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CHAPTER 222

INTERNATIONAL COMPANIES

Act 32 of 1992
Act 26 of 1993
Act 9 of 1994
Act 26 of 2000
Act 45 of 2006
Act 11 of 2010
Act 21 of 2012
Act 19 of 2013
Act 4 of 2016
Act 14 of 2017

ARRANGEMENT OF SECTIONS

PART 1 – PRELIMINARY
1. Interpretation

PART 2 – COMPANY FORMATION AND CONSTITUTION
2. Formation
3. Constitution
4. Names
5. Incorporation
6. Incorporators to be first members
6A. One year and long term registration
7. Amendment of constitution
8. Copies of constitution

PART 3 – COMPANY POWERS, RESTRICTIONS AND LIABILITIES
9. Powers
10. Restrictions on international companies
11. Validity of acts of company
12. Power of directors to bind company
13. No duty to enquire as to capacity of company or authority of directors
14. Change of status

PART 4 – CAPITAL AND DIVIDENDS
15. Nature of shares
16. Types of shares
16A. Prohibition on issuing bearer shares and bearer share warrants
17. Alterations of capital
18. Fractional shares
19. Rights of holders of classes of shares
20. Allotment of shares
21. Consideration for shares
22. (Repealed)
23. Issue and effect of share warrants
24. Share certificates
25. Transfer of registered shares and share warrants
26. (Repealed)
26A. (Repealed)
26B. (Repealed)
26C. (Repealed)
26D. (Repealed)
27. Forfeiture of shares
28. Seizure
29. Distributions
30. Dividends
31. Acquisition of own shares
32. Shares disabled in respect of voting and dividends
33. Increase or reduction of capital

PART 5 – REGISTERED OFFICE AND AGENT
34. Registered office
35. Registered agent
35A. Commission may require certain information or documents about beneficial owners or members

PART 6 – DIRECTORS AND OFFICERS
36. Management of directors
37. Appointment, term and removal of directors
38. Number of directors
39. Powers of directors
40. Emoluments of directors
41. Committee of directors
42. Meetings of directors
43. Notice of meetings of directors

44. Quorum for meetings of directors
45. Resolutions of directors
46. Alternate directors
47. Officers and agents
48. Standard of care
49. Reliance on records and reports
50. Conflict of interests
51. Indemnification
52. Personal liability

PART 7 – COMPANY ADMINISTRATION
53. Meetings of members
54. Notice of meetings of members
55. Quorum for meeting of members
56. Voting by members
57. Service of notice on members
58. Register of Members
58A. Company to keep up to date records of beneficial owners and nominators of nominee shareholders and directors
59. (Repealed)
60. Particulars in Register of Members in relation to share warrants
61. Rectification of Register of Members
62. Service of documents on company
63. Books and records
64. Seal
65. Inspection of books and records
66. Execution of contracts
67. Pre-incorporation contracts
68. Notes and bills of exchange
69. Appointment of agents
70. Authentication or attestation
71. Corporate representative at meetings

PART 8 – REGISTRATION OF CHARGES
72. Filing of charges
73. Validity of charges in certain circumstances
74. Register of charges
74A. (Repealed)
75. Endorsement of certificate of registration on debentures
76. Satisfaction and release of charges
77. Extensions and rectifications
78. Documents made outside Vanuatu
78A. Exemption from Part 8 granted to ship-owning companies

PART 9 – DEBENTURES
79. Power to issue debentures
80. Company to maintain register of debentures
81. Perpetual debentures
82. Reissue of redeemed debentures

PART 10 – MERGER, CONSOLIDATION, SALE OF ASSETS, FORCED REDEMPTIONS, ARRANGEMENTS AND DISSENTERS
83. Interpretation for purposes of Part 10
84. Merger and consolidation
85. Merger with subsidiary
86. Effect of merger or consolidation
87. Merger or consolidation with foreign company
88. Disposition of assets
89. Redemption of minority shares
90. Arrangements
91. Rights of dissenters

PART 11 – CONTINUATION
92. Continuation
93. Certificate of continuation
94. Effect of continuation
95. Continuation under foreign law
95A. Continuation of existing exempted companies as companies under this Act
95B. Effect of Provisional certificate of continuation
95C. Annual return of a company issued with provisional certificate of continuation

PART 12 – WINDING UP, DISSOLUTION AND STRIKING-OFF
96. Winding up by expiry of time
97. Members voluntary winding up and dissolution
98. Powers of directors in a members voluntary winding up and dissolution
99. Duties of liquidator in a members voluntary winding up
100. Powers of liquidator
101. Procedure on winding up and dissolution
102. Rescission of winding up and dissolution
103. Winding up and dissolution of company unable to pay its claims, etc.
104. Winding up and dissolution by the court
105. Receivers and managers
106. Striking off on breach of section 10
107. Restoration to Register
108. Effect of striking-off
109. Appointment of official liquidator
110. Dissolution of company struck off
110A. Disposal of books, records and papers of company

PART 13 – FEES
111. Fees
112. Annual registration fee for companies continuing registration under section 6A
112A. Annual fee for companies issued with provisional certificate of continuation
113. Striking off for non-payment of fees
114. Recovery of fees etc.
115. Company struck off liable for fees, etc.
116. (Repealed)
117. Fees payable to Commission

PART 14 – EXEMPTIONS
118. Exemptions from certain taxes, duties and exchange control restrictions

PART 15 – MISCELLANEOUS
119. Privileged information
119A. Indemnity from liability etc.
120. Documents
121. Prescribed forms
122. Certificate of good standing
123. Replacement of documents
124. Inspection of documents
124A. Commission may request information and documents
125. (Repealed)
125A. Confidentiality of company records
125B. Court proceedings disclosing company records
125C. Disclosure to foreign government agency
126. Jurisdiction
127. Penalty for false statements
128. (Repealed)
128A. On site inspections

128B.Commission may require information and documents
129. Declaration by court
130. Judge in chambers
131. Regulations
132. (Repealed)

FIRST SCHEDULE – Debenture

INTERNATIONAL COMPANIES

An Act to provide for the incorporation, registration and operation of International Companies.

PART 1 – PRELIMINARY

1. Interpretation

(1) In this Act unless the context otherwise requires –

"absolute majority" means more than half of all votes entitled to be cast;

"annual registration fee" means the annual registration fee required to be paid under section 112;

"articles" means the articles of association of a company that is registered under the Companies Act;

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

"certificate of continuation" means the certificate issued by the Commission under subsection 92(5);

"certified copy" means a copy of an original document certified as a true copy thereof by such person as the Commission shall deem acceptable;

"controller" of a company means a person who exercises influence, authority or power over decisions about the company's financial or operating policies, including as a result of, or by means of, a trust, agreement, arrangement, understanding or practice, and "control" has a corresponding meaning;"

"Commission" means the Vanuatu Financial Services Commission established by the Vanuatu Financial Services Commission Act [Cap. 229];

"Companies Act" means the Companies Act No. 25 of 2012;

"company" means an international company incorporated or continued under this Act;

"company limited by guarantee" means a company having the liability of its members limited by its constitution to such amount as the members undertake to contribute to the assets of the company in the event of it being wound up;

"company limited by shares" means a company having the liability of its members limited by its constitution to such amount, if any, unpaid on the shares respectively held by them;

"company limited both by shares and by guarantee" means a company having the liability of its members limited by its constitution:

(a) in the case of members who have given a guarantee, to such amount as they have respectively undertaken to contribute to the assets of the company in the event of it being wound up; and

(b) in the case of members who are shareholders, to the amount, if any, unpaid on the shares respectively held by them.

"company number" means the identification number given in respect of each company by the Commission;

"court" means the Supreme Court of Vanuatu;

"director" includes any person occupying the position of director of a company by whatever name called and any person held out by the company to be a director;

"distribution" means a direct or indirect transfer of money or other property (except the company's own shares) or incurrence of indebtedness by a company to or for the benefit of a member in respect of any of its shares, and may be in the form of a declaration or payment of a dividend, a purchase, redemption or other acquisition of shares, a distribution of indebtedness, or otherwise.

"dollars" and "$" means dollars of the currency of the United States of America;

"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;

"effective date" means the date on which the International Companies (Amendment) Act No. 11 of 2010 comes into force;

"exempted company" means a company that is registered or re-registered as an exempted company under the Companies Act No. 25 of 2012;

"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;

"First Schedule debenture" means the debentures set out in the First Schedule hereto;

"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;

"Gazette" means the Official Gazette;

"immovable property" means a land as defined under the Land Leases Act [CAP 163];

"incorporator" means any person who has signed a constitution as an incorporator pursuant to section 2;

"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;

"long term registration" means registration for 5 years, 10 years or 20 years;

"long term registration renewal fee" means the fee payable for the renewal of a long term registration;

"member" means any person –

(a) who agrees to become a member of a company and whose name is entered in the Register of Members; or

(b) (repealed)

(c) who is deemed to be a member pursuant to section 6;

"memorandum" means the memorandum of association of a company registered under the Companies Act;

"Minister" means the Minister for the time being responsible for finance;

"model constitution" means a constitution prescribed by the Minister pursuant to section 3(4);

"owner" of a company means a person who has a legal entitlement of 25% or more of the company by way of ownership of shares or otherwise, and "own" and "ownership" have a corresponding meaning;

"person resident in Vanuatu" means a person who ordinarily resides in Vanuatu or carries on business from an office or other fixed place of business within Vanuatu, and includes a company incorporated under this Act or the Companies Act;

"prescribed" means prescribed by regulations made under this Act;

"provisional certificate of continuation" means the certificate of continuation issued by the Commission under subsection 95A(3);

"registered agent" means a person who is at any particular time performing the functions of the registered agent of a company under this Act and who is licensed under the Company and Trust Services Providers Act No. 8 of 2010;

"registered share" means any share issued by an international company standing in the Register of Members of the company in the name of a member;

"Register" means the Register of International Companies maintained by the Commission in accordance with section 5(2);

"Register of Members" means a Register of Members kept by a company in accordance with section 58;

"regulations" means the regulations made by the Minister under this Act;

"resolution" in relation to a resolution of directors means –

(a) a resolution approved at a duly constituted meeting of directors or of a committee of directors by affirmative vote of a simple majority, of such larger majority as may be specified in the constitution, of the directors present at the meeting who voted; or

(b) a resolution, notice of which has been given to all directors entitled to receive notice of meetings, which has been consented to in writing by an absolute majority, or such larger majority as may be specified in the constitution, of all the directors or of all members of a committee of directors, as the case may be; and, where a director is given more than one vote in any circumstances, he shall be counted for the purposes of establishing a majority by the number of votes he is entitled to cast;

"resolution" in relation to a resolution of members means –

(a) resolution approved at a duly constituted meeting of the members by the affirmative vote of a simple majority, or such larger majority as may be specified in the constitution either generally or in respect of certain matters, of the votes of the members present at the meeting and entitled to vote thereon and who voted; or

(b) a resolution, notice of which has been given to all members entitled to receive notice of meetings, which is consented to in writing by an absolute majority or such larger majority as may be specified in the constitution either generally or in respect of certain matters of all the members who are entitled to vote thereon;

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

"seal and common seal", in relation to a company, means the common or corporate seal referred to in section 64;

"securities" includes shares and debt obligations of every kind, and options, warrants and rights to acquire shares or debt obligations;

"share warrant" means a share warrant issued under subsection 23(1);

"simple majority" means more than half of all votes validly cast;

"solvency test" has the meaning attributed to it in subsection (3);

"transition date" means 31st December 2012;

"treasury shares" means shares of a company that were previously issued but were repurchased or otherwise acquired by the company and not cancelled;

"writing" includes printing, typewriting, photography, telex, cable, telefax and any other method of representing or reproducing words on paper or a similar medium;

Words and expressions importing the masculine gender shall include the feminine and vice versa;

Words and expressions in the singular, shall include the plural and vice versa;

(2) Subject to any limitations in the constitution, shares that a company purchases, redeems or otherwise acquires may be cancelled or held as treasury shares.

(3) (a) A company satisfies the solvency test if –

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

(ii) the realisable value of the company's assets is greater than the aggregate of the present value of its liabilities, whether contingent or otherwise.

(b) In determining whether a company satisfies the solvency test regard may be had either to financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances, or a fair valuation or other method that is reasonable in the circumstances.

(c) In this subsection "realisable value", in relation to any asset, means the price that would be paid for that asset by a purchaser in an "at arms length" transaction.

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

PART 2 – COMPANY FORMATION AND CONSTITUTION

2. Formation

(1) Subject to the requirements of this Act, one or more persons may for any lawful purpose, by signing a constitution as an incorporator, form an international company under this Act.

(2) Every international company incorporated under this Act shall be –

(a) a company limited by shares;

(b) a company limited by guarantee; or

(c) a company limited both by shares and by guarantee.

3. Constitution

(1) The constitution of every company shall state –

(a) the name of the company;

(b) the address within Vanuatu of the first registered office of the company;

(c) the name and address within Vanuatu of the first registered agent of the company;

(ca) *(Repealed)*

(cb) *(Repealed)*

if the company elects to be registered under long term registration, whether the period of registration is 5 years, 10 years or 20 years;

(d) the objects or purposes for which the company is to be incorporated;

(e) whether the company is a company limited by shares, a company limited by guarantee or a company limited both by shares and by guarantee;

(f) in the case of a company limited by guarantee, that each member undertakes to contribute to the assets of the company in the event of it being wound up while he is a member or within 3 months, or such longer period as may be specified in the constitution, after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.

(g) in the case of a company limited both by shares and by guarantee, that each member giving a guarantee undertakes to contribute to the assets of the company in the event of it being wound up while he is a member or within 3 months, or such longer period as may be specified in the constitution, after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.

(1A) If the constitution of the company is in a language other than English or French:

(a) it must have with it an English translation and a statement by a qualified translator that the translation is a true copy; and

(b) the statement must be attested by a notary public.

(2) For the purposes of subsection (1)(d), the constitution may contain a statement either alone or with other objects or purposes that the objects or purposes of the company are unrestricted.

(3) The constitution must name the first directors of the company.

(4) The Minister shall, by Order, prescribe model constitution for each of the types of company specified in section 2(2).

(5) The constitution of a company must set out the regulations for the company.

(6) The regulations for a company comprise:

(a) regulations prepared by or for the company; or

(b) regulations contained in the model constitution appropriate for the company's type, adopted by the company, including any exclusions or modifications.

(7) The constitution of every company shall be –

(a) printed;

(b) divided into paragraphs numbered consecutively; and

(c) signed by each incorporator.

(8) Subject to the provisions of this Act, the constitution, when registered, shall bind the company and its members from time to time to the same extent as if each member had signed his name and affixed his seal thereto and as if there were contained in the constitution, on the part of himself, his heirs, executors and administrators, a covenant to observe the provisions of the constitution.

4. Names

(1) Subject to subsection (2), an international company shall have as part of and at the end of its name –

(a) the word "Corporation" or the abbreviation "Corp";

(b) the word "Incorporated" or the abbreviation "Inc";

(c) the word "Limited" or the abbreviation "Ltd";

(d) the words "Sendirian Berhad" or the abbreviation "Sdn Bhd";

(e) the words "Société à Responsabilité Limitée" or the abbreviation "SARL";

(f) the words "Besloten Vennootschap" or the abbreviation "B.V."; or

(g) the words "Gesellschaft mit beschrankter Haftung" or the abbreviation "GmbH".

(2) Notwithstanding the provisions of subsection (1), a company may, in lieu of any of the words or abbreviations specified therein, have as part of its name any other words or popular abbreviations of those words in any language being any words or abbreviations which a registered agent can satisfy the Commission connotes the existence of a body corporate as distinct from any other person or entity and such words or abbreviation may appear at the beginning, the end or elsewhere in the name of the company in accordance with common practice.

(3) No company shall have a name that –

(a) is identical with the name of a company registered under this Act or the Companies Act or under which a company has at anytime in the previous 20 years been so registered or so nearly resembles such name as to be in the opinion of the Commission calculated or likely to deceive or mislead;

(b) contains any word or expression that, in the opinion of the Commission, suggests the patronage of or any connection with the Government of Vanuatu, a department thereof, a statutory corporation or board or a local or municipal authority;

(c) is, in the opinion of the Commission, undesirable; or

(d) contains other than characters or numerals of any language or such other symbols as may be approved by the Commission.

(4) If the name of a company is to contain other than romanised characters or Arabic numerals, a certified translation of the name in either the English or French languages shall be provided to the Commission the prior approval of which to the use of the name shall be obtained.

(5) A company may, by resolution and with the written approval of the Commission, change its name.

(6) Where a company is registered with a name that contravenes subsections (1), (2) (3) or (4) the Commission may give notice to the company to change its name and if it fails to do so within 60 days from the date of the notice the Commission shall change the name of the company to such name as it deems appropriate and it shall publish a notice of the change in the Gazette.

(7) Where the name of a company is changed the Commission shall enter the new name in the Commission in place of the former name and shall issue a certificate of change of name.

(8) The change of name of a company shall take effect from the date of the certificate issued under subsection (6) and shall not affect any rights or obligations of the company or render defective any legal proceedings by or against it, and any legal proceedings that may have been commenced by or against it in its former name may be continued by or against it in its new name.

(9) Subject to the Business Names Act [Cap. 211], where a company carries on business under any name other than its registered name or continues to use its former name after it has been changed, the company and every officer who knowingly permits the use of the former name shall be liable on conviction to a daily default fine of $10.

(10) A change of name of a company shall be deemed not to be an amendment to its constitution.

(11) The Commission shall, upon a request made by any person, reserve for six months any name under which a company could be registered. The Commission may extend the period for which a name is reserved for further periods of six months.

(12) During a period for which a name is reserved no company, other than the company or intended company for which the name is reserved, shall be registered by that name.

5. Incorporation

(1) A person wishing to incorporate a company shall files its constitution with the Commission.

(1A) A person wishing to incorporate a company must also file with the Commission:

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

(b) such other information prescribed by the regulations.

(2) Where it is satisfied that all the requirements of this Act in respect of incorporation and all matters precedent and incidental thereto have been complied with, the Commission shall –

(a) register the constitution in a register to be maintained by it and to be known as the Register of International Companies; and

(b) issue a certificate authenticated by its official seal stating that the company is incorporated with limited liability.

(c) (*repealed*)

(2A) The Commission must make available to the public, in any way the Commission thinks fit, the constitution of a company registered under subsection (2) in the Register.

(3) A company shall, from the date of incorporation shown on the certificate, be a body corporate with perpetual succession being a person distinct from its members.

(4) A certificate of incorporation issued by the Commission shall be conclusive evidence that the requirements of this Act in respect of incorporation have been complied with and that the company has been incorporated under this Act on and from the date stated in the certificate, under the name contained in its constitution.

6. Incorporators to be first members

(1) Subject to subsection (2), an incorporator of a company is a member of the company from the date of incorporation and ceases to be a member of the company:

(a) on the first allotment of any shares in the company; or

(b) on the grant of membership of the company to a person who gives a guarantee required under the constitution of the company.

