that jurisdiction; or

(b) the International Companies Act [CAP 222],

may apply to continue as a company incorporated under this Act.

(2) A company applying to be continued under this Act is to file with the Registrar:

(a) a constitution which complies with this Act; and

(b) a certified copy of its existing memorandum of association and articles of association or their equivalent and certificate of incorporation; and

(c) a certified copy of a resolution passed by a simple majority of members entitled to vote, to:

(i) continue the company under this Act; and

(ii) approve the new constitution; and

(iii) appoint one or more persons to sign the new constitution; and

(iv) authorize one or more persons who may give notice to the Registrar in writing, that the new constitution be registered.

(3) The new constitution is to contain:

(a) the existing name, which is to be continued; and

(b) the jurisdiction in which it is incorporated; and

(c) the date it was incorporated.

(4) If the Registrar is satisfied that all requirements in respect of continuation and all matters precedent and incidental in this Act have been complied with, the Registrar may retain the documents filed under subsection (2) and grant a permit to continue the company under this Act.

(5) The Registrar must not prior to receiving a notice under subparagraph (2)(c)(iv), permit any person to inspect the documents referred to in subsection (2) and must not disclose any information requested.

(6) Prior to the registration of the new constitution, a company may rescind or amend the written authorization referred to under subparagraph (2)(c)(iv) by delivering to the Registrar a written notice of rescission or amendment.

(7) If the Registrar does not receive a notice referred to under subparagraph (2)(c)(iv) from a person named in the written authorization, within three years immediately following the date on which the permit to continue is granted by the Registrar under subsection (4), the permit is taken to have lapsed.

164B. Certificate of continuation

(1) Subject to subsection 164A(4), upon receipt of a notice under subparagraph 164A(2)(c)(iv), the Registrar may issue a dated certificate of continuation authenticated by its official seal certifying that the company is incorporated under this Act.

(2) A certificate of continuation issued by the Registrar under subsection (1) is prima facie evidence of compliance with all requirements of this Act in respect of continuation.

164C. Effect of continuation

(1) From the time of issuing of a certificate of continuation under subsection 164B(1):

(a) the company to which the certificate relates:

(i) continues to be a body corporate incorporated under this Act, under the name designated in the articles of continuation; and

(ii) is capable of exercising all powers of a company incorporated under this Act; and

(iii) is no longer to be treated as a company incorporated under the International Companies Act [CAP 222] or a company incorporated under the laws of a jurisdiction outside Vanuatu; and

(b) the constitution of the company, or its equivalent, as amended by the articles of continuation, continues to apply as the constitution of that company; and

(c) property of every description, including choses in action and the business of the company, must continue to be vested in the company; and

(d) the company must continue to be liable for all of its claims, debts, liabilities and obligations.

(2) If a company continues under this Act:

(a) no conviction, judgment, ruling, order, claim, debt, liability, or obligation due or to become due and no cause existing, against the company or against any member, director, officer or agent, is released or impaired by its continuation as a company under this Act; and

(b) any civil or criminal proceedings pending at the time of issuance of certificate of continuation by the Registrar under subsection 164A(5) must not be discontinued.

(3) All unpaid shares in the company that are outstanding prior to the Registrar issuing the certificate of continuation under subsection 164B(1) are deemed to have been issued in accordance with this Act.

(4) Despite subsection (3), if a share at the time the Registrar issues the certificate of continuation is not fully paid, the member holding the share remains liable until the share is fully paid.

(5) The company must amend its constitution within 2 years after the Registrar issues its certificate of continuation.

164D. Continuation under foreign law

(1) Subject to any limitations in its constitution, a company may, by a resolution of directors or by a resolution of members, be continued as a company incorporated under the laws of a jurisdiction outside Vanuatu in the manner provided under those foreign laws.

(2) A company that continues to be incorporated under the laws of a jurisdiction outside Vanuatu ceases to be a company incorporated under this Act upon the company complying with those laws, provided that the laws of the jurisdiction outside Vanuatu permit the continuation.

(3) Where a company continues under the laws of a jurisdiction outside Vanuatu:

(a) the company continues to be liable for all of its claims, debts, liabilities and obligations that existed prior to this continuation as a company under the laws of the jurisdiction outside Vanuatu; and

(b) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under the laws of the jurisdiction outside Vanuatu; and

(c) no proceedings, whether civil or criminal, pending by or against the company, or against any member, director, officer or agent be discontinued by its continuation as a company under the laws of the jurisdiction outside Vanuatu, but may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be.

PART 12 – COMMUNITY COMPANIES

165. Incorporation of a community company

(1) A private company may be registered as a community company under this Act if the company has as its principal objective, the promotion of the community interest.

(2) An application for registration of a community company must be completed under section 6 and must state the community interest the community company intends to promote.

(3) The provisions which relate to private companies under this Act are to apply to community companies except where inconsistent with this Part.

(4) A company which has as its principal objective, the promotion of a political purpose may not be registered as a community company under this Act.

(5) A shareholder of a community company must be a member of the relevant community and the shareholder holds the share or shares on trust for the community and is accountable to the community.

166. Meaning of community interest

For the purposes of this Act,

"community interest" means any community interest which benefits the community and which a reasonable person might consider that it is being carried on for the benefit of the community.

"community" means a group of individuals who share a readily identifiable characteristic.

167. Restrictions on distributions, dividends and loans

(1) Community companies under this Act must not make distributions or pay dividends to shareholders.

(2) Community companies under this Act must not make loans to directors or shareholders.

168. Asset- lock and use of assets of a community company

(1) The assets of a community company may be used in the ordinary course of business subject to the provisions of this Act and any restrictions which may be stated in the rules of the community company.

(2) All assets of a community company may only be disposed of:

(a) in the ordinary course of business; or

(b) for full consideration and with the approval of 75% of all registered shareholders.

(3) Any disposition under subsection (2) may only be approved by registered shareholders after the proposed disposition has been outlined to all members of the community as defined in section 166.

(4) Any disposition of assets made in contravention of this section is voidable by the community company.

(5) For the avoidance of doubt sections 107 to 109 of this Act apply to community companies.

169. Community Company Reports

(1) The director of a community company must prepare, in respect of each financial year, a report about the company's activities during the financial year.

(2) A community company report must contain:

(a) information about the remuneration of directors; and

(b) a fair and accurate description of the manner in which the company's activities during the year have benefited the community; and

(c) a description of the manner in which the company has consulted with the community during the course of the year and the outcome of these consultations; and

(d) if any assets have been disposed of other than in the ordinary course of business, the details of the transaction.

(3) If the director of a community company fails to comply with subsections (1) and (2), he or she, or if the community company has more than 1 director, each director of the community company is guilty of an offence punishable on conviction to a fine not exceeding VT25,000.

PART 13 – REGISTRAR OF COMPANIES

Division 1 Registrar

170. Registrar

The Minister is to appoint a person to hold office as Registrar of Companies.

171. Deputy Registrars

(1) The Registrar may appoint as many Deputy Registrars of Companies as may be necessary for the purposes of this Act.

(2) Subject to the control of the Registrar, a Deputy Registrar has and may exercise the powers, duties, and functions of the Registrar under this Act.

(3) The fact that a Deputy Registrar exercises those powers, duties, or functions is conclusive evidence of his or her authority to do so.

172. Transitional

The person holding office as Registrar of Companies under the Companies Act [CAP 191] immediately before the commencement of this Act is deemed to have been appointed as Registrar of Companies.

173. Notices in general

Section 206 applies, with the necessary modifications, to the giving of notices by the Registrar.

174. Notices to individuals

(1) A notice that the Registrar is required by this Act to give to an individual, must be given in writing and in a manner that the Registrar considers appropriate in the circumstances.

(2) Without limiting subsection (1), the Registrar may give notice to an individual by:

(a) having it delivered to that person; or

(b) posting it to that person at his or her last known postal address; or

(c) faxing it to a fax number used by that person; or

(d) having it published in a newspaper or other publication in circulation in the area where that person lives or is believed to live.

175. Admissibility of notices given by Registrar

A document is admissible in legal proceedings if the document:

(a) appears to be a copy of a notice given by the Registrar; and

(b) is certified by the Registrar, or by a person authorised by the Registrar, as having been derived from a device or facility that records or stores information electronically or by other means.

176. Registrar may require information and copies of documents

(1) The Registrar may give notice to a company requiring that company to provide, by the date specified in the notice:

(a) corrected or updated details of any matter entered on any of the registers for that company; or

(b) a certified copy of any document that has been or ought to have been delivered to the Registrar for registration under this Act, or under any other Act for that company; or

(c) any information or document relating to:

(i) the company's integrity, competence, financial standing or organisation; or

(ii) the company's compliance with this Act or the Regulations.

(2) The date specified in the notice must not be less than 10 working days from the date on which the notice is sent to the company.

(3) If a company fails to comply with a notice given under subsection (1), the company commits an offence and is liable on conviction to a fine not exceeding VT 15 million.

(4) In this section and section 177, company is taken to include an overseas company.

177. Registrar may amend register

If information provided to the Registrar by a company under section 176 differs from the information shown on any of the registers for that company, the Registrar may amend the registers accordingly.

178. Registrar's powers of inspection

(1) A director, shareholder, creditor or aggrieved person may apply to the Court to request the Registrar to exercise the powers specified in this Act.

(2) The Registrar, in complying with the Court order referred to in subsection (1), may do any of the following:

(a) require a person, including a person carrying on the business of banking, to produce for inspection relevant documents within that person's possession or control; or

(b) inspect and take copies of relevant documents; or

(c) take possession of relevant documents and remove them from the place where they are kept, and retain them for a reasonable time, for the purpose of taking copies; or

(d) retain relevant documents for a period that is, in all the circumstances reasonable, if there are reasonable grounds for believing that they are evidence of the commission of an offence.

(3) A person who fails to comply with paragraph (2)(a) is guilty of an offence punishable on conviction to a fine not exceeding VT 15 milliion.

(4) In this section,

"company" includes an overseas company;

"relevant document", in relation to a company, means a document that contains information relating to:

(a) the company; or

(b) money or other property that is, or has been, managed, supervised, controlled, or held in trust by or for the company.

179. Registrar not to be obstructed

(1) A person must not obstruct or hinder the Registrar, or a person authorised by the Registrar, while exercising a power conferred by section 178.

(2) A person who fails to comply with subsection (1) is guilty of an offence punishable on conviction to a fine not exceeding VT 15 million.

180. Certain Acts not affected by Registrar's power of inspection

Sections 178 and 179 do not limit or affect any powers of inspection provided under any Tax legislation.

180A. Registrar may request information and documents

For the purpose of performing a function or exercising a power under this Act, the Registrar may request information or documents, or both, from any or all of the following:

(a) the Financial Intelligence Unit;

(b) a supervisor within the meaning of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014;

(c) the Sanctions Secretariat;

(d) a law enforcement agency;

(e) a domestic regulatory authority;

(f) a foreign government agency that carries out functions corresponding or similar to the functions carried out by a body or agency referred to in paragraph (a), (b), (c), (d) or (e).

181. (*Repealed*)

182. Information and report to be given to Registrar

(1) A person authorised by the Registrar for the purposes of section 178 must supply the following documents, information, or reports to the Registrar or a Deputy Registrar when directed to do so:

(a) any document or information obtained in the course of making an inspection under that section; or

(b) any report prepared in relation to an inspection under that section.

(2) A person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding VT25,000.

183. Restrictions on disclosing information and documents

(1) The Registrar or a person authorised by the Registrar must not disclose any documents or information except:

(a) in accordance with section 178; or

(b) subject to the approval of the Registrar in the case of a person authorised by the Registrar, with the consent of the person to whom it relates; or

(c) subject to the approval of the Registrar in the case of a person authorised by the Registrar, for the purpose of, or in connection with, the exercise of powers conferred by this Act; or

(d) to the extent that the information, or information contained in the document or report, is available under any Act or in a public document; or

(e) subject to the approval of the Registrar in the case of a person authorised by the Registrar, to a liquidator for the purpose of the liquidation of a company or the assets of an overseas company; or

(f) to the Minister; or

(g) for the purpose of disclosure to:

(i) the Financial Intelligence Unit; or

(ii) a supervisor within the meaning of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 for the purposes of performing a function or exercising a power under that Act; or

(iii) a law enforcement agency for the purpose of investigating or prosecuting any offence against a law of Vanuatu; or

(iv) a law enforcement agency for the purpose of investigating or taking action under the Proceeds of Crime Act [CAP 284]; or

(v) a domestic regulatory authority for the purpose of carrying out its regulatory functions; or

(vi) the Sanctions Secretariat for the purpose of carrying out its functions under the United Nations Financial Sanctions Act No. of 2017; or

(vii) a foreign government agency in accordance with section 183A.

(2) A person who contravenes subsection (1) commits an offence punishable upon conviction by:

(a) for an individual - a fine not exceeding VT 15 million or imprisonment for a term not exceeding 5 years, or both; or

(b) for any other person - a fine not exceeding VT 75 million.

183A. Disclosure to foreign government agency

The Registrar or a person authorised by the Registrar may disclose documents or information to a foreign government agency if:

(a) the Registrar is satisfied that the disclosure is for the purpose of:

(i) performing a function or exercising a power under the foreign government agency's own regulatory legislation, including investigating a breach of that legislation; or

(ii) performing a function or exercising a power under the foreign jurisdiction's anti-money laundering and counter-terrorism financing regulation and supervision laws; or

(iii) performing a function or exercising a power under the foreign jurisdiction's financial sanctions laws; or

(iv) investigating or prosecuting a foreign serious offence or a foreign tax evasion offence; or

(v) investigating or taking action under the foreign jurisdiction's proceeds of crime laws; and

(b) the Registrar is satisfied that:

(i) the information will be used for a proper regulatory, supervisory or law enforcement purpose; and

(ii) the agency is subject to adequate restrictions on further disclosure.

184. Inspection report admissible in liquidation proceedings

Despite any other Act or Regulation, a report prepared by a person in relation to an inspection carried out by him or her under section 178, is admissible as evidence at the hearing of an application to the Court to appoint a liquidator.

185. Appeals

(1) A person who is aggrieved by an act or decision of the Registrar under this Act may appeal to the Court within 15 working days after the date of notification of the act or decision, or within any further time that the Court may allow.

(2) On hearing the appeal, the Court may:

(a) approve the Registrar's act or decision; or

(b) give any directions that the Court thinks fit; or

(c) make any determination in the matter that the Court thinks fit.

186. Exercise of inspection power not affected by appeal

Subject to section 187, but despite any other provision of any Act or Regulations, if a person appeals or applies to the Court in relation to an act or decision of the Registrar or a person authorised by the Registrar under section 178, until a decision on the appeal or application is given:

(a) the Registrar, or that person, may continue to exercise the powers under that section as if no such appeal or application had been made; and

(b) no person is excused from fulfilling an obligation under that section by reason of that appeal or application.

187. Destruction and admissibility of Registrar's documents

If an appeal or application to which section 186 applies is allowed or granted, as the case may be:

(a) the Registrar must ensure that, immediately after the decision of the Court is given, any copy of a document taken or retained by the Registrar or by a person authorised by the Registrar in respect of that act or decision, is destroyed; and

(b) no information acquired under that section in relation to that act or decision is admissible in evidence in any proceedings unless the Court hearing the proceedings in which it is sought to adduce the evidence is satisfied it was not obtained unfairly.

187A. Indemnity from liability etc.

The Registrar, and any person authorised by the Registrar, is not subject to any civil or criminal liability, action, claim or demand for anything done or omitted to be done in good faith under or for the purposes of this Act.

Division 2 – Register kept by Registrar

188. Register

(1) The Registrar is to ensure that a register of companies is kept in a place located in Vanuatu or overseas that the Registrar determines from time to time.

(2) The register may be kept in any manner that the Registrar thinks fit including, either wholly or partly, by means of a device or facility:

(a) that records or stores information electronically or by other means; and

(b) that permits the information so recorded or stored to be readily inspected or reproduced in usable form.

188A. Registrar to maintain a register of beneficial owners

The Registrar is to ensure that a register of beneficial owners of a company is kept and is updated on details of the company's beneficial owners.

189. Inspection of register

(1) A person may, on payment of a prescribed fee, inspect:

(a) a registered document that is part of the register referred to in subsection 188(1) (registered document); or

(b) details of any registered document that have been entered on any device or facility referred to in subsection 188(2); or

(c) any registered document of which details have been entered in any such device or facility.

(2) The inspection must take place during the hours when the office of the Registrar is open to the public for the transaction of business on a working day.

190. Certified copies

A person may, on payment of a prescribed fee, require the Registrar to give or certify:

(a) a certificate of incorporation of a company; or

(b) a copy of, or extract from, a registered document; or

(c) details of any registered document that have been entered in any device or facility referred to in subsection 188(2); or

(d) a copy of, or extract from, a registered document details of which have been entered in any such device or facility.

191. Registration of documents

As soon as a document is received for registration under this Act, the Registrar must:

(a) subject to section 192, register the document in the register; and

(b) in the case of a document that is not an annual return, give written advice of the registration to the person from whom the document was received.

192. Rejection of documents

(1) The Registrar may refuse to register a document that:

(a) is not in the prescribed form, if any; or

(b) does not comply with this Act or regulations made under this Act; or

(c) is not printed or typewritten; or

(d) if the relevant register is kept wholly or partly by means of a device or facility referred to in section 188(2), is not in a form that enables details to be entered directly by electronic or other means in the device or facility; or

(e) has not been properly completed; or

(f) contains material that is not clearly legible; or

(g) is not accompanied by the prescribed fee.

(2) If subsection (1) applies, the Registrar may require either that:

(a) the document is submitted for registration again, appropriately amended or completed, or accompanied by the prescribed fee; or

(b) a fresh document is submitted in its place.

193. When document registered

For the purposes of this Act, a document is registered when:

(a) the document itself becomes part of the register to which it relates; or

(b) details of the document including the time and date of its registration are entered in any device or facility referred to in subsection 188(2).

194. No presumption of validity or invalidity

The registration, or refusal of registration of a document by the Registrar does not affect or create a presumption as to, the validity or invalidity of the document or the correctness or otherwise of the information contained in it.

PART 14 – MISCELLANEOUS

Division 1 – Offences

195. Proceedings for offences

(1) Despite anything to the contrary in the Criminal Procedure Code [CAP 136], any information for an offence under this Act may be laid at any time within 3 years after the date of that offence.

(2) This Act does not affect the liability of any person under any other Act, but no person may be convicted of an offence against this Act and any other Act in respect of the same conduct.

196. False or misleading statements on documents

(1) A person who, with respect to a document required by or for the purposes of this Act:

(a) makes, or authorises the making of, a statement in it that is false or misleading in a material particular knowing it to be false or misleading; or

(b) omits, or authorises the omission from it of, any matter knowing that the omission makes the document false or misleading in a material particular,

is guilty of an offence.

(2) A director or employee of a company who

(a) makes or provides; or

(b) authorises or permits the making or providing of;

a false or misleading statement or report that relates to the affairs of the company especially in a material particular, to:

(i) a director, employee, auditor, shareholder, debenture holder, or trustee for debenture holders of the company; or

(ii) a liquidator, liquidation committee, or receiver or manager of property of the company; or

(iii) if the company is a subsidiary, a director, employee, or auditor of its holding company,

knowing it to be false or misleading, is guilty of an offence.

(3) A person who is guilty of an offence under subsections (1) or (2), is punishable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding VT500,000, or both.

(4) For the purposes of this Act, a person who voted in favour of the making of a statement at a meeting is deemed to have authorised the making of the false or misleading statement.

197. Fraudulent use or destruction of company property

(1) A director, employee, or shareholder of a company who:

(a) fraudulently takes or applies property of the company for:

(i) his or her own use or benefit; or

(ii) for a use or for any other purpose other than the use or purpose of the company; or

(b) fraudulently conceals or destroys property of the company,

is guilty of an offence.

(2) A person who commits an offence under subsection (1), is punishable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding VT500,000, or both.

198. Falsification of records

(1) A director, employee, or shareholder of a company who, with intent to defraud or deceive a person:

(a) destroys, parts with, mutilates, alters, or falsifies, or is a party to the destruction, mutilation, alteration, or falsification of any register, accounting records, book, paper, or other document belonging or relating to the company; or

(b) makes, or is a party to the making of, a false entry in any register, accounting records, book, paper, or other document belonging or relating to the company,

is guilty of an offence.

(2) A person who, in relation to a mechanical, electronic, or other device used in connection with the keeping or preparation of any register, accounting or other records, index, book, paper, or other document for the purposes of a company or this Act:

(a) records or stores in the device, or makes available to a person from the device, matter that he or she knows to be false or misleading in a material particular; or

(b) with intent to falsify or render misleading any such register, accounting or other records, index, book, paper, or other document, destroys, removes, or falsifies any matter recorded or stored in the device, or fails or omits to record or store any matter in the device,

is guilty of an offence.

(3) A person who commits an offence under subsections (1) or (2) is guilty of an offence punishable on conviction by imprisonment for not more than 7 years or to a fine not exceeding VT500,000, or both.

199. Carrying on business fraudulently

(1) A person who is knowingly a party to a company carrying on business with intent to defraud creditors of the company or any other person or for a fraudulent purpose, is guilty of an offence.

(2) A director of a company who:

(a) by false pretences or other fraud induces a person to give credit to the company; or

(b) with intent to defraud creditors of the company:

(i) gives, transfers, or causes a charge to be given on, property of the company to any person; or

(ii) causes property to be given or transferred to any person; or

(iii) caused or was a party to execution being levied against property of the company,

is guilty of an offence.

(3) A person who commits an offence under subsections (1) or (2) is guilty of an offence punishable on conviction by imprisonment for not more than 7 years or to a fine not exceeding VT500,000, or both.

199A. Penalty Notice

(1) The Registrar may serve a penalty notice on a person if it appears to the Registrar that the person has committed an offence under any provision of this Act.

(2) A penalty notice may be served personally or by post.

(3) The Minister may by Order prescribe penalties which a person is required to pay under this section, which must not exceed:

(a) VT 200,000 for an individual; or

(b) VT 1 million for a body corporate,

within 30 days after the date on which the notice was served.

(4) If the amount of penalty referred to in subsection (3) offence is paid, that person is not liable to any further proceedings for the alleged offence.

(5) Payment made under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any proceeding arising out of the same occurrence.

(6) The Registrar may publish a penalty notice issued to a person in such manner as the Registrar determines.

(7) If a penalty notice has been served on a person, a prosecution in respect of the alleged offence may only be commenced if the penalty remains unpaid 30 days after

the penalty was due, and the Court may take account of any unpaid penalty when imposing a penalty in respect of the offence.

(8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

Division 2 – Privileged Communications and Service of Documents

200. Privileged communications

(1) This Act does not require a legal practitioner to disclose a privileged communication.

(2) For the purposes of this Act, a communication is a privileged communication only if:

(a) it is a confidential communication, whether oral or written, passing between:

(i) a legal practitioner in his or her professional capacity and another legal practitioner in that capacity; or

(ii) a legal practitioner in his or her professional capacity and his or her client,

whether made directly or indirectly through an agent; and

(b) it is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and

(c) it is not made or brought into existence for the purpose of committing or furthering the commission of an illegal or wrongful act.

(3) If the information or document consists wholly of:

(a) payments, income, expenditure, or

(b) financial transactions of a specified person (whether a legal practitioner, his or her client, or any other person),

it is not a privileged communication if it is contained in, or comprises the whole or part of, a book, account, statement or other record prepared or kept by the legal practitioner in connection with a trust account of the legal practitioner.

(4) The Court may, on the application of any person, determine whether or not a claim of privilege is valid and may, for that purpose, require the information or document to be produced.

201. Service of documents on companies in legal proceedings

A document, including a writ, summons, notice, or order, in any legal proceedings may be served on a company as follows:

(a) by delivery to a person named as a director of the company on the Vanuatu register; or

(b) by delivery to an employee of the company at the company's head office or principal place of business; or

(c) by leaving it at the company's registered office; or

(d) by serving it in accordance with any directions as to service given by the Court having jurisdiction in the proceedings; or

(e) in accordance with an agreement made with the company; or

(f) by serving it at an address for service given in accordance with the rules of the Court having jurisdiction in the proceedings or by such means as a solicitor has, in accordance with those rules, stated that the solicitor will accept service.

