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CHAPTER 191

COMPANIES

Act 12 of 1986
Act 4 of 1990
Act 31 of 1992
Act 27 of 1993
Act 4 of 1997
Act 27 of 2000

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COMPANIES

To enact a consolidated company law.

PART 1 – PRELIMINARY PROVISIONS

1. Interpretation

(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them –

"accounts" includes a company's group accounts, whether prepared in the form of accounts or not;

"agent" does not include a person's counsel acting as such;

"annual fee" means the annual fee required to be paid under section 392;

"annual return" means the return required to be made under section 127 or under section 377;

"approved stock exchange" means any body of persons which is for the time being an approved stock exchange for the purposes of the Prevention of Fraud (Investments) Act, Cap. 70;

"articles" means the articles of association of a company, as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained (as the case may be) in Table A in the First Schedule to the Companies Act, 1929, or in Table A in the First Schedule to the Companies Act, 1948, or in Table A in the Second Schedule to the Companies Regulation (Q.R. No. 9 of 1971), or in Table A in Schedule 2 to this Act;

"book and paper" and "book or paper" include accounts, deeds, writings and documents;

"branch register" has the meaning assigned to it by section 123(1);

"Companies Act, 1929" or "Companies Act, 1948" means the United Kingdom Companies Acts of 1929 and 1948;

"company" means a company formed and registered under this Act or an existing company;

"company limited by guarantee" and "company limited by shares" have the meanings assigned to them respectively by section 2(2);

"contributory" has the meaning assigned to it by section 219;

"creditors' voluntary winding up" has the meaning assigned to it by section 279(4);

"debenture" includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not;

"default fine" has the meaning assigned to it by section 400;

"director" includes any person occupying the position of director by whatever name called;

"document" includes notice, order, summons, and other legal process, and register;

"exempted company" means a company registered or re-registered as an exempted company under section 376 or section 383, respectively;

"existing company" means a company formed and registered in Vanuatu under the Companies Act, 1929, or the Companies Act, 1948, or the New Hebrides Companies (Incorporation) Regulation, 1970, or the Companies Regulation (Q.R. No. 9 of 1971);

"financial year" has the meaning assigned to it by section 149;

"French company" has the meaning assigned to it by section 385;

"general rules" means general rules made under section 338, and includes forms;

"group accounts" has the meaning assigned to it by section 154(1);

"holding company" means a holding company as defined by section 158;

"issued generally" means, in relation to a prospectus, issued to persons who are not existing members or debenture holders of the company;

"local company" means a company other than an exempted company;

"members' voluntary winding up" has the meaning assigned to it by section 279(4);

"the minimum subscription" has the meaning assigned to it by section 60(2);

"memorandum" means the memorandum of association of a company, as originally framed or as altered in pursuance of any enactment;

"officer", in relation to a body corporate, includes a director, manager or secretary;

"oversea company" means a company incorporated outside Vanuatu to which the provisions of Part 9 apply;

"printed" includes typewritten and reproduced by any process of duplicating, rotaprinting, cyclostyling or photocopying;

"private company" has the meaning assigned to it by section 38;

"prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company;

"the registrar of companies", or when used in relation to registration of companies, "the registrar", means the registrar or other officer performing under this Act the duty of registration of companies;

"registration fee" means the registration fee required to be paid under section 392;

"resolution for reducing share capital" has the meaning assigned to it by section 75(2);

"a resolution for voluntary winding up" has the meaning assigned to it by section 274(2);

"share" means share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied;

"share warrant" has the meaning assigned to it by section 91(2);

"subsidiary" means a subsidiary as defined by section 158;

"Table A" means Table A in Schedule 2;

"the time of the opening of the subscription lists" has the meaning assigned to it by section 62(1);

"unlimited company" has the meaning assigned to it by section 2(2).

(2) A person shall not be deemed to be within the meaning of any provision in this Act a person in accordance with whose directions or instructions the directors of a company

are accustomed to act, by reason only that the directors of the company act on advice given by him in a professional capacity.

(3) References in this Act to a body corporate or to a corporation shall be construed as not including a corporation sole but as including a company incorporated outside Vanuatu.

PART 2 – CONSTITUTION AND INCORPORATION OF COMPANIES

Incorporation by Registration upon Permit of Minister

2. Application for permit to form a company

(1) Application may be made to the Minister, by or on behalf of any seven or more persons, or, where it is desired to form a private company, any two or more persons, associated for any lawful purpose, for a permit to form an incorporated company, with or without limited liability.

(2) Such a company may be –

(a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed "a company limited by shares"); or

(b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed "a company limited by guarantee"); or

(c) a company not having any limit on the liability of its members (in this Act termed "an unlimited company").

(3) A company limited by guarantee shall not be registered with shares and shall not create or issue shares.

3. Form of application

(1) An application for a permit, subject to any directions of the Minister, shall be in the form and shall contain the particulars set out in Schedule 1 and, without prejudice thereto, shall state –

(a) the full names (including any former names), addresses and nationalities of the applicants;

(b) the precise nature and fields of operation and place of the business intended to be carried on by the company and the place proposed for its registered office,

and shall be accompanied by the original memorandum of association, duly subscribed, and articles of association, if any, duly signed, to be filed with the registrar, together with such number of facsimile copies thereof as the Minister may require.

(2) An application for a permit shall be treated as a confidential official document by the Minister and all public officers having access thereto, and the provisions of subsections (3), (4) and (5) of section 381 shall have effect, in the case of any company proposed to be registered as an exempted company, with respect to the information therein contained.

4. Power to obtain further particulars

(1) Before reaching a decision upon an application for a permit, the Minister may require the applicants to provide such further information relating to themselves or to the

proposed company or to other persons having in interest or intending to have an interest in the company as the Minister may specify; and unless the Minister is satisfied that the applicants have supplied such information to the best of their ability the Minister shall, without prejudice to his powers under section 16, refuse to proceed further with the application:

Provided that in the case of a proposed exempted private company not being a company of a class specified in Schedule 3 no information shall be so required respecting the beneficial interest of any person in the company.

(2) Any information so provided by or on behalf of the applicants for a permit shall be treated as confidential by the Minister and all public officers having access thereto and the provisions of subsections (3), (4) and (5) of section 381 shall have effect, in relation to any company proposed to be registered as an exempted company, with respect to such information.

5. Requirements with respect to memorandum

(1) At least seven persons, or, where it is desired to form a private company, at least two persons, shall subscribe their names to the memorandum of every company.

(2) The memorandum of every company shall state –

(a) the full names (including any former names), addresses and nationalities of the persons who subscribe their names to the memorandum;

(b) the name of the company, with the word "Limited" as the last word of the name in the case of a company limited by shares or by guarantee;

(c) whether the company is to be a local company or an exempted company;

(d) the part of Vanuatu in which the registered office of the company is proposed to be situate;

(e) the restrictions, if any, upon the business to be carried on by the company, or upon the objects of the company, or a statement that the business or objects of the company are unrestricted; and

(f) the names of the first directors of the company.

(3) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited.

(4) The memorandum of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year 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 among themselves, such amount as may be required, not exceeding a specified amount.

(5) In the case of a company having a share capital –

(a) the memorandum must also, unless the company is an unlimited company, state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;

(b) no subscriber of the memorandum may take less than one share;

(c) each subscriber must write opposite to his name in words the number of shares he takes.