(2) An incorporator continues to be a member of the company if:

(a) shares are allotted to the incorporator; or

(b) the membership is granted to the incorporator.

6A. One year and long term registration

(1) An incorporator of a company may, or a company may at any time, elect that the company be registered:

(a) for a period of 1 year; or

(b) for a period of 5 years, 10 years or 20 years under long term registration.

(2) A company registered for 1 year may:

(a) subject to section 112 continue its registration, on payment of an annual fee; or

(b) at the end of 1 year elect to be registered under long term registration.

(3) A company registered under long term registration may at the end of its period of registration:

(a) renew its long term registration, on payment of the long term registration renewal fee under section 111; or

(b) elect to be registered for a period of 1 year.

7. Amendment of constitution

(1) Subject to any limitations therein, a company may amend its constitution by a resolution of members or, where permitted by its constitution, by a resolution of directors.

(2) (a) A company that amends its constitution shall within 14 days of the date of the resolution being passed file with the Commission a certified copy of the resolution amending the constitution;

(b) The copy of the resolution filed in accordance with this subsection shall be certified by –

(i) the lawyer engaged in advising the company; or

(ii) the registered agent of the company.

(3) An amendment to a constitution shall have effect from the time the amendment is registered by the Commission.

(4) A company that contravenes subsection (2) shall be liable on conviction to a daily default fine of $50.

(5) A director who knowingly permits the contravention of subsection (2) shall be liable on conviction to a daily default fine of $50.

8. Copies of constitution

(1) A company shall, when requested by any member, send or provide to him a copy of its constitution being in accordance with any amendments thereto subject to payment of such amount not exceeding $50 as the directors may determine to be reasonably necessary to defray the costs of preparing and furnishing it.

(2) Where an amendment is made to a company's constitution, every copy of the constitution issued after the date of the amendment shall be in accordance with the amendment.

(3) A company that contravenes this section shall be liable on conviction to a fine of $500.

(4) A director of a company who knowingly permits the contravention of this section shall be liable on conviction to a fine of $500.

PART 3 – COMPANY POWERS, RESTRICTIONS AND LIABILITIES

9. Powers

(1) Subject to any limitations in its constitution or this Act, a company shall, irrespective of corporate benefit, have the capacity, rights, powers and privileges of a natural person who is *sui juris* including but not limited to the powers to –

(a) guarantee a liability or obligation of any person and to secure any of its obligations by mortgage, pledge or other charge of or over any of its assets for that purpose;

(b) protect the assets of the company for the benefit of the company, its creditors and its members and, at the discretion of the directors, for any person having a direct or indirect interest in the company; and

(c) make gifts of any of the property of the company, provided that it will, after making any such gift, satisfy the solvency test.

(2) For the purpose of subsection (1)(b), notwithstanding any other provision of this Act or of any other enactment or rule of law for the time being in force in Vanuatu to the contrary, save the law as to fraudulent preference and the law as to dispositions made with intent to defraud creditors, the directors may cause the company to transfer any of its assets, business or liabilities in trust to one or more trustees and, with respect to such transfer, the directors may provide that the company, its creditors, its members, partners or any person having a direct or indirect interest in the company, or any of them, may be the beneficiaries.

(3) Where expressly permitted by its constitution, a company shall have the power by way of settlement or other dealing or disposition, to give the right to a person not being a member of the company to share in the whole or any part of its gains or profits, including future gains or profits to the exclusion of the members.

(4) Any settlement or other dealing or disposition made in accordance with subsection (3) shall be treated as if it was a distribution to a member and section 29 shall apply accordingly.

(5) A right to share in the gains or profits of the company given to a person under subsection (3) is not to be treated as a share in the capital of the company for the purposes of this Act.

10. Restrictions on international companies

(1) An international company shall not –

(a) carry on business in Vanuatu;

(b) acquire or own an interest in immovable property situate in Vanuatu other than a premises referred to in subsection (2)(b);

(c) carry on banking business as defined by the Financial Institutions Act [CAP 254], unless it is licensed under that Act;

(d) carry on banking business within the meaning of the International Banking Act [CAP 280], unless it is licensed under that Act;

(e) carry on trust business or company management business as defined by the Companies and Trust Service Providers Act No. 8 of 2010, unless it is licensed under that Act;

(f) carry on insurance business as defined by the Insurance Act No. 54 of 2005, unless it is licensed under that Act; or

(g) at any time have less than one member;

(h) make any invitation to the public to –

(i) subscribe for any shares or debentures in the company; or

(ii) deposit money with or lend money to the company.

(2) For the purposes of subsection (1)(a) an international company shall not be treated as carrying on business in Vanuatu by reason only that it –

(a) carries on business with another company incorporated under this Act or in furtherance of the business of the company carried on outside Vanuatu;

(ab) offers goods or services:

(i) electronically from a place of business in Vanuatu; or

(ii) through an internet or other electronic service provider located in Vanuatu; or

(ac) makes it known by way of advertisement or by any statement on a web-site or by an electronic record as defined in the Electronic Transactions Act [Cap. 263] that it may be contacted at a particular address in Vanuatu or it uses a Vanuatu domain address

(b) rents premises from which to carry on its business as permitted by this Act;

(c) makes or maintains deposits with a person licensed to carry on banking business pursuant to the International Banking Act [CAP 280] and the Financial Institutions Act [CAP 254];

(d) obtains professional services from its registered agent, counsel, attorneys, accountants, bookkeepers, trust companies, management companies, investment advisers, insurance brokers or agents or other similar persons carrying on business within Vanuatu;

(e) prepares or maintains its books and records within Vanuatu;

(f) holds meetings within Vanuatu of its directors or members;

(g) holds shares, debt obligations or other securities in a company incorporated under this Act or under the Companies Act; or

(h) issues shares, debt obligations or other securities to any person resident in Vanuatu or any company incorporated under this Act or under the Companies Act.

(3) A company may be wound up by the court upon a petition presented by the Commission if it contravenes any of the provisions of subsection (1).

(4) A company that contravenes subsection (1) shall be liable on conviction to a daily default fine of $100.

(5) A director who knowingly permits the contravention of subsection (1) shall be liable on conviction to a daily default fine of $100.

11. Validity of acts of company

(1) The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything in the company's constitution.

(2) A member of a company may bring proceedings to restrain the doing of an act which, but for subsection (1), would be beyond the company's capacity provided that so such proceedings shall lie in respect of an act to be done in fulfillment of a legal obligation arising from a previous act of the company.

12. Power of directors to bind company

(1) The power of the directors to bind the company, or authorize others to do so, in favour of a person dealing with a company in good faith, shall be deemed to be free of any limitation deriving from –

(a) the company's constitution; or

(b) any resolution of the members or of any class thereof.

(2) For the purposes of this section –

(a) a person deals with a company if he is a party to any transaction or other act to which the company is a party;

(b) a person shall not be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors as derived from the company's constitution or any resolution of the members or of any class thereof.

(3) It remains the duty of the directors of a company to observe any limitations on their powers flowing from the company's constitution or from any resolution of members or any class thereof and subsection (1) does not affect –

(a) any right of a member of the company to bring proceedings to restrain the doing of an act which is beyond the powers of the directors provided that no such proceedings shall lie in respect of an act to be done in fulfillment of a legal obligation arising from a previous act of the company; or

(b) any liability incurred by the directors of the company or any other person, by reason of the directors exceeding their powers.

13. No duty to enquire as to capacity of company or authority of directors

(1) A party to a transaction with a company is not bound to enquire as to whether it is permitted by the company's constitution or as to any limitation on the powers of the directors to bind the company or authorize others to do so.

(2) A person having dealings with a company is, subject to subsection (4), entitled to make, in relation to those dealings, the assumptions referred to in subsection (3) and, in any proceedings in relation to those dealings, any assertion by the company that the matters that the person is so entitled to assume were not correct shall be disregarded.

(3) The assumptions that a person is, by virtue of subsection (2), entitled to make in relation to dealings, transactions or acts with a company are –

(a) that, at all relevant times, the constitution of the company has been complied with;

(b) that a person who appears, from the register of directors of the company, to be a director of that company has been duly appointed and has authority to bind the company, and authorize others to do so, free of any limitation under the constitution of the company;

(c) that a person who is held out by the company to be an officer or an agent of the company has been duly appointed and has authority to exercise the powers and perform the duties customarily exercisable or performed by an officer or agent of the kind concerned;

(d) that a document has been duly authorized and executed by the company in accordance with sections 66 and 70, whether or not the common seal of the company has been affixed and without the need to enquire as to whether or not a valid meeting of the relevant officers was, in fact, properly held; and

(e) that the officers of the company properly perform their duties to the company.

(4) Notwithstanding subsection (2), a person is not entitled to make an assumption referred to in subsection (3) in relation to dealings with the company if at the relevant time he had actual knowledge, or suspected, that such assumption was not correct.

14. Change of status

(1) Every company incorporated (or continued) under this Act may, unless its constitution otherwise provides, change its status from any of the types of companies specified in paragraphs (a) to (c) of section 2(2) to any other type of company specified therein in accordance with this section and such change may be effected notwithstanding that at some earlier time the company has been any other (or the same) type of company as provided under that subsection.

(2) A company may change its status only if all of the following requirements are complied with:

(a) the proposed change is specifically authorized by a special resolution of the members of the company and is given effect to, as provided by subsection (3) within six months from the date of such resolution; and

(b) the directors make a statutory declaration which is lodged with the Commission that:

(i) the change of status will, in their honest belief, not result in the company thereby being incapable of meeting its obligations to its creditors as they fall due; and

(ii) the company has complied with all the provisions of this Act (including the payment of any fees due to the Commission); and

(iii) the constitution will be duly amended within three days to reflect the change of status.

(3) The change of status of a company shall take effect upon the day upon which it files a copy of the amended constitution with the Commission.

(4) Where:

(a) any member of a company did not vote in favour of the members' special resolution to change the status of the company; and

(b) the change of status may have the effect of increasing the liability of that member;

then except in so far as that change was made in accordance with the rights of that member as were specified in the constitution of the company at the time that person became a member, that member may exercise the rights of a dissenter pursuant to section 91.

(5) A member who has forfeited his membership interest pursuant to subsection (4) shall receive from the company such amount as may be specified in the constitution or as may be agreed or, failing that such amount as may be determined by the Commission (or a chartered accountant approved by the Commission, whose costs are to be paid by the company) as representing that members' proportional interest in the realisable net tangible assets of the company save however that any such amount shall be paid only to the extent to which the company would not otherwise be rendered insolvent.

(6) A certificate of change of status, in the form of a certificate of incorporation issued by the Commission shall be conclusive evidence that all the requirements of this Act with respect to the change of status have been complied with and that the company is henceforth of the type stated in that certificate, being a company validly incorporated pursuant to this Act.

(7) Any change in status of a company pursuant to this section shall not operate to –

(a) create a new legal entity;

(b) prejudice or affect the identity of the body corporate, or its continuity;

(c) affect the property or rights or obligations of the company; or

(d) render defective any legal proceedings whatsoever.

PART 4 – CAPITAL AND DIVIDENDS

15. Nature of shares

(1) A share is a form of personal property which represents an entitlement in respect of the capital, income or control of a company and confers on the holder all or any of the following rights:

(a) the right to share in the distribution of income of the company;

(b) the right to share in the distribution of the surplus assets of the company upon its liquidation;

(c) the right to vote at meetings of the company;

(d) the right to repayment at a future date of any sum in consideration of which the share was issued;

(e) the right to be paid a return at a specified rate on the sum in consideration of which the share was issued together with such other rights and privileges and subject to such limitations or conditions as may be provided for in the constitution of the company or upon the issue of the share.

(2) Unless otherwise specified in its constitution or upon the issue of the share, each share has attached to it the following:

(a) the right to one vote at any meeting of the company (other than a meeting of a class of members of which the holder of the share is not a member) which is held to do anyone or more of the following:

(i) to appoint or remove a director;

(ii) to approve any alteration to the constitution;

(b) the right to an equal share in dividends authorized by the directors in respect of its class or series;

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

16. Types of shares

(1) Subject to any limitations in its constitution, a company shall have the power to issue–

(a) *(Repealed)*

(b) shares having special, conditional, enhanced, limited or no voting rights;

(c) shares with or without par value;

(d) numbered or unnumbered shares;

(e) convertible common, ordinary, preferential or redeemable shares;

(f) shares that entitle participation only in certain assets;

(g) shares, the holders of which are entitled to forfeit them;

(h) shares in any one or more currencies;

(i) options, warrants or rights, or instruments of a similar nature, to acquire any securities of the company;

(j) securities that, at the option of the holder thereof or of the company or upon the happening of a specified event, are convertible into, or exchangeable for,

other securities in the company or any property then owned or to be owned by the company;

or any combination thereof.

(2) Without limiting subsection (1) shares may carry the right to suspend the voting rights of other shares.

(3) A registered share shall be transferable unless otherwise specified in the company's constitution or upon the issue of the share.

16A. Prohibition on issuing bearer shares and bearer share warrants

(1) 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.

17. Alterations of capital

Subject to its constitution a company may by resolution of members or, where permitted by its constitution, by resolution of its directors –

(a) purchase, redeem or otherwise acquire and hold its own shares;

(b) increase or reduce the number of its shares;

(c) exchange bearer shares for registered shares or shares that are to be registered;

(d) change the currency in which any of its shares are denominated;

(e) change par value shares to no par value and change no par value shares to par value;

(f) increase or decrease the par value of any of its shares;

(g) divide any shares into a larger number of shares of the same class or series or combine any of its shares into a smaller number of shares of the same class or series, provided where shares with par value are divided or combined the aggregate par value of the new shares shall be equal to the aggregate par value of the old shares;

(h) determine the number of classes and series of shares and the number of shares of each such class and series, the par value of shares with par value and the value at which shares with no par value are to be issued; and

(i) determine the designations, powers, preferences, rights, qualifications, limitations or restrictions of each class and series of shares;

or any combination or variation thereof.

18. Fractional shares

Subject to any limitations in its constitution, a company may issue fractions of a share and unless and to the extent otherwise provided in the constitution, a fractional share has the corresponding fractional liabilities, limitations, preferences, privileges, qualifications, restrictions, rights and other attributes of a whole share of the same class or series.

19. Rights of holders of classes of shares

(1) If the share capital of a company is divided into different classes of shares and provision is made in its constitution for authorizing the variation or abrogation of the rights attached to any class of shares in the company, and subject to the consent of any specified proportion of the holders of the issued shares of that class or the

sanction of a resolution passed at a separate meeting of holders of those shares, the rights attached to any class of shares are at any time varied or abrogated in pursuance of the said provisions, the holders of not less in the aggregate than 10 per centum of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation or abrogation, may apply to the court to have the variation or abrogation cancelled and if any such application is made, the variation or abrogation shall not have effect until confirmed by the court.

(2) An applicant shall be deemed not to have consented to or voted in favour of the resolution for the variation or abrogation if any relevant fact was not disclosed by the company to the member before he so consented or voted.

(3) The application under this section shall be made within 28 days after the date on which consent was given or the resolution was passed or within such further time as the court may allow.

(4) Upon hearing an application under this section, the court shall make an order confirming or setting aside the variation or abrogation on such terms as appear to it to be just.

(5) The issue by a company of:

(a) a First Schedule debenture; or

(b) shares limiting or affecting any rights previously conferred on the holders of any existing shares or class or series of shares,

shall be deemed to be a variation of the rights of any other shares issued by the company to which the holders of those shares may object and the provisions of this section shall apply *mutatis mutandis* to such deemed variation.

20. Allotment of shares

Subject to any limitations in its constitution, the treasury shares of a company shall be at the disposal of the directors who may offer, allot, grant options over or otherwise dispose of such shares to such persons, at such times and upon such terms as they may, by resolution, determine.

21. Consideration for shares

(1) Each share in a company shall be issued for valuable consideration which, subject to any limitations in its constitution, may include money, services rendered, personal property (including other shares, debt obligations and other securities in the company), an interest in real property, a promissory note or other binding obligation to contribute money or property, or any combination thereof.

(2) Subject to any limitations in its constitution, a company may issue shares for such amount as may be determined from time to time by the directors, except that in the case of shares with par value, the amount shall not be less than the par value and, in the absence of fraud, the decision of the directors as to the value of the consideration received by the company in respect of the issue shall be conclusive, unless a question of law is involved.

(3) A share issued by a company upon conversion of or in exchange for another share or a debt obligation or other security in the company, shall be treated for all purposes as having been issued for money equal to the consideration received or deemed to have been received by the company in respect of the other share, debt obligation or security.

22. *(Repealed)*

23. Issue and effect of share warrants

(1) Subject to any limitations in its constitution or upon the terms which the share is issued, a company shall at the request of a holder of any fully paid up registered share and upon surrender of the certificate of the registered share, if any, issue a share warrant which shall, where applicable, bear the same number as any certificate surrendered. A share warrant shall constitute conclusive evidence of the right to the title to the share specified in that share warrant.

(2) Subject to any limitations in its constitution or upon the terms which the share is issued, a company shall at the request of a holder of any share warrant, in exchange for that share warrant, issue a share certificate or share certificates in respect of the shares specified in the share warrant.

(3) The holder of a share warrant issued by a company shall be deemed not to be a member of that company and, subject to subsection (4), shall not be entitled to exercise any of the rights or receive any of the benefits of membership of the company unless and until such time as the share warrant is surrendered.

(4) Any share warrant issued by a company may carry coupons or other certificates for the payment of dividends and, in respect of any other rights determined in accordance with the constitution or the terms of issue of the share warrant, such coupons or certificates may be divisible from any other rights attaching to that share warrant.

(5) The exchange of any share certificate for a share warrant or vice versa in accordance with subsections (1) or (2) shall not constitute a cancellation of the existing share and the issue of a new share.

24. Share certificates

(1) Subject to any provisions in the constitution of a company, the directors shall resolve whether or not share certificates shall be issued and in respect of which classes of its shares they shall be issued.

(2) A share certificate issued by a company shall be –

(a) signed by at least two directors of the company or, if the company only has one director, by that director; or

(b) under the common seal of the company, with or without the signature of any director of the company;

and the constitution may provide for the signatures or common seal to be facsimiles.

(3) A share certificate issued by a company specifying a share held by a member of that company shall be *prima facie* evidence of the title of the member to the share specified therein.

25. Transfer of registered shares and share warrants

(1) Subject to any limitations in the constitution –

(a) registered shares or share warrants which are transferable may be transferred by a written instrument of transfer signed by the transferor and containing the name and address of the transferee;

(b) a company shall on the application of the transferor or on receipt from the transferee of a transfer as aforesaid of a registered share in the company or share warrant issued by the company enter in its Register of Members the name of the transferee of the share or share warrant;

(c) in the absence of a written instrument of transfer as aforesaid the directors may accept such evidence of a transfer of shares or share warrants as they consider appropriate.

(2) A company shall not be required to treat a transferee of a registered share in the company or share warrant issued by the company as a member until the transferee's name has been entered in the Register of Members.