202. Service of other documents on companies

A document, other than a document in any legal proceeding, may be served on a company as follows:

(a) by any of the methods set out in paragraphs 201(a), (b), (c), or (e); or

(b) by posting it to the company's postal address; or

(c) by faxing it to a fax number at the company's registered office or its head office or principal place of business.

203. Service of documents on overseas companies in legal proceedings

A document, including a writ, summons, notice, or order, in any legal proceedings, may be served on an overseas company in Vanuatu as follows:

(a) by delivery to a person named in the overseas register as a director of the overseas company and who is resident in Vanuatu; or

(b) by delivery to a person named in the overseas register as being authorised to accept service in Vanuatu of documents on behalf of the overseas company; or

(c) by delivery to an employee of the overseas company:

(i) at the overseas company's place of business in Vanuatu; or

(ii) if the overseas company has more than 1 place of business in Vanuatu, at the overseas company's principal place of business in Vanuatu; or

(d) by serving it in accordance with any directions as to service given by the Court having jurisdiction in the proceedings; or

(e) in accordance with an agreement made with the overseas company.

204. Service of other documents on overseas companies

A document, other than a document in any legal proceedings, may be served on an overseas company as follows:

(a) by any of the methods set out in paragraph 203(a), (b), (c), or (e); or

(b) by posting it to the postal address in Vanuatu of the overseas company; or

(c) by posting it to the postal address of a person named in the overseas register as being authorised to accept service in Vanuatu of documents on behalf of the overseas company; or

(d) by faxing it to a fax number at the principal place of business in Vanuatu of the overseas company.

205. Service of documents on shareholders and creditors

(1) A notice, statement, report, accounts, or other document to be sent to a shareholder or creditor who is a natural person may be:

(a) delivered to that person; or

(b) posted to that person's postal address; or

(c) faxed to a fax number used by that person.

(2) A notice, statement, report, accounts, or other document to be sent to a shareholder or creditor that is a company or an overseas company, may be sent by any of the methods of serving documents referred to in section 202 or section 204, as the case may be.

(3) A notice, statement, report, accounts, or other document to be sent or given to a creditor that is a body corporate, not being a company or an overseas company, may be:

(a) delivered to a person who is a principal officer of the body corporate; or

(b) delivered to an employee of the body corporate at the principal office or principal place of business of the body corporate; or

(c) delivered in such manner as the Court directs; or

(d) delivered in accordance with an agreement made with the body corporate; or

(e) posted to the postal address of the body corporate; or

(f) faxed to a fax number at the principal office or principal place of business of the body corporate.

206. Additional provisions relating to service

(1) Subject to subsection (2), for the purposes of sections 201 to 205:

(a) if a document is to be served by delivery to a natural person, service must be made:

(i) by handing the document to the person; or

(ii) if the person refuses to accept the document, by bringing it to the attention of, and leaving it in a place accessible to, that person;

(b) a document that is posted is deemed to be received 5 working days after it is posted;

(c) a document that is faxed is deemed to have been received on the working day following the day on which it was faxed;

(d) in proving service of a document by post, it is sufficient to prove that:

(i) the document was properly addressed; and

(ii) all postal or delivery charges were paid; and

(iii) the document was posted;

(e) in proving service of a faxed document, it is sufficient to prove that the document was properly faxed to the person concerned.

(2) A document is not to be deemed to have been served or sent or delivered to a person if that person proves that, through no fault on his or her part, the document was not received within the time specified.

Division 3 – Regulation Making Powers

207. Regulations

(1) The Minister may by Order make regulations not inconsistent with this Act for the better carrying out or giving effect to the provisions of this Act.

(2) Without limiting the generality of subsection (1), the Minister may make regulations for any of the following purposes:

(a) prescribing fees or other amounts payable to the Registrar in respect of the performance of functions and the exercise of his or her powers under this Act;

(b) prescribing amounts payable to the Registrar by way of penalty for failure to deliver a document to the Registrar within the time prescribed by this Act;

(c) prescribing fees or other amounts payable to the Registrar in respect of any other matter under this Act;

(d) prescribing fees or other amounts payable to the Registrar of the Supreme Court in respect of any Court proceedings under this Act;

(e) prescribing forms (including Court forms) for the purposes of this Act, and the regulations may require:

(i) the inclusion in, or attachment to, forms of specified information or documents; and
(ii) forms to be signed by specified persons;

(f) prescribing requirements, not inconsistent with this Act, with which documents delivered for registration must comply;

(g) prescribing requirements which relate to the re-registration or removal of companies under the Act;

(h) regulating the financial reporting of a company, overseas company, or class of companies or overseas companies, including (without limitation);

(i) prescribing requirements in respect of the adoption by directors of a balance date for a company; and

(ii) regulating changes to the balance date of a company;

(i) prescribing requirements, not inconsistent with this Act, in relation to the form or content of financial statements, or any other matters in respect of financial statements, including (without limitation):

(i) prescribing different requirements in respect of different classes of company; and
(ii) requiring compliance with standards issued or published by a specified body or bodies, with or without modifications;

(j) providing for any class or classes of overseas company to be exempted from the application of any or all of the requirements of Part 11, or modifying the application of Part 11 to such overseas companies, on any terms and conditions;

(k) prescribing transitional and savings provisions relating to the coming into force of this Act;

(l) amending the model rules in Schedules 1, 2, 3 and 4;

(m) replacing all or any of the model rules in Schedules 1, 2, 3 and 4;

(n) specifying the class or classes of companies to which the amended model rules or replaced model rules will apply;

(o) specifying the date or occasion on which the amended model rules or replaced model rules take effect or will apply;

(p) without limiting paragraphs (2)(m) and (n) specifying whether the amended model rules or replaced model rules apply:

(i) to all companies to which the relevant model rules apply; or

(ii) only to companies incorporated after the date on which the amended model rules or replaced model rules take effect;

(q) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

(3) The Registrar may refuse to perform a function or exercise a power until the prescribed fee or amount is paid.

(4) Any regulation made under subsection (2), may authorise the Registrar to waive, in whole or in part and on any conditions that may be prescribed, payment of any amount referred to in paragraph (2)(b).

(5) If the Registrar requires a company to change its name, no fee is payable in respect of an application to change the name of the company.

(6) A fee or amount payable to the Registrar is recoverable by the Registrar in any Court of competent jurisdiction as a debt due to the Government.

207A. Amendment of Schedule

The Minister may, by Order:

(a) add to; or

(b) vary; or

(c) replace,

the Schedules in the Act.

Division 4 – Repeals and Transitional Provisions

208. Repeals, revocations and savings

(1) The Companies Act [CAP 191] is repealed.

(2) Despite subsection (1), the provisions of the Companies Act [CAP 191] which apply to the Prevention of Fraud (Investments) Act [CAP 70], continue to apply to that Act as if they were made or given under this Act.

(3) A reference in any other Act or instrument to the "Companies Act [CAP 191]" is taken to be a reference to the "Companies Act No. 25 of 2012".

209. Re-registration of existing companies

(1) An existing company must apply for re-registration under this Act within 12 months from the date on which this Act commences.

(2) If an existing company does not re-register within the re-registration period provided under subsection (1), it will be removed from the register.

(3) A company that does not re-register within the re-registration period in must not carry on business until it is re-registered.

(4) The Registrar may serve written notices on companies relating to re-registration under this Act.

(5) The Registrar may extend the period for re-registration under this Act.

(6) The Registrar may restore a company that has failed to re-register under this Act and he or she may determine any notices that may be given and whether any fee is payable for such restoration.

(7) To avoid doubt, the re-registration of an existing company under this section does not:

(a) create a new legal entity; or

(b) affect the property, rights, or obligations of the company; or

(c) affect proceedings by or against the company; or

(d) affect the liability of the company for any amounts payable by way of penalty or default in respect of matters that were required to be done by the company before the date on which this Act comes into force.

(8) An application for re-registration of an existing company is to be made to the Registrar in the prescribed form.

(9) When making an application for re-registration of a company, the applicant must specify in the application:

(a) the name of the company, which must comply with section 10; and

(b) whether the company is a private company or a public company; and

(c) whether the rules of the company differ from the model rules set out in Schedule 1 (in the case of a private company) or Schedule 2 (in the case of a single shareholder company) or Schedule 3 (in the case of a public company) or the model rules prescribed by the Minster under subsection 9(6C) (in the case of a company limited by guarantee); and

(d) the full name, physical address, and postal address of each director of the proposed company; and

(e) whether each person named as a director of the company has consented to act as a director of the company; and

(f) the full name of every shareholder of the proposed company, and the number of shares to be issued to every shareholder; and

(g) the registered office of the proposed company; and

(h) the postal address of the company, which may be the registered office or any other postal address.

(10) An application for re-registration must be accompanied by a copy of the rules of the company if they differ from the model rules.

(11) As soon as the Registrar receives an application for re-registration that complies with subsection (9) the Registrar must:

(a) enter the company on the Vanuatu register; and

(b) issue a certificate of re-registration in respect of the company in the prescribed form.

(12) A certificate of re-registration of a company issued under paragraph (11)(b) is conclusive evidence that:

(a) all the requirements as to re-registration have been complied with; and

(b) on and from the date of re-registration stated in the certificate, the company is registered under this Act.

210. Rules of re-registered company

(1) When an existing company is re-registered:

(a) its articles of association of continue as the rules of the company for the purposes of this Act and to the extent that its articles of association adopt all or any of the articles set out in Table A of Schedule 1 of the Companies Act [CAP 191], those Articles are deemed to be incorporated in the rules of the company; and

(b) all shares issued by the existing company before re-registration are deemed to be converted into shares of no par value but that conversion does not affect the rights and obligations attached to the shares, and in particular does not affect:

(i) the entitlements of the holder of the shares in respect of distributions, voting, the redemption of any redeemable shares, or the distribution of surplus assets of the company in a liquidation;

(ii) any unpaid liability of a shareholder in respect of a share.

(2) Despite section 23 and anything in the articles of association of the existing company, the holder of a share at the time of re-registration is personally liable for any liability (including a liability for calls) attached to the share and, in the event of a transfer of the share after re-registration, that liability remains with the shareholder at the time of re-registration, and does not pass to the transferee of the share.

(3) An existing company may resolve to adopt the model rules in Schedules 1, 2, 3, or 4 as its rules on re-registration under this Act.

(4) An existing company may resolve to adopt new rules that differ from the model rules upon re-registration under this Act.

211. Other transitional and savings provisions

(1) Without limiting anything in the Interpretation Act [CAP 132] this Act does not apply to or affect:

(a) a company where demand under paragraph 225(a) of the Companies Act [CAP 191] has been served prior to the commencement of this Act;

(b) an application to the Court for the winding up of a company made prior to the commencement of this Act;

(c) a resolution of a company to be wound up by the Court passed prior to the commencement of this Act;

(d) a resolution of a company for voluntary winding up passed prior to the commencement of this Act;

(e) an order made by the Court under Part VI of the Companies Act [CAP 191] prior to the commencement of this Act;

(f) a company that has been dissolved under the Companies Act [CAP 191];

(g) a notice given by the Registrar to a company, prior to the commencement of this Act, to strike off the company from the register under section 335 of the Companies Act [CAP 191];

(h) a company struck off the register under section 335 of the Companies Act [CAP 191]:

(i) a penalty or amount payable to the Registrar by a company under the Companies Act [CAP 191] .

(2) Any rules or regulations made under the Companies Act [CAP 191], remain in force, with all necessary modifications, and apply to the matters set out in subsection (1) as if the Companies Act [CAP 191] had not been repealed and as if those rules and regulations had not been revoked.

SCHEDULE 1

MODEL RULES FOR PRIVATE COMPANY

PART 1 – GENERAL PROVISIONS

1. Name of company

(1) The name of the company at the time of registration under the Act appears on the application for registration or for re-registration, as the case may be.

(2) The name of the company may be changed in accordance with section 11 of the Act only with the prior approval of all shareholders.

2. Private company

(1) The company is a private company.

(2) The company must not offer any of its shares to the public.

(3) The company must not have more than 50 shareholders.

(4) If a share transfer is presented to the company for entry on the share register that would result in a breach of this restriction, the directors must decline to register the transfer.

3. Rules

(1) The company may adopt new rules in place of these rules by special resolution, in accordance with subsection 14(2) of the Act.

(2) Subject to the Act:

(a) these rules have effect and may be enforced as if they constituted a contract:

(i) between the company and its shareholders; and

(ii) between the company and each director; and

(b) the shareholders and directors of the company have the rights, powers, duties, and obligations set out in these rules.

PART 2 – SHARES AND SHAREHOLDERS

DIVISION 1 – GENERAL PROVISIONS

4. Number of shares

(1) At the time of registration under the Act, the company has the number of shares specified in the application for registration or re-registration, as the case may be.

(2) If the company was first registered under Part 2 of the Act, the company must immediately after its registration issue to any person named in the application for registration as a shareholder the number of shares specified in the application as being the number of shares to be issued to that person or those persons.

5. Rights attaching to shares

Subject to subclause 7(2), each share carries the following rights:

(a) the right to 1 vote on a poll at a meeting of the company on any resolution, including any resolution to:

(i) appoint or remove a director or auditor;

(ii) adopt new rules;

(iii) alter the company's rules;

(iv) approve a major transaction;

(v) put the company into liquidation;

(vi) approve the transfer of registration of the company to another country;

(b) the right to an equal share in dividends paid by the company;

(c) the right to an equal share in the distribution of the surplus assets of the company in a liquidation.

6. Issue of shares

The directors may issue shares:

(a) in accordance with clause 7; or

(b) to shareholders or any other persons on any other basis, with the prior approval of all shareholders.

7. Process for issuing shares

(1) The directors may issue shares according to the following process:

(a) the shares must first be offered to all shareholders proportionally, on such terms as the directors think fit, pursuant to an offer that, if accepted by all shareholders, would not affect relative voting or distribution rights. The shareholders must have a reasonable opportunity to consider and respond to the offer; and

(b) any shares not accepted by the shareholders to whom they were offered under paragraph (a) must then be offered to those shareholders who did accept the shares offered to them under paragraph (a), on a fair and equitable basis determined by the directors and on the same terms and conditions as the offer made under paragraph (a); and

(c) any shares offered under paragraph (b), but not taken up by shareholders may then be offered by the directors to shareholders or any other persons in such manner as the directors think fit, on the same terms and conditions as the offer made under paragraph (a).

(2) With the prior approval of all shareholders, the company may issue more than 1 class of shares. In particular, shares may be issued that:

(a) are redeemable; or

(b) confer preferential rights to distributions of capital or income; or

(c) confer special, limited, or conditional voting rights; or

(d) do not confer voting rights.

(3) If the company issues shares, it must give the prescribed notice to the Registrar under subsection 25(2) of the Act within 10 working days of the issue of any shares.

(4) If the rights attached to the shares differ from those set out in clause 5, the notice must be accompanied by a document setting out the terms of issue of the shares.

8. Transferability of shares

The shares of the company are, subject to subclauses 12(1) and 21(4) and their terms of issue, transferable by entry in the share register in accordance with subclauses 21(1) to (3).

DIVISION 2 – SHARE REGISTER

9. Company to keep share register

(1) The company must maintain a share register that records the shares issued by the company and states:

(a) the names, alphabetically arranged, and the last known address of each person who is, or has within the last 7 years been, a shareholder; and

(b) the number of shares of each class held by each shareholder within the last 7 years; and

(c) the date of any:

(i) issue of shares to; or

(ii) repurchase or redemption of shares from; or

(iii) transfer of shares by or to:

each shareholder within the last 7 years, and in relation to the transfer, the name of the person to and from whom the shares were transferred.

(2) No notice of a trust, whether express, implied, or constructive, may be entered on the share register.

(3) The company may appoint an agent to maintain the share register.

10. Form and location of share register

The share register must be kept:

(a) in a form that complies with clause 65; and

(b) at the company's registered office.

11. Status of registered shareholder

(1) The company must treat the registered holder of a share as the only person entitled to:

(a) exercise the right to vote attaching to the share; and

(b) receive notices; and

(c) receive a distribution in respect of the share; and

(d) exercise the other rights and powers attaching to the share.

(2) If a joint holder of a share dies, the remaining holders must be treated by the company as the holders of that share.

(3) If the sole holder of a share dies, that shareholder's legal representative is the only person recognised by the company as having any title to, or interest in, the share.

(4) Any person who becomes entitled to a share as a consequence of the death, bankruptcy or insolvency, or incapacity of a shareholder may be registered as the holder of that shareholder's shares on making a request in writing to the company to be so registered, accompanied by proof satisfactory to the directors of that entitlement.

DIVISION 3 - PRE-EMPTIVE RIGHTS

12. Restriction on selling shares

(1) A shareholder is not entitled to sell or otherwise dispose of his or her shares in the company without first offering to sell them to the other holders of shares of the same class in accordance with the procedure set out in clauses 13 to 20, unless all the other shareholders agree otherwise.

(2) Any share transfer delivered to the company by a shareholder who has not complied with subclause (1) is of no effect, and the transfer must not be entered on the share register.

13. Selling shareholder to give written notice to company

A shareholder who wishes to dispose of some or all of his or her shares (selling shareholder) must give written notice to the company of:

(a) the number of shares to be sold; and

(b) the price at which the selling shareholder is willing to sell the shares.

14. Company to give written notice to shareholders

The company must, within 10 working days, give a copy of the written notice referred to in clause 13 to each shareholder, together with a notice advising each holder of shares of the same class:

(a) that that shareholder is entitled to purchase a proportional number of the shares that the selling shareholder wishes to sell (rounded in an appropriate manner determined by the directors); and

(b) that, if that shareholder wishes to purchase those shares, he or she must give written notice to that effect to the company within 10 working days of the date of the notice.

15. Written notice is offer by selling shareholder

The notice referred to in clause 14 is deemed to be an offer by the selling shareholder to the recipient to sell the number of shares referred to in the notice at the price specified by the selling shareholder in the notice given under clause 13, on the terms set out in these rules.

16. Notice agreeing to purchase shares given within specified time

Subject to clause 19, if a notice is given by a shareholder within the specified time agreeing to purchase the shares offered to that shareholder in a notice given under clause 14:

(a) there is deemed to be a contract between that shareholder and the selling shareholder for the sale and purchase of the relevant number of shares; and

(b) the company must immediately advise the selling shareholder of the acceptance, and send him or her a copy of:

(i) the notice given under clause 14 by the company; and

(ii) the notice of acceptance given by the shareholder in question.

17. Notice agreeing to purchase shares not given within specified time

(1) If a shareholder does not give notice agreeing to purchase the shares offered to that shareholder within the specified time, the shares that were offered to that shareholder must be offered to those shareholders who did accept the shares offered to them, on a fair and equitable basis determined by the directors.

(2) Clauses 15 and 16 apply to any notice given to a shareholder, and to any notice of acceptance given by a shareholder, under this clause.

18. No shareholder wishes to purchase selling shareholder's shares

If no shareholder wishes to purchase the selling shareholder's shares at the specified price, the selling shareholder may, at any time in the 12 months following the giving of notice by the selling shareholder, sell some or all of those shares to any other person at a price not less than the specified price.

19. Selling shareholder not obliged to sell some shares

(1) The selling shareholder is not obliged to sell all of the shares that he or she wishes to dispose of.

(2) In the event that the selling shareholder has not been notified under clause 16 of acceptances by other shareholders in respect of all the shares referred to in the notice given under clause 13 within 40 working days of the date on which that notice was given to the company, the selling shareholder may, at his or her option, give written notice to the company terminating the offer to sell the shares to the other shareholders.

(3) If such a notice is given, clause 18 applies as if no shareholder had wished to purchase the selling shareholder's shares.

20. Directors may require evidence of terms

The directors may require reasonable evidence of the terms (including price) on which the shares were sold to accompany any share transfer in respect of those shares.

DIVISION 4 – TRANSFER OF SHARES

21. Transfer of shares

(1) If shares are to be transferred, a form of transfer signed by the holder or by his or her agent or attorney must be delivered to the company.

(2) The personal representative of a deceased shareholder may transfer a share even though the personal representative is not a shareholder at the time of transfer.

(3) Subject to clause 12 and subclause (4), the company must immediately on receipt of a properly executed share transfer enter the name of the transferee in the share register as holder of the shares transferred.

(4) If any amount payable to the company by the shareholder is due but unpaid, the directors may resolve to refuse to register a transfer of a share within 30 working days of receipt of the transfer.

(5) If the directors resolve to refuse to register a transfer for this reason, they must give notice of the refusal to the shareholder within 5 working days of the date of the resolution.

22. Share certificates

(1) A shareholder may apply to the company for a share certificate relating to some or all of the shareholder's shares in the company.

(2) On receipt of an application for a share certificate under subclause (1), the company must, within 20 working days after receiving the application:

(a) if the application relates to some but not all of the shares, separate the shares shown in the register as owned by the applicant into separate parcels; 1 parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares; and

(b) in all cases send to the shareholder a certificate stating:

(i) the name of the company; and

(ii) the class of shares held by the shareholder; and

(iii) the number of shares held by the shareholder to which the certificate relates.

(3) If a share certificate has been issued, a transfer of the shares to which it relates must not be registered by the company unless the form of transfer required by clause 21 is accompanied by:

(a) the share certificate relating to the share; or

(b) evidence as to its loss or destruction and, if required, an indemnity in a form determined by the directors.

(4) If shares to which a share certificate relates are to be transferred and the share certificate is sent to the company to enable the registration of the transfer, the share certificate must be cancelled and no further share certificate issued except at the request of the transferee.

DIVISION 5 – MEETINGS OF SHAREHOLDERS

23. Meetings of shareholders

(1) Clauses 24 to 32 set out the procedure to be followed at, and in relation to, meetings of shareholders.

(2) A meeting of shareholders may determine its own procedure to the extent that it is not governed by these rules.

24. Notice of meetings

(1) Written notice of the time and place of a meeting of shareholders must be given to every shareholder entitled to receive notice of the meeting and to each director and any auditor of the company not less than 10 working days before the meeting.

(2) The notice must set out:

(a) the nature of the business to be transacted at the meeting in enough detail to enable a shareholder to form a reasoned judgment in relation to it; and

(b) the text of any special resolution to be submitted to the meeting.

(3) An irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver.

(4) An accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a shareholder does not invalidate the proceedings at that meeting.

(5) If a meeting of shareholders is adjourned for less than 30 working days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that is adjourned.

25. Methods of holding meetings

A meeting of shareholders may be held either:

(a) by a number of shareholders, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or

(b) by means of audio, or audio and visual, communication by which all shareholders participating and constituting a quorum, may simultaneously hear each other throughout the meeting.

26. Quorum

(1) Subject to subclause (3), no business may be transacted at a meeting of shareholders if a quorum is not present.

(2) A quorum for a meeting of shareholders is present if shareholders or their proxies are present who are between them able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.

(3) If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the directors may appoint.

(4) If, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders present or their proxies are a quorum.

27. Chairperson

(1) If the directors have elected a chairperson of the directors, and the chairperson of the directors is present at a meeting of shareholders, he or she must chair the meeting.

(2) If no chairperson of the directors has been elected or if, at any meeting of shareholders, the chairperson of the directors is not present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may choose 1 of their number to be the chairperson of the meeting.

28. Voting

(1) In the case of a meeting of shareholders held under subclause 25(a), unless a poll is demanded, voting at the meeting must take place by whichever of the following methods is determined by the chairperson of the meeting:

(a) voting by voice; or

(b) voting by show of hands.

(2) In the case of a meeting of shareholders held under subclause 25(b), unless a poll is demanded, voting at the meeting must take place by shareholders signifying individually their assent or dissent by voice.

(3) A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with subclause (4).

(4) At a meeting of shareholders a poll may be demanded by:

(a) not fewer than 5 shareholders having the right to vote on the question at the meeting; or

(b) a shareholder or shareholders representing not less than 10% of the total voting rights of all shareholders having the right to vote on the question at the meeting.

(5) A poll may be demanded either before or after a vote is taken on a resolution.

(6) If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present and voting.

(7) The chairperson of a shareholders' meeting is not entitled to a casting vote.

29. Votes of joint shareholders

If 2 or more persons are registered as the holder of a share, the vote of the person named first in the share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

30. Proxies

(1) A shareholder may exercise the right to vote either by being present in person or by proxy.