6. Signature of memorandum

The memorandum must be signed by each subscriber in the presence of at least one witness who must attest the signature, and the full names of each subscriber and witness shall also be printed or legibly written thereon.

7. Restriction on alteration of memorandum

A company may not alter the provisions of its memorandum except in the cases, in the mode and to the extent for which express provision is made in this Act.

8. Alteration of authorised business or objects

(1) A company may, by special resolution, alter its memorandum by changing, imposing or removing any restriction upon the business which it is authorised to carry on or by altering the objects for which it is established:

Provided that if an application is made to the court in accordance with this section for the alteration to be annulled, it shall not have effect except in so far as it is confirmed by the court.

(2) Within 28 days of the passing of any such resolution notice thereof shall be given to the holders of all debentures secured by a floating charge over any of the company's property and to the trustees, if any, for such debenture holders.

(3) Application to the court under this section shall be made within 60 days after the passing of the resolution.

(4) An application to the court under this section may be made –

(a) in the case of a private company, by any member or by anyone to whom notice has been given under subsection (2); or

(b) in the case of a public company, by –

(i) the holders of not less than 5 per cent in the aggregate of the company's issued shares or of any class thereof or, if the company has no shares, by not less than 5 per cent of the company's members;

(ii) by the trustees for the holders of any debentures secured by a floating charge over any of the company's property; or

(iii) by the holders of not less than 5 per cent of the company's debentures secured by a floating charge over any of the company's property.

(5) If an application to the court is made under this section the company shall forthwith deliver to the registrar for registration notice of that fact.

(6) On an application under this section the court may make an order confirming the alteration in whole or in part and on such terms and conditions as it thinks fit and may adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentients and may give such directions and make such orders as it may think expedient for facilitating and carrying into effect any such arrangement. If the court shall refuse to confirm the alteration it shall make an order annulling the alteration.

(7) The company shall within 21 days of the making by the court of any order under this section deliver a copy thereof to the registrar for registration.

(8) If a company makes default in giving or publishing any notice or delivering any document as required by this section, the company and every officer of the company who is in default shall be liable to a default fine.

9. Objects of existing companies

A statement contained in the memorandum of a company incorporated before the commencement of this Act (27 October 1986) which specifies the objects for which the company is established shall, in so far as such objects relate to the carrying on of any business, be deemed to be a statement that the business which the company is permitted to carry on is restricted to the objects so specified, and shall be subject in all respects to the provisions of this Act.

Articles of Association

10. Articles prescribing regulations for companies

There may in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

11. Regulations required in case of unlimited company or company limited by guarantee

(1) In the case of an unlimited company the articles must state the number of members with which the company proposes to be registered and, if the company has a share capital, the amount of share capital with which the company proposes to be registered.

(2) In the case of a company limited by guarantee, the articles must state the number of members with which the company proposes to be registered.

(3) Where an unlimited company or a company limited by guarantee has increased the number of its members beyond the registered number, it shall, within 15 days after the increase was resolved on or took place, give to the registrar of companies notice of the increase, and the registrar shall record the increase.

If default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

12. Adoption and application of Table A

(1) Articles of association may adopt all or any of the regulations contained in Table A.

(2) In the case of a company limited by shares and registered after the commencement of this Act (27 October 1986), if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations contained in Table A, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

13. Printing and signature of articles

Articles must –

(a) be printed;

(b) be divided into paragraphs numbered consecutively;

(c) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature, and the full names of each subscriber and witness shall also be printed or legibly written thereon.

14. Alteration of articles by special resolution

(1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles.

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

Form of Memorandum and Articles

15. Statutory forms of memorandum and articles

The form of –

(a) the memorandum of association of a company limited by shares;

(b) the memorandum and articles of association of a company limited by guarantee and not having a share capital;

(c) the memorandum and articles of association of an unlimited company having a share capital;

shall be respectively in accordance with the forms set out in Tables B, C, and D in Schedule 2, or as near thereto as circumstances admit.

Registration

16. Powers of Minister on application

Subject to the provisions of this Act, the Minister may in his discretion grant or refuse a permit for which application is made under this Act and need not give any reason for his decision upon the application.

17. Endorsement of permit on original memorandum

(1) A permit granted under section 16 shall be endorsed on the original of the memorandum and shall be in such form as the Minister shall determine.

(2) The memorandum endorsed with the permit and the original of the articles (if any) shall as soon as possible be returned to the applicants or the person or persons acting on their behalf.

18. Filing of memorandum

If a permit is endorsed on a memorandum, the persons who have subscribed their names thereto may, within 6 months after the date of the grant of the permit, file the memorandum with the registrar.

19. Duties of registrar before accepting memorandum

Before accepting a memorandum for filing the registrar shall satisfy himself that it is duly endorsed with a permit and that it conforms with the requirements of this Act.

20. Certificate of incorporation, effect of registration

(1) Upon the due filing of the memorandum the registrar shall retain and forthwith register the memorandum, the name of the company, and the articles (if any), specifying whether it is registered as a local company or an exempted company, in a register to be maintained by him for the purpose; and shall then forthwith issue under his hand or seal a certificate of incorporation with the date of registration and its status as a local or exempted company, as the case may be, specified therein, together with a facsimile copy of the memorandum, and articles, if any, filed.

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but

with such liability on the part of the members to contribute to the assets of the company in the event of its being wound-up as is mentioned in this Act.

21. Conclusiveness of certificate of incorporation

A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Act.

Re-registration of Companies

22. Limited companies may apply for permit to be re-registered as unlimited

(1) A company which, at the date of the commencement of this Act (27 October 1986), was registered as limited or thereafter is so registered (otherwise than in pursuance of section 23) may apply to the Minister for a permit to be re-registered as unlimited; and such application shall comply with the requirement of subsection (2), shall be signed by a director or by the secretary of the company and shall be lodged with the Minister together with the documents mentioned in subsection (3).

(2) The said requirement is that the application must –

(a) set out such alterations in the company's memorandum as –

(i) if it is to have a share capital, are requisite to bring it, both in substance and in form, into conformity with the requirements imposed by this Act with respect to the substance and form of the memorandum of a company to be formed as an unlimited company having a share capital; or

(ii) if it is not to have a share capital, are requisite in the circumstances; and

(b) if articles have been registered, set out such alterations therein and additions thereto as –

(i) if it is to have a share capital, are requisite to bring them, both in substance and in form, into conformity with the requirements imposed by this Act with respect to the substance and form of the articles of a company to be formed as an unlimited company having a share capital; or

(ii) if it is not to have a share capital, are requisite in the circumstances;

and if articles have not been registered, have annexed thereto, printed articles proposed for registration, being, if the company is to have a share capital, articles complying with the said requirements and, if not, articles appropriate to the circumstances.

(3) The documents referred to in subsection (1) above are –

(a) the written assent to the company's being registered as unlimited subscribed by or on behalf of all the members of the company;

(b) a declaration made by the directors of the company that the persons by whom or on whose behalf the form of assent is subscribed constitute the whole membership of the company and, if any of the members have not subscribed that form themselves, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed it on behalf of a member was lawfully empowered so to do;

(c) a printed copy of the memorandum incorporating the alterations therein set out in the application; and

(d) if articles have been registered, a printed copy thereof incorporating the alterations therein and additions thereto set out in the application.