(3) A transfer of registered shares or share warrants of a deceased or bankrupt member of a company made by his personal representative, guardian or trustee, as the case may be, or a transfer of registered shares or share warrants owned by a person as a result of a transfer from a member by operation of law, shall be as valid as if the personal representative, guardian, trustee or transferee had been the registered holder of the shares or share warrants at the time of the execution of the instrument of transfer.

(4) A company must not transfer its registered share if the company or its beneficial owner is an owner of a real property in Vanuatu.

(5) Subsection (4) does not apply if a payment of 4% of the registered share value has been made to the Commission by that company.

26. *(Repealed)*
26A. *(Repealed)*
26B. *(Repealed)*
26C. *(Repealed)*
26D. *(Repealed)*

27. Forfeiture of shares

When a holder of a share, being so entitled, forfeits that share, his liability in respect of the share shall be limited to the amount of any calls of amounts, if any, unpaid on those shares where the call is made within a period of three months after the date of forfeiture provided that a forfeiture, or where there have been previous forfeitures, the last forfeiture shall not be effective if the forfeiture by itself or in combination with any other forfeiture results in the reduction of the number of members of the company to less than one.

28. Seizure

(1) Where a governmental authority, whether it is legally constituted or not, in any jurisdiction outside Vanuatu by or in connection with –

(a) any nationalization, expropriation, confiscation, coercion, force or duress, or similar action; or

(b) the imposition of any tax, assessment or other governmental charge,

takes or seizes any shares or other interest in a company incorporated under this Act, the company itself or a person holding shares or any other interest in a company, including an interest as a creditor, may apply to the court for an order that the company disregard the taking or seizure and continue to treat the person who would have held shares or any other interest in the company but for the taking or seizure of the shares or other interest as continuing to hold the shares or other interest.

(2) Without affecting subsection (1), where a person whose shares or other interest have been taken or seized as referred to in subsection (1) is other than a natural person, the person making the application under subsection (1) or the company itself, may apply to the court for an additional order for the company to treat the persons believed by the company to have held the direct or indirect beneficial interests in the shares or other interests in the company as the holder of those shares or other interest.

(3) The court may, upon application made to it under subsection (1) or (2) grant such relief as it considers just, equitable and proper and may order that any shares of or other interest in the company vest in the company as trustee or in such other trustees

as the court may appoint upon such trusts and for such purposes as the court may determine.

29. Distributions

(1) Subject to any limitations in its constitution, the directors of a company may by resolution authorize a distribution by the company at such time and of such amount and to such members as they think fit, provided that they are satisfied that the company will, after the distribution, satisfy the solvency test.

(2) In applying the solvency test for the purposes of this section,

(a) "debts" shall include fixed preferential returns on shares ranking ahead of those in respect of which a distribution is made; and

(b) "liabilities" shall include the amount that would be required, if the company was to be wound up immediately after the distribution, to satisfy the fixed entitlements of all members or other persons at that time;

except to the extent where that fixed preferential return or entitlement is by virtue of the constitution or the terms upon which any shares were issued, subject to the power of the directors to make the distribution.

(3) Any resolution authorizing a distribution shall record the director's opinion that the company will, after the distribution, satisfy the solvency test and shall record the names of the directors who voted in favour of the resolution.

(4) A distribution to a member made at a time when the company did not immediately after the distribution satisfy the solvency test as modified by this section may be recovered by the company from the member unless the member –

(a) received the distribution in good faith and without knowledge of the company's failure to satisfy the solvency test; and

(b) has altered his position in reliance on the validity of the distribution, so that having regard to all the circumstances it would be inequitable to require repayment in full or at all, as the case may be.

(5) Where a distribution has been made and, either –

(a) the procedure set out in subsection (3) has not been followed; or

(b) the procedure set out in subsection (3) was followed but there did not exist reasonable grounds for the opinion set out in the resolution;

those directors who failed to take reasonable steps to ensure that the procedure set out in subsection (3) was followed or who voted in favour of the resolution shall be personally liable to the company to restore the distribution, except in so far as it may be recoverable from the members under subsection (4).

(6) If in any action brought against a director or a member under this section the court is satisfied that the company could properly have made a distribution of lesser value which would not have caused the company to fail the solvency test, the court may –

(a) relieve the director from liability in respect of; or

(b) permit the member to retain,

the distribution made up to the value of any distribution that might properly have been made.

30. Dividends

(1) Subject to any limitations in its constitution and to section 29 a company may, by a resolution of directors, declare and pay dividends in money, shares or other property.

(2) Any person entitled to receive a dividend of shares may elect not to receive such shares.

(3) A division of the shares of a class or series into a larger number of shares of the same class or series, having in the case of shares with par value a proportionately smaller par value, shall not constitute a dividend of shares.

31. Acquisition of own shares

(1) Subject to any limitations in its constitution and to section 29 a company may purchase, redeem or otherwise acquire and hold its own shares provided that such transaction does not result in the company being the sole member.

(2) Subject to any provision to the contrary in its constitution, a company may provide financial assistance, whether directly or indirectly, and whether by way of loan, guarantee, or otherwise, for the purpose of, or in connection with, the purchase or subscription of its own shares of any subsidiary or of any holding company.

(3) There shall be no requirement to meet the solvency test where shares are purchased, redeemed or otherwise acquired –

(a) pursuant to a right of a member to have his shares redeemed or to have his shares exchanged for money or other property of the company;

(b) in exchange for newly issued shares in the company;

(c) by virtue of the provisions of section 89; or

(d) pursuant to an order of the court.

(4) Subject to any limitations in the constitution, shares that a company purchases, redeems or otherwise acquires may be cancelled or held as treasury shares.

32. Shares disabled in respect of voting and dividends

Where shares in a company are held –

(1) by the company as treasury shares those shares are not entitled to vote or to have dividends paid thereon; and

(2) by another company of which the first company holds, directly or indirectly, shares having more than 50 per cent of the votes in the election of directors of that other company, the shares of the first company held by that other company are not entitled to vote or to have dividends paid thereon and the shares shall not be treated as outstanding for any purpose under this Act except for the purpose of determining the capital of the first company.

33. Increase or reduction of capital

(1) Subject to any limitations in the constitution the capital of a company may by resolution of directors, be –

(a) increased; or

(b) reduced by –

(i) returning to members any amount received by the company upon the issue of any of its shares;

(ii) canceling any capital that is lost or not represented by assets having a realisable value.

(2) A company may if so authorized by its constitution and with the consent of the members affected, convert any amount of the capital of the company to debt obligations owed by the company to the holder of those shares (whether by repayment or by direct conversion to an instrument).

(3) A reduction of capital is a distribution and shall be subject to section 29.

(4) Any capital reduction transaction effected otherwise than in accordance with the provisions of this section shall be void at the absolute discretion of a liquidator or any creditor of the company.

PART 5 – REGISTERED OFFICE AND AGENT

34. Registered office

(1) A company shall at all times have a registered office in Vanuatu.

(2) Upon incorporation the address of the registered office set out in the constitution shall be the first registered office of the company.

(3) The directors of a company may by resolution change the address of the registered office of the company, which change shall be notified by the company in writing to the Commission within 14 days of the change occurring.

(4) A company that willfully fails to notify the Commission of the change of address of the registered office of the company shall be liable on conviction to a daily default fine of $25.

(5) A director who knowingly permits the failure to notify the Commission of the change of registered office address of a company shall be liable on conviction to a daily default fine of $25.

35. Registered agent

(1) A company shall at all times have a registered agent in Vanuatu.

(1A) A registered agent under subsection (1) must be licensed under paragraph 15(1)(a) of the Company and Trust Services Provider Act No. 8 of 2010.

(2) Upon incorporation the person named in the constitution as the registered agent shall be the first registered agent of the company.

(3) The directors of a company may by resolution change the registered agent of the company which change shall be notified in writing to the Commission within 14 days of the change occurring.

(3A) A company that fails to comply with subsection (3) commits an offence punishable upon conviction by a fine not exceeding VT 125 million.

(4) Being a registered agent shall not by itself make the registered agent an officer of the company.

(5) Upon becoming the registered agent of a company, the registered agent must obtain the following information:

(a) the company's constitution;

(b) the certificate or other proof of incorporation under this Act or under another law of the company;

(c) details of the beneficial owners of the company;

(d) the Register of Members of the company;

(e) details of the nominators of nominee shareholders and nominee directors.

(6) The registered agent of a company must give written notice of a change in any of the following:

(a) the name of the company;

(b) the constitution of the company;

(c) the details of the nominator of a nominee shareholder or nominee director;

(d) to the Commission within 14 days after the change occurs.

(7) The registered agent of a company must ensure any change in the Register of Members of the company or the details of the beneficial owners of the company is updated in the registered agent's records within 14 days after the change occurs.

(8) The registered agent of a company must ensure that the information referred to in subsection (5) is kept up to date and retained for at least 6 years after the registered agent ceases to be the registered agent of the company.

(9) If a registered agent fails to comply with subsection (5), (6), (7) or (8), the registered agent commits an offence punishable upon conviction by:

(a) if the registered agent is a natural person - a fine not exceeding VT 25 million or imprisonment not exceeding 15 years, or both; or

(b) if the registered agent is a body corporate - a fine not exceeding VT 125 million.

35A. Commission may require certain information or documents about beneficial owners or members

(1) Subject to subsection (2), the Commission may, by notice in writing to the registered agent of a company, require the registered agent to provide the Commission 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; or

(b) details of the members of the company as contained in its Register of Members.

(3) If the registered agent:

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

(b) knowingly or recklessly gives the Commission information or documents that are false or misleading;

the registered agent commits an offence punishable upon conviction by the penalty referred to in subsection (4).

(4) The penalty is:

(a) if the registered agent is a natural person - a fine not exceeding VT 15 million or imprisonment not exceeding 5 years, or both; or

(b) if the registered agent is a body corporate - a fine not exceeding VT 75 million.

(5) To avoid doubt, this section does not limit section 128B.

PART 6 – DIRECTORS AND OFFICERS

36. Management by directors

Subject to any limitations in its constitution, the business and affairs of a company shall be managed by or under the direction of a board of directors that consists of one or more persons who may be natural persons or bodies corporate.

37. Appointment, term and removal of directors

(1) The first directors of a company shall and any subsequent directors may be appointed by the members for such term as the members may determine or where permitted by its constitution, the directors may also appoint directors for such term as they may determine.

(2) A director shall cease to hold office on the expiry of his term or on his death, resignation or removal or, in the case of a corporate director, upon its entering liquidation or upon its ceasing to be a body corporate.

(3) Subject to any limitations in the constitution –

(a) a director shall cease to hold office if the other directors, being not less than the majority thereof, request his resignation in writing;

(b) a director may resign his office by giving written notice of his resignation to the company and the resignation shall have effect from the date the notice is received by the company or from such later date as may be specified in the notice;

(c) if a director shall cease to hold office before the expiry of his term of office the remaining directors may be resolution appoint a new director in his place to complete his term;

(d) a director shall not be required to hold shares in the company;

(e) the members may at any time remove a director from office.

38. Number of directors

The number of directors being not less than one may be fixed by the constitution or, if not so fixed may be fixed by the members.

39. Powers of directors

The directors shall have all the powers of the company that are not reserved to its members in its constitution or under this Act.

40. Emoluments of directors

Subject to any limitations in the constitution, the emoluments of any director in respect of services to be rendered by him as a director may be determined by a resolution of directors.

41. Committee of directors

(1) The directors may, by resolution, designate one or more committees, each consisting of one or more directors.

(2) Subject to any limitations in the constitution, each committee shall have such powers and authority as are set forth in the resolution establishing the committee, except that no committee shall have power or authority to appoint or remove directors.

42. Meetings of directors

(1) Subject to any limitations in the constitution, the directors of a company may meet at such times and in such manner and places within or outside Vanuatu as they may determine to be necessary or desirable.

(2) A director shall be deemed to be present at a meeting of directors if –

(a) he participates by telephone or other real time electronic means of audio interactive communication; and

(b) all directors participating in the meeting are able to hear each other and recognize each other's voice.

43. Notice of meetings of directors

(1) Subject to any requirement in the constitution to give longer notice, each director shall be given not less than 2 days notice of meetings of directors.

(2) Subject to any limitations in the constitution, a meeting of directors held otherwise than in accordance with subsection (1) shall be valid if all the directors, or such majority thereof entitled to vote at the meeting as may be specified in the constitution, have waived the notice of the meeting; and for this purpose, the presence of a director at the meeting shall be deemed to constitute waiver on his part.

(3) The inadvertent failure to give notice of a meeting to a director, or the fact that a director has not received the notice, shall not invalidate the meeting.

44. Quorum for meetings of directors

The quorum for a meeting of directors may be fixed by the constitution, but where no quorum is so fixed a meeting of directors shall be properly constituted for all purposes if at the commencement of the meeting two directors are present in person or by alternate, provided that if a company has only one director that director shall constitute a quorum.

45. Resolutions of directors

Where any action is required or permitted to be made or done by the directors of a company it may be made or done by a resolution of directors.

46. Alternate directors

(1) Subject to any limitations in the constitution, a director may by written instrument appoint an alternate who need not be another director.

(2) An alternate appointed under subsection (1) shall be entitled to attend meetings in the absence of the director who appointed him and to vote and act in his place.

(3) An alternate director shall be responsible as a director for all his acts or omissions when acting in the place of the director who appointed him.

(4) The appointment of an alternate director shall cease –

(a) at the expiration of the period, if any, for which he was appointed;

(b) if his appointor terminates his appointment and gives written notice to that effect to the company;

(c) if his appointor for any reason ceases to be a director;

(d) if the alternate director resigns by notice in writing to the company;

(e) if, in the case of a corporation, it enters into liquidation or ceases to be a body corporate;

(f) if, in the case of an individual, he becomes bankrupt or makes any arrangement or composition with his creditors generally; or

(g) if he becomes of unsound mind or of such infirm health as to be incapable of managing his affairs.

47. Officers and agents

(1) The directors may, by resolution, appoint any person, including a person who is a director, to be an officer or agent of the company.

(2) Subject to any limitations in the constitution, any officer or agent may be given such powers and authority of the directors, including the power and authority to affix the common seal of the company, as are set forth in the constitution or in the resolution appointing him, except that no officer or agent may be given any power or authority with respect to the matters requiring a resolution of directors under this Act.

(3) The directors may remove an officer or agent appointed under subsection (1) and may revoke or vary a power conferred on him under subsection (2).

48. Standard of care

Every director, officer and agent of a company, in performing his functions, shall act in good faith and in the best interest of the company and shall exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

49. Reliance on records and reports

Every director, officer and agent of a company, in performing his functions, is entitled to rely upon the Register of Members kept under section 58, the books of accounts and records and the minutes and copies of consents to resolutions kept under section 63 and any report made to the company by any other director, officer, agent or by any person selected by the company to make the report.

50. Conflict of interests

(1) Subject to subsection (2) and to any limitations in the constitution, no agreement or transaction between –

(a) a company; and

(b) one or more of its directors or connected person, or any person in which any director or liquidator has a financial interest or to whom any director or liquidator is related, including as a director or liquidator of that other person,

shall be void or voidable by reason only that the director or connected person is present at the meeting of directors, or at the meeting of the committee of directors, that approves the agreement or transaction or that the vote or consent of the director or connected person is counted for that purpose.

(2) An agreement or transaction referred to in subsection (1) shall be valid if –

(a) the material facts of the interest of each director or connected person in the agreement or transaction and his interest in or relationship to any other party to the agreement or transaction are disclosed in good faith or are known by the members entitled to vote at a meeting of members; and

(b) the agreement or transaction is approved or ratified by a resolution of members.

(3) Subject to any limitations in the constitution, a director who has an interest in any particular business to be considered at a meeting of directors or members may be counted for purposes of determining whether the meeting is duly constituted in accordance with this Act.

51. Indemnification

(1) Subject to subsection (2) and any limitation in its constitution, a company shall indemnify against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings, any person who acted honestly and in good faith in the best interests of the company.

(2) In the case of criminal proceedings, the indemnities set out in subsection (1) shall only take effect where the person had no reasonable cause to believe that his conduct was unlawful, and who –

(a) is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was a director or an officer of the company; or

(b) is or was, at the request of the company, serving as a director or an officer of, or in any other capacity is or was acting for, another company or body corporate or a partnership, joint venture, trust or other enterprise.

52. Personal liability

(1) The liability of a member of a company is limited to any amount expressly provided for in the constitution, including any amount unpaid on any share held by the member.

(2) Where a share is issued and the constitution or the terms of the issue applying hereto render the member liable to calls, or otherwise imposes a liability on its holder, that liability attaches to the holder of the share for the time being, and not to any prior holder of the share, whether or not the liability became enforceable before the share became the property of the current holder.

(3) Where all or part of the consideration for the issue of a share remains unsatisfied and the person to whom the share was issued no longer holds that share, liability in respect of that unsatisfied consideration does not attach to subsequent holders of the share, but remains the liability of the person to whom the share was issued, or any other person who assumed that liability at the time of issue.

(4) *(Repealed)*

(5) A member is not liable for any obligation of the company by virtue only of his status as a member.

(6) Nothing in this section shall affect a member's liability to the company on any contract (including a contract for the issue of shares) or for any tort or breach of fiduciary duty or other actionable wrong committed by him.

(7) Save as may be specified by this Act or by contract, the members of a company do not owe any duty, liability or obligation to the company, any creditor of the company or any other company related to the company.

(8) Until such time as a company is dissolved pursuant to the provisions of this Act, the company shall continue its corporate existence (without rendering defective any legal or other proceedings instituted against the company or affecting any property, rights, powers, authorities, duties, functions, liabilities or obligations of the company or any other person).

PART 7 – COMPANY ADMINISTRATION

53. Meetings of members

(1) Subject to any limitations in the constitution, the directors of a company may convene meetings of the members of the company at such times and in such manner and places within or outside Vanuatu as the directors consider necessary or desirable.

(2) Subject to any provision in the constitution for a lesser percentage, upon the written request of members holding not less than 25 per cent of the votes of the outstanding voting shares in the company, the directors shall convene a meeting of members.

(3) Subject to any limitations in the constitution, a member shall be deemed to be present at a meeting of members if –

(a) he participates by telephone or other real time electronic means of audio interactive communication; and

(b) all members participating in the meeting are able to hear each other and recognize each other's voice.

(4) A member may be represented at a meeting of members by a proxy who may speak and vote on behalf of the member.

(5) Subject to there being no provisions to the contrary in the constitution, the following provisions shall apply in respect of joint ownership of shares –

(a) if 2 or more persons hold shares jointly each of them may be present in person or by proxy at a meeting of members and may each speak as a member;

(b) if only one of them is present in person or by proxy, he may vote on behalf of all of them; and

(c) if 2 or more are present in person or by proxy, the first of them named in the Register of Members in respect of the share shall vote on behalf of all of them.

54. Notice of meetings of members

(1) Subject to a requirement in the constitution to give longer notice, the directors shall give not less than 7 days notice of meetings of members to those persons whose names on the date the notice is given appear as members in the Register of Members and are entitled to vote at the meeting.