(2) A proxy for a shareholder is entitled to attend and participate in a meeting of shareholders as if the proxy were the shareholder.

(3) A proxy must be appointed by notice in writing signed by the shareholder.

(4) The notice must state whether the appointment is for a particular meeting, or for a specified term.

(5) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is given to the company at least 24 hours before the start of the meeting.

31. Corporations may act by representatives

(1) A corporation that is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf by notice in writing signed by a director or secretary of the corporation.

(2) The notice must state whether the appointment is for a particular meeting, or for a specified term.

32. Minutes

(1) The directors must ensure that minutes are kept of all proceedings at meetings of shareholders.

(2) Minutes that have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings at the meeting.

DIVISION 6 – MISCELLANEOUS

33. Annual meetings and special meetings of shareholders

(1) Subject to subclause (3) and subclause 34(3), the directors must call an annual meeting of the company to be held:

(a) once in each calendar year; and

(b) not later than 5 months after the balance date of the company (or, if the time for completing the financial statements of the company has been extended under paragraph 70(1)(a), not later than 20 working days after the financial statements are required to be completed; and

(c) not later than 15 months after the previous annual meeting.

(2) The meeting must be held on the date on which it is called to be held.

(3) The company need not hold its first annual meeting in the calendar year of its incorporation, but must hold that meeting within 18 months of its incorporation.

(4) A special meeting of shareholders entitled to vote on an issue:

(a) may be called at any time by a director; and

(b) must be called by the directors on the written request of shareholders holding shares carrying together not less than 5% of the votes that may be cast on that issue.

34. Written resolutions of shareholders

(1) A resolution in writing signed by shareholders, who together hold not less than 75% of the votes entitled to be cast on that resolution at a meeting of shareholders, is as valid as if it had been passed at a meeting of those shareholders.

(2) Any such resolution may consist of several documents (including fax or other similar means of communication) in like form each signed or assented to by 1 or more shareholders.

(3) The company need not hold an annual meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with subclause (1).

(4) Within 5 working days of a resolution being passed under subclause (1), the company must send a copy of the resolution to every shareholder who did not sign it.

(5) A resolution may be signed under subclause (1) without any prior notice being given to shareholders.

35. Voting in interest groups

If the company proposes to take action that affects the rights attached to shares within the meaning of section 53 of the Act, the action may not be taken unless it is approved by a special resolution of each interest group, as defined in section 53(3) of the Act.

36. Shareholders entitled to receive distributions

(1) The shareholders who are entitled to receive distributions are:

(a) if the directors fix a date for this purpose - those shareholders whose names are registered in the share register on that date:

(b) if the directors do not fix a date for this purpose - those shareholders whose names are registered in the share register on the day on which the distribution is approved.

(2) A date fixed under subclause (1) must not exceed 20 working days from the date on which the proposed distribution will be taken.

37. Shareholders entitled to exercise pre-emptive rights

The shareholders who are entitled to pre-emptive rights to acquire shares in accordance with clause 12, are those shareholders whose names are registered in the share register on the day on which notice is given to the company by the selling shareholder under clause 13.

38. Shareholders entitled to attend and vote at meetings

(1) The shareholders who are entitled to receive notice of a meeting of shareholders are:

(a) if the directors fix a date for this purpose, those shareholders whose names are registered in the share register on that date;

(b) if the directors do not fix a date for this purpose, those shareholders whose names are registered in the share register at the close of business on the day immediately preceding the day on which the notice is given.

(2) A date fixed under paragraph (1)(a) must not precede by more than 30 working days the date on which the meeting is to be held.

(3) Before a meeting of shareholders, the company may prepare a list of shareholders entitled to receive notice of the meeting, arranged in alphabetical order, and showing the number of shares held by each shareholder:

(a) if a date has been fixed under paragraph (1)(a), as at that date; or

(b) if no such date has been fixed, as at the close of business on the day immediately preceding the day on which the notice is given.

(4) A person named in a list prepared under subclause (3) is entitled to attend the meeting and vote in respect of the shares shown opposite his or her name in person or by proxy, except to the extent that:

(a) that person has, since the date on which the shareholders entitled to receive notice of the meeting were determined, transferred any of his or her shares to some other person; and

(b) the transferee of those shares has been registered as the holder of those shares, and has requested before the commencement of the meeting that his or her name be entered on the list prepared under subclause (3).

(5) A shareholder may, on 2 working days' notice, examine any list prepared under subclause (3) during normal business hours at the registered office of the company.

39. Distributions to shareholders

(1) The company must not pay a dividend or make any other distribution to shareholders unless there are reasonable grounds for believing that, after that distribution is made:

(a) the company will be able to pay its debts as they become due in the normal course of business; and

(b) the value of the company's assets will not be less than the value of its liabilities.

(2) Subject to subclause (1) and to the terms of issue of any shares, the company may pay a dividend to shareholders:

(a) of the same amount in respect of each share of the same class, if the payment of the dividend is authorised by the directors; or

(b) on any other basis, with the prior approval of all shareholders.

(3) A distribution made in breach of subclauses (1) or (2) may be recovered by the company from the recipients or from the persons who approved the distribution, in accordance with section 28 of the Act.

40. Company may acquire its own shares and provide financial assistance

(1) The company may agree to acquire its own shares from a shareholder:

(a) with the prior approval of all shareholders; and

(b) subject to the solvency test in subclause 39(1).

(2) If the company acquires its own shares, those shares are deemed to be cancelled immediately on acquisition.

(3) The company may give financial assistance to a person for the purpose of, or in connection with, the purchase of a share issued or to be issued by the company, whether directly or indirectly, only if:

(a) after providing the assistance, the company will satisfy the solvency test in subclause 39(1); and

(b) all shareholders have approved the giving of the assistance.

41. Annual report to shareholders

(1) Subject to subclause (2), the directors of the company must, within 20 working days after the date on which the company is required to complete its financial statements under section 125 of the Act,:

(a) prepare an annual report on the affairs of the company during the accounting period ending on that date; and

(b) send a copy of that report to each shareholder.

(2) The directors are only required to prepare an annual report in respect of an accounting period if a shareholder has given written notice to the company before the end of that accounting period requiring such a report to be prepared.

(3) If the directors are not required to prepare an annual report in respect of an accounting period, they must send a notice to each shareholder to that effect within the period referred to in subclause (1).

(4) Every annual report for the company must:

(a) be in writing and be dated; and

(b) include financial statements for the accounting period that comply with section 125 of the Act; and

(c) if an auditor's report is required in relation to the financial statements included in the report, include that auditor's report; and

(d) state the names of the persons holding office as directors of the company as at the end of the accounting period and the names of any persons who ceased to hold office as directors of the company during the accounting period; and

(e) contain any other information that may be required by regulations made under the Act; and

(f) be signed on behalf of the directors by 2 directors of the company or, if the company has only 1 director, by that director.

42. Deemed approval by all shareholders for certain purposes

For the purposes of clause 6 and subclauses 7(2), 40(1) and (3), a decision is deemed to have been approved by all shareholders if:

(a) notice of the proposed decision has been given to all shareholders in accordance with clause 75; and

(b) no shareholder has responded within 10 working days objecting to that decision; and

(c) shareholders entitled to cast not less than 75% of the votes in relation to a resolution to alter these rules have responded within 10 working days approving that decision.

PART 3 – DIRECTORS

43. Appointment and removal of directors

(1) The shareholders may by ordinary resolution fix the number of directors of the company.

(2) A director may be appointed or removed by ordinary resolution passed at a meeting called for the purpose, or by a written resolution in accordance with subclause 34(1).

(3) A director vacates office if he or she:

(a) is removed from office in accordance with subclause (2); or

(b) resigns in accordance with clause 44; or

(c) becomes disqualified from being a director under section 82 of the Act; or

(d) dies.

44. Resignation of director

(1) A director may resign by delivering a signed written notice of resignation to the registered office of the company.

(2) Subject to subclauses (3) and (4), a notice of resignation is effective when it is received at the registered office, or at any later time specified in the notice.

(3) If the company has only 1 director, that director may not resign:

(a) until that director has called a meeting of shareholders to receive notice of the resignation; or

(b) if the company has only 1 shareholder, until that director has given not less than 10 working days' notice of the resignation to that shareholder.

(4) A notice of resignation given by the sole director of the company does not take effect until:

(a) a new director is appointed; or

(b) the time and date for which the meeting of shareholders is called under paragraph (3)(a); or

(c) if the company has only 1 shareholder, 10 working days after notice of the resignation has been given to that shareholder.

45. Notice of change in directors

The company must ensure that notice in the prescribed form of the following is delivered to the Registrar:

(a) a change in the directors of the company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both:

(b) a change in the name or the physical address of a director of the company.

46. Powers and duties of directors

(1) Subject to section 49 of the Act (which relates to major transactions), the business and affairs of the company must be managed by, or under the direction or supervision of, the directors.

(2) The directors have all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.

(3) The directors may delegate any of their powers to a committee of directors, or to a director or employee.

(4) The directors must monitor, by means of reasonable methods properly used, the exercise of powers by any delegate.

(5) The provisions of these rules relating to proceedings of the directors also apply to proceedings of any committee of directors, except to the extent the directors determine otherwise.

(6) The directors have the duties set out in the Act, and, in particular:

(a) each director must act in good faith and in a manner that the director believes to be in the interests of the company; and

(b) a director must not act, or agree to the company acting, in a manner that contravenes the Act or these rules.

47. Standard of care of directors

A director of the company, when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances taking into account, but without limitation:

(a) the nature of the company; and

(b) the nature of the decision; and

(c) the position of the director and the nature of the responsibilities undertaken by him or her.

48. Obligations of directors in connection with insolvency

(1) A director of the company must call a meeting of directors within 10 working days to consider whether the directors should appoint a liquidator, in accordance with section 70 of the Act, if the director:

(a) believes that the company is unable to pay its debts as they fall due; or

(b) is aware of matters that would put any reasonable person on inquiry as to whether the company is unable to pay its debts as they fall due.

(2) At a meeting called under section 70 of the Act, the directors must consider whether to:

(a) appoint a liquidator; or

(b) continue to carry on the business of the company.

49. Interested directors

(1) A director must not exercise any power as a director in circumstances where that director is directly or indirectly materially interested in the exercise of that power unless,:

(a) the Act expressly authorises the director to exercise the relevant power despite such an interest; or

(b) the director has reasonable grounds for believing that the company will satisfy the solvency test after that power is exercised, and either:

(i) these rules expressly authorise the director to exercise the relevant power despite such an interest; or

(ii) the matter in question has been approved by shareholders under section 50 of the Act, following disclosure of the nature and extent of the director's interest to all shareholders who are not otherwise aware of those matters.

(2) A director who is directly or indirectly materially interested in any transaction or proposed transaction must, within 10 working days of becoming aware of that interest, disclose the nature and extent of that interest in writing:

(a) if there is at least 1 other director who is not directly or indirectly materially interested in the transaction or proposed transaction - to the directors of the company; or

(b) if paragraph (a) does not apply - to all shareholders.

(3) A director may give a general disclosure in writing to the shareholders that he or she is a director or employee or shareholder of another company, or is otherwise associated with another company or another person.

(4) A general disclosure made under subclause (2) and (3) is a sufficient disclosure of the director's interest in any transaction entered into with that other company or person.

(5) A transaction entered into by the company in which a director is directly or indirectly materially interested is voidable at the election of the company in accordance with section 107 of the Act.

(6) A transaction entered into by the company as the result of action taken by a director in breach of sections 64, 65, or 66 of the Act is voidable at the option of the company in accordance with section 108 of the Act.

50. Use and disclosure of company information

(1) A director of the company who has information in his or her capacity as a director or employee of the company, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except:

(a) in the interests of the company; or

(b) as required by law; or

(c) if there are reasonable grounds for believing that the company will satisfy the solvency test after the director takes that action, and that action:

(i) is approved by all shareholders under section 50 of the Act; or

(ii) is authorised by any contract of employment entered into between that director and the company, the relevant terms of which have been approved by shareholders by ordinary resolution.

(2) A director cannot vote on a resolution to approve such terms in relation to himself or herself.

51. Indemnities and insurance for directors or employees

(1) Subject to section 73 of the Act, the company may provide an indemnity or purchase insurance for a director of the company or of a related company with the approval of:

(a) shareholders by ordinary resolution.; or

(b) all shareholders under section 50 of the Act.

(2) A director cannot vote on a resolution concerning an indemnity or insurance to be provided to him or her.

(3) In this clause:

"director" includes:

(a) a person who is liable under any of sections 64 to 66 of the Act by virtue of section 72 of the Act; and

(b) a former director

"indemnify" includes relieve or excuse from liability, whether before or after the liability arises; and indemnity has a corresponding meaning.

52. Remuneration of directors

(1) Directors may receive remuneration and other benefits from the company with the approval of:

(a) shareholders by ordinary resolution.; or

(b) all shareholders under section 50 of the Act.

(2) A director cannot vote on a resolution concerning remuneration or benefits to be received by him or her.

53. Procedure at meetings of directors

(1) Clauses 54 to 60 set out the procedure to be followed at meetings of directors.

(2) A meeting of directors may determine its own procedure to the extent that it is not governed by these rules.

54. Chairperson

(1) The directors may elect 1 of their number as chairperson of directors and may determine the period for which the chairperson is to hold office.

(2) If no chairperson is elected, or if at a meeting of the directors the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the directors present may choose 1 of their number to be the chairperson of the meeting.

55. Notice of meeting

(1) A director or, if requested by a director to do so, an employee of the company, may convene a meeting of directors by giving notice in accordance with this clause.

(2) Not less than 24 hours notice of a meeting of directors must be given to each director who is in Vanuatu, or who can readily be contacted outside Vanuatu.

(3) An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity, or if all directors entitled to receive notice of the meeting agree to the waiver.

56. Methods of holding meetings

A meeting of directors may be held either:

(a) by a number of the directors who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or

(b) by means of audio, or audio and visual, communication by which all directors participating and constituting a quorum, may simultaneously hear each other throughout the meeting.

57. Quorum

(1) A quorum for a meeting of directors is a majority of the directors.

(2) No business may be transacted at a meeting of directors if a quorum is not present.

58. Voting

(1) Each director has 1 vote.

(2) The chairperson has a casting vote.

(3) A resolution of the directors is passed if it is agreed to by all directors present without dissent, or if a majority of the votes cast on it are in favour of it.

(4) A director present at a meeting of directors is presumed to have agreed to, and to have voted in favour of, a resolution of the directors unless he or she expressly dissents from, or votes against, the resolution at the meeting.

59. Minutes

The directors must ensure that minutes are kept of all proceedings at meetings of the directors.

60. Unanimous resolution

(1) A resolution in writing, signed or assented to by all directors, is as valid and effective as if it had been passed at a meeting of the directors duly convened and held.

(2) Any such resolution may consist of several documents (including fax or other similar means of communication) in like form each signed or assented to by 1 or more directors.

(3) A copy of any such resolution must be entered in the minute book of the directors' proceedings.

61. Managing director and other executive directors

(1) The directors may, from time to time, appoint a director as managing director for such period and on such terms as they think fit.

(2) Subject to the terms of a managing director's appointment, the directors may at any time cancel the appointment of a director as managing director.

(3) A director who holds office as managing director ceases to hold office as managing director if he or she ceases to be a director of the company.

62. Delegation to managing director

(1) The directors may delegate to the managing director, subject to any conditions or restrictions that they consider appropriate, any of their powers that may be lawfully delegated.

(2) Any such delegation may at any time be withdrawn or varied by the directors.

(3) The delegation of a power of the directors to the managing director does not prevent the exercise of the power by the directors, unless the terms of the delegation expressly provide otherwise.

63. Remuneration of managing director and director

(1) Subject to shareholder approval in accordance with clause 52, the managing director, or a director (other than the managing director) who is employed by the company, may be paid such remuneration as he or she may agree with the directors.

(2) The remuneration may be by way of salary, commission, participation in profits, or any combination of these methods, or any other method of fixing remuneration.

PART 4 – COMPANY RECORDS

64. Company records

(1) The company must keep all the following documents at its registered office:

(a) the rules of the company;

(b) minutes of all meetings and resolutions of shareholders within the last 7 years;

(c) minutes of all meetings and resolutions of directors and directors' committees within the last 7 years;

(d) the full names and physical and postal addresses of the current directors;

(e) copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports made under section 55 of the Act;

(f) copies of all financial statements required to be completed under section 125 of the Act for the last 7 completed accounting periods of the company;

(g) the accounting records required by section 124 of the Act for the current accounting period and for the last 7 completed accounting periods of the company;

(h) the share register.

(2) The references in subclause (1)(b), (c), and (e) to 7 years and the references in subclause (1)(f) and (g) to 7 completed accounting periods include such lesser periods as the Registrar may approve by notice in writing to the company, in accordance with subsection 113(2) of the Act.

65. Form of records

(1) The records of the company must be kept:

(a) in written form; or

(b) in a form or in a manner that allows the documents and information that comprise the records to be readily accessible so as to be usable for subsequent reference, and convertible into written form.

(2) The directors must ensure that adequate measures exist to:

(a) prevent the records being falsified; and

(b) detect any falsification of them.

66. Access to records

(1) The directors of the company are entitled to access to the company's records in accordance with section 115 of the Act.

(2) A shareholder of the company is entitled:

(a) to inspect the documents referred to in section 116 of the Act, in the manner specified in section 118 of the Act; and

(b) to require copies of, or extracts from, any document that he or she may inspect within 5 working days of making a request in writing for the copy or extract, on payment of any reasonable copying and administration fee prescribed by the company.

(3) The fee may be determined by any director, subject to any directions from the directors.

67. Documents to be sent to Registrar

In addition to an annual return required under section 119 of the Act, a company must send all of the following documents to the Registrar under the Act:

(a) notice of the adoption of new rules by the company, or the alteration of the rules of the company, under section 14 of the Act;

(b) notice of a change in the registered office or postal address of the company under section 18 of the Act;

(c) notice of the issue of shares by the company, under section 25 of the Act;

(d) notice of the acquisition by the company of its own shares, under section 30 of the Act;

(e) notice of the redemption of a share, under section 34 of the Act;

(f) notice of a transfer of shares under section 37 of the Act;

(g) notice of a change in the directors of the company, or of a change in the name or physical address or postal address of a director, under section 85 of the Act;

(h) notice of the making of an order under section 99 of the Act altering or adding to the rules of the company;

(i) notice of any place other than the registered office of the company where records are kept;

(j) documents requested by the Registrar under section 176 of the Act.

68. Documents to be sent to shareholders

In addition to any annual report required under section 55 of the Act, the company must send all of the following documents to shareholders under the Act:

(a) notice of any repurchase of shares to which subsection 30(4) of the Act applies;

(b) notice of a written resolution approved under section 51 of the Act;

(c) financial statements required to be sent under section 125 of the Act;

(d) any written statement by an auditor under section 131 of the Act;

(e) any report by an auditor under section 133 of the Act.

PART 5 – ACCOUNTS AND AUDIT

69. Accounting records to be kept

(1) The directors of the company must cause accounting records to be kept that:

(a) correctly record and explain the transactions of the company; and

(b) enable the financial position of the company to be determined with reasonable accuracy; and

(c) enable the directors to ensure that the financial statements of the company comply with section 125 of the Act; and

(d) enable the financial statements of the company to be readily and properly audited.

(2) Without limiting subclause (1), the accounting records must contain:

(a) entries of money received and spent each day and the matters to which it relates; and

(b) a record of the assets and liabilities of the company; and

(c) if the company's business involves dealing in goods:

(i) a record of goods bought and sold, and relevant invoices;

(ii) a record of stock held at the end of the financial year together with records of any stocktakings during the year; and

(d) if the company's business involves providing services, a record of services provided and relevant invoices.

(3) If the company sells goods or provides services for cash in the ordinary course of carrying on a retail business:

(a) invoices need not be kept in respect of each retail transaction for the purposes of subclause (2); and

(b) a record of the total money received each day in respect of the sale of goods or provision of services, as the case may be, is sufficient to comply with subclause (2) in respect of those transactions.

(4) The accounting records must be kept:

(a) in a form permitted under clause 65; and

(b) at the registered office of the company.

70. Financial statements to be prepared

(1) The directors must ensure that:

(a) within 4 months after the balance date of the company, or with the approval of shareholders by special resolution, within an extended period not exceeding 7 months after the balance date of the company, financial statements that comply with subclause (2) are completed in relation to the company and that balance date; and

(b) within 20 working days of the date on which the financial statements must be completed under paragraph (a), those financial statements are sent to all shareholders. This requirement may be satisfied by sending the financial statements to shareholders in an annual report, in accordance with section 55 of the Act.

(2) The financial statements of the company must:

(a) give a true and fair view of the matters to which they relate; and

(b) comply with any applicable regulations made under the Act; and

(c) be dated and signed on behalf of the directors by 2 directors of the company, or, if the company has only 1 director, by that director.

(3) The following periods must not exceed 15 months:

(a) the period between the date of incorporation of the company and its first balance date;

(b) the period between any 2 balance dates of the company.

(4) In this clause, financial statements, in relation to the company and a balance date, means:

(a) a statement of financial position for the entity as at the balance date; and

(b) in the case of:

(i) a company trading for profit, a statement of financial performance for the company in relation to the accounting period ending at the balance date; and

(ii) a company not trading for profit, an income and expenditure statement for the company in relation to the accounting period ending at the balance date; and

(c) if required by regulations made under the Act, a statement of cash flows for the company in relation to the accounting period ending on the balance date; and

(d) such other financial statements in relation to the company or any group of companies of which it is the holding company as may be required by regulations made under the Act; and

(e) any notes or documents giving information relating to the statement of financial position and other statements.

71. Appointment of auditor

(1) If required to do so under subclause (2), the company must appoint an auditor who is qualified to hold that office under section 130 of the Act to:

(a) audit the financial statements of the company in respect of an accounting period; and

(b) hold office until those financial statements have been audited in accordance with the Act or until he or she ceases to hold office under subclause (3).

(2) The company must appoint an auditor within 30 working days if:

(a) a shareholder or shareholders holding shares that together carry the right to receive more than 20% of distributions made by the company give written notice to the company before the end of an accounting period requiring the financial statements of the company for that period to be audited; or

(b) a vacancy in the office of auditor arises before the financial statements in respect of a period for which an audit is required have been audited.

(3) An auditor ceases to hold office if he or she:

(a) resigns by delivering a written notice of resignation to the registered office of the company not less than 20 working days before the date on which the notice is expressed to be effective; or

(b) is replaced as auditor by an ordinary resolution appointing another person as auditor in his or her place, following notice to the auditor in accordance with section 128 of the Act; or

(c) becomes disqualified from being the auditor of the company under section 130 of the Act; or

(d) dies; or

(e) ceases to hold office under subclause (5); or

(f) is removed by all shareholders in accordance with subclause (6).

(4) An auditor may be appointed:

(a) by ordinary resolution; or

(b) if the office of auditor is vacant, by the directors. If an auditor is appointed by the directors, the directors must, within 10 working days, give notice of the appointment to all shareholders.

(5) If the company is required to appoint an auditor in respect of an accounting period but is not required to do so in respect of a subsequent accounting period:

(a) the audit of the financial statements of the company for the accounting period in respect of which an audit is required must be completed in accordance with this section; and

(b) the directors may give notice to all shareholders within 4 months of the commencement of a subsequent accounting period that the company is no longer required to appoint an auditor, and that the auditor will cease to hold office unless a notice is given by shareholders under paragraph (2)(a) by a date specified in the notice, which must be not less than 30 working days from the date on which the notice is given; and

(c) if a notice has been given under paragraph (5)(b), and no notice under paragraph (2)(a) is received by the company on the date specified in that notice, the auditor ceases to hold office on the later of:

(i) the date specified in the notice; or

(ii) the date on which the audit of the financial statements of the company for the previous accounting period is completed.

(6) Despite the other provisions of this clause, all shareholders may agree, in writing:

(a) to dispense with an audit for any accounting period; and

(b) to remove the auditor of the company.

(7) The fees payable to the auditor must be agreed between the auditor and the directors.