(4) The Minister may require the applicant to furnish any further or other information he may think necessary; and, having considered the application, he may in his discretion grant or refuse a permit applied for under this section and need not give any reasons for his decision.

(5) Upon the granting of a permit under subsection (4), the Minister shall endorse the application accordingly and return it and the other documents submitted as soon as possible to the company, which may within 3 months from the date of the permit lodge them with the registrar for re-registration of the company.

(6) The registrar shall retain the application and other documents lodged with him under subsection (5) and shall, if articles are annexed to the application, register them and shall issue to the company a certificate of incorporation appropriate to the status to be assumed by the company by virtue of this section; and upon the issue of the certificate –

(a) the status of the company shall, by virtue of the issue, be changed from limited to unlimited; and

(b) the alterations in the memorandum set out in the application and (if articles have been previously registered) any alterations and additions to the articles so set out shall, notwithstanding any other provisions of this Act, take effect as if duly made by resolution of the company and the provisions of this Act shall apply to the memorandum and articles as altered or added to by virtue of this section accordingly.

(7) A certificate of incorporation issued by virtue of this section shall be conclusive evidence that the requirements of this section with respect to re-registration and of matters precedent and incidental thereto have been complied with, and that the company was authorised to be re-registered under this Act in pursuance of this section and was duly so re-registered.

(8) Where a company is re-registered in pursuance of this section, a person who, at the time when the application for it to be re-registered was lodged, was a past member of the company and did not thereafter again become a member thereof shall not, in the event of the company's being wound-up, be liable to contribute to the assets of the company more than he would have been liable to contribute thereto had it not been so re-registered.

(9) For the purposes of this section –

(a) subscription to a form of assent by the legal personal representative of a deceased member of a company shall be deemed to be subscription by him;

(b) a trustee in bankruptcy of a person who is a member of a company shall, to the exclusion of that person, be deemed to be a member of the company.

23. Unlimited companies may apply for permit to be re-registered as limited

(1) A company which, at the commencement of this Act (27 October 1986), was registered as unlimited or thereafter is so registered (otherwise than by virtue of section 22) may apply to the Minister for a permit to be re-registered as limited if a special resolution that it should so apply to be re-registered (complying with the requirement of subsection (2)) is passed; and such application shall be signed by a director or by the secretary of the company and shall be lodged with the Minister together with the documents mentioned in subsection (3), not earlier than the day on which the copy of the resolution forwarded to the registrar of companies in pursuance of section 144 is received by the registrar.

(2) The said requirement is that the resolution –

(a) must state the manner in which the liability of the members of the company is to be limited and, if the company is to have a share capital, what that capital is to be; and

(b) must –

(i) if the company is to be limited by guarantee, provide for the making of such alterations in its memorandum and such alterations in and additions to its articles as are requisite to bring the memorandum and articles, both in substance and in form, into conformity with the requirements of this Act with respect to the substance and form of the memorandum and articles of a company to be formed as a company limited by guarantee;

(ii) if the company is to be limited by shares, provide for the making of such alterations in its memorandum as are requisite to bring it, both in substance and in form, into conformity with the requirements of this Act with respect to the substance and form of the memorandum of a company to be formed as a company so limited, and such alterations in and additions to its articles as are requisite in the circumstances.

(3) The documents referred to in subsection (1) above are a printed copy of the resolution, a printed copy of the memorandum as altered in pursuance of the resolution and a printed copy of the articles as so altered.

(4) The Minister may require the applicant to furnish any further or other information he may think necessary; and, having considered the application, he may in his discretion grant or refuse a permit applied for under this section and need not give any reasons for his decision.

(5) Upon the granting of a permit under subsection (4), the Minister shall endorse the application accordingly and return it and the other documents submitted as soon as possible to the company, which may within 3 months from the date of the permit lodge them with the registrar for re-registration of the company.

(6) The registrar shall retain the application and other documents lodged with him under subsection (5) and shall issue to the company a certificate of incorporation appropriate to the status to be assumed by the company by virtue of this section; and upon the issue of the certificate –

(a) the status of the company shall, by virtue of the issue, be changed from unlimited to limited; and

(b) the alterations in the memorandum specified in the resolution and the alterations in, and additions to, the articles so specified shall, notwithstanding any other provisions of this Act, take effect.

(7) A certificate of incorporation issued by virtue of this section shall be conclusive evidence that the requirements of this section with respect to re-registration and of matters precedent and incidental thereto have been complied with, and that the company was authorised to be re-registered under this Act in pursuance of this section and was duly so re-registered.

(8) In the event of the winding-up of a company re-registered in pursuance of this section, the following provisions shall have effect –

(a) notwithstanding paragraph (a) of section 218, a past member of the company who was a member thereof at the time of re-registration shall, if the winding-up commences within the period of 3 years beginning with the day on which

the company is re-registered, be liable to contribute to the assets of the company in respect of its debts and liabilities contracted before that time;

(b) where no persons who were members of the company at that time are existing members of the company, a person who, at that time, was a present or past member thereof shall, subject to paragraph (a) of section 218 and to paragraph (a) of this subsection, but notwithstanding paragraph (c) of section 218, be liable to contribute as aforesaid notwithstanding that the existing members have satisfied the contributions required to be made by them in pursuance of this Act;

(c) notwithstanding paragraphs (d) and (e) of section 218, there shall be no limit on the amount which a person who, at that time, was a past or present member of the company is liable to contribute as aforesaid.

24. Penalty for false statement

Any person who knowingly makes any statement which is false or which he does not believe to be true for the purpose of obtaining any permit or approval of the Minister under this Act shall be liable on conviction to a fine not exceeding VT 200,000 or to a term of imprisonment not exceeding 12 months or to both.

25. Penalty for falsification of memorandum or other document

Any person who, without lawful authority, makes any material alteration to a memorandum or other document after the Minister has granted a permit in relation thereto or has otherwise signified his approval thereto shall be liable on conviction to a fine not exceeding VT 200,000 or to a term of imprisonment not exceeding 12 months or to both.

Provisions with respect to Names of Companies

26. Restriction on name of company

(1) No company shall be permitted to be registered by a name which in the opinion of the Minister is undesirable.

(2) Without prejudice to the generality of subsection (1), no company shall be permitted to be registered by a name which –

(a) is identical with the name by which a company is registered under this Act or under which a company has at any time been incorporated in Vanuatu (whether or not that company has been dissolved) or so nearly resembles such name as to be in the opinion of the Minister calculated or likely to deceive or mislead;

(b) suggests or is likely to suggest connection with the government of any country or with any public international organisation or with any public board or statutory corporation or any municipal or other local authority;

(c) contains the words "co-operative" or "building society".

(3) A person may apply in writing to the registrar for the reservation of a name of a company for the incorporation of which a permit is to be sought, a name to which a company proposes to change its name or a name under which an oversea company proposes to apply for a permit to be registered, either originally or on change of name.

(4) If the registrar is satisfied as to the *bona fides* of the application and that the proposed name is a name by which an intended company, company or oversea company could be registered without contravention of subsection (1) or subsection (2), he shall, upon payment of the fee prescribed by Schedule 7, reserve the proposed name for a period of 6 months from the date of the lodging of the application.