(2) Notwithstanding subsection (1) but subject to any limitations in the constitution, a meeting of members called at shorter notice shall be valid if members, holding not less than a 90 per cent majority or such lesser majority as may be specified in the constitution of –

(a) the total number of the shares of the members entitled to vote on all the matters to be considered at the meeting; or

(b) the votes of each class or series of shares where members are entitled to vote thereon as a class or series,

have waived notice of the meeting and for this purpose, the presence of a member in person or by proxy at the meeting shall be deemed to constitute waiver on his part.

(3) The failure of a member to receive notice of a meeting or the inadvertent failure of the directors to give notice of a meeting to a member, shall not invalidate a meeting or any actions taken at such meeting.

55. Quorum for meeting of members

Except as otherwise provided in the constitution a meeting of members shall be properly constituted for all purposes if at the commencement of the meeting two members are present in person or by proxy, provided that where a company only has one member that members shall constitute a quorum.

56. Voting by members

(1) Except as otherwise provided in the constitution, all shares vote as one class and each whole share has one vote.

(2) The directors of a company may, in the notice of a meeting, fix any date being on or before the meeting as the record date for determining those shares that are entitled to vote at the meeting and unless so fixed it shall be 7 days prior to the meeting.

57. Service of notice on members

(1) Any notice, information or written statement required under this Act to be given to members by a company must be served in the manner prescribed in its constitution, or in the absence of any such provision, by personal service or by mail addressed to each member at the address shown in the Register of Members.

(2) *(Repealed)*

(3) Notwithstanding any other provisions of this Act and subject to the constitution, notice to the person first named in the Register of Members for any share jointly held shall be deemed to be notice to all holders of that share.

58. Register of Members

(1) A company shall cause to be kept one or more registers to be known as the Register of Members containing –

(a) the names and addresses of the persons:

(i) who hold registered shares in the company, if the company is a company limited by shares; or

(ii) who give a guarantee under the constitution of the company, if the company is a company limited by guarantee; or

(iii) who hold registered shares of the company, and give a guarantee under the constitution of the company, if the company is a company limited both by shares and guarantee;

(b) the number of each class and series of registered shares held by each person;

(ba) the names and addresses of the persons who hold registered share warrants issued by the company;

(bb) the identification number of each registered share warrant;

(c) the date on which the name of each person was entered in the Register of Members;

(d) the date on which any person ceased to be a member,

(e) *(Repealed)*

(f) (*Repealed)*

provided that the company may delete from the Register of Members information relating to persons who are no longer members or information relating to bearer shares that have been cancelled.

(2) The Register of Members may be in such form as the directors may approve but if it is magnetic, electronic or other data storage form, the company must be able to produce legible evidence of its contents within a reasonable time when required by the Commission.

(3) A copy of the Register of Members, commencing from the date of the incorporation of the company, shall be kept at the registered office of the company.

(4) The Register of Members shall be *prima facie* evidence of any matter directed or authorized by this Act to be contained therein.

(5) A company that willfully contravenes this section shall be liable on conviction to a daily default fine of $25.

(6) A director who knowingly permits the contravention of this section shall be liable on conviction to a daily default fine of $25.

58A Company to keep up to date records of beneficial owners and nominators of nominee shareholders and directors

A company must ensure that up to date records are kept of:

(a) the beneficial owners of the company; and

(b) the nominators of nominee shareholders and nominee directors.

59. *(Repealed)*

60. Particulars in Register of Members in relation to share warrants

(1) Upon the issue of a share warrant in respect of any share, a company shall –

(a) in the case of the surrender of a certificate of a registered share, strike out of its Register of Members and any branch register wherein the share is registered the name of the member entered therein as holding the share in respect of which the share warrant is issued; and

(b) enter in the Register of Members the following particulars:

(i) the fact of the issue of the share warrant and the surrender of the share certificate; and

(ii) the date of the issue of the share warrant.

(2) Upon the surrender of a share warrant, the date of such surrender shall be entered as if it were the date on which the person ceased to be a member.

61. Rectification of Register of Members

(1) If there is unreasonable delay in entering any information in the Register of Members or information that is required to be entered in the Register of Members is omitted therefrom or inaccurately entered therein any member of the company, or any person who is aggrieved by any omission, inaccuracy or delay in the entering of any information may apply to the court for an order that the Register of Members be rectified.

(2) The court may in any proceedings under subsection (1) –

(a) either grant or refuse the application, with or without costs to be paid by the applicant; and

(b) order the rectification of the Register of Members; and

(c) direct the company to pay all costs of the application and any damages the applicant may have sustained; and

(d) determine any question relating to the right of a person who is a party to the proceedings to have his name entered in or omitted from the Register of Members, whether the question arises between –

(i) two or more members or alleged members; or

(ii) between members or alleged members and the company,

and generally the court may in the proceedings determine any question that may be necessary or expedient for the rectification of the Register of Members.

62. Service of documents on company

(1) Any summons, notice, order, document, process, information or written statement may be served on a company by leaving it at, or sending it by registered mail addressed to the registered office of the company, or by leaving it with, or sending it by registered mail to, the registered agent of the company.

(2) Service of any summons, notice, order, document, process, information or written statement served on a company by registered mail may be proved by showing that it–

(a) was mailed in such time as to permit it being delivered in the normal course of delivery, within the period prescribed for service; and

(b) was correctly addressed and the postage was prepaid.

63. Books and records

(1) A company shall keep such accounts and records as are necessary in order to reflect its current financial position.

(2) A company shall keep –

(a) minutes of all meetings of, and copies of all resolutions consented to by –

(i) directors;

(ii) members;

(iii) committees of directors;

(iv) committees of members; and

(b) a register of all its directors which shall contain the following particulars in respect of each director –

(i) in the case of an individual, his present, full names, any former names, his usual residential address and citizenship; and

(ii) in the case of a company, its full name and registered office in its country of legal existence.

(3) The accounts, records, minutes, copies of resolutions and register required by this section shall be kept at the registered office of the company or at such other place as the directors may determine.

(4) A company that willfully contravenes this section shall be liable on conviction to a daily default fine of $25.

(5) An officer who knowingly permits the contravention of this section shall be liable on conviction to a daily default fine of $25.

64. Seal

(1) A company may have a seal which shall have on its face the full name of the company and the words “Common Seal” or “Corporate Seal” and an imprint thereof shall be kept at the registered office of the company.

(2) The directors may, subject to the constitution, prescribe a method for the attestation of the affixing of the seal which may, with the authority of the directors, be affixed anywhere in the world.

65. Inspection of books and records

(1) A member of a company may, in person or by some other person, inspect during normal business hours the Register of Members, minutes of all meetings of members and resolutions of members of the company, and make copies or extracts there from.

(2) A person other than a member may only carry out an inspection under subsection (1) if he is authorized to do so by power of attorney granted to him by the member or some other form of written authority acceptable to the directors.

66. Execution of contracts

(1) Contracts on behalf of a company may be made as follows –

(a) A contract which if made by natural persons would by law be required to be in writing under seal, may be made on behalf of the company either –

(i) in writing under the common seal of the company and signed by a director or by some other person appointed by the directors for the purpose, provided that such signature need not be made contemporaneously with the affixing of the common seal of the company; or

(ii) in the case of a company having only one director, under the signature of that director; or

(iii) in the case of a company having two or more directors, under the signature of any two directors;

(b) A contract which if made between natural persons would by law be required to be in writing signed by the parties to be charged therewith, may be made on behalf of the company in writing and signed by any person acting under its authority, express or implied;

(c) A contract which if made between natural persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority express or implied.

(2) A contract entered into in accordance with this section –

(a) is valid and binding on the company and its successors and all other parties to it; and

(b) may be varied or discharged in the same manner in which it is authorized by this section to be made.

67. Pre-incorporation contracts

(1) In this section, the term “pre-incorporation contract” means

(a) a contract purporting to be made by a company before its incorporation;

(b) a contract made by a person on behalf of a company before and in contemplation of its incorporation.

(2) Notwithstanding any enactment or rule of law, a pre-incorporation contract may be ratified within such period as may be specified in the contract, or if no period is

specified, then within a period of 90 days after the incorporation of the company in the name of which, or on behalf of which, it has been made. A contract so ratified shall, upon ratification be valid and enforceable as if the company had been a party to the contract when it was made.

(3) 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 66.

(4) Notwithstanding any enactment or rule of law, in a pre-incorporation contact, 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 such period as may be specified in the contract, or if no period is specified, then within 90 days after the making of the contract; and

(b) that the company will ratify the contract within such period as may be specified in the contract, of if no period is specified, then within 90 days after the incorporation of the company.

(5) The amount of any damages recoverable in an action for breach of a warranty implied by virtue of subsection (4) shall be 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 the unperformed obligations under the contract if the contract had been ratified and cancelled.

(6) Where a company after its incorporation does not ratify a pre-incorporation contract, any party to that contract may apply to the court for an order –

(a) directing the company to return any property, whether real or personal, acquired pursuant to the contract to that party; or

(b) for any other relief in favour of that party respecting any such property; or

(c) validating the contract, whether in whole or in part;

and the court may, if it considers it just and equitable to do so, make any order or grant such relief as it thinks fit and whether or not an order has been made under subsection (5).

(7) In any proceedings against a company for breach of a pre-incorporation contract which has been ratified by the company, the court may, on the application of the company, any other party to the proceedings, or of its own motion, make such order for the payment of damages or other relief, in addition to or in substitution for any order which may be made against the company, against any person by whom that contract was made in the name of, or on behalf of the company, as the court considers just and equitable.

(8) Where a company, after its incorporation, enters into a contract with the same parties in the same terms as, or in substitution for, a pre-incorporation contract (not being a contract ratified by the company under this section), the liability of any person under subsection (4) (including any liability under an order made by the court thereunder for the payment of damages) shall be discharged.

(9) If a pre-incorporation contract has not been ratified by a company, or validated by the court under subsection (6), the company may not enforce or otherwise take the benefit of that contract.

68. Note and bills of exchange

A promissory note or bill of exchange shall be deemed to have been made, accepted or endorsed by a company if it is made, accepted or endorsed in the name of the company –

(a) by or on behalf or on account of the company; or

(b) by a person acting under the authority of the company;

and if so endorsed, the person signing the endorsement shall not be liable thereon.

69. Appointment of agents

(1) A company may, by an instrument in writing, whether or not under its seal, authorize any person, either generally or in respect of any specified matters, as its agent to act on behalf of the company and to execute contracts, agreements, deeds and other instruments on behalf of the company.

(2) A contract, agreement, deed or other instrument executed on behalf of the company by an agent appointed under subsection (1), is binding on the company and has the same effect as if it were under the seal of the company.

70. Authentication or attestation

(1) A document requiring authentication or attestation by a company may be signed by a director, a secretary or by an authorized officer or agent of the company, and need not be under its seal.

(2) The registered agent of a company may verify the signature of any director, officer or agent of the company.

71. Corporate representative at meetings

A body corporate being a director, member or creditor of a company may act by a natural person who has been appointed for the purpose by a written resolution of the directors or other governing body of the body corporate.

PART 8 – REGISTRATION OF CHARGES

72. Filing of charges

(1) In this Part –

"charge" means any form of security interest fixed or floating, over property, other than an interest arising by operation by law; and

"property" in the context of what is subject to a charge, includes all property, wherever situate, including future property.

(2) Subject to this Part, where a company acquires any property subject to a charge to which this section applies or such a charge is created by a company, the company or any other person interested in the charge must cause to be lodged with the Commission for filing within 42 days after the relevant date –

(a) A copy of the instrument, if any, by which the charge is created or evidenced; or

(b) A statement in the prescribed form giving a short description of the property charged, the amount thereby secured, the nature of the instrument, and the names of the chargees or persons entitled to the benefit thereof.

(3) The relevant date is in the case of a charge over property acquired by the company, the date of the acquisition and in the case of a charge created by the company, the date upon which the charge is created.

(4) Where the instrument or a statement is not lodged with the Commission in accordance with subsection (2), the charge shall, so far as any security on the company's property or undertaking is conferred thereby, but without prejudice to any

contract or obligations for repayment of the money thereby secured, be void against a liquidator and any creditor of the company.

(5) Nothing in subsection (2) shall prejudice any contract or obligation for repayment of the money secured by the charge and, when a charge becomes void under this section, the money secured thereby shall immediately become payable.

(6) The charges to which this section applies are all charges (including any charge securing a contingent debt or obligation) whether fixed or floating on any property of a company other than a charge under which the chargee is entitled to possession either of the goods or of a document of title to them.

(7) (a) Where a charge created in Vanuatu affects property outside Vanuatu the instrument creating or purporting to create a charge or a copy thereof accompanied by a statutory declaration verifying the same may be lodged for filing under and in accordance with subsection (2) notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the place in which the property is situated.

(b) A charge is not excluded from this section because the chargee is entitled to take possession in case of default or on the occurrence of some other event.

(8) When a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall be sufficient if there is lodged with the Commission within 42 days after the execution of the instrument creating the charge, or, if there is no such instrument after the execution of the first debenture of the series, a statement containing the following particulars –

(a) The total amount secured by the whole series;

(b) The date of the resolution authorizing the issue of the series and the date of the covering instrument, if any, by which the security is created or defined;

(c) A general description of the property charged; and

(d) The name of the trustee, if any, for the debenture holders together with –

(e) The instrument creating the charge; or

(f) A copy of the instrument and statutory declaration verifying the execution of the instrument and verifying the copy to be a true copy.

(9) For the purposes of subsection (7) where more than one issue is made of debentures in the series, there may be lodged with the Commission within 42 days after each issue particulars of the date and amount of each issue, but an omission so to do shall not affect the validity of the debentures issued.

(10) Where a charge requiring registration under this section is created before the lapse of 42 days after the creation of a prior unregistered charge, and comprises all or any part of the property comprised in the prior charge, and the subsequent charge is given as a security for the same debt as is secured by the prior charge, or any part of the debt, then to the extent to which the subsequent charge is a security for the same debt or part thereof and so far as it is related to the property comprised in the prior charge, the subsequent charge shall not be operative or have any validity unless it is proved to the satisfaction of the Commission that it was given in good faith for the purpose of correcting some material error in the prior charge or under other proper circumstances and not for the purpose of avoiding or evading the provisions of this Part.

(11) Where the property of a company continued under Part 11 of this Act was, immediately prior to its continuation, subject to a charge to which this section applies, the company or any person interested in the charge may, within 42 days of the date

of continuation, file the documents referred to in subsection (2) and make application to the Commission in the prescribed form to have the charge registered in accordance with this Part.

(12) Upon application being made to register a charge pursuant to subsection (11) –

(a) Where, immediately prior to continuation –

(i) the law of the jurisdiction from which the company continued made provision for the registration of charges in similar terms of this Act; and

(ii) the charge was registered under that law,

the Commission shall register the charge in accordance with section 74. The registration shall be subject to the terms and conditions, if any, that the registration of the charge was subject to in the company's previous jurisdiction and, where the property of a company was, immediately prior to continuation, subject to other charges registered under the law of its previous jurisdiction, the charge shall be registered with the same priority as it had in relation to those other charges, which the Commission may also register whether or not application has been made for their registration under subsection (11);

(b) In any other case, on being satisfied that, having regard to all the circumstances and in particular to the law relating to charges in the company's former jurisdiction, the position of creditors and members will not be prejudiced, the Commission may on such terms and conditions as seem to it to be expedient, register the charge in accordance with section 74.

(13) Where the property of a company continued under Part 11 was, immediately prior to continuation, subject to a charge and application is not made to register the charge pursuant to subsection (11), or where the Commission refuses to register a charge pursuant to subsection (12) that charge shall be subject to the provisions of subsection (4).

73. Validity of charges in certain circumstances

(1) Notwithstanding any rule of law to the contrary, any charge or security given, or purported to be given, by any person ("the charger") in favour of another person ("the chargee") where –

(a) the charged property is or includes a debt due or to become due to the charger from the chargee; and

(b) which debt is situated in Vanuatu,

shall be deemed to be a charge over an asset and shall be as valid and enforceable to the same extent as if the charge or security had been given over that debt in favour of any other person.

(2) For the purpose of subsection (1) of this section, a debt shall be deemed to be situated in Vanuatu if either –

(a) the charger is an international company; or

(b) the chargee is an international company and

(i) the contract or deed evidencing the debt has been entered into (by one or all of the parties) in Vanuatu; or

(ii) the contract or deed evidencing the debt is, or is to be, given effect to (whether in whole or in part) in Vanuatu.

(3) Nothing in this section shall be construed in any way to limit the validity or effect of –

(a) any contractual, legal or equitable right of set off arising between the parties (including any right of a bank and the rules relating to matters of account between parties); or

(b) any provision creating other rights, powers, obligations between a debtor and a creditor;

and for the avoidance of doubt, nothing in this section shall be construed to require the giving of any charge or security by the parties to any contract or deed.

(4) For the purposes of this section any reference to a debt becoming due includes a reference to –

(a) a credit balance of an account (whether or not ascertained at any particular time);

(b) a contingent claim;

(c) proceeds and receivables due from time to time.

(5) Where a charge or security of the type referred to in subsection (1) has been given, or purported to have been given, by a company which has not been registered in accordance with this Part, the charge may be registered pursuant to this Part within 42 days of the commencement of this Act.

74. Register of charges

(1) The Commission shall keep a register of all the charges lodged for filing under this Part and shall enter in the register with respect to those charges the following particulars –

(a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are required to be contained in a statement furnished under section 72(8); and

(b) in the case of any other charge –

(i) if the charge is a charge created by a company, the date of its creation and, if the charge was a charge existing on property acquired by a company, the date of the acquisition of the property;

(ii) the amount secured by the charge;

(iii) a description sufficient to identify the property charged; and

(iv) the name of the person entitled to the charge.

(2) The Commission shall upon payment of the prescribed fee issue to a company a certificate of every charge filed relating to the company stating, if applicable, the amount secured by the charge and the certificate shall be conclusive evidence that the requirements as to filing have been complied with.

74A. *(Repealed)*

75. Endorsement of certificate or registration on debentures

(1) A company shall cause to be endorsed on every debenture forming one of a series of debentures, or certificate of debenture stock, which is issued by the company and the payment of which is secured by a charge so registered –

(a) a copy of the certificate of filing under section 74(2); or

(b) a statement that filing has been effected and the date of filing.

(2) Subsection (1) shall not apply to any debenture or certificate of debenture stock issued by a company before the charge was filed.

(3) Every person who knowingly and willfully authorizes or permits the delivery of any debenture or certificate of debenture stock which is not endorsed as required by this section commits an offence against this Act.

76. Satisfaction and release of charges

(1) Where, with respect to a registered charge created by a company –

(a) the debt for which the charge was given has been paid or satisfied in whole or in part; or

(b) the property or undertaking charged or any part thereof has been released from the charge or has ceased to form part of the company's property or undertaking,

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

(2) The memorandum must be accompanied by the prescribed fee and supported by evidence sufficient to satisfy the Commission of the payment, satisfaction, release or ceasing referred to in subsection (1).