72. Auditor's attendance at shareholders' meeting

The directors must ensure that an auditor of the company:

(a) is permitted to attend a meeting of shareholders of the company; and

(b) receives the notices and communications that a shareholder is entitled to receive relating to meetings and resolutions of shareholders; and

(c) may be heard at a meeting of shareholders that he or she attends on any part of the business of the meeting that concerns him or her as auditor.

PART 6 – LIQUIDATION AND REMOVAL FROM REGISTER

73. Resolution to appoint liquidator

(1) The shareholders may resolve to liquidate the company by special resolution.

(2) The directors may resolve to liquidate the company at a meeting called under section 70 of the Act, if they consider that the company is unable to meet its debts as they become due in the normal course of business.

74. Distribution of surplus assets

(1) The surplus assets of the company available for distribution to shareholders after all creditors of the company have been paid must be distributed in proportion to the number of shares held by each shareholder, subject to the terms of issue of any shares.

(2) The liquidator may, with the approval of a special resolution, distribute the surplus assets of the company among the shareholders in kind. For this purpose, the liquidator may set such value as he or she considers fair on any property to be divided, and may determine how the division will be carried out as between the shareholders or different classes of shareholders.

PART 7 – MISCELLANEOUS

75. Service of documents on shareholders

(1) A notice, statement, report, accounts, or other document to be sent to a shareholder who is a natural person may be:

(a) delivered to that person; or

(b) posted to that person's postal address; or

(c) faxed to a fax number used by that person.

(2) A notice, statement, report, accounts, or other document to be sent to a shareholder that is a company or an overseas company may be sent by any of the methods of serving documents referred to in sections 201 or 203 of the Act, as the case may be.

76. Authority to bind the company

A contract or other enforceable obligation may be entered into on behalf of the company in writing signed under the name of the company by:

(a) 2 or more directors'; or

(b) if the company has only 1 director, by that director; or

(c) 1 or more attorneys appointed by the company under section 104 of the Act.

77. Interpretation

(1) In these rules, Act means the Companies Act No. 25 of 2012.

(2) Unless the context otherwise requires, any term or expression that is defined in the Act or any regulations made under the Act and used, but not defined, in these rules has the same meaning as in the Act or the regulations.

SCHEDULE 2

MODEL RULES FOR SINGLE SHAREHOLDER COMPANY

s 15(2)

PART 1 – GENERAL PROVISIONS

1. Name of company

(1) The name of the company at the time of registration under the Act appears on the application for registration or for reregistration, as the case may be.

(2) The name of the company may be changed in accordance with section 11 of the Act only with the prior approval of the shareholder.

2. Private company with 1 shareholder

(1) The company is a private company.

(2) The company must not offer any of its shares to the public.

(3) The company has 1 shareholder.

(4) These rules are designed for a company with 1 shareholder: if the company proposes to increase the number of shareholders, it must first adopt new rules.

(5) The company must not have more than 1 shareholder.

(6) If a share transfer is presented to the company for entry on the share register that would result in a breach of this restriction, the directors must decline to register the transfer.

3. Rules

(1) The company may adopt new rules in place of these rules by special resolution, in accordance with subsection 14(2) of the Act.

(2) Subject to the Act:

(a) these rules have effect and may be enforced as if they constituted a contract:

(i) between the company and the shareholder; and

(ii) between the company and each director; and

(b) the shareholder and the directors of the company have the rights, powers, duties, and obligations set out in these rules.

PART 2 – SHARES AND SHAREHOLDERS

4. Shares

(1) At the time of registration under the Act, the company has the number of shares specified in the application for registration or reregistration, as the case may be.

(2) If the company was first registered under Part 2 of the Act, the company must immediately after its registration issue to the person named in the application for registration as the shareholder the number of shares specified in the application as being the number of shares to be issued to that person.

(3) With the prior approval of the shareholder, the company may:

(a) issue shares to the shareholder; and

(b) issue more than 1 class of shares.

(4) If the company issues shares, it must give the prescribed notice to the Registrar under subsection 25(2) of the Act within 10 working days of the issue of any shares.

(5) If the rights attached to the shares differ from those set out in section 22 of the Act, the notice must be accompanied by a document setting out the terms of issue of the shares.

(6) The shares of the company are, subject to subclause 8(4) and their terms of issue, transferable by entry in the share register in accordance with subclauses 8(1) to (3).

5. Company to keep share register

(1) The company must maintain a share register that records the shares issued by the company and states:

(a) the names, alphabetically arranged, and the latest known address of each person who is, or has within the last 7 years been, a shareholder; and

(b) the number of shares of each class held by the shareholder within the last 7 years; and

(c) the date of any:

(i) issue of shares to; or

(ii) re-purchase or redemption of shares from; or

(iii) transfer of shares by or to,

the shareholder within the last 7 years, and in relation to the transfer, the name of the person to or from whom the shares were transferred.

(2) No notice of a trust, whether express, implied, or constructive, may be entered on the share register.

(3) The company may appoint an agent to maintain the share register.

6. Form and location of share register

The share register must be kept:

(a) in a form that complies with clause 32; and

(b) at the company's registered office.

7. Status of registered shareholder

(1) The company must treat the registered holder of a share as the only person entitled to:

(a) exercise the right to vote attaching to the share; and

(b) receive notices; and

(c) receive a distribution in respect of the share; and

(d) exercise the other rights and powers attaching to the share.

(2) If the shareholder dies, that shareholder's legal representative is the only person recognised by the company as having any title to, or interest in, the share.

(3) Any person who becomes entitled to the share as a consequence of the death, bankruptcy or insolvency or incapacity of the shareholder may be registered as the holder of the deceased shareholder's shares on making a request in writing to the company to be so registered, accompanied by proof satisfactory to the directors of that entitlement.

8. Transfer of shares

(1) If shares are to be transferred, a form of transfer signed by the holder or by his or her agent or attorney must be delivered to the company.

(2) The personal representative of a deceased shareholder may transfer a share even though the personal representative is not the shareholder at the time of transfer.

(3) Subject to subclause (4), the company must, immediately on receipt of a properly executed share transfer, enter the name of the transferee in the share register as holder of the shares transferred.

(4) If any amount payable to the company by the shareholder is due but unpaid, the directors may resolve to refuse to register a transfer of a share within 30 working days of receipt of the transfer.

(5) If the directors resolve to refuse to register a transfer under subclause (4), they must give notice of the refusal to the shareholder within 5 working days of the date of the resolution.

9. Share certificates

(1) The shareholder may apply to the company for a share certificate relating to some or all of the shareholder's shares in the company.

(2) On receipt of an application for a share certificate, the company must, within 20 working days after receiving the application:

(a) if the application relates to some but not all of the shares, separate the shares shown in the register as owned by the shareholder into separate parcels: 1 parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares; and

(b) in all cases send to the shareholder a certificate stating:

(i) the name of the company; and

(ii) the class of shares held by the shareholder; and

(iii) the number of shares held by the shareholder to which the certificate relates.

(3) If a share certificate has been issued, a transfer of the shares to which it relates must not be registered by the company unless the form of transfer required by clause is accompanied by:

(a) the share certificate relating to the share; or

(b) evidence as to its loss or destruction and, if required, an indemnity in a form determined by the directors.

(4) If shares to which a share certificate relates are to be transferred, and the share certificate is sent to the company to enable the registration of the transfer, the share certificate must be cancelled and no further share certificate issued except at the request of the transferee.

10. Shareholder decisions and exercise of shareholder powers

A resolution in writing signed by the shareholder is as valid as if it had been passed at a meeting of shareholders.

11. Distributions to shareholder

(1) The payment of a dividend or the making of any other distribution must be approved by the shareholder.

(2) The company must not make a distribution to the shareholder unless there are reasonable grounds for believing that, after that distribution is made:

(a) the company will be able to pay its debts as they become due in the normal course of business; and

(b) the value of the company's assets will not be less than the value of its liabilities.

(3) A distribution made in breach of subclause (2) may be recovered by the company from the shareholder, in accordance with section 28 of the Act.

12. Company may acquire its own shares and provide financial assistance

(1) The company may agree to acquire its own shares from the shareholder, subject to the solvency test in subclause 11(2).

(2) If the company acquires its own shares, those shares are deemed to be cancelled immediately on acquisition.

(3) The company may give financial assistance to the shareholder for the purpose of, or in connection with, the purchase of a share issued or to be issued by the company, whether directly or indirectly, only if after providing the assistance the company will satisfy the solvency test in subclause 11(2).

13. Annual report to shareholder

The directors of the company are not required to prepare an annual report in respect of any accounting period, unless requested to do so by the shareholder by notice in writing.

PART 3 – DIRECTORS

14. Appointment and removal of directors

(1) The shareholder may fix the number of directors of the company by notice in writing to the company.

(2) A director may be appointed or removed by the shareholder by notice in writing to the company.

(3) A director vacates office if he or she:

(a) is removed from office in accordance with subclause (2); or

(b) resigns in accordance with subclause (4); or

(c) becomes disqualified from being a director under section 82 of the Act; or

(d) dies.

(4) A director may resign by delivering a signed written notice of resignation to the registered office of the company and to the shareholder. Subject to subclause (5), the notice is effective when it is received at the registered office, or at any later time specified in the notice.

(5) If the company has only 1 director, that director may not resign until that director has given not less than 10 working days' written notice of the resignation to the shareholder. A notice of resignation given by the sole director of the company does not take effect, despite its terms, until the earlier of:

(a) the expiry of 10 working days after written notice of the resignation has been given to the shareholder; or

(b) the appointment of another director of the company.

(6) The company must ensure that notice in the prescribed form of all the following is delivered to the Registrar:

(a) a change in the directors of the company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both:

(b) a change in the name or the physical address of a director of the company.

15. Powers and duties of directors

(1) The business and affairs of the company must be managed by, or under the direction or supervision of, the directors subject to:

(a) section 49 of the Act, which relates to major transactions; and

(b) any directions given to the board in writing by the shareholder.

(2) The directors have all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.

(3) The directors may delegate to a committee of directors, or to a director or employee, any of their powers.

(4) The directors must monitor, by means of reasonable methods properly used, the exercise of powers by any delegate.

(5) The provisions of these rules relating to proceedings of the directors also apply to proceedings of any committee of directors, except to the extent the directors determine otherwise.

(6) The directors have the duties set out in the Act, and, in particular:

(a) each director must act in good faith and in a manner that the director believes to be in the interests of the company; and

(b) a director must not act, or agree to the company acting, in a manner that contravenes the Act or these rules.

16. Standard of care of directors

A director of the company, when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances taking into account, but without limitation:

(a) the nature of the company; and

(b) the nature of the decision; and

(c) the position of the director and the nature of the responsibilities undertaken by him or her.

17. Obligations of directors in connection with insolvency

(1) A director of the company must call a meeting of directors within 10 working days to consider whether the directors should appoint a liquidator, in accordance with section 70 of the Act, if the director:

(a) believes that the company is unable to pay its debts as they fall due; or

(b) is aware of matters that would put any reasonable person on inquiry as to whether the company is unable to pay its debts as they fall due.

(2) At a meeting called under section 70 of the Act, the directors must consider whether to:

(a) appoint a liquidator; or

(b) continue to carry on the business of the company.

18. Interested directors

(1) A director must not exercise any power as a director in circumstances where that director is directly or indirectly materially interested in the exercise of that power unless the matter in question has been approved by the shareholder.

(2) A transaction entered into by the company in which a director is directly or indirectly materially interested is voidable at the election of the company in accordance with section 107 of the Act.

(3) A transaction entered into by the company as the result of action taken by a director in breach of sections 64, 65, or 66 of the Act is voidable at the option of the company in accordance with section 108 of the Act.

19. Use and disclosure of company information

A director of the company who has information in his or her capacity as a director or employee of the company, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except:

(a) in the interests of the company; or

(b) as required by law; or

(c) to the shareholder; or

(d) if there are reasonable grounds for believing that the company will satisfy the solvency test after the director takes that action, and that action:

(i) is approved by the shareholder; or

(ii) is authorised by any contract of employment entered into between that director and the company, the relevant terms of which have been approved by the shareholder.

20. Indemnities and insurance for directors or employees

(1) Subject to section 73 of the Act, the company may provide an indemnity or purchase insurance for a director of the company or of a related company with the approval of the shareholder.

(2) In subclause (1):

director includes:

(a) a person who is liable under any of sections 64 to 70 of the Act by virtue of section 72 of the Act; and

(b) a former director;

indemnify includes relieve or excuse from liability, whether before or after the liability arises; and indemnity has a corresponding meaning.

21. Remuneration of directors

Directors may receive remuneration and other benefits from the company with the approval of the shareholder.

22. Procedure at meetings of directors

(1) Clauses 23 to 29 set out the procedure to be followed at meetings of directors.

(2) A meeting of directors may determine its own procedure to the extent that it is not governed by these rules.

23. Chairperson

(1) The shareholder may appoint a director as chairperson of directors and may determine the period for which the chairperson is to hold office.

(2) If no chairperson is appointed, or if at a meeting of the directors the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the directors present may choose 1 of their number to be the chairperson of the meeting.

24. Notice of meeting

(1) A director or, if requested by a director to do so, an employee of the company, may convene a meeting of directors by giving notice in accordance with this clause.

(2) Not less than 24 hours notice of a meeting of directors must be given to each director who is in Vanuatu, or who can readily be contacted outside Vanuatu.

(3) An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity, or if all directors entitled to receive notice of the meeting agree to the waiver.

25. Methods of holding meetings

A meeting of directors may be held either:

(a) by a number of the directors who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or

(b) by means of audio, or audio and visual, communication by which all directors participating and constituting a quorum, may simultaneously hear each other throughout the meeting.

26. Quorum

(1) A quorum for a meeting of directors is a majority of the directors.

(2) No business may be transacted at a meeting of directors if a quorum is not present.

27. Voting

(1) Each director has 1 vote.

(2) The chairperson has a casting vote.

(3) A resolution of the board is passed if it is agreed to by all directors present without dissent, or if a majority of the votes cast on it are in favour of it.

(4) A director present at a meeting of directors is presumed to have agreed to, and to have voted in favour of, a resolution of the directors unless he or she expressly dissents from, or votes against, the resolution at the meeting.

28. Minutes

The directors must ensure that minutes are kept of all proceedings at meetings of the directors.

29. Unanimous resolution

(1) A resolution in writing signed or assented to by all directors is as valid and effective as if it had been passed at a meeting of the directors duly convened and held.

(2) A resolution may consist of several documents (including fax or other similar means of communication) in like form each signed or assented to by 1 or more directors.

(3) A copy of a resolution must be entered in the minute book of the directors' proceedings.

30. Managing director and other executive directors

(1) The shareholder may from time to time appoint a director as managing director for such period and on such terms as the shareholder thinks fit.

(2) The remuneration of the managing director must be approved by the shareholder.

(3) Subject to the terms of a managing director's appointment, the shareholder may at any time cancel the appointment of a director as managing director.

(4) A director who holds office as managing director ceases to hold office as managing director if he or she ceases to be a director of the company.

(5) The directors may, with the prior approval of the shareholder, delegate to the managing director, subject to any conditions or restrictions that they consider appropriate, any of their powers that may be lawfully delegated.

(6) A delegation may at any time be withdrawn or varied by the directors.

(7) The delegation of a power of the directors to the managing director does not prevent the exercise of the power by the directors, unless the terms of the delegation expressly provide otherwise.

(8) A director other than the managing director who is employed by the company may be paid such remuneration as may be approved by the shareholder.

PART 4 – COMPANY RECORDS

31. Company records

(1) The company must keep all the following documents at its registered office:

(a) the rules of the company;

(b) minutes of all resolutions made by the shareholder within the last 7 years;

(c) minutes of all meetings and resolutions of directors and directors' committees within the last 7 years;

(d) the full names and physical and postal addresses of the current directors;

(e) copies of all written communications to the shareholder during the last 7 years, including annual reports made under section 55 of the Act;

(f) copies of all financial statements required to be completed under section 125 of the Act for the last 7 completed accounting periods of the company;

(g) the accounting records required by section 124 for the current accounting period and for the last 7 completed accounting periods of the company;

(h) the share register.

(2) The references in clause (1)(b), (c), and (e) to 7 years and the references in clause (1)(f) and (g) to 7 completed accounting periods include any lesser periods that the Registrar may approve by notice in writing to the company, in accordance with subsection 113(2) of the Act.

32. Form of records

(1) The records of the company must be kept:

(a) in written form; or

(b) in a form or in a manner that allows the documents and information that comprise the records to be readily accessible so as to be usable for subsequent reference, and convertible into written form.

(2) The directors must ensure that adequate measures exist to:

(a) prevent the records being falsified; and

(b) detect any falsification of them.

33. Access to records

(1) The directors of the company are entitled to access to the company's records in accordance with section 115 of the Act.

(2) The shareholder is entitled to have access to the company's records as if that shareholder were a director.

34. Documents to be sent to Registrar

In addition to the annual return required under section 119 of the Act, the company must send all the following documents to the Registrar under the Act:

(a) notice of the adoption of new rules by the company, or the alteration of the rules of the company, under section 14 of the Act;

(b) notice of a change in the registered office of the company, under section 18 of the Act;

(c) notice of the issue of shares by the company, under section 25 of the Act;

(d) notice of the acquisition by the company of its own shares, under section 30 of the Act;

(e) notice of the redemption of a share, under section 34 of the Act;

(f) notice of the transfer of shares under section 37 of the Act;

(g) notice of a change in the directors of the company, or of a change in the name or physical address or postal address of a director, under section 85 of the Act;

(h) notice of the making of an order under section 99 of the Act altering or adding to the rules of a company;

(i) notice of any place other than the registered office of the company where records are kept;

(j) documents requested by the Registrar under the Act.

35. Documents to be sent to shareholder

In addition to any annual report required under section 55 of the Act, the company must send all the following documents to the shareholder under the Act:

(a) financial statements required to be sent under section 125 of the Act;

(b) any written statement by an auditor under section 131 of the Act;

(c) any report by an auditor under section 133 of the Act.

PART 5 – ACCOUNTS AND AUDIT

36. Accounting records to be kept

(1) The directors of the company must cause accounting records to be kept that:

(a) correctly record and explain the transactions of the company; and

(b) will at any time enable the financial position of the company to be determined with reasonable accuracy; and

(c) will enable the directors to ensure that the financial statements of the company comply with section 125 of the Act; and

(d) will enable the financial statements of the company to be readily and properly audited.

(2) Without limiting subclause (1), the accounting records must contain:

(a) entries of money received and spent each day and the matters to which it relates; and

(b) a record of the assets and liabilities of the company; and

(c) if the company's business involves dealing in goods:

(i) a record of goods bought and sold, and relevant invoices; and

(ii) a record of stock held at the end of the financial year together with records of any stocktakings during the year; and

(d) if the company's business involves providing services, a record of services provided and relevant invoices.

(3) If the company sells goods or provides services for cash in the ordinary course of carrying on a retail business:

(a) invoices need not be kept in respect of each retail transaction for the purposes of subclause (2); and

(b) a record of the total money received each day in respect of the sale of goods or provision of services, as the case may be, is sufficient to comply with subclause (2) in respect of those transactions.

(4) The accounting records must be kept:

(a) in a form permitted under clause 32; and

(b) at the registered office of the company.

37. Financial statements to be prepared

(1) The directors of every company must ensure that within 4 months after the balance date of the company or, if the shareholder agrees in writing, within an extended period not exceeding 7 months after the balance date of the company, financial statements that comply with subclause (2) are:

(a) completed in relation to the company and that balance date; and

(b) given to the shareholder.

(2) The financial statements of the company must:

(a) give a true and fair view of the matters to which they relate; and

(b) comply with any applicable regulations made under the Act; and

(c) be dated and signed on behalf of the directors by 2 directors of the company, or, if the company has only 1 director, by that director.

(3) The period between:

(a) the date of incorporation of the company and its first balance date; or

(b) any 2 balance dates of the company:

must not exceed 15 months.

(4) In this clause, financial statements, in relation to the company and a balance date, means:

(a) a statement of financial position for the entity as at the balance date; and

(b) in the case of:

(i) a company trading for profit, a statement of financial performance for the company in relation to the accounting period ending at the balance date; and

(ii) a company not trading for profit, an income and expenditure statement for the company in relation to the accounting period ending at the balance date; and

(c) if required by regulations made under the Act, a statement of cash flows for the company in relation to the accounting period ending on the balance date; and

(d) such other financial statements in relation to the company or any group of companies of which it is the holding company as may be required by regulations made under the Act; and

(e) any notes or documents giving information relating to the statement of financial position and other statements.

38. Appointment of auditor

(1) The shareholder may, by notice in writing to the company, appoint an auditor who is qualified to hold that office under section 130 of the Act to:

(a) hold office as auditor for the period specified in the notice; and

(b) audit the financial statements of the company.

(2) The shareholder may remove an auditor by notice in writing to the company and to that auditor.

PART 6 — LIQUIDATION AND REMOVAL FROM REGISTER

39. Resolution to appoint liquidator

(1) The shareholder may resolve to liquidate the company by special resolution.

(2) The directors may resolve to liquidate the company at a meeting called under section 70 of the Act if they consider that the company is unable to meet its debts as they become due in the normal course of business.

(3) The directors must give not less than 5 working days' notice to the shareholder of any meeting called under section 70 of the Act, and must permit the shareholder to attend and speak at that meeting.

40. Distribution of surplus assets

(1) The surplus assets of the company available for distribution to shareholders after all creditors of the company have been paid must be distributed to the shareholder.

(2) The liquidator may, with the approval of the shareholder, distribute the surplus assets of the company to the shareholder in kind.

PART 7 – MISCELLANEOUS

41. Service of documents on shareholder

(1) A notice, statement, report, accounts, or other document to be sent to a shareholder who is a natural person may be:

(a) delivered to that person; or

(b) sent by any other method approved in writing by that shareholder.

(2) A notice, statement, report, accounts, or other document to be sent to a shareholder that is a company or an overseas company may be sent by any of the methods of serving documents referred to in sections 201 or 203 of the Act, as the case may be.

42. Authority to bind the company

A contract or other enforceable obligation may be entered into on behalf of the company in writing signed under the name of the company by:

(a) 2 or more directors; or

(b) if the company has only 1 director, by that director; or

(c) 1 or more attorneys appointed by the company under section 104.

43. Interpretation

(1) In these rules, Act means the Companies Act No. 25 of 2012.

(2) Unless the context otherwise requires, any term or expression that is defined in the Act or any regulations made under the Act and used, but not defined, in these rules has the same meaning as in the Act or the regulations.

SCHEDULE 3

MODEL RULES FOR PUBLIC COMPANIES

s 15(3)

PART 1 – GENERAL PROVISIONS

1. Name of company

(1) The name of the company at the time of registration under the Act appears on the application for registration or for reregistration, as the case may be.

(2) The name of the company may be changed in accordance with section 11 of the Act with the prior approval of the directors.

2. Public company

The company is a public company.

3. Rules

(1) The company may adopt new rules in place of these rules by special resolution, in accordance with subsection 14(2) of the Act.

(2) Subject to the Act:

(a) these rules have effect and may be enforced as if they constituted a contract:

(i) between the company and its shareholders; and

(ii) between the company and each director; and

(b) the shareholders and directors of the company have the rights, powers, duties, and obligations set out in these rules.

PART 2 – SHARES AND SHAREHOLDERS

DIVISION 1 – GENERAL PROVISIONS

4. Number of shares

At the time of registration under the Act the company has the number of shares specified in the application for registration or reregistration, as the case may be.

5. Rights attaching to shares

Subject to subclause 7(4), each share carries all the following rights:

(a) the right to 1 vote on a poll at a meeting of the company on any resolution, including any resolution to:

(i) appoint or remove a director or auditor:

(ii) adopt new rules:

(iii) alter the company's rules:

(iv) approve a major transaction:

(vi) approve registration of a public company as a private company:

(vii) put the company into liquidation:

(viii) approve the transfer of registration of the company to another country; and

(b) the right to an equal share in dividends paid by the company; and

(c) the right to an equal share in the distribution of the surplus assets of the company in a liquidation.

6. Initial issue of shares

If the company was first registered under Part 2 of the Act, the company must immediately after its registration issue to any person named in the application for registration as a shareholder the number of shares specified in the application as being the number of shares to be issued to that person or those persons.