(5) During a period for which a name is reserved, no company, oversea company, person, firm or society (other than the applicant for reservation of the name) shall be registered under this Act or any other Act, whether originally or on change of name, under the reserved name or under any other name which, in the opinion of the registrar, so closely resembles the reserved name as to be calculated or likely to be mistaken for that name.

(6) The reservation of a name under this section in respect of an intended company, company or oversea company shall not in itself entitle the intended company, company, or oversea company to be registered by that name, either originally or on change of name.

27. Change of name

(1) A company may by special resolution and with the approval of the registrar signified in writing change its name.

(2) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name is registered by a name which, in the opinion of the registrar, is too like the name by which a company in existence is previously registered, the first-mentioned company may change its name with the sanction of the registrar and, if he so directs within 12 months of its being registered by that name, shall change it within a period of 6 weeks from the date of the direction or such longer period as the registrar may think fit to allow.

If a company makes default in complying with a direction under this subsection, it shall be liable to a fine not exceeding VT 1,000 for every day during which the default continues.

(3) Where a company changes its name under this section, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.

(4) A change of name by a company under this section shall not affect any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

28. Power of registrar to require company to abandon misleading name

(1) If, in the opinion of the registrar, the name by which a company is registered gives so misleading an indication of the nature of its activities as to be likely to cause harm to the public, he may direct it to change its name.

(2) A direction given under this section to a company must, if not duly made the subject of an application under subsection (3) to the court, be complied with within a period of 6 weeks from the date of the direction or such longer period as the registrar may think fit to allow.

(3) A company to which a direction is given under this section may, within a period of 3 weeks from the date of the direction, apply to the court to set the direction aside, and the court may set it aside or confirm it; and, if it confirms it, it shall specify a period within which it must be complied with.

(4) If a company makes default in complying with a direction under this section, it shall be liable to a fine not exceeding VT 1,000 for every day during which the default continues.

(5) The provisions of subsection (3) and subsection (4) of section 27 shall apply to a change of name under this section.

29. Power to dispense with "limited" in name of charitable and other companies

(1) Where it is proved to the satisfaction of the Minister that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Minister may by licence direct that the association may be registered as a company with limited liability, without the addition of the word "limited" to its name, and the association may be registered accordingly and shall, on registration, enjoy all the privileges and (subject to the provisions of this section) be subject to all the obligations of limited companies.

(2) Where it is proved to the satisfaction of the Minister –

(a) that the objects of a company registered under this Act as a limited company are restricted to those specified in the subsection (1) and to objects incidental or conducive thereto; and

(b) that by its constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its members;

the Minister may by licence authorise the company to make by special resolution a change in its name including or consisting of the omission of the word "limited", and subsections (3) and (4) of section 27 shall apply to a change of name under this subsection as they apply to a change of name under that section.

(3) A licence by the Minister under this section may be granted on such conditions and subject to such regulations as the Minister thinks fit, and those conditions and regulations shall be binding on the body to which the licence is granted, and (where the grant is under subsection (1)) shall, if the Minister so directs, be inserted in the memorandum and articles, or in one of those documents.

(4) A body to which a licence is granted under this section shall be excepted from the provisions of this Act relating to the use of the word "limited" as any part of its name, the publishing of its name and the sending of lists of members to the registrar of companies.

(5) A licence under this section may at any time be revoked by the Minister, and upon revocation the registrar shall enter the word "limited" at the end of the name upon the register of the body to which it was granted, and the body shall cease to enjoy the exemptions and privileges or, as the case may be, the exemptions granted by this section:

Provided that, before a licence is so revoked, the Minister shall give to the body notice in writing of his intention, and shall afford it an opportunity of being heard in opposition to the revocation.

(6) Where a body in respect of which a licence under this section is in force alters the provisions of its memorandum with respect to its objects, the Minister may (unless he sees fit to revoke the licence) vary the licence by making it subject to such conditions and regulations as the Minister thinks fit, in lieu of or in addition to the conditions and regulations, if any, to which the licence was formerly subject.

General Provisions with respect to Memorandum and Articles

30. Effect of memorandum and articles

(1) Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants

on the part of each member to observe all the provisions of the memorandum and of the articles.

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company, and shall be of the nature of a specialty debt.

31. Provision as to memorandum and articles of companies limited by guarantee

(1) In the case of a company limited by guarantee every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of a company limited by guarantee, purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

32. Alterations in memorandum or articles increasing liability to contribute to share capital not to bind existing members without consent

Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company:

Provided that this section shall not apply in any case where the member agrees in writing, either before or after the alteration is made, to be bound thereby.

33. Power to alter conditions in memorandum which could have been contained in articles

(1) Subject to the provisions of section 32 and of section 216, any condition contained in a company's memorandum which could lawfully have been contained in articles of association instead of in the memorandum may, subject to the provisions of this section, be altered by the company by special resolution:

Provided that if an application is made to the court for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

(2) This section shall not apply where the memorandum itself provides for or prohibits the alteration of all or any of the said conditions, and shall not authorise any variation or abrogation of the special rights of any class of members.

(3) Subsections (3), (4), (5), (6), (7) and (8) of section 8 (except that subsection (4) shall only apply to applications to the court by any member of a private company and as provided in paragraph (b)(i) of the said subsection (4)) shall apply in relation to any alteration and to any application made under this section as they apply in relation to alterations and to applications made under that section.

(4) This section shall apply to a company's memorandum whether registered before or after the commencement of this Act (27 October 1986).

34. Copies of memorandum and articles to be given to members

A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles, if any, subject to payment, in the case of a copy of the

memorandum and of the articles, of VT 2,000 or such less sum as the company may prescribe.

35. Issued copies of memorandum to embody alterations

(1) Where an alteration is made in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it shall be liable to a fine not exceeding VT 1,000, and every officer of the company who is in default shall be liable to the like penalty.

Membership of company

36. Definition of member

(1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

37. Membership of holding company

(1) Except in the cases hereafter in this section mentioned, a body corporate cannot be a member of a company which is its holding company, and any allotment or transfer of shares in a company to its subsidiary shall be void.

(2) Nothing in this section shall apply where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(3) This section shall not prevent a subsidiary which is, at the commencement of this Act, a member of its holding company, from continuing to be a member but, subject to subsection (2), the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof.

(4) Subject to subsection (2) of this section, subsections (1) and (3) thereof shall apply in relation to a nominee for a body corporate which is a subsidiary, as if references in the said subsections (1) and (3) to such a body corporate included references to a nominee for it.

(5) In relation to a company limited by guarantee or unlimited which is a holding company, the reference in this section to shares shall be construed as including a reference to the interest of its members as such, whatever the form of that interest.

Private Companies

38. Meaning of "private company"

(1) For the purposes of this Act, subject to subsection (3), the expression "private company" means a company which by its articles –

(a) restricts the right to transfer its shares; and

(b) limits the number of its members to fifty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were while in that employment, and have

continued after the determination of that employment to be, members of the company; and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

(2) Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member.

(3) Notwithstanding subsection (1), in the case of an exempted private company which is not of a class specified in Schedule 3, the expression "private company" means a company which by its articles prohibits any invitation to the public to subscribe for any shares or debentures of the company.