77. Extensions and rectifications

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

78. Documents made outside Vanuatu

Where under this Part an instrument, deed, statement or other document is required to be lodged with the Commission within a specified time, the time so specified shall in relation to an instrument, deed statement or other document executed or made in a place outside Vanuatu, be extended by 28 days or such further period as the Commission may from time to time allow.

78A. Exemption from Part 8 granted to ship-owning companies

(1) Notwithstanding anything in this Part, a ship-owning company shall be exempted from registering any charge created by the company and registered in the office of the Commissioner or any Deputy Commissioner of Maritime Affairs in accordance with the Maritime Act [Cap. 131].

(2) For the purposes of this section, "ship owning company" means a company –

(a) which is the owner or bareboat charterer of a vessel documented under the Maritime Act [Cap. 131]; and

(b) which is engaged principally in the business of ship-owners, bareboat charterers, shippers or businesses directly related thereto.

PART 9 – DEBENTURES

79. Power to issue debentures

(1) Subject to this Part and to the terms and conditions of its constitution a company shall have power to issue debentures on such terms and conditions as it thinks fit and in particular but without limiting the generality of the foregoing may issue debentures –

(a) constituting a charge on any or all the assets of the company;

(b) as registered debentures;

(c) *(Repealed)*

(d) as First Schedule debentures.

(2) The debt payable under any debenture whether sealed or signed on behalf of the company shall be a specialty debt of the company and where issued by a branch of a company shall be located at that branch.

(3) Each First Schedule debenture issued by a company shall, so far as it does not exclude or modify the terms contained in the First Schedule, be deemed to have been issued upon such terms and conditions.

(4) Where a debenture is issued as a First Schedule debenture it shall, subject to the terms of the debenture, have the following effect –

(a) The holders of such debentures shall have the right and power to vote and to demand a poll and thereby to determine all those matters in respect of which the members had the right and power to vote and to demand a poll before those rights and powers of the members became suspended in accordance with the terms of the debenture;

(b) Every holder of such debenture, or the trustee for any such holder, shall have one vote for each whole dollar, or its equivalent in any other currency, of the principal sum the subject of the debenture outstanding at the time when the votes are counted;

(c) The holders of such debentures may cast their votes by proxy in writing without attending a meeting;

(d) A resolution in writing signed by a majority in value of the holders of such debentures shall be as effectual as would a resolution passed by a similar majority at a meeting duly convened and held for the purpose;

(e) The constitution of the company may not be altered without the consent of the debenture holders;

(f) Any provision in this Act or the constitution of the company by which anything is required or permitted to be done by general meeting or by a resolution of the members shall be construed as requiring or permitting the same to be done by a resolution of those debenture holders in whom the right and power to vote are for the time being vested, passed by such majority of votes as would, if the votes were votes of members, be the majority necessary to pass the resolution;

(g) Subject to paragraph (d), notice of a meeting of those debenture holders in whom the right and power to vote are for the time being vested, shall be given to such debenture holders and their trustees, if any, in the same manner as notice of a meeting of members is required to be given to members;

(h) Unless it is otherwise provided by the terms of the debenture, the quorum for any meeting of the holders of such debentures shall be 2;

(i) Upon the redemption of any such debenture the rights and powers referred to above of the holders of such debentures shall cease and determined; and

(j) The holder of a First Schedule debenture shall not be deemed to be or to have been a member of a company by reason only of the holding of such debenture or the exercise by him or on his behalf of any rights or powers or discretions pursuant to the terms of the debenture or the dealing in any way with the debenture;

(5) Notwithstanding any other provision of this Act or any implication which apart from this subsection might arise or would arise at law or in equity, the holding or dealing with any First Schedule debenture shall not impose or imply and shall be deemed (subject to any express provision contained in the terms of issue of such debenture or arising as a necessary implication therefrom) never to have imposed or implied any duty on the part of the holder of the Fist Schedule debenture to exercise any right or power or discretion contained in or arising out of or connected with the First Schedule debenture for any particular purpose or to exercise any such right or power or discretion whether or not subject to any fiduciary or other like obligations whatsoever;

(6) Every debenture of a company shall bear a serial number, shall be sealed or signed on behalf of the company or the branch of the company which issues it and shall contain –

(a) the name of the company;

(b) the date of issue of the debenture;

(c) a statement of the quorum for meeting of debenture holders;

(d) a statement of the name of the debenture holder;

(e) a statement of the amount of principal (if any) for which such debenture is issued;

(f) the date upon which such principal is due and payable, if not payable on demand;

(g) the currency or currencies in which the principal and interest are payable; and

(h) the rate of interest, if any, per annum payable thereon.

(7) Where the provisions of this Act and of the constitution of a company which give the members of the company the right and power to vote and to demand a poll have been suspended or have otherwise been modified pursuant to the terms of a First Schedule debenture then (subject to there being no other unredeemed First Schedule debentures under the terms of which such provisions are to remain suspended) those provisions shall upon redemption of that First Schedule debenture resume full force and effect in respect of that company in the same manner and to the same extent as before those provisions were suspended or were modified. Where such provisions resume full force and effect in any other circumstances then in the absence of any provisions to the contrary in the constitution or in any relevant First Schedule debenture they shall likewise resume full force and effect in the same manner and to the same extent as before those provisions were suspended or modified.

(8) *(Repealed)*

80. Company to maintain register of debentures

(1) Subject to the provisions of this section every company which issues debentures shall keep and maintain –

(a) a register of debentures at the registered office of the company in Vanuatu containing the information required pursuant to section 79(5);

(b) a copy of all the terms of the debentures issued by the company with the register of holders of debentures at that registered office.

(2) A company may cause to be kept in any place outside Vanuatu a branch register of debentures.

(3) A branch register of debentures of a company shall be kept in the same manner in which the principal register is by this Act required to be kept.

(4) A company may discontinue a branch register and thereupon all entries in that register shall be transferred to some other branch register kept by the company or to the principal register.

(5) Where a debenture is registered on a branch register the debenture and all rights arising therefrom shall be situated in the place where it is registered and unless otherwise expressed in the debenture the principal and interest is payable in the money of the place of registration calculated at the exchange rate at noon on the date on which it becomes due and payable.

(6) A debenture registered in a branch register shall be distinguished from a debenture registered in the principal register.

(7) The costs of maintaining branch registers shall, unless the debenture otherwise provides, be borne rateably according to the amount of the principal represented by the debentures registered therein by the holders of those debentures.

(8) Debentures may be transferred from one register to another either by the holder or the company provided the written consent of the other party is first obtained, which consent shall not be unreasonably withheld provided further that the company shall not be obliged to obtain such consent from the holder for the time being of a bearer debenture unless the holder shall have advised the company in writing of his address for notice.

(9) *(Repealed)*

(10) A company shall be responsible for any loss incurred by any person by reason of the company recording in its register of debentures the name of the holder of any debenture without the original debenture or the negotiable documents in respect of the same, as the case may be, being surrendered to that company and cancelled prior to or contemporaneously with that entry.

(11) Upon the surrender to a company of a registered debenture, the company shall enter in the appropriate register of debentures the fact and date of its surrender.

81. Perpetual debentures

(1) A condition contained in a debenture or in a deed for securing a debenture shall not be invalid by reason only that the debenture is thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of law or equity to the contrary notwithstanding.

(2) Subject to subsection (3), notwithstanding anything in any debenture or trust deed, the security for a debenture issued by a company which is irredeemable or redeemable only on the happening of a contingency shall, if the court so orders, be enforceable forthwith or at such other time as the court directs if, on the application of the trustee for the holder of the debenture or, where there is no trustee, on the application of the holder of the debenture, the court is satisfied that –

(a) at time of the issue of the debenture the assets of the company which constituted or where intended to constitute the security therefore were sufficient to discharge the principal debt and any interest thereon;

(b) the security, if realized under the circumstances existing at the time of the application, would be likely to bring not more than 60 per centum of the principal sum of monies outstanding, regard being had to all prior charges and charges ranking *pari passu*, if any; and

(c) the assets covered by the security, on a fair valuation, on the basis of a going concern, after allowing a reasonable amount for depreciation are worth less than the principle sum and the company is not making sufficient profit to pay the interest due on the principle sum or, where no definite rate of interest is payable, interest thereon at such rate as the court considers would be a fair rate to expect from a similar investment.

(3) Subsection (2) shall not affect any power to vary rights, accept any compromise or arrangement created by the terms of a debenture or the relevant trust deed or under a compromise or arrangement between the company and its creditors.

82. Reissue of redeemed debentures

(1) Where a company has redeemed any debentures –

(a) unless any provision to the contrary, whether express or implied, is contained in any contract entered into by the company; or

(b) unless the company had, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

that company shall have power to reissue one or more of the debentures, either by reissuing the same debentures or by issuing other debentures in their place, but the reissue of a debenture or the issue of one debenture in place of another under this subsection shall not be regarded as the issue of a new debenture for the purpose of any provision limiting the amount or number of debentures that may be issued by the company.

(2) After the reissue, the person entitled to the debenture shall have and shall be deemed always to have had the same priorities as if the debenture had never been redeemed.

(3) Where a company has deposited any of its debentures to secure advances on current accounts or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debt while the debentures remain so deposited.

PART 10 – MERGER, CONSOLIDATION, SALE OF ASSETS, FORCED REDEMPTIONS, ARRANGEMENTS AND DISSENTERS

83. Interpretation for purposes of Part 10

In this Part –

"consolidated company" means the new company that results from the consolidation of two or more constituent companies;

"consolidation" means the fusion of two or more constituent companies into a new company;

"constituent company" means an existing company that is participating in a merger or consolidation with one or more other existing companies;

"merger" means the merging of two or more constituent companies into one of the constituent companies;

"parent company" means a company that owns more than 50 percent of the outstanding voting shares of each class and series of shares in another company, provided that for the purposes of section 85 it means a company that owns more than 90 percent of such shares as aforesaid;

"subsidiary company" means a company more than 50 percent of whose outstanding voting shares are owned by another company, provided that for the purposes of section 85 it means a company more than 90 percent of whose shares as aforesaid are owned by another company;

"surviving company" means the constituent company into which one or more other constituent companies are merged.

84. Merger and consolidation

(1) Two or more companies may merge or consolidate in accordance with this section.

(2) The directors of each constituent company that proposes to participate in a merger or consolidation shall approve a written plan of merger or consolidation containing, as the case requires –

(a) the name of each constituent company and the name proposed for the surviving company or the consolidated company;

(b) in respect of each constituent company –

(i) the designation and number of outstanding shares of each class and series of shares specifying each such class and series entitled to vote on the merger or consolidation; and

(ii) a specification of each such class and series, if any, entitled to vote as a class or series;

(c) the terms and conditions of the proposed merger or consolidation, including the manner and basis of converting shares in each constituent company into shares, debt obligations or other securities in the surviving company or consolidated company, or into money or other property, or a combination thereof;

(d) in respect of a merger, a statement of any amendment to the constitution of the surviving company to be brought about by the merger; and

(e) in respect of a consolidation, everything required to be included in the constitution for a company except statements as to facts not available at the time the plan of consolidation is approved by the directors.

(3) Some or all shares of the same class or series of shares in each constituent company may be converted into a particular or mixed kind or property and other shares of the class or series, or all shares of other classes or series of shares, may be converted into other property.

(4) (a) Approval of the plan of merger or consolidation shall be by a resolution of the members and for the purpose thereof outstanding shares of a class or series of shares shall be entitled to vote on the merger or consolidation as a class or series if –

(i) the constitution so provides; or

(ii) the plan of merger or consolidation contains any provisions that, if contained in a proposed amendment to the constitution, would entitle the class or series to vote on the proposed amendment as a class or series;

(b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of merger or consolidation, shall be given to each member whether or not entitled to vote on the merger or consolidation;

(c) if it is proposed to obtain the written consent of members, a copy of the plan of merger or consolidation shall be given to each member, whether or not entitled to consent to the plan of merger or consolidation;

(d) after approval of the plan of merger or consolidation by the directors and members of each constituent company, articles of merger or consolidation shall be executed by each company and shall contain –

(i) the plan of merger or consolidation and, in the case of consolidation, any statement required to be included in the constitution for a company;

(ii) the date on which the constitution of each constituent company was registered by the Commission;

(iii) the manner in which the merger or consolidation was authorized with respect to each constituent company;

(e) the articles of merger or consolidation shall be submitted to the Commission which shall retain and register them in the Register;

(f) upon the registration of the articles of merger or consolidation, the Commission shall issue a certificate authenticated by its official seal certifying that the articles of merger or consolidation have been registered.

(5) A certificate of merger or consolidation issued by the Commission shall be *prima facie* evidence of compliance with all requirements of this Act in respect of the merger or consolidation.

85. Merger with subsidiary

(1) A parent company may merge with one or more subsidiary companies registered under this Act without the authorization of the members of any such subsidiary company in accordance with this section.

(2) The parent company shall approve a written plan of merger containing –

(a) the name of each constituent company and the name of the surviving company;

(b) in respect of each constituent company –

(i) the designation and number of outstanding shares of each class and series of shares, and

(ii) the number of shares of each class and series of shares in each subsidiary company owned by the parent company; and

(c) the terms and conditions of the proposed merger, including the manner and basis of converting shares in each company to be merged into shares, debt obligations or other securities in the surviving company, or money or other property, or a combination thereof.

(3) Some or all shares of the same class or series of shares in each company to be merged may be converted into property of a particular or mixed kind and other shares of the class or all shares of other classes or series of shares may be converted into other property; but, if the parent company is not the surviving company, shares of each class and series of shares in the parent company may only be converted into similar shares of the surviving company.

(4) A copy of the plan of merger or an outline thereof shall be given to every member of each subsidiary company to be merged unless the giving of that copy or outline has been waived by that member.

(5) Articles of merger shall be executed by the parent company and shall contain –

(a) the plan of merger;

(b) the date on which the constitution of each constituent company was registered by the Commission;

(c) if the parent company does not own all the shares in each subsidiary company to be merged, the date on which a copy of the plan of merger or an outline thereof was made available to the members of each subsidiary company.

(6) The articles of merger shall be submitted to the Commission which shall retain and register them in the Register.

(7) Upon the registration of the articles of merger, the Commission shall issue a certificate authenticated by its official seal certifying that the articles of merger have been registered.

(8) A certificate of merger issued by the Commission shall be *prima facie* evidence of compliance with all the requirements of this Act in respect of the merger.

86. Effect of merger or consolidation

(1) A merger or consolidation shall be effective on the date the articles of merger or consolidation are registered by the Commission or such date subsequent thereto, not exceeding 30 days, as is stated in the articles of merger or consolidation.

(2) As soon as a merger or consolidation becomes effective –

(a) the surviving company or the consolidated company insofar as is consistent with its constitution, as amended or established by the articles of merger or consolidation, has all the rights, privileges, immunities, powers, objects and purposes of each of the constituent companies;

(b) in the case of a merger, the constitution of the surviving company is automatically amended to the extent, if any, that changes in its constitution are contained in the articles of merger;

(c) in the case of a consolidation, the statements contained in the articles of consolidation that are required or authorized to be contained in the constitution of a company incorporated under this Act, shall be the constitution of the consolidated company;

(d) property of every description, including choses in action and the business of each of the constituent companies, immediately vests in the surviving company or the consolidated company; and

(e) the surviving company or the consolidated company shall be liable for all claims, debts, liabilities and obligations of each of the constituent companies.

(3) Where a merger or consolidation occurs –

(a) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against a constituent company or against any member, director, officer or agent thereof, shall be released or impaired by the merger or consolidation; and

(b) no proceedings, whether civil or criminal pending at the time of a merger or consolidation by or against a constituent company, or against any member,

director, officer or agent thereof, shall be abated or discontinued by the merger or consolidation, but –

(i) the proceedings may be enforced, prosecuted, settled or compromised by or against the surviving company or the consolidated company or against the member, director, officer or agent, as the case may be, or

(ii) the surviving company or the consolidated company may be substituted in the proceedings for a constituent company.

(4) The Commission shall strike off the Register –

(a) a constituent company that is not the surviving company in a merger;

(b) a constituent company that participates in a consolidation.

87. Merger or consolidation with foreign company

(1) One or more companies incorporated under this Act may merge or consolidate with one or more companies incorporated under the laws of jurisdictions outside Vanuatu in accordance with this section, including where one of the constituent companies is a parent company and the other constituent companies are subsidiary companies, if the merger or consolidation is permitted by the laws of the jurisdiction in which the companies incorporated outside Vanuatu are incorporated.

(2) The following provisions shall apply in respect of a merger or consolidation under this section –

(a) a company incorporated under this Act shall comply with the provisions of this Act with respect to the merger or consolidation, as the case may be, of companies incorporated under this Act and a company incorporated under the laws of a jurisdiction outside Vanuatu shall comply with the laws of that jurisdiction; and

(b) if the surviving company or the consolidation company is to be incorporated under the laws of a jurisdiction outside Vanuatu, it shall submit to the Commission –

(i) an agreement that a service of process may be effected on it in Vanuatu in respect of proceedings for the enforcement of any claim, debt, liability or obligation of a constituent company incorporated under this Act or in respect of proceedings for the enforcement of the rights of a dissenting member of a constituent company incorporated under this Act against the surviving company or the consolidated company;

(ii) an irrevocable appointment of the Commission as its agent to accept service of process in proceedings referred to in subparagraph (i);

(iii) an agreement that it will promptly pay to the dissenting members of a constituent company incorporated under this Act the amount, if any, to which they are entitled under this Act with respect to the rights of dissenting members; and

(iv) a certificate of merger or consolidation issued by the appropriate authority of the foreign jurisdiction where it is incorporated; or if no certificate or merger or consolidation is issued by the appropriate authority of the foreign jurisdiction, then, such evidence of the merger or consolidation as the Commission considers acceptable.

(3) The effect under this section of a merger or consolidation shall be the same as in the case of a merger or consolidation under section 84 if the surviving company or the consolidated company is incorporated under this Act, but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside

Vanuatu, the effect of the merger or consolidation shall be the same as in the case of a merger or consolidation under section 84 except insofar as the laws of the other jurisdiction otherwise provide.

(4) If the surviving company of the consolidated company is incorporated under this Act, the merger or consolidation shall be effective on the date the articles of merger or consolidation are registered by the Commission or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of merger or consolidation; but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside Vanuatu, the merger or consolidation shall be effective as provided by the laws of that other jurisdiction.

88. Disposition of assets

Any sale, transfer, exchange or other disposition of more than 75 per cent, by value, of the assets of a company, other than a transfer pursuant to the power described under section 9(2), if not made in the usual manner or regular course of the business carried on by the company, shall be as follows:

(a) the proposed sale, transfer, exchange or other dispositions shall be approved by the directors;

(b) upon approval of the proposed sale, transfer, exchange or other disposition, the directors shall submit the proposal to the members for it to be authorized by a resolution of members;

(c) if a meeting of members is to be held, notice of the meeting, accompanied by an outline of the proposal, shall be given to each member, whether or not he is entitled to vote on the sale, transfer, exchange or other disposition; and

(d) if it is proposed to obtain the written consent of members, an outline of the proposal shall be given to each member, whether or not he is entitled to consent to the sale, transfer, exchange or other disposition.