7. Process for issuing shares

(1) The directors may issue shares:

(a) pursuant to an offer made to all shareholders proportionally, that, if accepted by all shareholders, would not affect relative voting or distribution rights, on such terms as the directors think fit (including issuing shares without consideration, or instead of dividends). The shareholders must have a reasonable opportunity to consider and respond to the offer; or

(b) to shareholders or any other persons for a consideration determined by the directors. The directors must use reasonable endeavours to obtain the best price reasonably obtainable for those shares.

(2) The directors may issue more than 1 class of shares. In particular, shares may be issued that:

(a) are redeemable; or

(b) confer preferential rights to distributions of capital or income; or

(c) confer special, limited, or conditional voting rights; or

(d) do not confer voting rights.

(3) If the company issues shares, it must give the prescribed notice to the Registrar under subsection 25(2) of the Act within 10 working days of the issue of any shares.

(4) If the rights attached to the shares differ from those set out in clause 5, the notice must be accompanied by a document setting out the terms of issue of the shares.

8. Transferability of shares

The shares of the company are, subject to subclause 7(4) and their terms of issue, transferable by entry in the share register in accordance with subclauses 12(1) to (3).

DIVISION 2 – SHARE REGISTER

9. Company to keep share register

(1) The company must maintain a share register that records the shares issued by the company and states:

(a) the names, alphabetically arranged, and the last known address of each person who is, or has within the last 7 years been, a shareholder; and

(b) the number of shares of each class held by each shareholder within the last 7 years; and

(c) the date of any:

(i) issue of shares to and from; or

(ii) repurchase or redemption of shares to and from; or

(iii) transfer of shares to and from,

each shareholder within the last 7 years, and in relation to the transfer, the name of the person to or from whom the shares were transferred.

(2) No notice of a trust, whether express, implied, or constructive, may be entered on the share register.

(3) The company may appoint an agent to maintain the share register.

10. Form and location of share register

The share register must be kept:

(a) in a form that complies with clause 76; and

(b) at the company's registered office

11. Status of registered shareholders

(1) The company must treat the registered holder of a share as the only person entitled to:

(a) exercise the right to vote attaching to the share; and

(b) receive notices; and

(c) receive a distribution in respect of the share; and

(d) exercise the other rights and powers attaching to the share.

(2) If a joint holder of a share dies, the remaining holders must be treated by the company as the holders of that share.

(3) If the sole holder of a share dies, that shareholder's legal representative is the only person recognised by the company as having any title to or interest in the share.

(4) A person who becomes entitled to a share as a consequence of the death, bankruptcy or insolvency or incapacity of a shareholder may be registered as the holder of that shareholder's shares on making a request in writing to the company to be so registered, accompanied by proof satisfactory to the directors of that entitlement.

DIVISION 3 – TRANSFER OF SHARES AND SHARE CERTIFICATES

12. Transfer of shares

(1) If shares are to be transferred, a form of transfer signed by the holder or by his or her agent or attorney must be delivered to the company.

(2) The personal representative of a deceased shareholder may transfer a share even though the personal representative is not a shareholder at the time of transfer.

(3) Subject to subclause (4), the company must, immediately on receipt of a properly executed share transfer, enter the name of the transferee in the share register as holder of the shares transferred.

(4) The directors may resolve to refuse to register a transfer of a share within 30 working days of receipt of the transfer, if any amount payable to the company by the shareholder is due but unpaid.

(5) If the directors resolve to refuse to register a transfer for this reason, they must give notice of the refusal to the shareholder within 5 working days of the date of the resolution.

13. Share certificates

(1) A shareholder may apply to the company for a share certificate relating to some or all of the shareholder's shares in the company.

(2) On receipt of an application for a share certificate under subclause (1), the company must, within 20 working days after receiving the application:

(a) if the application relates to some but not all of the shares, separate the shares shown in the register as owned by the applicant into separate parcels - 1 parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares; and

(b) in all cases send to the shareholder a certificate stating:

(i) the name of the company; and

(ii) the class of shares held by the shareholder; and

(iii) the number of shares held by the shareholder to which the certificate relates.

(3) If a share certificate has been issued, a transfer of the shares to which it relates must not be registered by the company unless the form of transfer required by clause 12 is accompanied by:

(a) the share certificate relating to the share; or

(b) evidence as to its loss or destruction and, if required, an indemnity in a form determined by the directors.

(4) If shares to which a share certificate relates are to be transferred, and the share certificate is sent to the company to enable the registration of the transfer, the share certificate must be cancelled and no further share certificate issued except at the request of the transferee.

DIVISION 4 – MEETINGS OF SHAREHOLDERS

14. Meetings of shareholders

(1) Clauses 15 to 27 set out the procedure to be followed at, and in relation to, meetings of shareholders.

(2) A meeting of shareholders may determine its own procedure to the extent that it is not governed by these rules.

15. Notice of meetings

(1) Written notice of the time and place of a meeting of shareholders must be given to every shareholder entitled to receive notice of the meeting and to each director and any auditor of the company not less than 15 working days before the meeting.

(2) The notice must set out:

(a) the nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and

(b) the text of any special resolution to be submitted to the meeting.

(3) An irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver.

(4) An accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a shareholder does not invalidate the proceedings at that meeting.

(5) If a meeting of shareholders is adjourned for less than 30 working days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that is adjourned.

16. Methods of holding meetings

A meeting of shareholders may be held either:

(a) by a number of shareholders, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or

(b) by means of audio, or audio and visual, communication by which all shareholders participating and constituting a quorum, may simultaneously hear each other throughout the meeting.

17. Quorum

(1) Subject to subclause (3), no business may be transacted at a meeting of shareholders if a quorum is not present.

(2) A quorum for a meeting of shareholders is present if 5 or more shareholders or their proxies are present who are between them able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.

(3) If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the directors may appoint.

(4) If, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders present or their proxies are a quorum.

18. Chairperson

(1) If the directors have elected a chairperson of the directors, and the chairperson of the directors is present at a meeting of shareholders, he or she must chair the meeting.

(2) If no chairperson of the directors has been elected or if, at any meeting of shareholders, the chairperson of the directors is not present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may choose 1 of their number to be the chairperson of the meeting.

19. Voting

(1) In the case of a meeting of shareholders held under paragraph 16(a), unless a poll is demanded, voting at the meeting will take place by whichever of the following methods is determined by the chairperson of the meeting:

(a) voting by voice; or

(b) voting by show of hands.

(2) In the case of a meeting of shareholders held under paragraph 16(b), unless a poll is demanded, voting at the meeting will take place by shareholders signifying individually their assent or dissent by voice.

(3) A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with subclause (4).

(4) At a meeting of shareholders a poll may be demanded by:

(a) not fewer than 5 shareholders having the right to vote on the question at the meeting; or

(b) a shareholder or shareholders representing not less than 10% of the total voting rights of all shareholders having the right to vote on the question at the meeting.

(5) A poll may be demanded either before or after a vote is taken on a resolution.

(6) If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present and voting.

(7) The chairperson of a shareholders' meeting is not entitled to a casting vote.

20. Votes of joint shareholders

If 2 or more persons are registered as the holder of a share, the vote of the person named first in the share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

21. Proxies

(1) A shareholder may exercise the right to vote either by being present in person or by proxy.

(2) A proxy for a shareholder is entitled to attend and participate in a meeting of shareholders as if the proxy were the shareholder.

(3) A proxy must be appointed by notice in writing signed by the shareholder. The notice must state whether the appointment is for a particular meeting, or for a specified term.

(4) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is given to the company at least 24 hours before the start of the meeting.

22. Corporations may act by representatives

(1) A corporation that is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf by notice in writing signed by a director or secretary of the corporation.

(2) The notice must state whether the appointment is for a particular meeting, or for a specified term.

23. Postal votes

(1) A shareholder may exercise the right to vote at a meeting by casting a postal vote in accordance with this clause.

(2) The notice of a meeting at which shareholders are entitled to cast a postal vote must state the name of the person authorised by the directors to receive and count postal votes at that meeting.

(3) A shareholder may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which his or her shares are to be voted to a person authorised to receive and count postal votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.

(4) A shareholder who has submitted a postal vote on any resolution:

(a) may attend and speak at the meeting; and

(b) must not vote on that resolution in person at the meeting.

24. Duty of person authorised to receive and count postal votes

(1) If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, each director is deemed to be so authorised.

(2) It is the duty of a person authorised to receive and count postal votes at a meeting:

(a) to collect together all postal votes received by him or her or by the company; and

(b) in relation to each resolution to be voted on at the meeting, to count:

(i) the number of shareholders voting in favour of the resolution and the number of votes cast by each shareholder in favour of the resolution; and

(ii) the number of shareholders voting against the resolution, and the number of votes cast by each shareholder against the resolution; and

(c) to sign a certificate that he or she has carried out the duties set out in paragraphs (a) and (b) and that sets out the results of the counts required by paragraph (b); and

(d) to ensure that the certificate required by paragraph (c) is presented to the chairperson of the meeting.

25. Duty of chairperson concerning postal votes

(1) If a vote is taken at a meeting on a resolution on which postal votes have been cast, the chairperson of the meeting must:

(a) on a vote by show of hands, count each shareholder who has submitted a postal vote for or against the resolution; and

(b) on a poll, count the votes cast by each shareholder who has submitted a postal vote for or against the resolution.

(2) The chairperson of a meeting must call for a poll on a resolution on which he or she holds sufficient postal votes that he or she believes, that if a poll is taken, the result may differ from that obtained on a show of hands.

(3) The chairperson of a meeting must ensure that a certificate of postal votes held by him or her is annexed to the minutes of the meeting.

26. Minutes

(1) The directors must ensure that minutes are kept of all proceedings at meetings of shareholders.

(2) Minutes that have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings at the meeting.

DIVISION 5 – MISCELLANEOUS

27. Annual meetings and special meetings of shareholders

(1) Subject to subclause (3) and subclause 28(3), the directors must call an annual meeting of the company to be held:

(a) once in each calendar year; and

(b) not later than 5 months after the balance date of the company; and

(c) not later than 15 months after the previous annual meeting.

(2) The meeting must be held on the date on which it is called to be held.

(3) The company need not hold its first annual meeting in the calendar year of its incorporation, but must hold that meeting within 18 months of its incorporation.

(4) A special meeting of shareholders entitled to vote on an issue:

(a) may be called at any time by a director; and

(b) must be called by the directors on the written request of shareholders holding shares carrying together not less than 10% of the votes that may be cast on that issue.

28. Written resolutions of shareholders

(1) A resolution in writing signed by shareholders, who together hold not less than 75% of the votes entitled to be cast on that resolution at a meeting of shareholders, is as valid as if it had been passed at a meeting of those shareholders.

(2) Any such resolution may consist of several documents (including fax or other similar means of communication) in like form, each signed or assented to by 1 or more shareholders.

(3) The company need not hold an annual meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with subclause (1).

(4) Within 5 working days of a resolution being passed under subclause (1), the company must send a copy of the resolution to every shareholder who did not sign it.

(5) A resolution may be signed under subclause (1) without any prior notice being given to shareholders.

29. Voting in interest groups

If the company proposes to take action that affects the rights attached to shares within the meaning of section 53 of the Act, the action may not be taken unless it is approved by a special resolution of each interest group, as defined in subsection 53(3) of the Act.

30. Shareholders entitled to receive dividends

(1) The shareholders who are entitled to receive dividends are:

(a) if the directors fix a date for this purpose, those shareholders whose names are registered in the share register on that date:

(b) if the directors do not fix a date for this purpose, those shareholders whose names are registered in the share register on the day on which the dividend is approved.

(2) A date fixed under paragraph (1)(a) must not precede by more than 20 working days the date on which the proposed action will be taken.

31. Notice of meetings and voting

(1) The shareholders who are entitled to receive notice of a meeting of shareholders are:

(a) if the directors fix a date for this purpose, those shareholders whose names are registered in the share register on that date; or

(b) if the directors do not fix a date for this purpose, those shareholders whose names are registered in the share register at the close of business on the day immediately preceding the day on which the notice is given.

(2) A date fixed under paragraph (1)(a) must not precede by more than 30 working days the date on which the meeting is to be held.

(3) Before a meeting of shareholders, the company may prepare a list of shareholders entitled to receive notice of the meeting, arranged in alphabetical order, and showing the number of shares held by each shareholder:

(a) if a date has been fixed under paragraph subclause (1)(a), as at that date; or

(b) if no such date has been fixed, as at the close of business on the day immediately preceding the day on which the notice is given.

(4) A person named in a list prepared under subclause (3) is entitled to attend the meeting and vote in respect of the shares shown opposite his or her name in person or by proxy, except to the extent that:

(a) that person has, since the date on which the shareholders entitled to receive notice of the meeting were determined, transferred any of his or her shares to some other person; and

(b) the transferee of those shares has been registered as the holder of those shares, and has requested, before the commencement of the meeting, that his or her name be entered on the list prepared under subclause (3).

(5) A shareholder may on 2 working days' notice examine any list prepared under subclause (3) during normal business hours at the registered office of the company.

32. Distributions to shareholders

(1) The company must not pay a dividend or make any other distribution to shareholders unless there are reasonable grounds for believing that, after that distribution is made:

(a) the company will be able to pay its debts as they become due in the normal course of business; and

(b) the value of the company's assets will not be less than the value of its liabilities.

(2) Subject to subclause (1) and to the terms of issue of any shares, the company may pay a dividend to shareholders:

(a) of the same amount in respect of each share of the same class, if the payment of the dividend is authorised by the directors; or

(b) on any other basis, with the prior approval of all shareholders.

(3) A distribution made in breach of subclauses (1) or (2) may be recovered by the company from the recipients or from the persons approving the distribution, in accordance with section 28 of the Act.

(4) No dividend or other distribution bears interest against the company unless the applicable terms of issue of a share expressly provide otherwise.

(5) All dividends and other distributions unclaimed for 1 year after the due date for payment may be invested or otherwise made use of by the directors for the benefit of the company until claimed.

(6) The company is entitled to mingle the unclaimed distribution with other money of the company and is not required to hold it or to regard it as being impressed with any trust but, subject to compliance with the solvency test, must pay the distribution to the person producing evidence of entitlement to receive it.

33. Company may acquire its own shares and provide financial assistance

(1) Subject to the solvency test, the company may agree to acquire its own shares from a shareholder:

(a) pursuant to an offer to acquire shares made to all holders of shares of the same class that would, if accepted by all persons to whom the offer is made, leave unaffected relative voting and distribution rights; or

(b) on any other basis, with the prior approval of shareholders by special resolution.

(2) If the company acquires its own shares, those shares are deemed to be cancelled immediately on acquisition.

(3) The company may give financial assistance to a person for the purpose of, or in connection with, the purchase of a share issued or to be issued by the company, whether directly or indirectly, only if:

(a) the company gives the assistance in the normal course of its business and on usual terms and conditions; or

(b) the giving of the assistance is authorised by the directors or by all shareholders under section 50 of the Act, and there are reasonable grounds for believing that, after providing the assistance, the company will satisfy the solvency test.

34. Annual report to shareholders

(1) The directors of the company must, within 5 months after the balance date of the company:

(a) prepare an annual report on the affairs of the company during the accounting period ending on that date; and

(b) send a copy of that report to each shareholder.

(2) Every annual report for the company must:

(a) be in writing and be dated; and

(b) include financial statements for the accounting period that comply with section 125 of the Act; and

(c) include the auditor's report required under section 133 of the Act; and

(d) state the names of the persons holding office as directors of the company as at the end of the accounting period and the names of any persons who ceased to hold office as directors of the company during the accounting period; and

(e) contain such other information as may be required by regulations made under the Act; and

(f) be signed on behalf of the directors by 2 directors of the company or, if the company has only 1 director, by that director.

DIVISION 6 – COMPULSORY ACQUISITIONS

35. Compulsory acquisition of minority holdings below 10%

(1) A shareholder who holds 90% of the voting shares of the company (majority shareholder) may give a notice to the other holders of voting shares (minority shareholders) in accordance with this clause, requiring the minority shareholders to sell their voting shares to the majority shareholder.

(2) The majority shareholder must also give the notice to the company, and give public notice of the fact that such a notice has been given.

(3) A notice may be given under subclause (1) by a majority shareholder at any time within 6 months after that majority shareholder first becomes interested in not less than 90% of the voting shares of the company.

36. Price for voting share

(1) The majority shareholder must pay a price for each voting share that is:

(a) equal to the highest price paid for a voting share by that majority shareholder in an arms length sale and purchase of such shares during the 6-month period

ending on the date on which the majority shareholder first became interested in not less than 90% of the voting shares; or

(b) if the majority shareholder so elects, a price to be fixed by an independent arbitrator.

(2) The majority shareholder must ask the directors of the company to nominate an independent arbitrator for this purpose.

(3) If the directors fail to do so within 10 working days of receiving such a request, the majority shareholder may nominate the arbitrator.

37. Notice under clause 35- General requirements

(1) A notice given under clause 35 must specify:

(a) the name of the majority shareholder; and

(b) the date on which the majority shareholder first became interested in not less than 90% of the voting shares of the company; and

(c) if the price to be paid for each voting share has been determined under clause 36(1)(a), that price, which must be certified by the majority shareholder as meeting the requirements of clause 36(1)(a); and

(d) if the price to be paid for each voting share is to be fixed by an arbitrator under clause 36(1)(b), the name of the arbitrator and the date on which and place at which the arbitration is to be held; and

(e) the rights of minority shareholders under clause 39.

(2) The date referred to in paragraph subclause (1)(d) must not be less than 60 working days from the date on which the notice is given to minority shareholders.

38. Requirements for price for voting share determined under clause 36(1)(a)

If the price to be paid for each voting share has been determined under clause 36(1)(a), a notice given under clause 35 must also:

(a) specify a date not less than 20 working days from the date of the notice on which the price will be paid, and the shares will be acquired by the majority shareholder (transfer date); and

(b) advise the shareholder that no payment will be received by the shareholder until any share certificate that has been issued in respect of the voting shares has been delivered to the company; and

(c) require the shareholder to specify the manner in which payment for the voting shares is to be made to that shareholder; and

(d) advise the shareholder that payment may be made by cheque to be collected from the company at a specified address, or posted to a postal address specified by the shareholder, and may provide for other payment options.

39. Requirements for price for voting share determined under clause 36(1)(b)

(1) A minority shareholder may give 10 days notice to the company requiring the company to apply to the Court for appointment of another person as arbitrator if:

(a) the price to be paid for each voting share is to be determined under clause 36(1)(b); and

(b) that minority shareholder considers that the arbitrator is not suitably qualified to value the shares, or is not independent.

(2) The company must, upon receiving a notice under subclause (1), immediately apply to the Court for the appointment of an arbitrator.

(3) If a notice is given under subclause (1), or if for any other reason the arbitration does not proceed on the date and at the place specified in the notice, not less than 40 working days notice of the altered date and place must be given to each minority shareholder.

(4) Each minority shareholder is entitled to attend the arbitration and to be heard, in person or by a representative (who may, but need not, be a lawyer or a public accountant).

(5) The arbitrator must expeditiously determine a fair and reasonable price per share for the shares to be acquired.

(6) The price must not include any discount or premium to reflect the size of the parcels of shares to be acquired, or the circumstances of the acquisition.

(7) The costs of the arbitration must be paid by the majority shareholder.

40. Notice of determination of price by arbitrator

Within 10 working days of the determination by the arbitrator, the company must give a notice to each minority shareholder that:

(a) advises the shareholder of the price that has been determined by the arbitrator; and

(b) specifies a date not less than 10 working days and not more than 20 working days from the date of the notice on which the price will be paid, and the shares will be acquired by the majority shareholder (transfer date); and

(c) advises the shareholder that no payment will be received by the shareholder until any share certificate that has been issued in respect of the voting shares has been delivered to the company; and

(d) requires the shareholder to specify the manner in which payment for the voting shares is to be made to that shareholder; and

(e) advises the shareholder that payment may be made by cheque to be collected from the company at a specified address, or posted to a postal address specified by the shareholder, and may provide for other payment options.

41. Requirements on transfer date

(1) On the transfer date:

(a) the majority shareholder must pay the full amount of the price for all voting shares held by minority shareholders to the company, to be held on trust by the company for the benefit of those shareholders. The payment must be made in cleared funds; and

(b) all voting shares held by minority shareholders are deemed to be transferred to the majority shareholder on payment to the company in accordance with paragraph (a), and the company must register the majority shareholder as the holder of those shares despite any outstanding share certificates in respect of those shares.

(2) Subject to subclause (5), within 3 working days of the transfer date, the company must pay each minority shareholder the price for that shareholder's voting shares, in the manner specified by that shareholder.

(3) If the shareholder has specified that a cheque will be collected from the company by that shareholder, the cheque must be held ready for collection from that date.

(4) If the company fails to make a payment, or to make it available for collection, the company must pay interest to the shareholder from the due date to the date on which the payment is made, or is made available for collection, at the rate of 15% per year, accruing daily and compounding monthly.

(5) If a share certificate has been issued in respect of voting shares held by a minority shareholder, no payment may be made to that minority shareholder until the minority shareholder delivers to the company:

(a) the share certificate; or

(b) evidence as to its loss or destruction and, if required, an indemnity in a form determined by the directors.

DIVISION 7 – EXIT RIGHTS

42. Application of exit rights

(1) Subject to subclause (2), this clause and clauses 43 to 48 apply to a shareholder (acquirer) who:

(a) acquires shares in the company or otherwise becomes interested in shares in the company (acquisition); and

(b) before the acquisition, was interested in less than 50% of the voting shares of the company; and

(c) following the acquisition, is interested in 50% or more of the voting shares of the company.

(2) A person may be exempted from the application of this clause and clauses 43 to 48, either with or without conditions, by a special resolution of holders of voting shares other than:

(a) voting shares in which that person is interested; and

(b) voting shares in which any other person is interested, where that other person is interested in not less than 50% of the company's voting shares.

43. Acquirer to give notice to company

An acquirer must, within 10 working days of first becoming a shareholder to whom this clause applies, give notice to the company:

(a) advising the company that the acquirer is a shareholder to whom this clause applies; and

(b) identifying the names of the holders of all voting shares in which the acquirer is interested, and the number of shares held by each of them in which the acquirer is interested; and

(c) offering to purchase all voting shares in which the acquirer is not interested (remaining shares) on the terms set out in clause 44.

44. Consideration for remaining shares

A notice given under clause 43 must be signed by the acquirer or, if the acquirer is a corporation, by a director of that corporation, and must:

(a) specify the highest price paid for any voting share in the company by the acquirer, or by any person holding shares in which the acquirer is interested, from the date 6 months before the date on which the acquirer first became a person to whom this clause applies up to the date of the notice; and

(b) if any shares in which the acquirer is interested were acquired during this period for a non-cash consideration, describe that consideration and state an assessment of the cash value to which that consideration corresponds; and

(c) specify the consideration offered by the acquirer for each remaining share, which may, but need not, be a cash consideration (consideration); and

(d) specify the date on which the acquirer will provide the consideration for any remaining shares in respect of which the offer is accepted, which must be not less than 20 working days nor more than 40 working days from the date on which the notice is given to the company (transfer date); and

(e) specify the rights of the holders of remaining shares under clause 47.

45. Independent report

A notice given under clause 43 must be accompanied by a report from an independent, appropriately qualified person previously approved by the company, confirming that the consideration offered is a fair and reasonable consideration for a share, without any discount or premium to reflect the size of the parcels of shares to be acquired or the circumstances of the acquisition.

46. Notice to holders of remaining shares

(1) Within 10 working days of receiving a notice under clause 43, the company must forward the notice to all holders of remaining shares.

(2) The notice under subclause (1) may, but need not, be accompanied by:

(a) additional information provided by the directors in relation to the offer;

(b) a recommendation by the directors as to whether or not the offer should be accepted.

(3) The company must also immediately give public notice of the notice given to shareholders.

47. Rights of holders of remaining shares

(1) A shareholder to whom a notice is forwarded under clause 46:

(a) is not required to accept the offer; or

(b) may accept the offer by notice in writing to the company within 20 working days of the date on which the notice was given to the shareholder.

(2) If a shareholder gives notice accepting an offer in accordance with paragraph (1)(b), there is deemed to be a contract between the acquirer and the shareholder for the purchase by the acquirer of the remaining shares held by that shareholder:

(a) on the transfer date; and

(b) for the consideration.