39. Consequences of default in complying with conditions constituting a company a private company

Where the articles of a company include the provisions which, under section 38, are required to be included in the articles of a company in order to constitute it a private company but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions contained in section 42, paragraph (d) of section 224 and paragraph (i) of proviso (a) to subsection (1) of section 226 and thereupon the provisions contained in those enactments shall apply to the company as if it were not a private company:

Provided that the court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seem to the court just and expedient, order that the company be relieved from such consequences as aforesaid.

40. Restriction on alteration of articles

(1) A company, being a private company, may not alter its articles in such manner and for the purpose that the company shall cease to be a private company except in accordance with the provisions of subsection (2).

(2) A company, being a private company, which seeks to alter the provisions of its articles in order that the company shall cease to be a private company shall submit to the Minister details of the alteration and of the reasons therefor together with such further information as the Minister in his discretion may require, for the approval of the Minister and, unless the approval of the Minister thereof is signified in writing, any resolution purporting to alter such provisions shall be null and void.

41. Passing of resolutions by entries in minute book etc.

(1) Anything which may be done by a company registered under Part 2 by resolution, special resolution, or extraordinary resolution passed at a meeting of the company may, subject to any special provisions in that behalf in the articles of the company, be done by a private company in the same manner or by resolution passed, without a meeting or any previous notice being required, by means of an entry in its minute book signed by at least three-fourths of the members having the right to vote on that resolution, holding in the aggregate at least three-fourths in nominal value of the shares giving that right.

(2) It shall not be necessary for a private company to hold an annual general meeting if everything required to be done at that meeting by resolution, special resolution, or extraordinary resolution (including the adoption or approval of every balance sheet or other document required to be laid before the meeting) is, within the time prescribed for the holding of the meeting, done by means of an entry in its minute book in accordance with this section.

(3) Any such entry may be signed on behalf of a member by his agent duly authorised in writing.

(4) For the purposes of this section a memorandum pasted or otherwise permanently affixed in the minute book and purporting to have been signed for the purpose of becoming an entry therein shall be deemed to be an entry accordingly, and any such entry may consist of several documents in like form, each signed by or on behalf of one or more members.

(5) The company shall within 7 days after any resolution is passed by means of an entry in its minute book in accordance with this section send to every member by or on behalf of whom the entry has not been signed a copy thereof, including the signatures.

(6) If default is made in complying with subsection (5), the company and every officer of the company who is in default shall be liable to a default fine.

(7) The provisions of section 144 shall apply to resolutions which have been passed by means of entries in the minute book of a private company in accordance with the foregoing provisions of this section to the same extent as if those resolutions had been passed at a meeting of the company.

(8) Where a private company passes a resolution for a creditors' voluntary winding up by means of an entry in its minute book in accordance with the foregoing provisions of this section, the company, instead of complying with the requirements of subsection (1) of section 289, shall cause a meeting of the creditors of the company to be summoned for a day not later than the tenth day after the day on which the resolution is passed, and shall cause notice of the said meeting to be sent by post to the creditors at least 7 days before the day on which the meeting is to be held. In every such case all references in this Act to subsection (1) of the said section 289 shall be read as references to this subsection.

(9) Where a private company passes a resolution for a creditors' voluntary winding up by means of an entry in its minute book in accordance with the foregoing provisions of this section, the company may at the same time, or at any subsequent time before the date of the meeting of creditors to be summoned as provided in subsection (8), appoint the official receiver to be the provisional liquidator of the company; and thereupon the official receiver shall become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such.

Reduction of Number of Members below Legal Minimum

42. Members severally liable for debts where business carried on with fewer than seven, or in case of private company two, members

If at any time the number of members of a company is reduced, in the case of a private company, below two, or, in the case of any other company, below seven, and it carries on business for more than 6 months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those 6 months and is cognisant of the fact that it is carrying on business with fewer than two members, or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefore.

Contracts, etc.

43. Pre-incorporation contracts

(1) Any person who purports to enter into a contract in the name of or on behalf of a company before it comes into existence shall be personally bound by the contract and entitled to the benefits thereof, except as provided in this section.

(2) A company may within a reasonable time after it comes into existence, expressly, or by any action or conduct signifying its intention to be bound thereby, adopt a written contract made before it came into existence in its name or on its behalf, and upon such adoption, subject to subsection (3) –

(a) the company shall for all purposes be bound by the contract and entitled to the benefits thereof as if the company had been in existence at the date of such contract and had been a party thereto; and

(b) the person who purported to act in the name of or on behalf of the company shall, except as provided in subsection (3), cease to be bound by or entitled to the benefits of the contract.

(3) Except as provided in subsection (4), whether or not a contract made before the coming into existence of a company is adopted by the company, the other party to the contract may apply to the court for an order fixing obligations under the contract as joint or joint and several, or apportioning liability between or among the company and the person who purported to act in the name of or on behalf of the company, and upon such application the court may make any order it thinks fit.

(4) If expressly so provided in the written contract, the person who purported to act in the name of or on behalf of the company before it came into existence shall not in any event be bound by the contract nor entitled to the benefits thereof.

44. Capacity of company

A company shall have and shall be deemed always to have had the capacity of a natural person of full capacity, subject only to such limitations as are inherent in its corporate nature.

45. Unauthorised acts

(1) A company shall not carry on any business or pursue any object or exercise any power that it is restricted by its memorandum or articles from carrying on or pursuing or exercising, nor exercise any of its powers in a manner inconsistent with its memorandum or articles:

Provided that (subject to subsections (2), (3) and (4)) no act of a company and no transfer of property to or by a company shall be invalid by reason only that the act or transfer may contravene or have contravened this subsection.

(2) On the application of –

(a) any member of the company; or

(b) the holder of any debenture secured by a floating charge over all or any of the company's property or by a trustee for the holders of any such debentures,

the court may prohibit by injunction the doing of any act or the conveyance or transfer of any property in breach of subsection (1).

(3) Where the act or transaction sought to be prohibited in any proceedings under subsection (2) is being or is to be performed or made under a contract to which the company is a party, all parties to the contract shall be made parties to the proceedings, and the court may make any order as to compensation or otherwise as it may consider equitable.

(4) Any breach of subsection (1) may be asserted in any proceedings under section 216 or 224 and in any action against a director or other officer of the company for breach of duty or breach of trust.

46. Form of contracts

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

(a) a contract which if made between private persons would be by law required to be in writing and under seal shall be made on behalf of the company in writing under the common seal of the company;

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

(c) a contract which if made between private 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 made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto.

(3) A contract made according to this section may be varied or discharged in the same manner in which it is authorised by this section to be made.

47. Bills of exchange and promissory notes

A bill of exchange or promissory note shall be deemed to have been made, accepted or endorsed on behalf of a company if made, accepted or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority.

48. Execution of deeds abroad

(1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situated in Vanuatu.

(2) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were under its common seal.

49. Power for a company to have official seal for use abroad

(1) A company whose objects require or comprise the transaction of business in foreign countries may, if authorised by its articles, have for use in any territory, district, or place not situated in Vanuatu, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district or place where it is to be used.

(2) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

(3) A company having an official seal for use in any such territory, district or place may, by writing under its common seal, authorise any person appointed for the purpose in that territory, district or place to affix the official seal to any deed or other document to which the company is party in that territory, district or place.