89. Redemption of minority shares

(1) Subject to any limitations in the constitution –

(a) members holding 90 per cent of the votes of the outstanding shares entitled to vote; and

(b) members holding 90 per cent of the votes of the outstanding shares of each class and series of shares entitled to vote as a class or series,

on a merger or consolidation under this Part, may give a written instruction to a company incorporated under this Act directing the company to redeem the shares held by the remaining members.

(2) Upon receipt of the written instruction referred to in subsection (1), the company shall redeem the shares specified in the written instruction irrespective of whether or not the shares are by their terms redeemable.

(3) The company shall give written notice to each member whose shares are to be redeemed stating the redemption price and the manner in which the redemption is to be effected.

90. Arrangements

(1) In this section “arrangement” means –

(a) a reorganization or reconstruction of a company incorporated under this Act;

(b) a merger or consolidation of one or more companies incorporated under this Act with one or more other companies, if the surviving company or the consolidated company is a company incorporated under this Act;

(c) a separation of two or more businesses carried on by a company incorporated under this Act;

(d) any combination of any of the things specified in paragraph (a) to (c).

(2) The directors of a company may, by a resolution of directors, approve a plan of arrangement that contains the details of the proposed arrangement.

(3) Upon approval of the plan of arrangement by the directors, the company shall make application to the court for approval of the proposed arrangement.

(4) The court may, upon an application made to it under subsection (3), make an interim or final order that is not subject to an appeal unless a question of law is involved in which case notice of appeal shall be given within the period of 20 days immediately following the date of the order, and in making the order the court may –

(a) determine to whom notice of the proposed arrangement is to be given;

(b) determine whether any person's approval of the proposed arrangement should be obtained and the manner of obtaining such approval;

(c) determine whether any holder of shares, debt obligations or other securities in the company may dissent from the proposed arrangement and receive payment of the fair value of his shares, debt obligations or other securities under section 91;

(d) conduct a hearing and permit any interested persons to appear; and

(e) approve or reject the plan of arrangement as proposed or with such amendments as it may direct.

(5) Where the court makes an order approving a plan of arrangement, the directors of the company if they are still desirous of executing the plan shall confirm the plan of arrangement as approved by the court including any amendments directed to be made by the court.

(6) The directors of the company, upon confirming the plan of arrangement, shall –

(a) give notice to the persons to whom the order of the court requires notice to be given; and

(b) submit the plan of arrangement to those persons for such approval, if any, as the order of the court requires.

(7) After the plan of arrangement has been approved by those persons by whom the order of the court may require approval, articles of arrangement shall be executed by the company and shall contain –

(a) the plan of arrangement;

(b) the order of the court approving the plan of arrangement; and

(c) the manner in which the plan of arrangement was approved, if approval was required by the order of the court.

(8) The articles of arrangement shall be submitted to the Commission who shall retain and register them in the Register.

(9) Upon registration of the articles of arrangement, the Commission shall issue a certificate authenticated by its official seal certifying that the articles of arrangement have been registered.

(10) A certificate of arrangement issued by the Commission shall be *prima facie* evidence of compliance with all the requirements of this Act in respect of the arrangement.

(11) An arrangement shall be effective on the date the articles of arrangement are registered by the Register or on such date subsequent thereto, not exceeding 30 days, as shall be stated in the articles of arrangement.

91. Rights of dissenters

(1) A member of a company shall be entitled to payment of the fair value of his shares upon dissenting from –

(a) a merger, if the company is a constituent company, unless the company is the surviving company and the member continues to hold the same or similar shares;

(b) a consolidation, if the company is a constituent company;

(c) any sale, transfer, exchange or other disposition of more than 75 per cent of the assets or business of the company, if not made in the usual or regular course of the business carried on by the company, but not including –

(i) a disposition pursuant to an order of the court having jurisdiction in the matter;

(ii) a disposition at fair value for money on terms requiring all or substantially all net proceeds to be distributed to the members in accordance with their respective interests within one year after the date of disposition; or

(iii) a transfer pursuant to the power described in section 9(2);

(d) a redemption of his shares by the company pursuant to section 89; and

(e) an arrangement, if approved by the court.

(2) A member who desires to exercise his entitlement under subsection (1) shall give to the company, before the meeting of members at which the proposed action is submitted to a vote, or at the meeting but before the vote, written objection to the action; but a written objection shall not be required from a member to whom the company did not give notice of the meeting in accordance with this Act or where the proposed action is authorized by written consent of members without a meeting.

(3) An objection under subsection (2) shall include a statement that the member proposes to demand payment of his shares if the proposed action is taken.

(4) Within 20 days immediately following the date on which the vote of members authorizing the action is taken, or the date on which written consent of members without a meeting is obtained, the company shall give written notice of the authorization or consent to each member who gave written objection or from whom written objection was not required, except those members who voted for, or consented to in writing, the proposed action.

(5) A member to whom the company was required to give notice who elects to dissent shall, within 20 days immediately following the date on which the notice referred to in subsection (4) is given, give to the company a written notice of his decision to elect to dissent, stating –

(a) his name and address;

(b) the number and classes or series of shares in respect of which he dissents; and

(c) a demand for payment of the fair value of his shares;

and a member who elects to dissent from a merger under section 84 shall give to the company a written notice of his decision to elect to dissent within 20 days

immediately following the date on which the copy of the plan of merger or an outline thereof is given to him in accordance with section 84.

(6) A member who dissents shall do so in respect of all shares that he holds in the company.

(7) Upon the giving of a notice of election to dissent, the member to whom the notice relates shall cease to have any of the rights of a member except the right to be paid the fair value of his shares.

(8) Within 7 days immediately following the date of the expiration of the period within which members may give their notices of election to dissent, or within 7 days immediately following the date on which the proposed action is put into effect, whichever is later, the company or, in the case of a merger or consolidation, the surviving company or the consolidated company, shall make a written offer to each dissenting member to purchase his shares at a specified price that the company determines to be their fair value; and if, within 30 days immediately following the date on which the offer is made, the company making the offer and the dissenting member agree upon the price to be paid for his shares, the company shall pay to the member the amount in money upon the surrender of the certificates representing his shares.

(9) If the company and a dissenting member fail within the period of 30 days referred to in subsection (8) to agree on the price to be paid for the shares owned by the member, within 20 days immediately following the date on which the period of 30 days expires, the following shall apply –

(a) the company and the dissenting member shall each appoint an arbitrator willing to so act;

(b) the two arbitrators shall fix the fair value of the shares owned by the dissenting member as of the close of business on the day prior to the date on which the vote of members authorizing the action was taken or the date on which written consent of members was obtained, excluding any appreciation or depreciation directly or indirectly induced by the action or its proposal, and that value is binding on the company and the dissenting member for all purposes;

(c) in the event that the two appointed arbitrators cannot within 90 days or such longer period as agreed by the dissenting members and the company agree upon the fair value of the shares pursuant to subparagraph (b), the dissenting members may upon giving the company 14 days notice apply to the court to appoint a single arbitrator who shall determine the fair value in accordance with paragraph (b); and

(d) the company shall pay to the member the amount in money upon the surrender by him of the certificates representing his shares.

(10) Shares acquired by the company pursuant to subsection (8) or (9) shall be cancelled but if the shares are shares of a surviving company, they shall be available for re-issue.

(11) The enforcement by a member of his entitlement under this section excludes the enforcement by the member of a right to which he might otherwise be entitled by virtue of his holding shares, except that this section does not exclude the right of the member to institute proceedings to obtain relief on the ground that the action is illegal.

PART 11 – CONTINUATION

92. Continuation

(1) Subject to section 95A, 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 Companies Act;

may apply to continue as a company incorporated under this Act provided that on continuation it will not be in breach of section 10.

(2) A company applying to be continued under this Act shall file with the Commission: –

(a) a constitution which complies with this section and section 3 to be effective upon continuance (the new constitution);

(b) a certified copy of its existing memorandum and articles or their equivalent and certificate of incorporation;

(c) a certified copy of a resolution passed by a simple majority in value of the members entitled to vote, to –

(i) continue the company under this Act;

(ii) approve the new constitution;

(iii) appoint one or more persons to sign the new constitution; and

(iv) authorize one or more persons who may give notice to the Commission by telefax, telex, telegram, cable or registered mail, that the new constitution be registered.

(d) (*repealed*)

(3) The new constitution, in addition to complying with the provisions of section 3 shall contain:

(a) the existing name and subject to section 4, the name under which it is to be continued;

(b) the jurisdiction in which it is incorporated; and

(c) the date it was incorporated.

(4) Provided it is satisfied that all requirements in respect of continuation and all matters precedent and incidental thereto have been complied with, the Commission may retain the documents filed under subsection (2) and grant a permit to continue the company under this Act.

(5) Subject to subsection (4), upon receipt of notice of exercise of the authority pursuant to subsection (2)(c)(iv) which may be contemporaneous with the filing of the documents required by subsection (2) the Commission shall issue a dated certificate of continuation authenticated by its official seal certifying that the company is incorporated under this Act.

(6) The Commission shall not prior to the receipt of the notice referred to in subsection (2)(c)(iv), permit any person to inspect the documents referred to in subsection (2) and shall not divulge any information in respect thereof.

(7) Prior to the registration of the new constitution a company may rescind or amend the written authorization referred to in subsection (2)(c)(iv) by delivering to the Commission a written notice of rescission or amendment.

(8) If the Commission does not receive a notice referred to in subsection (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 Commission under subsection (4), the permit shall lapse.

93. Certificate of continuation

A certificate of continuation issued by the Commission under section 92(5) shall be prima facie evidence of compliance with all requirements of this Act in respect of continuation.

94. Effect of continuation

(1) From the time of the issue by the Commission of a certificate of continuation under section 92(5) –

(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;

(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 Companies Act or a company incorporated under the laws of a jurisdiction outside Vanuatu;

(b) the constitution of the company, or its equivalent, as amended by the articles of continuation, shall be the constitution of the company;

(c) property of every description, including choses in action and the business of the company, shall continue to be vested in the company; and

(d) the company shall continue to be liable for all of its claims, debts, liabilities, and obligations.

(2) Where a company is continued 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 thereof, is released or impaired by its continuation as a company under this Act; and

(b) no proceedings, whether civil or criminal, pending at the time of the issue by the Commission of a certificate of continuation under section 92(5) by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under this Act, but the proceedings 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.

(3) All shares in the company that were outstanding prior to the issue by the Commission of a certificate of continuation under section 92(5) in respect of the company shall be deemed to have been issued in conformity with this Act, but a share that at the time of the issue of the certificate of continuation was not fully paid remains unpaid, and until the share is paid up, the member holding the share remains liable for the amount unpaid on the share.

(4) If at the time of the issue by the Commission of a certificate of continuation under section 92(5) in respect of the company any provisions of the constitution of the company do not in any respect accord with this Act –

(a) the provisions of the constitution continue to govern the company until the provisions are amended to accord with this Act or for a period of 2 years immediately following the date of the issue of the certificate of continuation, whichever is the sooner;

(b) any provisions of the constitution of the company that are in any respect in conflict with this Act cease to govern the company when the provisions are

amended to accord with this Act or after expiration of a period of 2 years after the date of issue of the certificate of continuation whichever is the sooner; and

(c) the company shall make such amendments to its constitution as may be necessary to accord with this Act within a period that is not later than 2 years immediately following the date of the issue of the certificate of continuation.

95. 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 laws.

(2) A company that continues its jurisdiction outside Vanuatu shall, provided that the laws of the jurisdiction outside Vanuatu permit the continuation, cease to be a company incorporated under this Act upon the company complying with those laws.

(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;

(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 thereof, and abated or discontinued by its continuation as a company under the laws of the jurisdiction outside Vanuatu, but the proceedings 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.

95A. Continuation of existing exempted companies as companies under this Act

(1) Despite anything in any other Act, on the effective date, an exempted company is taken to have been granted a provisional certificate of continuation under this section to continue as a company under this Act.

(2) Despite anything in any other Act, on the effective date an exempted company ceases to be subject to the Companies Act.

(3) The Commission must as soon as possible after the effective date issue to each exempted company, a provisional certificate of continuation.

(4) A provisional certificate of continuation must:

(a) be in the form approved by the Commission; and

(b) remain in force for a period of 5 years.

(5) If a company issued with a provisional certificate of continuation wishes to continue as a company incorporated under this Act after the end of the period of 5 years, the company must within 6 months before the date ending the period of 5 years, apply to

the Commission under subsection 92(1) for a certificate of continuation to continue as a company under this Act.

(6) To avoid doubt, an application by a company under subsection 92(1) is an application for a new certificate of continuation.

(7) The Commission must not take into account the fact that a company holds a provisional certificate of continuation under this section when determining an application for continuation filed under subsection 92(2).

95B. Effect of Provisional certificate of continuation

Upon the issue of a provisional certificate of continuation under subsection 95A(3):

(a) the status of the company issued with the certificate is changed from an exempted company to a company under this Act; and

(b) Section 94 applies *mutatis mutandis* in relation to the effect of the continuation of the company under this Act.

95C. Annual return of a company issued with provisional certificate of continuation

A company issued with a provisional certificate of continuation, must upon each anniversary of its registration as a company under the Companies Act, forward to the Commission a return in the form and containing the particulars, prescribed by regulations.

PART 12 – WINDING UP, DISSOLUTION AND STRIKING OFF

96. Winding up by expiry time

A company shall commence to wind up and dissolve upon the expiration of such time as may be prescribed in its constitution for its existence.

97. Members voluntary winding up and dissolution

(1) A company with a share capital that has never issued shares may voluntarily commence to wind up and dissolve by a resolution of directors.

(2) A company that has previously issued shares or a company limited by guarantee may voluntarily commence to wind up and dissolve by a resolution of members.

98. Powers of directors in members voluntary winding up and dissolution

Upon the commencement of a winding-up and dissolution required under section 96 or permitted under section 97 the directors' powers shall be limited –

(a) to authorizing a liquidator, by resolution, to carry on the business of the company provided that the liquidator determines that to do so would be necessary or in the best interests of the creditors or members of the company; and

(b) to rescinding the articles of dissolution as permitted under section 102.

99. Duties of liquidator in members voluntary winding up

(1) A liquidator shall, upon his appointment in accordance with this Part and upon the commencement of a winding-up and dissolution, proceed –

(a) to identify all assets of the company;

(b) to identify all creditors of and claimants against the company;

(c) to pay or provide for payment of, or to discharge, all claims, debts, liabilities and obligations of the company;

(d) to distribute any surplus assets of the company in accordance with the constitution;

(e) to prepare or cause to be prepared a statement of account in respect of the actions and transactions of the liquidator; and

(f) to send a copy of the statement of account to members if so required by the plan of dissolution required by section 101.

(2) A transfer, including a prior transfer, described in section 9(2) of all or substantially all of the assets of a company incorporated under this Act for the benefit of the creditors and members of the company, is sufficient to satisfy the requirements of subsection (1)(c) and (d).

100. Powers of liquidator

(1) In order to perform the duties imposed on him under section 99, a liquidator has all powers of the company that are not reserved to the members under this Act or in the constitution, including, but not limited to, the power –

(a) to take custody of the assets of the company and, in connection therewith, to register any property of the company in the name of the liquidator or that of his nominee;

(b) to sell any assets of the company at public auction or by private sale without any notice;

(c) to collect the debts and assets due or belonging to the company;

(d) to borrow money from any person for any purpose that will facilitate the winding-up and dissolution of the company and to pledge or mortgage any property of the company as security for any such borrowing;

(e) to negotiate, compromise and settle any claim, debt, liability or obligation of the company;

(f) to prosecute and defend, in the name of the company or in the name of the liquidator or otherwise, any action or other legal proceedings;

(g) to retain counsel and attorneys, accountants and other advisers and appoint agents;

(h) to carry on the business of the company, if the liquidator has received authorization to do so in the plan of liquidation or by a resolution of directors

(i) permitted under section 98, as the liquidator may determine to be necessary or to be in the best interest of the creditors or members of the company;

(j) to execute any contract, agreement or other instrument in the name of the company or in the name of the liquidator; and

(k) to make any distribution in money or in other property or partly in each, and if in other property, to allot the property, or an undivided interest therein, in equal or unequal proportions.

(2) Notwithstanding subsection (1)(h), a liquidator shall not, without the permission of the court, carry on for a period in excess of two years the business of a company that is being wound up and dissolved under this Act.

101. Procedure on winding up and dissolution

(1) The directors of a company required under section 96 or proposing under section 97 to wind-up and dissolve the company shall approve a plan of dissolution containing –

(a) a statement of the reason for the winding-up and dissolving;

(b) a statement that the company is, and will continue to be, able to discharge or pay or provide for the payment of all claims, debts, liabilities and obligations in full;

(c) a statement that the winding-up will commence on the date when articles of dissolution are submitted to the Commission or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of dissolution;

(d) a statement of the estimated time required to wind up and dissolve the company;

(e) a statement as to whether the liquidator is authorized to carry on the business of the company if the liquidator determines that to do so would be necessary or in the best interest of the creditors or members of the company;

(f) a statement of the name and address of each person to be appointed a liquidator and the remuneration proposed to be paid to each liquidator; and

(g) a statement as to whether the liquidator is required to send to all members a statement of account prepared or caused to be prepared by the liquidator in respect of his actions or transactions.

(2) If a winding-up and dissolution is being effected in a case where section 97 is applicable –

(a) the plan of dissolution shall be authorized by a resolution of members, and the holders of the outstanding shares of a class or series of shares are entitled to vote on the plan of dissolution as a class or series only if the constitution so provides;

(b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of dissolution shall be given to each member, whether or not entitled to vote on the plan of dissolution; and

(c) if it is proposed to obtain the written consent of members, a copy of the plan of dissolution shall be given to each member, whether or not entitled to consent to the plan of dissolution.

(3) After approval of the plan of dissolution by the directors, and if required by the members in accordance with subsection (2), articles of dissolution shall be executed by the company and shall contain –

(a) the plan of dissolution; and

(b) the manner in which the plan of dissolution was authorized.

(4) Articles of dissolutions hall be submitted to the Commission which shall retain and register them in the Register and within 30 days immediately following the date on which the articles of dissolution are submitted to the Commission, the company shall cause to be published, in the Gazette, a notice stating –

(a) that the company is in dissolution;

(b) the date of commencement of the dissolution; and

(c) the names and addresses of the liquidators.

(5) A winding-up and dissolution commences on the date the articles of dissolution are registered by the Commission or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of dissolution.

(6) A liquidator shall, upon completion of a winding-up and dissolution submit to the Commission a statement that the winding-up and dissolution has been completed and upon receiving the notice, the Commission shall –

(a) strike the company off the Register; and

(b) issue a certificate of dissolution authenticated by its official seal certifying that the company has been dissolved.

(7) Where the Commission issues a certificate of dissolution authenticated by its official seal certifying that the company has been dissolved –

(a) the certificate shall be *prima facie* evidence of compliance with all requirements of this Act in respect of dissolution; and

(b) the dissolution of the company is effective from the date of the issue of the certificate.