48. When voting rights not to be exercised

(1) If a shareholder to whom this clause applies fails to give the notice required under clause 43 within the time specified in that clause, no voting rights may be exercised in respect of any shares in which that acquirer is interested until that notice has been given.

(2) If a person who is not a shareholder becomes interested in 40% or more of the voting shares of the company, no voting rights may be exercised in respect of any voting shares in which that person is interested unless that person:

(a) is exempted by a special resolution under subclause 42(2); or

(b) undertakes to the company to make an offer as if that person were an acquirer, and complies with that undertaking.

PART 3 – DIRECTORS

49. Number of directors

(1) The minimum number of directors is 2.

(2) The maximum number of directors is 10.

(3) The shareholders may, by ordinary resolution, vary the minimum or maximum number of directors of the company.

50. Appointment and removal of directors

A director may be appointed or removed by ordinary resolution passed at a meeting called for the purpose, or by a written resolution in accordance with subclause 28(1).

51. Term of office

(1) The resolution appointing a director may specify the period for which the director is to hold office.

(2) On the expiry of any period specified in this manner, the director ceases to hold office unless reappointed.

52. When director vacates office

A director vacates office if he or she:

(a) is removed from office in accordance with clause 50; or

(b) ceases to hold office in accordance with clause 51; or

(c) resigns in accordance with clause 53; or

(d) becomes disqualified from being a director under section 82 of the Act; or

(e) dies; or

(f) is absent from 3 consecutive meetings of the directors without leave being granted by a resolution of the directors, and the directors resolve that that director has vacated office.

53. Resignation of director

(1) A director may resign by delivering a signed written notice of resignation to the registered office of the company.

(2) Subject to subclauses (3) and (4), the notice is effective when it is received at the registered office, or at any later time specified in the notice.

(3) If the company has only 1 director, that director may not resign:

(a) until that director has called a meeting of shareholders to receive notice of the resignation; or

(b) if the company has only 1 shareholder, until that director has given not less than 10 working days' notice of the resignation to that shareholder.

(4) A notice of resignation given by the sole director of the company does not take effect, despite its terms, until the earlier of the appointment of another director of the company or:

(a) the time and date for which the meeting of shareholders is called under clause (3)(a); or

(b) if the company has only 1 shareholder, 10 working days after notice of the resignation has been given to that shareholder.

54. Casual vacancies

The directors may appoint any person to be a director to fill a casual vacancy until the next annual meeting of the company.

55. Notice of changes in directors

The company must ensure that notice in the prescribed form of the following is delivered to the Registrar:

(a) a change in the directors of the company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both;

(b) a change in the name or the physical address of a director of the company.

56. Powers and duties of directors

(1) Subject to section 49 of the Act (which relates to major transactions) the business and affairs of the company must be managed by, or under the direction or supervision of, the directors.

(2) The directors have all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.

(3) The directors may delegate any of their powers to a committee of directors, or to a director or employee.

(4) The directors must monitor, by means of reasonable methods properly used, the exercise of powers by any delegate.

(5) The provisions of these rules relating to proceedings of the directors also apply to proceedings of any committee of directors, except to the extent the directors determine otherwise.

(6) The directors have the duties set out in the Act, and, in particular:

(a) each director must act in good faith and in a manner that the director believes to be in the interests of the company; and

(b) a director must not act, or agree to the company acting, in a manner that contravenes the Act or these rules.

57. Standard of care of directors

A director of the company, when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances, taking into account, but without limitation:

(a) the nature of the company; and

(b) the nature of the decision; and

(c) the position of the director and the nature of the responsibilities undertaken by him or her.

58. Obligations of directors in connection with insolvency

(1) A director of the company must call a meeting of directors within 10 working days to consider whether the directors should appoint a liquidator, in accordance with section 70 of the Act, if the director:

(a) believes that the company is unable to pay its debts as they fall due; or

(b) is aware of matters that would put any reasonable person on inquiry as to whether the company is unable to pay its debts as they fall due.

(2) At a meeting called under section 70 of the Act the directors must consider whether to appoint a liquidator, or to continue to carry on the business of the company.

59. Interested directors

(1) A director must not exercise any power as a director in circumstances where that director is directly or indirectly materially interested in the exercise of that power unless:

(a) the Act expressly authorises the director to exercise the relevant power despite such an interest; or

(b) the director has reasonable grounds for believing that the company will satisfy the solvency test after that power is exercised, and either:

(i) these rules expressly authorise the director to exercise the relevant power despite such an interest, and the interest has been disclosed in accordance with subclause 63(4); or

(ii) the matter in question has been approved by shareholders under section 50 of the Act, following disclosure of the nature and extent of the director's interest to all shareholders who are not otherwise aware of those matters.

(2) A transaction entered into by the company in which a director is directly or indirectly materially interested is voidable at the election of the company in accordance with section 107 of the Act.

(3) A transaction entered into by the company as the result of action taken by a director in breach of sections 64, 65, or 66 of the Act is voidable at the option of the company in accordance with section 108 of the Act.

60. Use and disclosure of company information

A director of the company who has information in his or her capacity as a director or employee of the company, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except:

(a) in the interests of the company; or

(b) as required by law; or

(c) if there are reasonable grounds for believing that the company will satisfy the solvency test after the director takes that action, and that action:

(i) is approved by all shareholders under section 50 of the Act; or

(ii) is authorised by any contract of employment entered into between that director and the company, the relevant terms of which have been disclosed in the interests register referred to in clause 63.

61. Indemnities and insurance for directors or employees

(1) Subject to section 73 of the Act, the company may provide an indemnity or purchase insurance for a director of the company or of a related company with the approval of:

(a) the directors; but no director may vote on a resolution concerning an indemnity or insurance to be provided for him or her; or

(b) shareholders by ordinary resolution - but no director may vote on a resolution concerning an indemnity or insurance to be provided for him or her; or

(c) all shareholders under section 50 of the Act.

(2) In subclause (1):

"director" includes:

(a) a person who is liable under any of sections 64 to 70 of the Act by virtue of section 72 of the Act; and

(b) a former director;

"indemnify" includes relieve or excuse from liability, whether before or after the liability arises; and indemnity has a corresponding meaning.

62. Remuneration of directors

Directors may receive remuneration and other benefits from the company with the approval of:

(a) the directors; but no director may vote on a resolution concerning remuneration or other benefits to be provided for him or her; or

(b) shareholders by ordinary resolution; but no director may vote on a resolution concerning remuneration or benefits to be received by him or her; or

(c) all shareholders under section 50 of the Act.

63. Disclosure of interests by directors

(1) The company must:

(a) maintain an interests register; and

(b) permit any director or shareholder to inspect the interests register as if sections 115 and 116 of the Act applied to the interests register.

(2) The annual report of the company under section 55 of the Act in respect of any accounting period must contain all entries made in the interests register in the course of that accounting period.

(3) The directors must enter in the interests register details of any:

(a) contract of employment to which paragraph 60(c) applies; and

(b) indemnity or insurance provided for a director under clause 61; and

(c) remuneration or other benefits provided to directors under clause 62; and

(d) disclosure by a director under subclauses (4) or (5).

(4) A director who is in any way directly or indirectly materially interested in a transaction or proposed transaction with the company must, within 10 working days of becoming aware of that interest:

(a) disclose that interest in writing to the directors; and

(b) ensure that details of that disclosure are entered in the interests register.

(5) A director may disclose to the other directors, and enter in the interests register, a general disclosure that the director is a director or employee or shareholder of another company, or is otherwise associated with another company or another person.

(6) Disclosure under subclause (5) is disclosure of the director's interest in any transaction entered into with that other company or person for the purposes of subclause (4).

64. Procedure at meetings of directors

(1) Clauses 65 to 74 set out the procedure to be followed at meetings of directors.

(2) A meeting of directors may determine its own procedure, to the extent that it is not governed by these rules.

65. Chairperson

(1) The directors may elect 1 of their number as chairperson of directors and may determine the period for which the chairperson is to hold office.

(2) If no chairperson is elected, or if at a meeting of the directors the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the directors present may choose 1 of their number to be the chairperson of the meeting.

66. Notice of meeting

(1) A director or, if requested by a director to do so, an employee of the company, may convene a meeting of directors by giving notice in accordance with this clause.

(2) Not less than 24 hours' notice of a meeting of directors must be given to each director who is in Vanuatu, or who may readily be contacted outside Vanuatu.

(3) An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity, or if all directors entitled to receive notice of the meeting agree to the waiver.

67. Methods of holding meetings

A meeting of directors may be held either:

(a) by a number of the directors who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or

(b) by means of audio, or audio and visual, communication by which all directors participating and constituting a quorum, may simultaneously hear each other throughout the meeting.

68. Quorum

(1) A quorum for a meeting of directors is a majority of the directors.

(2) No business may be transacted at a meeting of directors if a quorum is not present.

69. Voting

(1) Each director has 1 vote.

(2) The chairperson has a casting vote.

(3) A resolution of the directors is passed if it is agreed to by all directors present without dissent, or if a majority of the votes cast on it are in favour of it.

(4) A director present at a meeting of directors is presumed to have agreed to, and to have voted in favour of, a resolution of the directors unless he or she expressly dissents from or votes against the resolution at the meeting.

70. Minutes

The directors must ensure that minutes are kept of all proceedings at meetings of the directors.

71. Unanimous resolution

(1) A resolution in writing signed or assented to by all directors is as valid and effective as if it had been passed at a meeting of the directors duly convened and held.

(2) Any such resolution may consist of several documents (including fax or other similar means of communication) in like form, each signed or assented to by 1 or more directors.

(3) A copy of any such resolution must be entered in the minute book of the directors' proceedings.

72. Managing director and other executive directors

(1) The directors may, from time to time, appoint a director as managing director for such period and on such terms as they think fit.

(2) Subject to the terms of a managing director's appointment, the directors may, at any time, cancel the appointment of a director as managing director.

(3) A director who holds office as managing director ceases to hold office as managing director if he or she ceases to be a director of the company.

73. Delegation to managing director

(1) The directors may delegate to the managing director, subject to any conditions or restrictions that they consider appropriate, any of their powers that may be lawfully delegated.

(2) Any such delegation may at any time be withdrawn or varied by the directors.

(3) The delegation of a power of the directors to the managing director does not prevent the exercise of the power by the directors, unless the terms of the delegation expressly provide otherwise.

74. Remuneration of managing director and executive directors

(1) The managing director may be paid such remuneration as he or she may agree with the other directors.

(2) A director (other than the managing director) who is employed by the company may be paid such remuneration as may be agreed between that director and the other directors.

(3) The remuneration referred to in subclauses (1) and (2) may be by way of salary, commission, participation in profits or any combination of these methods, or any other method of fixing remuneration.

PART 4 – COMPANY RECORDS

75. Company records

(1) The company must keep all the following documents at its registered office:

(a) the rules of the company;

(b) minutes of all meetings and resolutions of shareholders within the last 7 years;

(c) minutes of all meetings and resolutions of directors and directors' committees within the last 7 years;

(d) the full names and physical and postal addresses of the current directors;

(e) copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports made under section 55 of the Act;

(f) copies of all financial statements required to be completed under section 125 of the Act for the last 7 completed accounting periods of the company;

(g) the accounting records required by section 124 of the Act for the current accounting period and for the last 7 completed accounting periods of the company;

(h) the share register.

(2) The references in paragraph (1)(b), (c), and (e) to 7 years and the references in paragraph (1)(f) and (g) to 7 completed accounting periods include any lesser periods that the Registrar may approve by notice in writing to the company, in accordance with subsection 113(2) of the Act.

(3) The interests register required to be kept under clause 63 must be:

(a) kept at the same place as the written communications to shareholders referred to in paragraph 75(1)(e); and

(b) kept in a form that complies with clause 76; and

(c) made available to shareholders in the same manner as records to which subclause 76(2) applies.

76. Form of records

(1) The records of the company must be kept:

(a) in written form; or

(b) in a form or in a manner that allows the documents and information that comprise the records to be readily accessible so as to be usable for subsequent reference, and convertible into written form.

(2) The directors must ensure that adequate measures exist to:

(a) prevent the records being falsified; and

(b) detect any falsification of them.

77. Access to records

(1) The directors of the company are entitled to access to the company's records in accordance with section 115 of the Act.

(2) A shareholder of the company is entitled:

(a) to inspect the documents referred to in section 116 of the Act, in the manner specified in section 118 of the Act; and

(b) to require copies of or extracts from any document that he or she may inspect within 5 working days of making a request in writing for the copy or extract, on payment of any reasonable copying and administration fee prescribed by the company.

(3) The fee may be determined by any director, subject to any directions from the directors.

78. Documents to be sent to Registrar

In addition to the annual return required under section 119 of the Act, the company must send all the following documents to the Registrar under the Act:

(a) notice of the adoption of new rules by the company, or the alteration of the rules of the company, under section 14 of the Act;

(b) notice of a change in the registered office of the company, under section 17 of the Act;

(c) notice of the issue of shares by the company, under section 25 of the Act;

(d) notice of the acquisition by the company of its own shares, under section 30 of the Act;

(e) notice of the redemption of a share, under section 34 of the Act;

(f) notice of the transfer of shares under section 37 of the Act;

(g) notice of a change in the directors of the company, or of a change in the name or physical address or postal address of a director, under section 85 of the Act;

(h) notice of the making of an order under section 99 of the Act altering or adding to the rules of a company;

(i) notice of any place other than the registered office of the company where records are kept;

(j) documents requested by the Registrar under the Act.

79. Documents to be sent to shareholders

In addition to the annual report required under section 55 of the Act, the company must send all the following documents to shareholders under the Act:

(a) notice of any repurchase of shares to which subsection 30(4) of the Act applies; and

(b) notice of a written resolution approved under section 51 of the Act; and

(c) financial statements required to be sent under section 125 of the Act; and

(d) any written statement by an auditor under section 131 of the Act; and

(e) the report by the auditor under section 133 of the Act.

PART 5 – ACCOUNTS AND AUDIT

80. Accounting records to be kept

(1) The directors of the company must cause accounting records to be kept that:

(a) correctly record and explain the transactions of the company; and

(b) will at any time enable the financial position of the company to be determined with reasonable accuracy; and

(c) will enable the directors to ensure that the financial statements of the company comply with section 125 of the Act; and

(d) will enable the financial statements of the company to be readily and properly audited.

(2) Without limiting subclause (1), the accounting records must contain:

(a) entries of money received and spent each day and the matters to which it relates; and

(b) a record of the assets and liabilities of the company; and

(c) if the company's business involves dealing in goods:

(i) a record of goods bought and sold, and relevant invoices; and

(ii) a record of stock held at the end of the financial year together with records of any stocktakings during the year; and;

(d) if the company's business involves providing services, a record of services provided and relevant invoices.

(3) If the company sells goods or provides services for cash in the ordinary course of carrying on a retail business:

(a) invoices need not be kept in respect of each retail transaction for the purposes of subclause (2); and

(b) a record of the total money received each day in respect of the sale of goods or provision of services, as the case may be, is sufficient to comply with subclause (2) in respect of those transactions.

(4) The accounting records must be kept:

(a) in a form permitted under clause 76; and

(b) at the registered office of the company.

81. Financial statements to be prepared

(1) The directors must ensure that:

(a) within 4 months after the balance date of the company, financial statements that comply with subclause (2) are completed in relation to the company and that balance date; and

(b) within 20 working days of the date on which the financial statements must be completed under paragraph (a), those financial statements are sent to all shareholders - this requirement may be satisfied by sending the financial statements to shareholders in an annual report, in accordance with section 55 of the Act.

(2) The financial statements of the company must:

(a) give a true and fair view of the matters to which they relate; and

(b) comply with any applicable regulations made under the Act; and

(c) be dated and signed on behalf of the directors by 2 directors of the company, or, if the company has only 1 director, by that director.

(3) The period between:

(a) the date of incorporation of the company and its first balance date; or

(b) any 2 balance dates of the company:

must not exceed 15 months.

(4) In this clause, financial statements, in relation to the company and a balance date, means:

(a) a statement of financial position for the entity as at the balance date; and

(b) in the case of:

(i) a company trading for profit, a statement of financial performance for the company in relation to the accounting period ending at the balance date; and

(ii) a company not trading for profit, an income and expenditure statement for the company in relation to the accounting period ending at the balance date; and

(c) if required by regulations made under the Act, a statement of cash flows for the company in relation to the accounting period ending on the balance date; and

(d) such other financial statements in relation to the company or any group of companies of which it is the holding company as may be required by regulations made under the Act; and

(e) any notes or documents giving information relating to the statement of financial position and other statements.

82. Appointment of auditor

(1) The company must appoint an auditor who is qualified to hold that office under section 130 of the Act to:

(a) audit the financial statements of the company in respect of an accounting period; and

(b) hold office until those financial statements have been audited in accordance with the Act or until he or she ceases to hold office.

(2) The company must appoint an auditor within 30 working days in the event of a vacancy in the office of auditor.

(3) An auditor ceases to hold office if he or she:

(a) resigns by delivering a written notice of resignation to the registered office of the company not less than 20 working days before the date on which the notice is expressed to be effective; or

(b) is replaced as auditor by an ordinary resolution appointing another person as auditor in his or her place, following notice to the auditor in accordance with section 128 of the Act; or

(c) becomes disqualified from being the auditor of the company; or

(d) dies.

(4) An auditor may be appointed:

(a) by ordinary resolution; or

(b) if the office of auditor is vacant, by the directors. If an auditor is appointed by the directors, the directors must, within 10 working days, give notice of the appointment to all shareholders.

(5) The fees payable to the auditor must be agreed between the auditor and the directors.

83. Auditor's attendance at shareholders' meeting

The directors must ensure that an auditor of the company:

(a) is permitted to attend a meeting of shareholders of the company; and

(b) receives the notices and communications that a shareholder is entitled to receive relating to meetings or resolutions of shareholders; and

(c) may be heard at a meeting of shareholders that he or she attends on any part of the business of the meeting that concerns him or her as auditor.

PART 6 – LIQUIDATION AND REMOVAL FROM REGISTER

84. Resolution to appoint liquidator

(1) The shareholders may resolve to liquidate the company by special resolution.

(2) The directors may resolve to liquidate the company at a meeting called under section 70 of the Act, if they consider that the company is unable to meet its debts as they become due in the normal course of business.

85. Distribution of surplus assets

(1) The surplus assets of the company available for distribution to shareholders after all creditors of the company have been paid must be distributed in proportion to the number of shares held by each shareholder, subject to the terms of issue of any shares.

(2) The liquidator may, with the approval of a special resolution, distribute the surplus assets of the company among the shareholders in kind.

(3) For the purposes of subclause (2), the liquidator may:

(a) set such value as he or she considers fair on any property to be divided; and

(b) determine how the division will be carried out as between the shareholders or different classes of shareholders.

PART 7 – MISCELLANEOUS

86. Service of documents on shareholders

(1) A notice, statement, report, accounts, or other document to be sent to a shareholder who is a natural person may be:

(a) delivered to that person; or

(b) posted to that person's postal address; or

(c) faxed to a fax number used by that person for the transmission of documents.

(2) A notice, statement, report, accounts, or other document to be sent to a shareholder that is a company or an overseas company may be sent by any of the methods of serving documents referred to in section 201 or section 203 of the Act, as the case may be.

87. Authority to bind the company

A contract or other enforceable obligation may be entered into on behalf of the company in writing signed under the name of the company by:

(a) 2 or more directors; or

(b) in the case where there may only be 1 director, by that director; or

(c) 1 or more attorneys appointed by the company under section 104 of the Act.

88. Interpretation

(1) In these rules, Act means the Companies Act No. 25 of 2012.

(2) Unless the context otherwise requires, any term or expression that is defined in the Act or any regulations made under the Act and used, but not defined, in these rules has the same meaning as in the Act or the regulations.

(3) For the purposes of these rules:

(a) voting share means a share that confers on its holder the right to vote on a resolution to amend the rules;

(b) the percentage of voting shares held by any person is treated as equal to the percentage of votes that that person is entitled to cast on such a resolution.

(4) For the purposes of these rules, a person is interested in a voting share if that person:

(a) is a beneficial owner of the share; or

(b) has the power to exercise any right to vote attached to the share; or

(c) has the power to control the exercise of any right to vote attached to the share; or

(d) has the power to acquire or dispose of the share; or

(e) has the power to control the acquisition or disposition of the share by another person; or

(f) under, or by virtue of, any trust, agreement, arrangement or understanding relating to the share (whether or not that person is a party to it, and whether or not it is legally enforceable) may, at any time, have the power to:

(i) exercise any right to vote attached to the share; or

(ii) control the exercise of any right to vote attached to the share; or

(iii) acquire or dispose of, the share; or

(iv) control the acquisition or disposition of the share by another person.

(5) A person who has, or may have, a power referred to in clause (4)(b) to (f) is interested in a share, regardless of whether the power is:

(a) express or implied;

(b) direct or indirect;

(c) legally enforceable or not;

(d) related to a particular share or not;

(e) subject to restraint or restriction or capable of being made subject to restraint or restriction;

(f) exercisable presently or in the future;

(g) exercisable only on the fulfilment of a condition;

(h) exercisable alone or jointly with another person or persons.

SCHEDULE 4

MODEL RULES FOR COMMUNITY COMPANY

s 15(4)

PART 1 – GENERAL PROVISIONS

1. Name of company

(1) The name of the company at the time of registration under the Act appears on the application for registration.

(2) The name of the company may be changed in accordance with section 11 of the Act only with the prior approval of all shareholders.

2. Community company

(1) The company is a community company.

(2) The company must not offer any of its shares or other securities to the public.

(3) The company must not have more than 50 shareholders.

(4) If a share transfer is presented to the company for entry on the share register that would result in a breach of this restriction, the directors must decline to register the transfer.

3. Rules

(1) The company may adopt new rules in place of these rules by special resolution, in accordance with subsection 14(2) of the Act.

(2) Subject to the Act:

(a) these rules have effect and may be enforced as if they constituted a contract:

(i) between the company and its shareholders; and

(ii) between the company and each director; and

(b) the shareholders and directors of the company have the rights, powers, duties, and obligations set out in these rules.

PART 2 – RESTRICTIONS

4. Asset Lock and restrictions on distributions, dividends and loans

(1) The assets of the company may only be transferred

(a) for full consideration, and

(b) with the prior unanimous approval of 75 % of all registered shareholders

(2) If the company makes a transfer of assets under subclause 4(1) it must first outline to all members of the community details of the transaction

(3) The company must not make any distributions; or pay dividends to shareholders; or make loans to directors or shareholders.

PART 3 – SHARES AND SHAREHOLDERS

DIVISION 1 – GENERAL PROVISIONS

5. Number of shares

(1) At the time of registration under the Act, the company has the number of shares specified in the application for registration.

(2) If the company was first registered under Part 2 of the Act, the company must immediately after its registration, issue, to any person named in the application for registration as a shareholder, the number of shares specified in the application as being the number of shares to be issued to that person or persons.

6. Rights attaching to shares

Subject to subclause 8(2), each share carries the right to 1 vote on a poll at a meeting of the company on any resolution, including any resolution to:

(a) appoint or remove a director or auditor;

(b) adopt new rules;

(c) alter the company's rules;

(d) approve a major transaction;

(e) put the company into liquidation;

7. Issue of shares

The directors may issue shares:

(a) in accordance with clause 8; or

(b) to shareholders or any other persons on any other basis, with the prior approval of all shareholders.

8. Process for issuing shares

(1) The directors may issue shares in accordance with the following process:

(a) the shares must first be offered to all shareholders proportionally, on such terms as the directors think fit, pursuant to an offer that, if accepted by all shareholders, would not affect relative voting or distribution rights. The shareholders must have a reasonable opportunity to consider and respond to the offer;

(b) any shares not accepted by the shareholders to whom they were offered under paragraph (a) must then be offered to those shareholders who did accept the shares offered to them under paragraph (a), on a fair and equitable basis determined by the directors and on the same terms and conditions as the offer made under paragraph (a);

(c) any shares offered under paragraph (b), but not taken up by shareholders may then be offered by the directors to shareholders or any other persons in such manner as the directors think fit, on the same terms and conditions as the offer made under paragraph (a).