(4) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(5) The person affixing any such official seal shall, by writing under his hand, certify on the deed or other instrument in which the seal is affixed the date on which and the place at which it is affixed.

Authentication of Documents

50. Authentication of documents

A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorised officer of the company, and need not be under its common seal.

PART 3 – SHARE CAPITAL AND DEBENTURES

Prospectus

51. Prospectus to be approved by Minister

No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless the Minister has first given his approval.

52. Matters to be stated and reports to be set out in prospectus

(1) Subject to the provisions of section 53, every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must be dated, and must state the matters specified in Part 1 of Schedule 4 and set out the reports specified in Part 2 of that Schedule, and the said Parts 1 and 2 shall have effect subject to the provisions contained in Part 3 of that Schedule.

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) Subject to the provisions of section 53, it shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section:

Provided that this subsection shall not apply if it is shown that the form of application was issued either –

(a) in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or

(b) in relation to shares or debentures which were not offered to the public.

If any person acts in contravention of the provisions of this subsection, he shall be liable to a fine not exceeding VT 1,000,000.

(4) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if –

(a) as regards any matter not disclosed, he proves that he was not cognisant thereof; or

(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

(c) the non-compliance or contravention was in respect of matters which in the opinion of the court were immaterial or was otherwise such as ought, in the opinion of the court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 16 of Schedule 4, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) This section shall not apply –

(a) to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; or

(b) to the issue of a prospectus or form of application relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on an approved stock exchange;

but, subject as aforesaid, this section shall apply to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

53. Exclusion of section 52 and relaxation of Schedule 4 in case of certain prospectuses

(1) Where –

(a) it is proposed to offer any shares in or debentures of a company to the public by a prospectus issued generally (that is to say, issued to persons who are not existing members or debenture holders of the company); and

(b) application is made to an approved stock exchange for permission for those shares or debentures to be dealt in or quoted on that stock exchange:

there may, on the request of the applicant, be given by or on behalf of that stock exchange a certificate of exemption, that is to say, a certificate that, having regard to the proposals (as stated in the request) as to the size and other circumstances of the issue of shares or debentures and as to any limitations on the number and class of persons to whom the offer is to be made, compliance with the requirements of Schedule 4 would be unduly burdensome.

(2) If a certificate of exemption is given, and if the proposals aforesaid are adhered to and the particulars and information required to be published in connection with the application for permission made to the stock exchange are so published, then –

(a) a prospectus giving the particulars and information aforesaid in the form in which they are so required to be published shall be deemed to comply with the requirements of Schedule 4; and

(b) section 52 shall not apply to any issue, after the permission applied for is granted, of a prospectus or form of application relating to the shares or debentures.

54. Expert's consent to issue of prospectus containing statement by him

(1) A prospectus inviting persons to subscribe for shares in or debentures of a company and including a statement purporting to be made by an expert shall not be issued unless –

(a) he has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to the issue thereof with the statement included in the form and context in which it is included; and

(b) a statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.

(2) If any prospectus is issued in contravention of this section the company and every person who is knowingly a party to the issue thereof shall be liable to a fine not exceeding VT 1,000,000.

(3) In this section the expression "expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him.

55. Registration of prospectus

(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the registrar of companies for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, and having endorsed thereon or attached thereto –

(a) any consent to the issue of the prospectus required by section 54 from any person as an expert; and

(b) in the case of a prospectus issued generally, also –

(i) a copy of any contract required by paragraph 14 of Schedule 4 to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof or, if in the case of a prospectus deemed by virtue of a certificate granted under section 53 to comply with the requirements of that Schedule a contract or a copy thereof or a memorandum of a contract is required to be available for inspection in connection with the application made under that section to the stock exchange, a copy or, as the case may be, a memorandum of that contract; and

(ii) where the persons making any report required by Part 2 of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in paragraph 29 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

The references in subparagraph (i) of paragraph (b) of this subsection to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a foreign language, be taken as references to a copy of a translation of the contract in English or French or a copy embodying a translation into English or French of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation, and the reference to a copy of a contract required to be available for inspection shall include a reference to a copy of a translation thereof or a copy embodying a translation of parts thereof.

(2) Every prospectus shall, on the face of it –

(a) state that a copy has been delivered for registration as required by this section; and

(b) specify, or refer to statements included in the prospectus which specify, any documents required by this section to be endorsed on or attached to the copy so delivered.

(3) The registrar shall not register a prospectus unless it is dated and the copy thereof signed in manner required by this section and unless it has endorsed thereon or attached thereto the documents (if any) specified as aforesaid.

(4) If a prospectus is issued without a copy thereof being delivered under this section to the registrar or without the copy so delivered having endorsed thereon or attached thereto the required documents, the company, and every person who is knowingly a

party to the issue of the prospectus, shall be liable to a fine not exceeding VT 1,000 for every day from the day of the issue of the prospectus until a copy thereof is so delivered with the required documents endorsed thereon or attached thereto.

56. Civil liability for mis-statements in prospectus

(1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the following persons shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement included therein, that is to say –

(a) every person who is a director of the company at the time of the issue of the prospectus;

(b) every person who has authorised himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;

(c) every person being a promoter of the company; and

(d) every person who has authorised the issue of the prospectus:

Provided that where, under section 54, the consent of a person is required to the issue of a prospectus and he has given that consent, he shall not by reason of his having given it be liable under this subsection as a person who has authorised the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert.

(2) No person shall be liable under subsection (1) of this section if he proves –

(a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or

(c) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor; or

(d) that –

(i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable grounds to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and

(ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable grounds to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and that person had given the consent required by section 54 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder; and

(iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document:

Provided that this subsection shall not apply in the case of a person liable, by reason of his having given a consent required of him by the said section 54, as a person who has authorised the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert.

(3) A person who, apart from this subsection would under subsection (1) be liable, by reason of his having given the consent required of him by section 54, as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert shall not be so liable if he proves –

(a) that, having given his consent under the said section 54 to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration; or

(b) that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal, and of the reason therefor; or

(c) that he was competent to make the statement and that he had reasonable grounds to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true.

(4) Where –

(a) the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof; or

(b) the consent of a person is required under section 54 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus;

the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof shall be liable to indemnify the person named as aforesaid or whose consent was required as aforesaid, as the case may be, against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect thereof:

Provided that a person shall not be deemed for the purposes of this subsection to have authorised the issue of a prospectus by reason only of his having given the consent required by section 54 to the inclusion therein of a statement purporting to be made by him as an expert.

(5) For the purposes of this section –

(a) the expression "promoter" means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company; and

(b) the expression "expert" has the same meaning as in section 54.

57. Criminal liability for mis-statements in prospectus

(1) Where a prospectus issued after the commencement of this Act (27 October 1986) includes any untrue statement, any person who authorised the issue of the prospectus shall be liable to imprisonment for a term not exceeding 2 years, or a fine not exceeding VT 1,000,000, or both, unless he proves either that the statement was immaterial or that he had reasonable grounds to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.

(2) A person shall not be deemed for the purposes of this section to have authorised the issue of a prospectus by reason only of his having given the consent required by section 54 to the inclusion therein of a statement purporting to be made by him as an expert.