(8) Immediately following the issue by the Commission of a certificate of dissolution under subsection (6), the liquidator shall cause to be published in the Gazette, in a publication of general circulation in Vanuatu and in a publication of general circulation in the country or place where the company has its principal office, a notice that the company has been dissolved and has been struck off the Register.

(9) A company that willfully contravenes subsection (4) shall be liable to a penalty of $50 for every day or part thereof during which the contravention continues.

(10) A director or liquidator who knowingly permits the contravention shall be liable on conviction to a penalty of $50 for every day or part thereof during which the contravention continues.

102. Rescission of winding-up and dissolution

(1) In the case of a winding-up and dissolution permitted under section 97, a company may prior to submitting to the Commission a notice specified in section 101(4), rescind the articles of dissolution by –

(a) a resolution of directors in the case of a winding-up and dissolution under section 97(1); or

(b) a resolution of members in the case of a winding-up and dissolution under section 97(2).

(2) A copy of a resolution referred to in subsection (1) shall be submitted to the Commission which shall retain and register it in the Register.

(3) Within 30 days immediately following the date on which the resolution referred to in subsection (1) has been submitted to the Commission, the company shall cause a notice stating that the company has rescinded its intention to wind up and dissolve to be published in the Gazette, in a publication of general circulation in Vanuatu and in a publication of general circulation in the country or place where the company has its principal office.

103. Winding-up and dissolution of company unable to pay its claims, etc.

(1) Where, at the commencement of a members voluntary winding up –

(a) the directors or, as the case may be, the members of a company at the time of the passing of the resolution to wind up and dissolve the company, have reason to believe that the company will not be able to pay or provide for the payment of or discharge all claims, debts, liabilities and obligations of the company in full; or

(b) the liquidator after his appointment has reason so to believe,

then, the directors, the members or the liquidator, as the case may be, shall immediately give notice of the fact to the Commission.

(2) Where a notice has been given to the Commission under subsection (1), all winding-up and dissolution proceedings after the notice has been given shall be in accordance with the provisions of the Companies Act relating to winding-up and dissolution and those provisions shall apply *mutatis mutandis* to the winding-up and dissolution of the company.

104. Winding up and dissolution by the court

Notwithstanding the provisions of this Act relating to winding-up and dissolution, a company may be wound up by the court under any of the circumstances, insofar as they are applicable to a company incorporated under this Act, in which a company incorporated under the Companies Act may be wound up by the court and, in that case the provisions of the Companies Act relating to winding-up and dissolution apply *mutatis mutandis* to the winding-up and dissolution of the company.

105. Receivers and managers

The provisions of the Companies Act regarding receivers and managers shall govern *mutatis mutandis* the appointment, duties, powers and liabilities of receivers and managers of the assets of any company incorporated under this Act.

106. Striking off on breach of section 10

(1) Where the Commission has reasonable cause to believe that a company is in breach of section 10 or is not carrying on business or is not in operation, the Commission may serve on the company by post a notice that the name of the company will, upon the grounds set out therein, unless cause is shown to the contrary, be struck off the Register.

(2) (*Repealed*)

(3) If the Commission –

(a) in reply to a notice sent to the company under subsection (1), receives from the company a notice that it consents to being struck off the Commission; or

(b) the company does not show cause to the notice served on the company under subsection (1),

it shall publish a notice in the Gazette that the name of the company will be struck off the Register unless the company or another person satisfies the Commission that the name of the company should not be struck off.

(4) At the expiration of a period of 90 days immediately following the date of the publication of the notice under subsection (3), the Commission shall strike the name of the company off the Register, unless the company or any other person has within the period of 90 days satisfied the Commission that the name of the company should not be struck off, and the Commission shall publish notice of the striking-off in the Gazette.

(4A) If the Commission has reasonable cause to believe that the registered agent of a company has failed to comply with subsection 35(5), (6), (7) or (8) the Commission may publish in the Gazette and serve on the registered agent a notice stating that the name of the company will be struck off the Register if the registered agent fails to comply with that subsection.

(4B) If the registered agent of a company fails to comply with subsection 35(5), (6), (7) or (8) within 60 days after the date of the notice referred to in subsection (4A), the Commission must strike the name of the company off the Register and must publish notice of the striking-off in the Gazette.

(4C) If the Commission has reasonable cause to believe that the registered agent of a company has:

(a) failed to give the information or documents required under a notice under section 35A; or

(b) given the Commission information or documents that are false or misleading in response to a notice under that section;

the Commission may publish in the Gazette and serve on the registered agent a notice stating that the name of the company will be struck off the Register if the registered agent of the company fails to comply with the notice given under section 35A or to correct the information or documents that the registered agent has given.

(4D) If the registered agent of a company fails to comply with a notice under section 35A or to correct the information or documents that the registered agent has given, within 60 days after the date of the notice referred to in subsection (4C), the Commission must strike the name of the company off the Register and must publish notice of the striking-off in the Gazette.

(5) A company that has been struck off the Register under this section and section 112A remains liable for all claims, debts, liabilities and obligations of the company, and the striking-off does not affect the liability of any of its members directors, officers or agents.

(6) A company that has been struck off the Register pursuant to this section and section 112A shall be deemed to have been dissolved.

107. Restoration to Register

(1) If the name of a company has been struck off the Register under section 106 the Commission, or a creditor, member or liquidator thereof, may at any time apply within 20 years of the date of striking-off to the Commission to have the name of the company restored to the Register.

(2) If upon an application under subsection (1) the Commission is satisfied that:

(a) at the time the name of the company was struck off the Register, the company was an international company; and

(b) it would be fair and reasonable for the name of the company to be restored to the Register,

the Commission may order the name of the company to be restored to the Register upon payment to the Commission of all fees payable by virtue of section 111 and all annual fees payable by virtue of section 112 or such lesser amounts as the Commission may order, without any increase for late payment, and upon restoration of the name of the company to the Register, the name of the company shall be deemed never to have been struck off the Register.

(3) If the name of a company has been struck off the Register under section 113 the company, or a creditor, member or liquidator thereof, may apply to the Commission to have the name of the company restored to the Register, and upon payment to the Commission of:

(a) all fess due under section 111; and

(b) annual fee due under section 112 and 112A,

(c) (Repealed)

the Commission shall restore the name of the company to the Register and upon restoration of the name of the company to the Register, the name of the company shall be deemed never to have been struck off the Register but the name must be changed if that name then exists on the Register.

(4) For purposes of this part, the appointment of an official liquidator under section 109 operates as an order to restore the name of the company to the Register.

108. Effect of striking-off

(1) Where the name of a company has been struck off the Register, neither that company nor a director, member, liquidator or receiver thereof, may –

(a) commence or defend any legal proceedings in the name of the company;

(b) carry on any business or in any way deal with the assets of the company;

(c) make any claim or claim any right for, or in the name of, that company; or

(d) act in any way with respect to the affairs of the company.

(2) Notwithstanding subsection (1), where the name of the company has been struck off the Register, the company, or a director, member, liquidator or receiver thereof, may–

(a) continue to defend proceedings that were commenced against the company prior to the date of the striking-off;

(b) continue to carry legal proceedings that were instituted on behalf of the company prior to the date of the striking-off; and

(c) make application for restoration of the name of the company to the Register.

109. Appointment of official liquidator

The court may appoint a person to be the official liquidator in respect of a company the name of which has been struck off the Register.

110. Dissolution of company struck off

(1) If the name of a company has been struck off the Register under section 106 and section 113 the Commission may, if it determines that it is in the best interest of Vanuatu to do so, apply to the court to have the company put into liquidation and a person shall be appointed as the official liquidator thereof.

(2) The duties of an official liquidator in respect of a company in liquidation pursuant to subsection (1) shall be limited to:

(a) identifying and taking possession of all assets of the company;

(b) calling for claims by advertisement in the Gazette and in such other manner as he deems appropriate, requiring all claims to be submitted to him within such period as he may determine not exceeding 90 days from the date of the advertisement; and

(c) applying those assets that he recovers in satisfaction of all other claims admitted by him and in determining the priority of those claims the provisions of the Companies (Insolvency and Receivership) Act No. of 2013 shall apply *mutatis mutandis*.

(3) In order to perform the duties with which he is charged under subsection (2), the official liquidator may exercise such powers as the court may consider reasonable to confer on him.

(4) The official liquidator may require such proof as he considers necessary to substantiate any claim submitted to him and he may admit, reject or settle claims on the basis of the evidence submitted to him.

(5) When the official liquidator has completed his duties, he shall submit a written report of his conduct of the liquidation proceedings to the Commission and, upon receipt of the report by the Commission, all assets of the company, wherever situate, that are not disposed of, vest in the Government and the company shall be dissolved.

(6) The official liquidator shall be entitled to such remuneration out of the assets of the company for his services as the court approves, but if the company is unable to discharge all of its claims, debts, liabilities and obligations, payment of the official liquidator's remuneration shall be a charge on the Public Fund.

(7) No liability shall attach to an official liquidator:

(a) to account to creditors of the company who have not submitted claims within the time allowed by him; or

(b) for any failure to locate any assets of the company.

110A. Disposal of books, records and papers of company

(1) If a company is wound up and about to be dissolved, the books, records and papers of the company, and liquidators may be disposed:

(a) in the case of a winding up by the court - in the manner the court may direct; and

(b) in the case of a members' voluntary winding up - in the manner the company by extraordinary resolution directs.

(2) After 5 years from the dissolution of the company, no responsibility must rest on the company, the liquidators or any person to whom the custody of the books, records and papers has been committed, by reason of any book, record or paper not being forthcoming to any person who claims to have an interest in it.

PART 13 – FEES

111. Fees

(1) Where a company incorporated under the Companies Act is continued as an international company under this Act that company shall be required to pay such fees as are specified in subsection (2) and shall not be required to pay any fees prescribed under the Companies Act.

(2) There shall be paid to the Commission the following fees:

(a) $150 for registration of a company that elects to be registered for 1 year;

(aa) for long term registration:

(i) $675 for registration for 5 years;

(ii) $1200 for registration for 10 years;

(iii) $2000 for registration for 20 years;

(ab) for renewal of long term registration:

(i) $1000 for renewal of registration for 5 years;

(ii) $1500 for renewal of registration for 10 years;

(iii) $2500 for renewal of registration for 20 years;

(b) $50 upon the registration of an amendment to the constitution of a company;

(c) $500 upon the registration of articles of merger or consolidation or articles of arrangement;

(d) $150 upon the issue of a permit to continue a company under this Act;

(e) $100 upon the issue of a certificate of continuation of a company under this Act;

(f) $100 upon the registration of articles of dissolution;

(g) $100 upon the registration of a resolution rescinding articles of dissolution;

(h) $25 upon the issue of a certificate of good standing;

(i) $25 upon the issue of a copy or extract, whether or not certified, of a document or a part of a document;

(j) $25 for the issue of a replacement document or certificate;

(k) $100 upon the issue of a certificate of change of name;

(l) $10 for an inspection of the documents kept by the Commission pursuant to this Act;

(m) $250 upon the restoration to the Register of a company incorporated under this Act, the name of which was struck off the Register;

(n) $10 for each inspection of the Register;

(o) $10 upon the filing of any other document under this Act;

(p) $25 upon the reservation of a name;

(q) $100 upon the filing of a charge pursuant to section 72;

(r) $50 upon the filing of a memorandum of satisfaction or release pursuant to section 76;

(s) $100 for making application for an extension or rectification pursuant to section 77.

(3) The Commission may charge a fee in respect of costs reasonably incurred in the performance of its duties under this Act.

(4) A company incorporated under the Companies Act which is continued under Part 11 shall be exempted from the fee payable for filing a charge under section 72 in respect of any charge which, immediately prior to the company's continuation, was registered under the Companies Act.

(5) Subsections (1), (2) and (3) do not apply to a company issued with a provisional certificate of continuation under subsection 95A(3).

112 Annual registration fee for companies continuing registration under section 6A

(1) A company that wishes to continue its registration must pay to the Commission an annual registration fee of US$300 and the fees set out under paragraph 111(2)(ab), on or before 30th June each year.

(2) A company that fails to make the payment under subsection (1), is liable to a late fee payment of US$100.00.

112A. Annual fee for companies issued with provisional certificate of continuation

A company issued with a provisional certificate of continuation must, upon each anniversary of its registration as a company under the Companies Act, pay to the Commission an annual fee as set out in the table:

Authorised capital of a company		**Annual fee**
(i)	VT 50,000,000 or less	VT100,000
(ii)	more than VT50,000,000, but not more than VT 100.000,	VT150,000
(iii)	more than Vt100,000,000, but not more than VT 200,000,000	VT200,000
(iv)	more than VT 200,000,000, but not more than 300,000,000	VT250,000
(v)	more than VT 300,000,000	VT300,000.

113. Striking off on non-payment of fee

(1) If a company:

(a) registered for 1 year fails to pay the annual fee payable under section 112 within a period of 30 days from the date on which the annual fee falls due; or

(b) registered under long term registration, fails to pay the long term registration renewal fee payable under paragraph 111(2)(ab) within a period of 30 days from the date on which the long term registration renewal fee falls due; or

(c) issued with a provisional certificate of continuation under subsection 95A(3), fails to pay the annual fee payable under section 112A within a period of 30 days from the date on which the annual fee falls due,

the Commission must within 7 days after the expiration of the period of 30 days, send a notice to the company stating that the name of the company will be struck off the Register if the company fails to pay the fee within 14 days from the date of the notice.

(2) If a company fails to pay the fee within 14 days from the date of the notice referred to in subsection (1), the Commission must strike the name of the company off the Register and must publish notice of the striking off in the Gazette.

(3) Subsection (2) does not apply to a company in the process of being wound up or dissolved.

(4) Subsections 106(5) and (6) apply to a company that has been struck off under this section.

114. Recovery of fees etc.

Any fee payable under this Act shall from and after the day on which the same became due and payable be deemed to be debts due to the Commission from every person liable to the payment of same and may be recovered in any court of competent jurisdiction.

115. Company struck off liable for fees, etc.

A company shall continue to be liable for all fees payable under this Act notwithstanding that the name of the company has been struck off the Register and all those fees shall have priority to all other claims against the assets of the company.

116. *(Repealed)*

117. Fees payable to Commission

(1) The Commission may refuse to take action required of it under this Act for which a fee is prescribed until the fee has been paid.

(2) The Commission may refuse to continue under this Act a company incorporated under the Companies Act until all fees and penalties payable by the company under the Companies Act have been paid.

PART 14 – EXEMPTIONS

118. Exemptions from certain taxes, duties and exchange control restrictions

(1) A company shall not unless carrying on business in Vanuatu be subject to any business licence fee. A company or a shareholder thereof shall not be subject to any tax on income, profits, capital gains, distributions accruing to or derived by or from such company.

(2) No estate, inheritance, succession or gift tax, rate, duty, levy or other charge shall be payable in Vanuatu with respect to any shares, debt obligations or other securities of a company registered under this Act.

(2) Notwithstanding any provision of the Stamp Duties Act –

(a) all transfers of property other than real property situate in Vanuatu to or by a company;

(b) all transactions and declarations in respect of the shares, debt obligations or other securities of a company; and

(c) all other transactions relating to the business of a company;

shall be exempt from the payment of stamp duty.

(3) No exchange controls shall be applied to any company nor to any transactions relating to the securities of or in such company between the holders of such securities.

(3A) To avoid doubt, when a company registered under this Act transfers shares, debt obligation or other securities in a company incorporated under the Companies Act:

(a) subsection (3) does not apply in that situation; and

(b) such transactions must comply with the Companies Act.

(4) The exemptions granted to a company by this section shall remain in force for a period of twenty years from the date of its registration under this Act.

(5) An exemptions granted to a company under this section remains in force until 31 December 2099."

(6) To avoid doubt, subsection (3) does not apply to the transfer of a beneficial or equitable ownership of a company registered under this Act that is a shareholder in a company registered under the Companies Act.

PART 15 – MISCELLANEOUS

119. Privileged information

Nothing in subsection 35(6), section 35A or 128B or any other provision of this Act requires a person to disclose to the Commission information or documents that are subject to legal professional privilege.

119A. Indemnity from liability etc.

No person is 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.

120. Documents

Every document, save as otherwise provided, filed with the Commission shall be in either the English or French language.

121. Prescribed forms

The Commission may by order advertised in the Gazette –

(a) prescribe forms for the purposes of this Act;

(b) require the inclusion in or attachment to any such form, when used for the purposes of this Act, of any information or document; and

(c) require the signing of any such form by specified persons.

122. Certificate of good standing

(1) Subject to section 124 the Commission shall, upon request by any person issue a certificate of good standing authenticated by its official seal certifying that a company is of good standing if it is satisfied that:

(a) the name of the company is on the Register; and

(b) the company has paid all fees and penalties due and payable.

(2) The certificate of good standing issued under subsection (1) shall contain a statement as to whether –

(a) the company has submitted to the Commission articles of merger or consolidation that have not yet become effective;

(b) the company has submitted to the Commission articles of arrangement that have not yet become effective;

(c) the company is in the process of being wound-up and dissolved; or

(b) any proceedings to strike the name of the company off the Register have been instituted.

123. Replacement of documents

Where it is proved to the satisfaction of the Commission that any document or certificate issued by it has been lost or destroyed it shall upon application made by any person entitled thereto, issue a duplicate thereof.

124. Inspection of documents

(1) Except as provided in subsection (3), any person may upon payment of the prescribed fee:

(a) inspect the documents kept by the Commission pursuant to this Act; and

(b) require a copy or an extract of any document or any part of a document of which he has custody, to be certified by the Commission and a certified copy or extract shall be *prima facie* evidence of the matters contained therein.

(2) A document or a copy or an extract of any document or any part of a document certified by the Commission under subsection (1) shall be admissible in evidence in any proceedings as if it were the original document.

(3) An entry in the Register of Charges in respect of a company may be inspected only by any debentures holder, chargee or liquidator of the company, by its registered agent or by any person authorized in writing by the registered agent.

124A. Commission may request information and documents

For the purpose of discharging a duty, performing a function or exercising a power under this Act, the Commission 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).

125. *(Repealed)*

125A. Confidentiality of company records

(1) For the purpose of this section, **company records** means records of a company registered under this Act and includes record of:

(a) the shareholding in, or beneficial ownership of any share or shares in a company; and

(b) the management personnel of such a company; and

(c) the business, financial or other affairs or transactions of the company; and

(d) the assets or liabilities of such a company; and

(e) any other information prescribed by the Commission.

(2) For the purpose of paragraph (1)(b), **management personnel** means the Directors or any authorised officers or agents of the company.

(3) Company records are confidential unless otherwise required to be made available to the public under another provision of this Act.

(4) Except as required or permitted under this Act, a person must not:

(a) disclose; or

(b) attempt, offer or threaten to disclose; or

(c) induce or attempt to induce other persons to disclose; or

(d) incite, abet, counsel or procure any person to disclose; or

(e) be involved in any way in the disclosure of,

the details of company records of any company registered under this Act.

(5) A person who contravenes subsection (4) commits an offence punishable, on conviction, by a fine not exceeding US$100,000 or to imprisonment for a term not exceeding 5 years, or both.