(2) With the prior approval of all shareholders, the company may issue more than 1 class of shares. In particular, shares may be issued that:

(a) are redeemable; or

(b) confer special, limited, or conditional voting rights; or

(c) do not confer voting rights.

(3) If the company issues shares, it must give the prescribed notice to the Registrar under subsection 25(2) of the Act within 10 working days of the issue of any shares.

(4) If the rights attached to the shares differ from those set out in clause 6, the notice must be accompanied by a document setting out the terms of issue of the shares.

9. Transferability of shares

The shares of the company are, subject to clauses 13 and 22 and their terms of issue, transferable by entry in the share register in accordance with clause 22.

DIVISION 2 – SHARE REGISTER

10. Company to keep share register

(1) The company must maintain a share register that records the shares issued by the company and states:

(a) the names, alphabetically arranged, and the last known address of each person who is, or has within the last 7 years been, a shareholder; and

(b) the number of shares of each class held by each shareholder within the last 7 years; and

(c) the date of any:

(i) issue of shares to; or

(ii) repurchase or redemption of shares from; or

(iii) transfer of shares by or to:

each shareholder within the last 7 years, and in relation to the transfer, the name of the person to or from whom the shares were transferred.

(2) No notice of a trust, whether express, implied, or constructive, may be entered on the share register.

(3) The company may appoint an agent to maintain the share register.

11. Form and location of share register

The share register must be kept:

(a) in a form that complies with clause 65; and

(b) at the company's registered office, or at any other place in Vanuatu notice of which has been given to the Registrar under section 18 of the Act.

12. Status of registered shareholder

(1) The company must treat the registered holder of a share as the only person entitled to:

(a) exercise the right to vote attaching to the share; and

(b) receive notices; and

(c) exercise the other rights and powers attaching to the share.

(2) If a joint holder of a share dies, the remaining holders must be treated by the company as the holders of that share.

(3) If the sole holder of a share dies, that shareholder's legal representative is the only person recognised by the company as having any title to, or interest in, the share.

(4) Any person who becomes entitled to a share as a consequence of the death, bankruptcy or insolvency, or incapacity of a shareholder may be registered as the holder of that shareholder's shares on making a request in writing to the company to be so registered, accompanied by proof satisfactory to the directors of that entitlement.

DIVISION 3 – PRE-EMPTIVE RIGHTS

13. Restriction on selling shares

(1) A shareholder is not entitled to sell or otherwise dispose of his or her shares in the company without first offering to sell them to the other holders of shares of the same class in accordance with the procedure set out in clauses 14 to 21, unless all the other shareholders agree otherwise.

(2) A share transfer delivered to the company by a shareholder who has not complied with subclause (1) is of no effect, and the transfer must not be entered on the share register.

14. Selling shareholder to give written notice to company

A shareholder who wishes to dispose of some or all of his or her shares (selling shareholder) must give written notice to the company of:

(a) the number of shares to be sold; and

(b) the price at which the selling shareholder is willing to sell the shares.

15. Company to give written notice to shareholders

The company must, within 10 working days, give a copy of the written notice referred to in clause 14 to each shareholder, together with a notice advising each holder of shares of the same class:

(a) that that shareholder is entitled to purchase a proportional number of the shares that the selling shareholder wishes to sell (rounded in an appropriate manner determined by the directors); and

(b) that, if that shareholder wishes to purchase those shares, he or she must give written notice to that effect to the company within 10 working days of the date of the notice.

16. Written notice is offer by selling shareholder

The notice referred to in clause 15 is deemed to be an offer by the selling shareholder to the recipient to sell the number of shares referred to in the notice at the price specified by the selling shareholder in the notice given under clause 14, on the terms set out in these rules.

17. Notice agreeing to purchase shares given within specified time

Subject to clause 20, if a notice is given by a shareholder within the specified time agreeing to purchase the shares offered to that shareholder in a notice given under clause 15:

(a) there is deemed to be a contract between that shareholder and the selling shareholder for the sale and purchase of the relevant number of shares; and

(b) the company must immediately advise the selling shareholder of the acceptance, and send him or her a copy of:

  (i) the notice given under clause 15 by the company; and

  (ii) the notice of acceptance given by the shareholder in question.

18. Notice agreeing to purchase shares not given within specified time

(1) If any shareholder does not give notice agreeing to purchase the shares offered to that shareholder within the specified time, the shares that were offered to that shareholder must be offered to those shareholders who did accept the shares offered to them, on a fair and equitable basis determined by the directors.

(2) Clauses 16 and 17 apply to any notice given to a shareholder, and to any notice of acceptance given by a shareholder, under this clause.

19. No shareholder wishes to purchase selling shareholder's shares

If no shareholder wishes to purchase the selling shareholder's shares at the specified price, the selling shareholder may, at any time in the 12 months following the giving of notice by the selling shareholder, sell some or all of those shares to any other person at a price not less than the specified price.

20. Selling shareholder not obliged to sell some shares

(1) The selling shareholder is not obliged to sell all of the shares that he or she wishes to dispose of.

(2) In the event that the selling shareholder has not been notified under clause 17 of acceptances by other shareholders in respect of all the shares referred to in the notice given under clause 14 within 40 working days of the date on which that notice was given to the company, the selling shareholder may, at his or her option, give written notice to the company terminating the offer to sell the shares to the other shareholders.

(3) If such a notice is given, clause 19 applies as if no shareholder had wished to purchase the selling shareholder's shares.

21. Directors may require evidence of terms

The directors may require reasonable evidence of the terms (including price) on which the shares were sold to accompany any share transfer in respect of those shares.

DIVISION 4 – TRANSFER OF SHARES

22. Transfer of shares

(1) If shares are to be transferred, a form of transfer signed by the holder or by his or her agent or attorney must be delivered to the company.

(2) The personal representative of a deceased shareholder may transfer a share even though the personal representative is not a shareholder at the time of transfer.

(3) Subject to clause 13, the company must immediately on receipt of a properly executed share transfer enter the name of the transferee in the share register as holder of the shares transferred.

23. Share certificates

(1) A shareholder may apply to the company for a share certificate relating to some or all of the shareholder's shares in the company.

(2) On receipt of an application for a share certificate under subclause (1), the company must, within 20 working days after receiving the application:

(a) if the application relates to some but not all of the shares, separate the shares shown in the register as owned by the applicant into separate parcels; 1 parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares; and

(b) in all cases send to the shareholder a certificate stating:

(i) the name of the company; and

(ii) the class of shares held by the shareholder; and

(iii) the number of shares held by the shareholder to which the certificate relates.

(3) If a share certificate has been issued, a transfer of the shares to which it relates must not be registered by the company unless the form of transfer required by that section is accompanied by:

(a) the share certificate relating to the shares; or

(b) evidence as to its loss or destruction and, if required, an indemnity in a form determined by the directors.

(4) If shares to which a share certificate relates are to be transferred, and the share certificate is sent to the company to enable the registration of the transfer, the share certificate must be cancelled and no further share certificate issued except at the request of the transferee.

DIVISION 5 – MEETINGS OF SHAREHOLDERS

24. Meetings of shareholders

(1) Clauses 25 to 33 set out the procedure to be followed at, and in relation to, meetings of shareholders.

(2) A meeting of shareholders may determine its own procedure to the extent that it is not governed by these rules.

25. Notice of meetings

(1) Written notice of the time and place of a meeting of shareholders must be given to every shareholder entitled to receive notice of the meeting and to each director and any auditor of the company not less than 10 working days before the meeting.

(2) The notice must set out:

(a) the nature of the business to be transacted at the meeting in enough detail to enable a shareholder to form a reasoned judgment in relation to it; and

(b) the text of any special resolution to be submitted to the meeting.

(3) An irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver.

(4) An accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a shareholder does not invalidate the proceedings at that meeting.

(5) If a meeting of shareholders is adjourned for less than 30 working days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that is adjourned.

26. Methods of holding meetings

A meeting of shareholders may be held either:

(a) by a number of shareholders, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or

(b) by means of audio, or audio and visual, communication by which all shareholders participating and constituting a quorum, may simultaneously hear each other throughout the meeting.

27. Quorum

(1) Subject to subclause (3), no business may be transacted at a meeting of shareholders if a quorum is not present.

(2) A quorum for a meeting of shareholders is present if shareholders or their proxies are present who are between them able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.

(3) If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the directors may appoint.

(4) If, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders present or their proxies are a quorum.

28. Chairperson

(1) If the directors have elected a chairperson of the directors, and the chairperson of the directors is present at a meeting of shareholders, he or she must chair the meeting.

(2) If no chairperson of the directors has been elected or if, at any meeting of shareholders, the chairperson of the directors is not present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may choose 1 of their number to be the chairperson of the meeting.

29. Voting

(1) In the case of a meeting of shareholders held under paragraph 26(a), unless a poll is demanded, voting at the meeting must take place by whichever of the following methods is determined by the chairperson of the meeting:

(a) voting by voice; or

(b) voting by show of hands.

(2) In the case of a meeting of shareholders held under paragraph 26(b), unless a poll is demanded, voting at the meeting must take place by shareholders signifying individually their assent or dissent by voice.

(3) A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with subclause (4).

(4) At a meeting of shareholders a poll may be demanded by:

(a) not fewer than 5 shareholders having the right to vote on the question at the meeting; or

(b) a shareholder or shareholders representing not less than 10% of the total voting rights of all shareholders having the right to vote on the question at the meeting.

(5) A poll may be demanded either before or after a vote is taken on a resolution.

(6) If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present and voting.

(7) The chairperson of a shareholders' meeting is not entitled to a casting vote.

30. Votes of joint shareholders

If 2 or more persons are registered as the holder of a share, the vote of the person named first in the share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

31. Proxies

(1) A shareholder may exercise the right to vote either by being present in person or by proxy.

(2) A proxy for a shareholder is entitled to attend and participate in a meeting of shareholders as if the proxy were the shareholder.

(3) A proxy must be appointed by notice in writing signed by the shareholder.

(4) The notice must state whether the appointment is for a particular meeting, or for a specified term.

(5) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is given to the company at least 24 hours before the start of the meeting.

32. Corporations may act by representatives

(1) A corporation that is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf by notice in writing signed by a director or secretary of the corporation.

(2) The notice must state whether the appointment is for a particular meeting, or for a specified term.

33. Minutes

(1) The directors must ensure that minutes are kept of all proceedings at meetings of shareholders.

(2) Minutes that have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings at the meeting.

DIVISION 6 – MISCELLANEOUS

34. Annual meetings and special meetings of shareholders

(1) Subject to subclause (3) and subclause 35(3), the directors must call an annual meeting of the company to be held:

(a) once in each calendar year; and

(b) not later than 5 months after the balance date of the company (or, if the time for completing the financial statements of the company has been extended under paragraph 70(1)(a), not later than 20 working days after the financial statements are required to be completed); and

(c) not later than 15 months after the previous annual meeting.

(2) The meeting must be held on the date on which it is called to be held.

(3) The company need not hold its first annual meeting in the calendar year of its incorporation, but must hold that meeting within 18 months of its incorporation.

(4) A special meeting of shareholders entitled to vote on an issue:

(a) may be called at any time by a director; and

(b) must be called by the directors on the written request of shareholders holding shares carrying together not less than 5% of the votes that may be cast on that issue.

35. Written resolutions of shareholders

(1) A resolution in writing signed by shareholders, who together hold not less than 75% of the votes entitled to be cast on that resolution at a meeting of shareholders, is as valid as if it had been passed at a meeting of those shareholders.

(2) Any such resolution may consist of several documents (including fax or other similar means of communication) in like form each signed or assented to by 1 or more shareholders.

(3) The company need not hold an annual meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with subclause (1).

(4) Within 5 working days of a resolution being passed under subclause (1), the company must send a copy of the resolution to every shareholder who did not sign it.

(5) A resolution may be signed under subclause (1) without any prior notice being given to shareholders.

36. Voting in interest groups

If the company proposes to take action that affects the rights attached to shares within the meaning of section 53 of the Act, the action may not be taken unless it is approved by a special resolution of each interest group, as defined in subsection 53(3) of the Act.

37. Shareholders entitled to exercise pre-emptive rights

The shareholders who are entitled to pre-emptive rights to acquire shares in accordance with clause 13 are those shareholders whose names are registered in the share register on the day on which notice is given to the company by the selling shareholder under clause 14.

38. Shareholders entitled to attend and vote at meetings

(1) The shareholders who are entitled to receive notice of a meeting of shareholders are:

(a) if the directors fix a date for this purpose, those shareholders whose names are registered in the share register on that date:

(b) if the directors do not fix a date for this purpose, those shareholders whose names are registered in the share register at the close of business on the day immediately preceding the day on which the notice is given.

(2) A date fixed under paragraph subclause (1)(a) must not precede by more than 30 working days the date on which the meeting is to be held.

(3) Before a meeting of shareholders, the company may prepare a list of shareholders entitled to receive notice of the meeting, arranged in alphabetical order, and showing the number of shares held by each shareholder:

(a) if a date has been fixed under paragraph subclause (1)(a), as at that date; or

(b) if no such date has been fixed, as at the close of business on the day immediately preceding the day on which the notice is given.

(4) A person named in a list prepared under subclause (3) is entitled to attend the meeting and vote in respect of the shares shown opposite his or her name in person or by proxy, except to the extent that:

(a) that person has, since the date on which the shareholders entitled to receive notice of the meeting were determined, transferred any of his or her shares to some other person; and

(b) the transferee of those shares has been registered as the holder of those shares, and has requested before the commencement of the meeting that his or her name be entered on the list prepared under subclause (3).

(5) A shareholder may, on 2 working days' notice, examine any list prepared under subclause (3) during normal business hours at the registered office of the company.

39. Distributions to shareholders

(1) The company must not pay a dividend or make any other distribution to shareholders.

(2) A distribution made in breach of subclause (1) may be recovered by the company from the recipients or from the persons approving the distribution, in accordance with section 28 of the Act.

40. Company may acquire its own shares

(1) The company may agree to acquire its own shares from a shareholder:

(a) with the prior approval of all shareholders; and

(b) subject to the solvency test.

(2) If the company acquires its own shares, those shares are deemed to be cancelled immediately on acquisition.

41. Annual report to shareholders

(1) The directors of the company must, within 20 working days after the date on which the company is required to complete its financial statements under section 125 of the Act:

(a) prepare an annual report on the affairs of the company during the accounting period ending on that date; and

(b) send a copy of that report to each shareholder.

(2) Every annual report for the company must:

(a) be in writing and be dated; and

(b) include financial statements for the accounting period that comply with section 125 of the Act; and

(c) if an auditor's report is required in relation to the financial statements included in the report, include that auditor's report; and

(d) state the names of the persons holding office as directors of the company as at the end of the accounting period and the names of any persons who ceased to hold office as directors of the company during the accounting period; and

(e) contain any other information that may be required by regulations made under the Act including how the company has furthered the community interest including a report on its consultations with community stakeholders; and

(f) be signed on behalf of the directors by 2 directors of the company or, if the company has only 1 director, by that director.

42. Deemed approval by all shareholders for certain purposes

For the purposes of clause 7, and subclause 8(2), a decision is deemed to have been approved by all shareholders if:

(a) notice of the proposed decision has been given to all shareholders in accordance with clause 75; and

(b) no shareholder has responded within 10 working days objecting to that decision; and

(c) shareholders entitled to cast not less than 75% of the votes in relation to a resolution to alter these rules have responded within 10 working days approving that decision.

PART 3 – DIRECTORS

43. Appointment and removal of directors

(1) The shareholders may by ordinary resolution fix the number of directors of the company.

(2) A director may be appointed or removed by ordinary resolution passed at a meeting called for the purpose, or by a written resolution in accordance with subclause 35(1).

(3) A director vacates office if he or she:

(a) is removed from office in accordance with subclause (2); or

(b) resigns in accordance with clause 44; or

(c) becomes disqualified from being a director under section 82 of the Act; or

(d) dies.

44. Resignation of director

(1) A director may resign by delivering a signed written notice of resignation to the registered office of the company.

(2) Subject to subclauses (3) and (4), a notice of resignation is effective when it is received at the registered office, or at any later time specified in the notice.

(3) If the company has only 1 director, that director may not resign:

(a) until that director has called a meeting of shareholders to receive notice of the resignation; or

(b) if the company has only 1 shareholder, until that director has given not less than 10 working days' notice of the resignation to that shareholder.

(4) A notice of resignation given by the sole director of the company does not take effect, despite its terms, until the earlier of the appointment of another director of the company or:

(a) the time and date for which the meeting of shareholders is called under paragraph subclause (3)(a); or

(b) if the company has only 1 shareholder, 10 working days after notice of the resignation has been given to that shareholder.

45. Notice of change in directors

The company must ensure that notice in the prescribed form of the following is delivered to the Registrar:

(a) a change in the directors of the company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both:

(b) a change in the name or the physical address of a director of the company.

46. Powers and duties of directors

(1) Subject to section 49 of the Act (which relates to major transactions), the business and affairs of the company must be managed by, or under the direction or supervision of, the directors.

(2) The directors have all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.

(3) The directors may delegate any of their powers to a committee of directors, or to a director or employee.

(4) The directors must monitor, by means of reasonable methods properly used, the exercise of powers by any delegate.

(5) The provisions of these rules relating to proceedings of the directors also apply to proceedings of any committee of directors, except to the extent the directors determine otherwise.

(6) The directors have the duties set out in the Act, and, in particular:

(a) each director must act in good faith and in a manner that the director believes to be in the interests of the company; and

(b) a director must not act, or agree to the company acting, in a manner that contravenes the Act or these rules.

47. Standard of care of directors

A director of the company, when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances taking into account, but without limitation:

(a) the nature of the company; and

(b) the nature of the decision; and

(c) the position of the director and the nature of the responsibilities undertaken by him or her.

48. Obligations of directors in connection with insolvency

(1) A director of the company must call a meeting of directors within 10 working days to consider whether the directors should appoint a liquidator, in accordance with section 70 of the Act, if the director:

(a) believes that the company is unable to pay its debts as they fall due; or

(b) is aware of matters that would put any reasonable person on inquiry as to whether the company is unable to pay its debts as they fall due.

(2) At a meeting called under section 70 of the Act, the directors must consider whether to:

(a) appoint a liquidator; or

(b) continue to carry on the business of the company.

49. Interested directors

(1) A director must not exercise any power as a director in circumstances where that director is directly or indirectly materially interested in the exercise of that power, unless:

(a) the Act expressly authorises the director to exercise the relevant power despite such an interest; or

(b) the director has reasonable grounds for believing that the company will satisfy the solvency test after that power is exercised, and either:

(i) these rules expressly authorise the director to exercise the relevant power despite such an interest; or

(ii) the matter in question has been approved by shareholders under section 50 of the Act, following disclosure of the nature and extent of the director's interest to all shareholders who are not otherwise aware of those matters.

(2) A director who is directly or indirectly materially interested in any transaction or proposed transaction must, within 10 working days of becoming aware of that interest, disclose the nature and extent of that interest in writing:

(a) if there is at least 1 other director who is not directly or indirectly materially interested in the transaction or proposed transaction, to the directors of the company; or

(b) if paragraph (a) does not apply, to all shareholders other than the director.

(3) A director may give a general disclosure in writing to all other shareholders that the he or she is:

(a) a director or employee or shareholder of another company; or

(b) otherwise associated with another company or another person.

(4) The general disclosure made under subclause (3) is a sufficient disclosure of the director's interest in any transaction entered into with that other company or person for the purposes of subclause (2).

(5) A transaction entered into by the company in which a director is directly or indirectly materially interested is voidable at the election of the company in accordance with section 107 of the Act.

(6) A transaction entered into by the company as the result of action taken by a director in breach of sections 64, 65, or 66 of the Act is voidable at the option of the company in accordance with section 108 of the Act.

50. Use and disclosure of company information

(1) A director of the company who has information in his or her capacity as a director or employee of the company, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except:

(a) in the interests of the company; or

(b) as required by law; or

(c) if there are reasonable grounds for believing that the company will satisfy the solvency test after the director takes that action, and that action:

(i) is approved by all shareholders under section 50 of the Act; or

(ii) is authorised by any contract of employment entered into between that director and the company, the relevant terms of which have been approved by shareholders by ordinary resolution.

(2) A director must not vote on a resolution to approve such terms in relation to himself or herself.

51. Indemnities and insurance for directors or employees

(1) Subject to section 73 of the Act, the company may provide an indemnity or purchase insurance for a director of the company or of a related company with the approval of the board of directors and subject to the rules of the company.

(2) A director must not vote on a resolution concerning an indemnity or insurance to be provided to him or her.

(3) In this clause:

"director" includes:

(a) a person who is liable under any of sections 64 to 66 of the Act by virtue of section 72 of the Act; and

(b) a former director;

"indemnify" includes relieve or excuse from liability, whether before or after the liability arises; and indemnity has a corresponding meaning.

52. Remuneration of directors

(1) Directors may receive remuneration and other benefits (excluding loans) from the company with the approval of:

(a) shareholders by special resolution; or

(b) all shareholders under section 50 of the Act.

(2) A director must not vote on a resolution concerning remuneration or benefits to be received by him or her.

53. Procedure at meetings of directors

(1) Clauses 54 to 60 set out the procedure to be followed at meetings of directors.

(2) A meeting of directors may determine its own procedure to the extent that it is not governed by these rules.

54. Chairperson

(1) The directors may elect 1 of their number as chairperson of directors and may determine the period for which the chairperson is to hold office.

(2) If no chairperson is elected, or if at a meeting of the directors the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the directors present may choose 1 of their number to be the chairperson of the meeting.

55. Notice of meeting

(1) A director or, if requested by a director to do so, an employee of the company, may convene a meeting of directors by giving notice in accordance with this clause.

(2) Not less than 24 hours notice of a meeting of directors must be given to each director who is in Vanuatu, or who can readily be contacted outside Vanuatu.

(3) An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity, or if all directors entitled to receive notice of the meeting agree to the waiver.

56. Methods of holding meetings

A meeting of directors may be held either:

(a) by a number of the directors who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or

(b) by means of audio, or audio and visual, communication by which all directors participating and constituting a quorum, may simultaneously hear each other throughout the meeting.

57. Quorum

(1) A quorum for a meeting of directors is a majority of the directors.

(2) No business is to be transacted at a meeting of directors if a quorum is not present.

58. Voting

(1) Each director has 1 vote.

(2) The chairperson has a casting vote.

(3) A resolution of the directors is passed if it is agreed to by all directors present without dissent, or if a majority of the votes cast on it are in favour of it.

(4) A director present at a meeting of directors is presumed to have agreed to, and to have voted in favour of, a resolution of the directors unless he or she expressly dissents from, or votes against, the resolution at the meeting.

59. Minutes

The directors must ensure that minutes are kept of all proceedings at meetings of the directors.

60. Unanimous resolution

(1) A resolution in writing, signed or assented to by all directors, is as valid and effective as if it had been passed at a meeting of the directors duly convened and held.

(2) Any such resolution may consist of several documents (including fax or other similar means of communication) in like form each signed or assented to by 1 or more directors.

(3) A copy of any such resolution must be entered in the minute book of the directors' proceedings.

61. Managing director and other executive directors

(1) The directors may, from time to time, appoint a director as managing director for such period and on such terms as they think fit.

(2) Subject to the terms of a managing director's appointment, the directors may at any time cancel the appointment of a director as managing director.

(3) A director who holds office as managing director ceases to hold office as managing director if he or she ceases to be a director of the company.

62. Delegation to managing director

(1) The directors may delegate to the managing director, subject to any conditions or restrictions that they consider appropriate, any of their powers that may be lawfully delegated.

(2) A delegation under subclause (1) may be withdrawn or varied by the directors at any time.

(3) The delegation of a power of the directors to the managing director does not prevent the exercise of the power by the directors, unless the terms of the delegation expressly provide otherwise.

63. Remuneration of managing director and director

(1) Subject to shareholder approval under clause 52, the managing director, or a director (other than the managing director) who is employed by the company, may be paid such remuneration as he or she may agree with the directors.

(2) The remuneration may be by way of salary, commission, participation in profits, or any combination of these methods, or any other method of fixing remuneration.