58. Document containing offer of shares or debentures for sale to be deemed prospectus

(1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of mis-statements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown –

(a) that an offer of the shares or debentures or of any of them for sale to the public was made within 6 months after the allotment or agreement to allot; or

(b) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) Section 52 as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus –

(a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and

(b) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected;

and section 55 as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by two directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorised in writing.

59. Interpretation of provisions relating to prospectuses

For the purposes of the foregoing provisions of this Part of this Act –

(a) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

(b) a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

Allotment

60. Prohibition of allotment unless minimum subscription received

(1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph 4 of Schedule 4 has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company.

For the purposes of this subsection, a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid.

(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as "the minimum subscription".

(3) The amount payable on application on each share shall not be less than 5 per cent of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of 40 days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within 48 days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of 10 per cent per annum from the expiration of the forty-eighth day:

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

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This section, except subsection (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

61. Effect of irregular allotment

(1) An allotment made by a company to an applicant in contravention of the provisions of section 60 shall be voidable at the instance of the applicant within one month after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in the course of being wound up.

(2) If any director of a company knowingly contravenes, or permits or authorises the contravention of, any of the provisions of the said section with respect to allotment, he shall be liable to compensate the company and the allottee, respectively, for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby:

Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of 2 years from the date of the allotment.

62. Applications for, and allotment of, shares and debentures

(1) No allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus issued generally and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the third day after that on which the prospectus is first so issued or such later time (if any) as may be specified in the prospectus.

The beginning of the said third day or such later time as aforesaid is hereafter in this Act referred to as "the time of the opening of the subscription lists".

(2) The validity of an allotment shall not be affected by any contravention of the foregoing provisions of this section but, in the event of any such contravention, the company and every officer of the company who is in default shall be liable to a fine not exceeding VT 100,000.

(3) In the application of this section to a prospectus offering shares or debentures for sale, subsections (1) and (2) shall have effect with the substitution of references to sale for references to allotment, and with the substitution for the reference to the company and every officer of the company who is in default of a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the contravention.

(4) An application for shares in or debentures of a company which is made in pursuance of a prospectus issued generally shall not be revocable until after the expiration of the third day after the time of the opening of the subscription lists, or the giving before the expiration of the said third day, by some person responsible under section 56 of this Act for the prospectus, of a public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.

(5) In reckoning for the purposes of this section and section 63, the third day after another day, any intervening day which is a Saturday or Sunday or which is a public holiday in Vanuatu shall be disregarded, and if the third day (as so reckoned) is itself a Saturday or Sunday or such a public holiday there shall for the said purposes be substituted the first day thereafter which is none of them.

(6) This section shall not apply in relation to a prospectus to which paragraph (a) or (b) of subsection (2) of section 53 applies.

63. Allotment of shares and debentures to be dealt in on stock exchange

(1) Where a prospectus, whether issued generally or not, states that application has been or will be made for permission for the shares or debentures offered thereby to be dealt in on any stock exchange, any allotment made on an application in pursuance of the prospectus shall, whenever made, be void if the permission has not been applied for before the third day after the first issue of the prospectus or if the permission has been refused before the expiration of 3 weeks from the date of the closing of the subscription lists or such longer period not exceeding 6 weeks as may, within the said 3 weeks, be notified to the applicant for permission by or on behalf of the stock exchange.

(2) Where the permission has not been applied for as aforesaid, or has been refused as aforesaid, the company shall forthwith repay without interest all money received from applicants in pursuance of the prospectus, and, if any such money is not repaid within 8 days after the company becomes liable to repay it, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of 10 per cent per annum from the expiration of the eighth day:

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

(3) All money received as aforesaid shall be kept in a separate bank account so long as the company may become liable to repay it under subsection (2); and, if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding VT 500,000.

(4) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section shall be void.

(5) For the purposes of this section, permission shall not be deemed to be refused if it is intimated that the application for it, though not at present granted, will be given further consideration.

(6) This section shall have effect –

(a) in relation to any shares or debentures agreed to be taken by a person underwriting an offer thereof by a prospectus as if he had applied therefor in pursuance of the prospectus; and

(b) in relation to a prospectus offering shares for sale with the following modifications, that is to say –

(i) references to sale shall be substituted for references to allotment;

(ii) the persons by whom the offer is made, and not the company, shall be liable under subsection (2) to repay money received from applicants, and references to the company's liability under that subsection shall be construed accordingly; and

(iii) for the reference in subsection (3) to the company and every officer of the company who is in default there shall be substituted a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the default.

64. Return as to allotments

(1) Whenever a company limited by shares makes any allotment of its shares, the company shall within one month thereafter deliver to the registrar of companies for registration –

(a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and descriptions of the allottees, and the amount, if any, paid or due and payable on each share; and

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped if so required, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as above mentioned is not reduced to writing, the company shall within 1 month after the allotment deliver to the registrar of companies for registration the prescribed particulars of the contract stamped with the same stamp duty (if any) as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Stamp Duties Act, Cap. 68, and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be assessed under section 9 of that Act.

(3) If default is made in complying with this section, every officer of the company who is in default shall be liable to a fine not exceeding VT 1,000 for every day during which the default continues:

Provided that, in case of default in delivering to the registrar of companies within 1 month after the allotment any document required to be delivered by this section, the company, or any officer liable for the default, may apply to the court for relief, and the court, if satisfied that the omission to deliver the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for delivery of the document for such period as the court may think proper.

Commissions and Discounts, etc.

65. Power to pay certain commissions, and prohibition of payment of all other commissions, discounts, etc.

(1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company if –

(a) the payment of the commission is authorised by the articles; and

(b) the commission paid or agreed to be paid does not exceed 10 per cent of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less; and

(c) the amount or rate per cent of the commission paid or agreed to be paid is –

(i) in the case of shares offered to the public for subscription, disclosed in the prospectus; or

(ii) in the case of shares not offered to the public for subscription, disclosed in a statement signed by at least two directors of the company and delivered before the payment of the commission to the registrar of companies for registration, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice; and

(d) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in manner aforesaid.

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

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

(5) If default is made in complying with the provisions of this section relating to the delivery to the registrar of the statement, the company and every officer of the company who is in default shall be liable to a fine not exceeding VT 5,000.

66. Prohibition of provision of financial assistance by company for purchase of or subscription for its own, or its holding company's, shares

(1) Subject as provided in this section, it shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company, or, where the company is a subsidiary company, in its holding company:

Provided that nothing in this section shall be taken to prohibit –

(a) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business;

(b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully-paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company;

(c) the making by a company of loans to persons, other than directors, *bona fide* in the employment of the company with a view to enabling those persons to purchase or subscribe for fully-paid shares in the company or its holding company to be held by themselves by way of beneficial ownership.

(2) If a company acts in contravention of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding VT 500,000.

Construction of References to Offering Shares or Debentures to the Public

67. Construction of references to offering shares or debentures to the public

(1) Any reference in this Act to offering shares or debentures to the public shall, subject to any provision to the contrary contained therein, be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner, and references in this Act or in a company's articles to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be similarly construed.

(2) Subsection (1) shall not be taken as requiring any offer or invitation to be treated as made to the public if it can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving it, and in particular –

(a) a provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures shall not be taken as prohibiting the making to members or debenture holders of an invitation which can properly be regarded as aforesaid; and

(b) the provisions of this Act relating to private companies shall be construed accordingly.