(6) Despite subsection (4), the Commission or a person authorised by the Commission, may disclose company records if:

(a) required to do so by a court of competent jurisdiction under section 125B; or

(b) requested by:

(i) an officer of a company registered under this Act to which the information requested pertains to or a trustee company for the purpose of complying with the provisions of this Act; or

(ii) any person appointed as a liquidator, or by an officer of a company registered under this Act or trustee company in the performance of his or her duties as liquidator or an officer; or

(iii) *(Repealed)*

(ba) the disclosure is made 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

discharging a duty, performing a function or exercising a power under that Act; or

(iii) a law enforcement agency for the purpose of investigating or prosecuting an offence against a law of Vanuatu for which the maximum penalty is a fine of at least VT 1 million or imprisonment for at least 12 months; 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. 6 of 2017; or

(c) necessary to ensure compliance with any provisions of this Act.

(7) *(Repealed)*

(8) *(Repealed)*

(9) Despite the provisions of this Act, a shareholder is authorised to disclose the identity of the company's beneficial owners.

125B. Court proceedings disclosing company records

(1) If a company record under section 125A is likely to be disclosed in a Court proceeding, the Court may decide whether:

(a) the disclosure is to be made in open Court; and

(b) any confidential company information is to be disclosed in any written judgement, orders or minutes of the proceeding.

(2) Subject to subsection (1), civil or criminal proceedings relating to international companies commenced in any Court:

(a) under the provisions of this Act; or

(b) for the purpose solely of determining the rights or obligations of officers, members or holders of debentures; or

(c) relating to any appeal from the proceedings referred to in paragraphs (a) or (b),

may be held in an open Court.

125C. Disclosure to foreign government agency

(1) In this section, "regulatory information" means information about a company and the company's compliance with this Act.

(2) This section applies despite confidentiality requirements in section 125A.

(3) The Commission may disclose information about a company to a foreign government agency in the manner set out in this section.

(4) The Commission may disclose regulatory information to a foreign government agency of a country if:

(a) the Government of Vanuatu has entered into an agreement with the government of the country about exchanging regulatory information; and

(b) the Commission is satisfied, on information supplied by the agency, that the agency is subject to adequate legal restrictions on further disclosure; and

(c) the Commission has received a request for the information from the agency; and

(d) the Commission is satisfied, on information supplied by the agency, that the information sought is within the terms of the agreement; and

(e) the disclosure is in accordance with the agreement.

(5) The Commission may disclose information about a company to a foreign government agency of a country with whom the Government of Vanuatu has no agreement on exchanging information if:

(a) the Commission is satisfied that the disclosure is for the purpose of:

(i) discharging a duty, performing a function or exercising a power under the foreign government agency's own regulatory legislation (if any), including investigating a breach of that legislation; or

(ii) discharging a duty, 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) discharging a duty, 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 Commission 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.

(6) In deciding whether to disclose information under subsection (5), the Commission may take into consideration whether:

(a) the foreign government agency has agreed to assist the Commission with the costs of supplying the information; and

(b) the foreign government agency has provided, or would provide, similar assistance to the Commission; and

(c) it is in the interests of Vanuatu as a reputable financial centre to disclose the information.

126. Jurisdiction

Subject to any provisions to the contrary in any agreement, between the parties thereto, for the purposes of determining matters relating to title and jurisdiction but not for purposes of taxation, the *situs* of the ownership of shares, debt obligations or other securities of a company incorporated under this Act shall be Vanuatu.

127. Penalty for false statements

If any person in any return, report, certificate or other document, required by or for the purposes of any of the provisions of this Act willfully makes a statement false in any material particular knowing it to be false he shall be liable on conviction to a fine not exceeding VT 15 million or to a term of imprisonment not exceeding 5 years.

128. *(Repealed)*

128A. On site inspections

(1) The Commission may conduct on-site inspections at the business premises occupied by the registered agent of a company at any time during normal business hours.

(2) The Commission may, for the purposes of subsection (1):

(a) enter the business premises of the registered agent during ordinary business hours; and

(b) inspect and take copies of any books, accounts and documents of the registered agent that relate to:

(i) a service provided by the registered agent to the company; or

(ii) any other business of the registered agent, so far as it affects services provided by the registered agent to the company; and

(c) require information from the registered agent about the services it provides to the company.

(3) The registered agent must cooperate fully with the Commission by:

(a) giving the Commission all the information, and making available the documents it requires; and

(b) if necessary, giving the Commission appropriate workspace and reasonable access to office services, during the inspection.

(4) A person who intentionally obstructs the Commission in the exercise of its powers under this section commits an offence punishable upon conviction by:

(a) if the person is a natural person - a fine not exceeding VT 15 million or imprisonment not exceeding 5 years, or both; or

(b) if the person is a body corporate - a fine not exceeding VT 75 million.

(5) In this section, a reference to the Commission includes a person authorised by the Commission in writing as an authorised officer for the purposes of this section.

(6) An authorised officer must produce written evidence of his or her appointment if required to do so while carrying out on-site inspections.

(7) A statement by a person to the Commission under this section may not be used in evidence against the person in criminal proceedings other than in proceedings for making a false statement.

128B. Commission may require information and documents

(1) Subject to subsections (2) and (3), the Commission may, by notice in writing to a company or the registered agent of a company, require the company or the registered agent to provide the Commission with information or documents, or both, specified in the notice within the period set out in the notice.

(2) In the case of a notice to the registered agent of a company, the information or documents may relate to any or all of the following:

(a) the registered agent's provision of services to the company;

(b) the registered agent's integrity, competence, financial standing or organisation;

(c) the registered agent's compliance with this Act or the Regulations.

(3) In the case of a notice to a company, the information or documents must relate to any of the following:

(a) the company's integrity, competence, financial standing or organisation;

(b) the company's compliance with this Act or the Regulations.

(4) If the registered agent of a company:

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

(b) knowingly or recklessly gives the Commission information or documents that are false or misleading;

the registered agent commits an offence punishable upon conviction by the penalty referred to in subsection (5).

(5) The penalty is:

(a) if the registered agent is a natural person - a fine not exceeding VT 15 million or imprisonment not exceeding 5 years, or both; or

(b) if the registered agent is a body corporate - a fine not exceeding VT 75 million.

(6) If a company:

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

(b) knowingly or recklessly gives the Commission information or documents that are false or misleading;

the company commits an offence punishable upon conviction by a fine not exceeding VT 75 million.

129. Declaration by court

(1) A company may without the necessity of joining any other party, apply to the court, by summons supported by an affidavit, for a declaration on any question of interpretation of this Act or of the constitution of the company.

(2) A person acting on a declaration made by the court as a result of an application made in good faith under subsection (1) shall be deemed, in so far as regards the discharge of any fiduciary or professional duty, to have properly discharged his duties in the subject matter of the application.

130. Judge in chambers

(1) A judge of the Supreme Court may exercise in chambers any jurisdiction that is vested in the court by this Act and in exercise of that jurisdiction, the judge may award such costs as may be just.

(2) All proceedings before the court shall be heard *in camera* and no evidence or documents submitted to the court by any party shall, without the consent of that party and the court being first obtained, be made available to any other person not a party to the proceedings.

131. Regulations

(1) The Minister may, on the advice of the Commission, make regulations prescribing all matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the regulations may make provisions about:

(a) *(Repealed)*

(b) *(Repealed)*

(c) *(Repealed)*

(d) *(Repealed)*

(e) *(Repealed)*

(f) the conduct, duties and responsibilities of registered agents; and

(g) the issue of provisional certificate of continuation, and matters in relation to the companies, that certificate relates; and

(h) vary any fee specified in this Act.

132. *(Repealed)*

FIRST SCHEDULE

(Section 19, 79)

DEBENTURE

1. This Debenture secures the principal sum shown on its face and any interest accrued thereon from time to time. It is payable in the currency set out in this Debenture.

2. The principal sum is payable by the Debenture Holder at the time or time set out in this Debenture.

3. Until payment in full, this Debenture will carry interest payable yearly on the principal sum at the rate (if any) shown in the Debenture.

4. The company is not entitled to redeem this Debenture without the Holder's consent.

5. The provisions of the Constitution of the company giving the members or any class of the members of the company the right and power to vote and to demand a poll shall, so far as they relate to the company for the period while this Debenture is unredeemed, be void and of no effect for any purpose whatsoever and the provisions contained in the International Companies Act 1992 shall apply.

Table of Amendments

1	*Amended by Acts 26 of 1993, 9 of 1994*
	Amended by Act 45 of 2006
	Amended by Act 11 of 2010
	Amended by Act 19 of 2013
	Amended by Act 4 of 2016
	Amended by Act 14 of 2017
1(4)	*Inserted by Act 14 of 2017*
3(1)(ca)	*Substituted by Act 45 of 2006*
	Substituted by Act 11 of 2010
	Repealed by Act 4 of 2016
3(1)(cb)	*Inserted by Act 11 of 2010*
	Repealed by Act 4 of 2016
3(1A)	*Inserted by Act 45 of 2006*
3(3)	*Substituted by Act 14 of 2017*
3(5)	*Amended by Act 11 of 2010*
	Substituted by Act 14 of 2017
3(6)	*Amended by Act 11 of 2010*
	Substituted by Act 14 of 2017
4(4)	*Amended by Act 9 of 1994*
5(1A)	*Inserted by Act 14 of 2017*
5(2A)	*Inserted by Act 14 of 2017*
5(2)(a),(b)	*Amended by Act 9 of 1994*
5(2)(c)	*Repealed by Act 9 of 1994*
6	*Substituted by Act 45 of 2006*
6A	*Inserted by Act 45 of 2006*
	Substituted by Act 11 of 2010
7(3)	*Amended by Act 26 of 1993*
9(3),(4)	*Inserted by Act 26 of 1993*
9(3)	*Amended by Act 45 of 2006*
9(5)	*Inserted by Act 45 of 2006*
10(1)(b)	*Amended by Act 4 of 2016*
10(1)(c)	*Amended by Act 45 of 2006*
	Amended by Act 21 of 2012
10(1)(d)	*Substituted by Act 11 of 2010*
10(1)(e)	*Substituted by Act 45 of 2006*
	Substituted by Act 11 of 2010
10(1)(f)	*Substituted by Act 11 of 2010*
10(2)(ab),(ac)	*Inserted by Act 26 of 2000*
10(2)(b)	*Amended by Act 4 of 2016*
10(2)(c)	*Amended by Act 4 of 2016*
14(2)(a)	*Amended by Act 45 of 2006*
	Amended by Act 11 of 2010
14(5)	*Amended by Act 26 of 1993*
16(1)(a)	*Repealed by Act 4 of 2016*
16(3)	*Amended by Act 26 of 1993*
16A	*Inserted by Act 14 of 2017*
17(c)	*Amended by Act 45 of 2006*
	Substituted by Act 4 of 2016
20	*Amended by Act 45 of 2006*
22	*Repealed by Act 4 of 2016*
23(1)	*Amended by Act 4 of 2016*
23(4)	*Amended by Act 26 of 1993*
25 (heading)	*Amended by Act 4 of 2016*
25	*Amended by Act 4 of 2016*
25(1)(b)	*Amended by Act 14 of 2017*
25(1)(c)	*Amended by Act 14 of 2017*
25(2)	*Amended by Act 14 of 2017*
25(3)	*Amended by Act 14 of 2017*
25(4) and (5)	*Inserted by Act 19 of 2013*
26	*Amended by Act 45 of 2006*
	Amended by Act 11 of 2010
	Substituted by Act 4 of 2016
	Repealed by Act 14 of 2017
26A	*Inserted by Act 45 of 2006*
	Substituted by Act 11 of 2010
	Repealed by Act 4 of 2016
26B	*Inserted by Act 11 of 2010*
	Repealed by Act 4 of 2016
26C	*Inserted by Act 11 of 2010*
	Repealed by Act 4 of 2016
26D	*Inserted by Act 11 of 2010*
	Repealed by Act 4 of 2016
29(3),(4),(5),(6)	*Inserted by Act 26 of 1993*
35	*Amended by Act 14 of 2017*
35(1A)	*Inserted by Act 14 of 2017*
35(3A)	*Inserted by Act 14 of 2017*
35(5) to (9)	*Inserted by Act 14 of 2017*
35A	*Inserted by Act 14 of 2017*
46(4)	*Inserted by Act 26 of 1993*
52(4)	*Repealed by Act 4 of 2016*
57(1)	*Substituted by Act 14 of 2017*
57(2)	*Repealed by Act 14 of 2017*
58	*Amended by Act 14 of 2017*
58(1)	*Amended by Act 11 of 2010*
58(1)(a)	*Substituted by Act 45 of 2006*
58(1)(ba)	*Inserted by Act 14 of 2017*
58(1)(bb)	*Inserted by Act 14 of 2017*
58(1)(d)	*Amended by Act 4 of 2016*
58(1)(e)	*Amended by Act 45 of 2006*
	Repealed by Act 4 of 2016
58(1)(f)	*Amended by Act 11 of 2010*
	Repealed by Act 4 of 2016
58A	*Inserted by Act 14 of 2017*
59(1)	*Amended by Act 26 of 1993*
59	*Repealed by Act 4 of 2016*
60(1)	*Amended by Act 26 of 1993*
63(1)	*Amended by Act 14 of 2017*
65 (heading)	*Amended by Act 11 of 2010*
72(2)	*Amended by Act 45 of 2006*
72(8),(10)	*Amended by Act 26 of 1993*
72(11),(12),(13)	*Added by Act 26 of 1993*
74(1)	*Amended by Act 26 of 1993*
74(2)	*Amended by Act 45 of 2006*
74A	*Inserted by Act 11 of 2010*
	Repealed by Act 4 of 2016
76 (heading)	*Amended by Act 26 of 1993*
78	*Amended by Act 26 of 1993*
78A	*Inserted by Act 26 of 1993*
79	*Amended by Act 14 of 2017*
79(1)(b)	*Amended by Act 4 of 2016*
79(1)(c)	*Amended by Act 4 of 2016*
	Repealed by Act 14 of 2017
79(6)(d)	*Substituted by Act 14 of 2017*
79(8)	*Repealed by Act 4 of 2016*
80(9)	*Repealed by Act 4 of 2016*
80(10)	*Amended by Act 4 of 2016*
84(4)	*Amended by Act 9 of 1994*
85(7)	*Amended by Act 9 of 1994*
89(1)	*Amended by Act 26 of 1993*
90(2)	*Amended by Act 26 of 1993*
90(9)	*Amended by Act 9 of 1994*
91(9)(c)	*Amended by Act 26 of 1993*
92(1)	*Amended by Act 9 of 1994*
	Amended by Act 11 of 2010
92(2)(b)	*Amended by Act 11 of 2010*
92(2)(d)	*Amended by Act 26 of 1993, repealed by Act 9 of 1994*
92(4),(5)	*Amended by Act 9 of 1994*
95A	*Inserted by Act 11 of 2010*
95B	*Inserted by Act 11 of 2010*
95C	*Inserted by Act 11 of 2010*
101(6),(7)	*Amended by Act 9 of 1994*
106 (heading)	*Amended by Act 11 of 2010*
106(1)	*Substituted by Act 26 of 1993*
106(2)	*Repealed by Act 26 of 1993*
106(3)	*Substituted by Act 26 of 1993*
106(4A) to (4D)	*Inserted by Act 14 of 2017*
106(5)	*Substituted by Act 26 of 1993*

	Repealed by Act 11 of 2010
106(6)	*Amended by Act 26 of 1993*
	Repealed by Act 11 of 2010
106(7)	*Amended by Act 11 of 2010*
106(8)	*Amended by Act 11 of 2010*
107(1)	*Amended by Act 4 of 2016*
107(2)	*Amended by Act 11 of 2010*
	Amended by Act 4 of 2016
107(3)	*Amended by Act 11 of 2010*
	Amended by Act 4 of 2016
107(3)(a)	*Amended by Act 11 of 2010*
107(3)(b)	*Substituted by Act 11 of 2010*
107(3)(c)	*Repealed by Act 11 of 2010*
110(1)	*Amended by Act 11 of 2010*
110(2)(c)	*Amended by Act 19 of 2013*
110A	*Inserted by Act 11 of 2010*
111(2)	*Amended by Act 45 of 2006*
111(2)(a)	*Substituted by Act 11 of 2010*
111(2)(aa)	*Inserted by Act 45 of 2006*
	Substituted by Act 11 of 2010
111(2)(ab)	*Inserted by Act 11 of 2010*
111(2)(p),(q),(r),(s)	*Inserted by Act 26 of 1993*
111(4)	*Inserted by Act 26 of 1993*
111(5)	*Inserted by Act 45 of 2006*
	Substituted by Act 11 of 2010
112(1)	*Substituted by Act 26 of 1993*
	Amended by Act 45 of 2006
112(1A)	*Inserted by Act 45 of 2006*
112	*Substituted by Act 11 of 2010*
	Substituted by Act 4 of 2016
112A	*Inserted by Act 11 of 2010*
113	*Substituted by Act 11 of 2010*
114	*Amended by Act 9 of 1994*
	Amended by Act 11 of 2010
115	*Amended by Act 11 of 2010*
116	*Substituted by Act 9 of 1994*
	Repealed by Act 11 of 2010
117	*Amended by Act 9 of 1994*
117(1)	*Amended by Act 11 of 2010*
118(3A)	*Inserted by Act 4 of 2016*
118(5)	*Substituted by Act 4 of 2016*
118(6)	*Inserted by Act 4 of 2016*
119	*Repealed by Act 9 of 1994*
119	*Inserted by Act 14 of 2017*
119A	*Inserted by Act 14 of 2017*
122(1)	*Amended by Act 9 of 1994*
124(1)	*Amended by Acts 26 of 1993, 9 of 1994*
124(3)	*Inserted by Act 26 of 1993*
124A	*Inserted by Act 14 of 2017*
125	*Substituted by Act 4 of 2016*
	Repealed by Act 14 of 2017
125A(3)	*Inserted by Act 4 of 2016*
	Amended by Act 14 of 2017
125A(4)	*Amended by Act 14 of 2017*
125(A)(6)(b)(iii)	*Repealed by Act 14 of 2017*
125(A)(6)(ba)	*Inserted by Act 14 of 2017*
125A(7)	*Repealed by Act 14 of 2017*
125A(8)	*Repealed by Act 14 of 2017*
125B	*Inserted by Act 4 of 2016*
125B(1)	*Substituted by Act 14 of 2017*
125C	*Inserted by Act 14 of 2017*
127	*Amended by Act 14 of 2017*
128	*Repealed by Act 45 of 2006*
128A	*Inserted by Act 14 of 2017*
128B	*Inserted by Act 14 of 2017*
131	*Substituted by Act 45 of 2006*
131(2)	*Amended by Act 11 of 2010*
131(2)(a),(b),(c),(d) and (e)	*Repealed by Act 4 of 2016*
132	*Inserted by Act 45 of 2006*
	Repealed by Act 11 of 2010
Throughout	*Replace "Registrar" with "Commission" per Act 9 of 1994*