PART 4 – COMPANY RECORDS

64. Company records

(1) The company must keep all the following documents at its registered office:

(a) the rules of the company;

(b) minutes of all meetings and resolutions of shareholders within the last 7 years;

(c) minutes of all meetings and resolutions of directors and directors' committees within the last 7 years;

(d) the full names and physical and postal addresses of the current directors;

(e) copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports made under section 55 of the Act;

(f) copies of all financial statements required to be completed under section 125 of the Act for the last 7 completed accounting periods of the company;

(g) the accounting records required by section 124 of the Act for the current accounting period and for the last 7 completed accounting periods of the company;

(h) the share register.

(2) The references in paragraph (1)(b), (c), and (e) to 7 years and the references in paragraph subclause (1)(f) and (g) to 7 completed accounting periods include such lesser periods as the Registrar may approve by notice in writing to the company, in accordance with subsection 113(2) of the Act.

65. Form of records

(1) The records of the company must be kept:

(a) in written form; or

(b) in a form or in a manner that allows the documents and information that comprise the records to be readily accessible so as to be usable for subsequent reference, and convertible into written form.

(2) The directors must ensure that adequate measures exist to:

(a) prevent the records being falsified; and

(b) detect any falsification of them.

66. Access to records

(1) The directors of the company are entitled to access to the company's records in accordance with section 115 of the Act.

(2) A shareholder of the company is entitled:

(a) to inspect the documents referred to in section 116 of the Act, in the manner specified in section 118 of the Act; and

(b) to require copies of, or extracts from, any document that he or she may inspect within 5 working days of making a request in writing for the copy or extract, on payment of any reasonable copying and administration fee prescribed by the company.

(3) The fee may be determined by any director, subject to any directions from the directors.

67. Documents to be sent to Registrar

In addition to any annual return required under sections 119 of the Act, the company must send all the following documents to the Registrar under the Act:

(a) notice of the adoption of new rules by the company, or the alteration of the rules of the company, under section 14 of the Act;

(b) notice of a change in the registered office or postal address of the company under section 18 of the Act;

(c) notice of the issue of shares by the company, under section 25 of the Act;

(d) notice of the acquisition by the company of its own shares, under section 30 of the Act;

(e) notice of the redemption of a share, under section 34 of the Act;

(f) notice of the transfer of shares under section 37 of the Act;

(g) notice of a change in the directors of the company, or of a change in the name or physical address or postal address of a director, under section 85 of the Act;

(h) notice of the making of an order under section 99 of the Act altering or adding to the rules of a company;

(i) notice of any place other than the registered office of the company where records are kept;

(j) documents requested by the Registrar under section 176 of the Act.

68. Documents to be sent to shareholders

In addition to any annual report required under section 55 of the Act, the company must send all the following documents to shareholders under the Act:

(a) notice of any repurchase of shares to which subsection 30(4) of the Act applies;

(b) notice of a written resolution approved under section 51 of the Act;

(c) financial statements required to be sent under section 125 of the Act;

(d) any written statement by an auditor under section 131 of the Act;

(e) any report by an auditor under section 133 of the Act.

PART 5 – ACCOUNTS AND AUDIT

69. Accounting records to be kept

(1) The directors of the company must cause accounting records to be kept that:

(a) correctly record and explain the transactions of the company; and

(b) will at any time enable the financial position of the company to be determined with reasonable accuracy; and

(c) will enable the directors to ensure that the financial statements of the company comply with section 125 of the Act; and

(d) will enable the financial statements of the company to be readily and properly audited.

(2) Without limiting subclause (1), the accounting records must contain:

(a) entries of money received and spent each day and the matters to which it relates; and

(b) a record of the assets and liabilities of the company; and

(c) if the company's business involves dealing in goods:

(i) a record of goods bought and sold, and relevant invoices;

(ii) a record of stock held at the end of the financial year together with records of any stocktakings during the year; and

(d) if the company's business involves providing services, a record of services provided and relevant invoices.

(3) If the company sells goods or provides services for cash in the ordinary course of carrying on a retail business:

(a) invoices need not be kept in respect of each retail transaction for the purposes of subclause (2); and

(b) a record of the total money received each day in respect of the sale of goods or provision of services, as the case may be, is sufficient to comply with subclause (2) in respect of those transactions.

(4) The accounting records must be kept:

(a) in a form permitted under clause 65; and

(b) at the registered office of the company.

70. Financial statements to be prepared

(1) The directors must ensure that:

(a) within 4 months after the balance date of the company, or with the approval of shareholders by special resolution, within an extended period not exceeding 7 months after the balance date of the company, financial statements that comply with subclause (2) are completed in relation to the company and that balance date; and

(b) within 20 working days of the date on which the financial statements must be completed under paragraph (a), those financial statements are sent to all shareholders. This requirement may be satisfied by sending the financial statements to shareholders in an annual report, in accordance with section 55 of the Act.

(2) The financial statements of the company must:

(a) give a true and fair view of the matters to which they relate; and

(b) comply with any applicable regulations made under the Act; and

(c) be dated and signed on behalf of the directors by 2 directors of the company, or, if the company has only 1 director, by that director.

(3) The following periods must not exceed 15 months:

(a) the period between the date of incorporation of the company and its first balance date;

(b) the period between any 2 balance dates of the company.

(4) In this clause, financial statements, in relation to the company and a balance date, means:

(a) a statement of financial position for the entity as at the balance date; and

(b) in the case of:

(i) a company trading for profit, a statement of financial performance for the company in relation to the accounting period ending at the balance date; and

(ii) a company not trading for profit, an income and expenditure statement for the company in relation to the accounting period ending at the balance date; and

(c) if required by regulations made under the Act, a statement of cash flows for the company in relation to the accounting period ending on the balance date; and

(d) such other financial statements in relation to the company or any group of companies of which it is the holding company as may be required by regulations made under the Act; and

(e) any notes or documents giving information relating to the statement of financial position and other statements.

71. Appointment of auditor

(1) The company must appoint an auditor who is qualified to hold that office under section 130 of the Act to:

(a) audit the financial statements of the company in respect of an accounting period; and

(b) hold office until those financial statements have been audited in accordance with the Act or until he or she ceases to hold office under subclause (3).

(2) The company must appoint an auditor within 30 working days in the event of a vacancy in the office of auditor.

(3) An auditor ceases to hold office if he or she:

(a) resigns by delivering a written notice of resignation to the registered office of the company not less than 20 working days before the date on which the notice is expressed to be effective; or

(b) is replaced as auditor by an ordinary resolution appointing another person as auditor in his or her place, following notice to the auditor in accordance with section 128 of the Act; or

(c) becomes disqualified from being the auditor of the company under section 130 of the Act; or

(d) dies.

(4) An auditor may be appointed:

(a) by ordinary resolution; or

(b) if the office of auditor is vacant, by the directors.

(5) If an auditor is appointed by the directors under clause (4)(b), the directors must, within 10 working days, give notice of the appointment to the shareholders.

(6) The fees payable to the auditor must be agreed between the auditor and the directors.

72. Auditor's attendance at shareholders' meeting

The directors must ensure that an auditor of the company:

(a) is permitted to attend a meeting of shareholders of the company; and

(b) receives the notices and communications that a shareholder is entitled to receive relating to meetings and resolutions of shareholders; and

(c) may be heard at a meeting of shareholders that he or she attends on any part of the business of the meeting that concerns him or her as auditor.

PART 6 – LIQUIDATION AND REMOVAL FROM REGISTER

73. Resolution to appoint liquidator

(1) The shareholders may resolve to liquidate the company by special resolution.

(2) The directors may resolve to liquidate the company at a meeting called under section 70 of the Act, if they consider that the company is unable to meet its debts as they become due in the normal course of business.

74. Distribution of surplus assets

(1) Any surplus assets of the company that are available for distribution to shareholders will be subject to any Court order which must be obtained by the liquidator.

(2) Upon receipt of the Court order, the liquidator is to ensure that the surplus assets are distributed accordingly to that order.

PART 7 — MISCELLANEOUS

75. Service of documents on shareholders

(1) A notice, statement, report, accounts, or other document to be sent to a shareholder who is a natural person may be:

(a) delivered to that person; or

(b) posted to that person's postal address; or

(c) faxed to a fax number used by that person.

(2) A notice, statement, report, accounts, or other document to be sent to a shareholder that is a company or an overseas company may be sent by any of the methods of serving documents referred to in sections 201 or 203 of the Act, as the case may be.

76. Authority to bind the company

A contract or other enforceable obligation may be entered into on behalf of the company in writing signed under the name of the company by:

(a) 2 or more directors; or

(b) in the case where there may only be 1 director, by that director; or

(c) 1 or more attorneys appointed by the company under Section 104 of the Act.

77. Interpretation

(1) In these rules, Act means the Companies Act No. 25 of 2012.

(2) Unless the context otherwise requires, any term or expression that is defined in the Act or any regulations made under the Act and used, but not defined, in these rules has the same meaning as in the Act or the regulations.

SCHEDULE 5

MINORITY BUY-OUT PROCEDURE

s 54

1. Shareholder may give notice requiring purchase of shares

A shareholder of a company who is entitled to require the company to purchase shares by virtue of section 54 of the Act may:

(a) within 10 working days of the passing of the resolution at a meeting of shareholders; or

(b) if the resolution was passed under section 52 of the Ac, within 10 working days of the date on which notice of the passing of the resolution is given to the shareholder,

give a written notice to the company requiring the company to purchase those shares.

2. Directors' duties on receipt of notice requiring purchase

Within 20 working days of receiving a notice under clause 1, the directors must:

(a) agree to the purchase of the shares by the company; and

(b) arrange for some other person to agree to purchase the shares; and

(c) arrange, before taking the action concerned, for the resolution to be rescinded or decide in the appropriate manner not to take the action concerned, as the case may be; and

(d) give written notice to the shareholder of the directors' decision.

3. Directors to nominate and give notice of price for shares

(1) If the directors agree under clause 2(a) to the purchase of the shares by the company, the directors must, on giving notice under that clause or within 5 working days after giving that notice:

  (a) nominate a date on which the shares will be acquired by the company (purchase date), which must not be less than 10 working days or more than 20 working days from the date of giving notice to the shareholder; and

  (b) nominate a fair and reasonable price for the shares to be acquired; and

  (c) give notice of the price to the holder of those shares.

(2) On the purchase date:

  (a) the shares are deemed to be transferred to the company; and

  (b) the company is liable to pay for the shares in accordance with this clause, subject to section 27 of the Act.

(3) For the purposes of this schedule, a price for a share is a fair and reasonable price if it is a fair and reasonable price for a share in the company as at the purchase date, disregarding:

  (a) any premium or discount in respect of the size of parcels of shares to be acquired:

  (b) the fact that the shares are being acquired under section 54 of the Act:

  (c) the effect or likely effect on the value of the company and its shares of the company approving the resolution, the approval of which entitled the shareholder to require the company to purchase his or her shares.

4. Objection to share price

(1) A shareholder who considers that the price nominated by the directors is not fair or reasonable must, within 10 working days, give notice of objection to the company.

(2) If, within 10 working days of giving notice to a shareholder under subclause 3(1), an objection to the price has been received by the company, the company must:

(a) refer the question of what is a fair and reasonable price to determination by an expert in accordance with clause 6; and

(b) on the purchase date, pay a provisional price in respect of each share equal to the price nominated by the directors.

5. Nominated price payable if no objection

If, within 10 working days of giving notice to a shareholder under subclause 3(1), no objection to the price has been received by the company, the price to be paid for the shares is the nominated price.

6. Expert determination of price

(1) If the company is required to refer the price for shares to expert determination in accordance with clause 4(2)(a), the company must, within 10 working days, nominate an independent person with appropriate expertise as the expert to determine the price, and give notice of that appointment to the shareholder.

(2) The shareholder may, within 10 working days of receiving the notice referred to in subclause (1), give notice to the company that he or she objects to the expert nominated by the company, on the grounds that that person:

(a) is not independent; or

(b) does not have the appropriate expertise.

(3) If, within 10 working days of receipt of notice by a shareholder under subclause (1), no objection to the expert has been received by the company, the expert must expeditiously determine a fair and reasonable price for the shares to be purchased.

(4) If, within 10 working days of receipt of notice by a shareholder under subclause (1), an objection to the expert has been received by the company, the company must immediately apply to the Court for the appointment of an expert.

(5) The Court may appoint the person nominated by the company, or any person nominated by the shareholder, or such other independent person with appropriate expertise as the Court may think fit.

(6) The expert appointed by the Court must, immediately on being appointed, proceed to expeditiously determine a fair and reasonable price for the shares to be purchased.

(7) If the price determined by the expert:

(a) exceeds the provisional price, the company must, subject to section 27 of the Act, immediately pay the balance owing to the shareholder;

(b) is less than the provisional price paid, the company may recover the excess paid from the shareholder.

(8) The expert may award interest on any balance payable or excess to be repaid under subclause (7) at such rate as he or she thinks fit.

(9) The determination by the expert is final and is made by the expert as an expert, and not as an arbitrator.

7. Purchase of shares by third party

(1) Clauses 3 to 6 apply to the purchase of shares by a person with whom the company has entered into an arrangement for purchase in accordance with clause 2(b), subject to such modifications as may be necessary and, in particular, as if references in section 55 to the directors and the company were references to that person.

(2) A holder of shares that are to be purchased in accordance with the arrangement, is indemnified by the company in respect of loss suffered by reason of the failure by the person who has agreed to purchase the shares to purchase them at the price nominated or fixed by arbitration, as the case may be.

8. Inability of company to pay purchase price

Section 33 of the Act applies to the purchase of shares under this schedule as if there were a contract between the shareholder and the company for the purchase of shares in accordance with this schedule.

SCHEDULE 6

AMALGAMATIONS

s. 136

PART 1 – AMALGAMATIONS IN GENERAL

1. Amalgamations

Any 2 or more companies may amalgamate, and continue to operate as 1 company, in accordance with this Schedule.

2. Notice of proposed amalgamation

The directors of each amalgamating company must, not less than 20 working days before the amalgamation is proposed to take effect:

(a) send a copy of the amalgamation proposal to every secured creditor of the company; and

(b) give public notice of the proposed amalgamation, including a statement that:

(i) copies of the amalgamation proposal are available for inspection by any shareholder or creditor of an amalgamating company or any person to whom an amalgamating company is under an obligation at the registered offices of the amalgamating companies and at any other places specified during normal business hours; and

(ii) a shareholder or creditor of an amalgamating company or any person to whom an amalgamating company is under an obligation is entitled to be supplied free of charge with a copy of the amalgamation proposal on request to an amalgamating company.

3. Registration of amalgamation proposal

For the purpose of effecting an amalgamation, the following documents must be delivered to the Registrar for registration:

(a) an amalgamation proposal approved in accordance with this Schedule;

(b) a certificate signed by the directors of each amalgamating company stating that the amalgamation has been approved in accordance with this Act and the company's rules;

(c) a document in the prescribed form signed by each of the persons named in the amalgamation proposal as a director of the amalgamated company containing his or her consent to be a director.

4. Certificate of amalgamation

(1) Immediately after receipt of the documents required under clause 3, the Registrar must issue a certificate of amalgamation in the prescribed form.

(2) If an amalgamation proposal specifies a date on which the amalgamation is intended to become effective, and that date is the same as, or later than, the date on which the Registrar receives the documents, the certificate of amalgamation must be expressed to have effect on the date specified in the amalgamation proposal.

5. Effect of certificate of amalgamation

On the date shown in a certificate of amalgamation.:

(a) the amalgamation is effective; and

(b) subject to section 10, the amalgamated company has the name specified in the amalgamation proposal; and

(c) the amalgamated company is entitled to all the property, rights, powers, and privileges of each of the amalgamating companies; and

(d) the amalgamated company is subject to all the liabilities and obligations of each of the amalgamating companies; and

(e) proceedings pending by, or against, an amalgamating company may be continued by, or against, the amalgamated company; and

(f) a conviction, ruling, order, or judgment in favour of, or against, an amalgamating company may be enforced by, or against, the amalgamated company; and

(g) any provisions of the amalgamation proposal that provide for the conversion of shares or rights of shareholders in the amalgamating companies have effect according to their tenor.

6. Registers

(1) If an amalgamation becomes effective, neither the Director of Land Records nor any other person charged with the keeping of any books or registers is obliged, solely by reason of the amalgamation becoming effective, to change the name of an amalgamating company to that of an amalgamated company in those books or registers or in any documents.

(2) The presentation to the Director of Land Records or any other person of any instrument (whether or not comprising an instrument of transfer) by the amalgamated company:

(a) executed or appearing to be executed by the amalgamated company; and

(b) relating to any property held immediately before the amalgamation by an amalgamating company; and

(c) stating that that property has become the property of the amalgamated company by virtue of this Part,

is, in the absence of evidence to the contrary, sufficient evidence that the property has become the property of the amalgamated company.

(3) Without limiting subclauses (1) or (2), if:

(a) any security issued by any person; or

(b) any rights or interests in property of any person,

becomes the property of an amalgamated company, that person must, upon presenting a certificate signed on behalf of the amalgamated company, despite any other enactment or rule of law or the provisions of any instrument, register the amalgamated company as the holder of that security or as the person entitled to such rights or interests.

(4) Except as expressly provided in this Part, this Part does not derogate from the provisions of the Land Leases Act [CAP 163] and the Strata Titles Act [CAP 266].

7. Powers of Court in relation to amalgamations

(1) If the Court is satisfied that giving effect to an amalgamation proposal would unfairly prejudice a shareholder or creditor of an amalgamating company or a person to whom an amalgamating company is under an obligation, it may, on the application, made at any time before the date on which the amalgamation becomes effective, of

that person, make any order it thinks fit in relation to the proposal, and may, without limiting the generality of this section, make an order:

(a) directing that effect must not be given to the proposal;

(b) modifying the proposal in such manner as may be specified in the order;

(c) directing the company or its directors to reconsider the proposal or any part of it.

(2) An order may be made under subclause (1) on any conditions that the Court thinks fit.

PART 2 — APPROVAL OF AMALGAMATIONS, ETC, BY COURT

8. Interpretation

In this Part, unless the context otherwise requires:

arrangement includes a reorganisation of the share capital of a 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;

company:

(a) means a company; and

(b) includes an overseas company that is registered on the overseas register.

9. Approval of amalgamations, etc

(1) Subject to clause 10, but despite any other provision or the rules of a company, the Court may, on the application of a company or any shareholder or creditor of a company, order that an amalgamation, arrangement, or compromise is binding on the company and on any other persons or classes of persons specified by the Court.

(2) The order may be made on any conditions that the Court thinks fit.

(3) An order made under this section has effect on and from the date specified in the order.

10. When Court may approve amalgamations, etc

(1) An amalgamation, arrangement, or compromise may be approved under this subpart only if it is not practicable for the amalgamation, arrangement, or compromise to be effected under the Companies (Insolvency and Receiverships) Act No. 3 of 2013 ,or under both.

(2) To avoid doubt, it is not impracticable for an amalgamation, arrangement, or compromise to be effected under the Companies (Insolvency and Receiverships) Act No. 3 of 2013 by reason only that the compromise has not been, or would not be likely to be, approved in accordance with the procedure set out in those subparts.

11. Initial Court orders

(1) Before making an order under subclause 9(1), the Court may, on the application of the company or any shareholder or creditor or other person who appears to the Court to be interested, or of its own motion, make any 1 or more of the following orders:

(a) an order that notice of the application, together with such information relating to it as the Court thinks fit, be given in the form and manner and to any persons or classes of persons specified by the Court;

(b) an order directing the holding of a meeting or meetings of shareholders or any class of shareholders or creditors or any class of creditors of a company to consider and, if thought fit, to approve the proposed arrangement or

amalgamation or compromise and, for that purpose, the Court may determine the shareholders or creditors that constitute a class of shareholders or creditors of a company;

(c) an order requiring that a report on the proposed arrangement or amalgamation or compromise be prepared for the Court by a person specified by the Court and, if the Court thinks fit, be supplied to the shareholders or any class of shareholders or creditors or any class of creditors of a company or to any other person who appears to the Court to be interested;

(d) an order as to the payment of the costs incurred in the preparation of the report;

(e) an order specifying the persons who are entitled to appear and be heard on the application to approve the amalgamation, arrangement, or compromise.

(2) In making an order under subclause (1), the Court must have regard to the procedures for amalgamations under subpart 1 and for compromises under the Companies (Insolvency and Receiverships) Act No. of 2012.

(3) An order made under this section has effect on and from the date specified in the order.

12. Court may make additional orders

(1) Without limiting clause 9, the Court may, for the purpose of giving effect to any amalgamation, arrangement, or compromise approved under that section, either by the order approving the amalgamation, arrangement, or compromise, or by any later order, provide for, and prescribe terms and conditions relating to:

(a) the transfer or vesting of real or personal property, assets, rights, powers, interests, liabilities, contracts, and engagements;

(b) the issue of shares, securities, or policies of any kind;

(c) the continuation of legal proceedings;

(d) the liquidation of any company;

(e) the provisions to be made for persons who voted against the amalgamation, arrangement, or compromise at any meeting called in accordance with any order made under paragraph 151(1)(b) of the Act or who appeared before the Court in opposition to the application to approve the amalgamation, arrangement, or compromise;

(f) any other matters that are necessary or desirable to give effect to the amalgamation, arrangement, or compromise.

(2) An order made under this section has effect on and from the date specified in the order.

13. Copy of orders to be delivered to Registrar

(1) Within 10 working days of an order being made by the Court under this Part, the company must ensure that a copy of the order is delivered to the Registrar for registration.

(2) If a company fails to comply with subclause (1), the director, or if the company has more than 1 director, each director is guilty of an offence punishable on conviction to a fine not exceeding VT25,000

14. Application of section 11 of the Companies (Insolvency and Receiverships) Act No. 3 of 2013

Section 11 of the Act applies, with the necessary modifications, to any compromise approved under clause 10.

Table of Amendments

1 Amended by Acts 32 of 2017, 27 of 2018
1(2) Inserted by Act 27 of 2018
4A Inserted by Act 27 of 2018
6(3)(b) Amended by Act 27 of 2018
6(3)(c) Amended by Act 27 of 2018
6(3)(ga) Inserted by Act 32 of 2017
6(3)(gb) Inserted by Act 27 of 2018
7 Substituted by Act 27 of 2018
7A Inserted by Act 27 of 2018
9(6A) Inserted by Act 27 of 2018
9(6B) Inserted by Act 27 of 2018
9(6C) Inserted by Act 27 of 2018
14(1)(a) Amended by Act 27 of 2018
15 Substituted by Act 27 of 2018
25A Inserted by Act 32 of 2017
Division 9 of Part 3 (Heading) Amended by Act 32 of 2017
37 (heading) Amended by Act 32 of 2017
37(1) Amended by Act 32 of 2017
37(2) Amended by Act 32 of 2017
37(3) Amended by Act 32 of 2017
37(4) Amended by Act 32 of 2017
39(1) Amended by Act 32 of 2017
39(1)(a) Amended by Act 32 of 2017
39(1)(d) and (e) Inserted by Act 32 of 2017
39(4) Amended by Act 32 of 2017
83(5) Inserted by Act 27 of 2018
85A Inserted by Act 27 of 2018
85B Inserted by Act 27 of 2018
113(1)(d) Amended by Act 32 of 2017
113(5) Amended by Act 32 of 2017
140 Substituted by Act 32 of 2017
141 Amended by Act 32 of 2017
142 Amended by Act 32 of 2017
143(1) Amended by Act 32 of 2017
143(2) Amended by Act 32 of 2017
146(2) Substituted by Act 6 of 2016
150(1) Amended by Act 32 of 2017
153A Inserted by Act 24 of 2024
157(2)(b) Amended by Act 32 of 2017
157(2)(ba) Inserted by Act 32 of 2017
160(1)(a) Amended by Act 32 of 2017
160(1)(aa) Inserted by Act 32 of 2017
160(2) Amended by Act 32 of 2017
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164C Inserted by Act 27 of 2018
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176(1)(c) Inserted by Act 32 of 2017
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178(3) Amended by Act 32 of 2017
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180A Inserted by Act 32 of 2017
181 Repealed by Act 32 of 2017
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183A Inserted by Act 32 of 2017
187A Inserted by Act 32 of 2017
188A Inserted by Act 27 of 2018
199A Inserted by Act 27 of 2018
207A Inserted by Act 27 of 2018
209(9)(c) Amended by Act 27 of 2018