Issue of Shares at Premium and Discount and Redeemable Preference Shares

68. Application of premiums received on issue of shares

(1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account, to be called "the share premium account", and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the share premium account were paid up share capital of the company.

(2) The share premium account may, notwithstanding anything in subsection (1), be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares, in writing off –

(a) the preliminary expenses of the company; or

(b) the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;

or in providing for the premium payable on redemption of any redeemable preference shares or of any debentures of the company.

(3) Where a company has before the commencement of this Act (27 October 1986), issued any shares at a premium, this section shall apply as if the shares had been issued on or after that date:

Provided that any part of the premiums which has been so applied that it does not at the commencement of this Act (27 October 1986), form an identifiable part of the company's reserves within the meaning of Schedule 6 shall be disregarded in determining the sum to be included in the share premium account.

69. Prohibition on allotment of shares at a discount

(1) It shall not be lawful for a company to allot or issue shares at a discount.

(2) Where shares are allotted in contravention of subsection (1), the allottee shall be liable to pay to the company an amount equal to the discount, together with interest at the rate of 10 per cent per annum, and the directors who were privy to the making of the allotment shall be jointly and severally liable to the company for any loss it sustains.

70. Power to issue redeemable preference shares

(1) Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company are to be liable, to be redeemed:

Provided that –

(a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;

(b) no such shares shall be redeemed unless they are fully paid;

(c) the premium, if any, payable on redemption, must have been provided for out of the profits of the company or out of the company's share premium account before the shares are redeemed;

(d) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called "the capital redemption reserve fund", a sum equal to the nominal amount of the shares redeemed, and the provisions of this Act relating to the reduction of the share

capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up capital of the company.

(2) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.

(3) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of the company's authorised share capital.

(4) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any enactments relating to stamp duty be deemed to be increased by the issue of shares in pursuance of this subsection:

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within 1 month after the issue of the new shares.

(5) The capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

Miscellaneous Provisions As To Share Capital

71. Power of company to arrange for different amounts being paid on shares

A company, if so authorised by its articles, may do any one or more of the following things –

(a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;

(b) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;

(c) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

72. Power of company limited by shares to alter its share capital

(1) A company limited by shares, if so authorised by its articles, may alter the conditions of its memorandum as follows, that is to say, it may –

(a) increase its share capital by new shares of such amount as it thinks expedient;

(b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(c) convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination;

(d) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section must be exercised by the company in general meeting.

(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

73. Notice to registrar of consolidation of share capital, conversion of shares into stock, etc.

(1) If a company having a share capital has –

(a) consolidated and divided its share capital into shares of larger amount than its existing shares; or

(b) converted any shares into stock; or

(c) re-converted stock into shares; or

(d) subdivided its shares or any of them; or

(e) redeemed any redeemable preference shares; or

(f) cancelled any shares, otherwise than in connection with a reduction of share capital under section 75,

it shall within 1 month after so doing give notice thereof to the registrar of companies specifying, as the case may be, the shares consolidated, divided, converted, sub-divided, redeemed or cancelled, or the stock re-converted.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

74. Notice of increase of share capital

(1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, it shall, within 15 days after the passing of the resolution authorising the increase, give to the registrar of companies notice of the increase, and the registrar shall record the increase.

(2) The notice to be given as aforesaid shall include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued, and there shall be forwarded to the registrar of companies together with the notice a printed copy, or a copy in some other form approved by the registrar, of the resolution authorising the increase.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Reduction of Share Capital

75. Special resolution for reduction of share capital

(1) Subject to confirmation by the court, a company limited by shares may, if so authorised by its articles, by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may –

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or

(b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or

(c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company;

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

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

76. Application to court for confirming order, objections by creditors, and settlement of list of objecting creditors

(1) Where a company has passed a resolution for reducing share capital, it may apply to the court for an order confirming the reduction.

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the court so directs, the following provisions shall have effect, subject nevertheless to subsection (3) –

(a) every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction;

(b) the court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction;

(c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the court may direct, the following amount –

(i) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;

(ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like enquiry and adjudication as if the company were being wound up by the court.

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if, having regard to any special circumstances of the case, it thinks proper so to do, direct that subsection (2) shall not apply as regards any class or any classes of creditors.

77. Order confirming reduction and powers of court on making such order

The court, if satisfied, with respect to every creditor of the company who under section 76 is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

78. Registration of order and minute of reduction

(1) The registrar of companies, on production to him of an order of the court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute approved by the court showing, with respect to the share capital of the company as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount, if any, at the date of the registration deemed to be paid up on each share, shall register the order and minute.

(2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the court may direct.

(4) The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

(5) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum, and shall be valid and alterable as if it had been originally contained therein.

(6) The substitution of any such minute as aforesaid for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning of section 35.

79. Liability of members in respect of reduced shares

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

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

(a) every person, who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and

(b) if the company is wound up, the court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(2) Nothing in this section shall affect the rights of the contributories among themselves.

80. Penalty for concealing name of creditor, etc.

If any officer of the company –

(a) wilfully conceals the name of any creditor entitled to object to the reduction; or

(b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or

(c) aids, abets or is privy to any such concealment or misrepresentation as aforesaid, he shall be liable to a fine not exceeding VT 100,000.

Variation of Shareholders, Rights

81. Rights of holders of special classes of shares

(1) If, in the case of a company the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than 15 per cent of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled, and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the court.

(2) An application under this section must be made within 21 days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) On any such application the court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(4) The decision of the court on any such application shall be final.

(5) The company shall within 15 days after the making of an order by the court on any such application forward a copy of the order to the registrar of companies, and, if default is made in complying with this provision, the company and every officer of the company who is in default shall be liable to a default fine.

(6) The expression "variation" in this section includes abrogation and the expression "varied" shall be construed accordingly.

Transfer of Shares and Debentures, Evidence of Title, etc.

82. Numbering of shares

Each share in a company having a share capital shall be distinguished by its appropriate number:

Provided that, if at any time all the issued shares in a company, or all the issued shares therein of a particular class, are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

83. Transfer not to be registered except on production of instrument of transfer

Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company:

Provided that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

84. Transfer by personal representative

A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.

85. Registration of transfer at request of transferor

On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

86. Notice of refusal to register transfer

(1) If a company refuses to register a transfer of any shares or debentures, the company shall, within 2 months after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

87. Certification of transfers

(1) The certification by a company of any instrument of transfer of shares in or debentures of the company shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a *prima facie* title to the shares or debentures in the transferor named in the instrument of transfer, but not as a representation that the transferor has any title to the shares or debentures.

(2) Where any person acts on the faith of a false certification by a company made negligently, the company shall be under the same liability to him as if the certification had been made fraudulently.

(3) For the purposes of this section –

(a) an instrument of transfer shall be deemed to be certificated if it bears the words "certificate lodged" or words to the like effect;

(b) the certification of an instrument of transfer shall be deemed to be made by a company if –

(i) the person issuing the instrument is a person authorised to issue certificated instruments of transfer on the company's behalf; and

(ii) the certification is signed by a person authorised to certificate transfers on the company's behalf or by any officer or servant either of the company or of a body corporate so authorised;

(c) a certification shall be deemed to be signed by any person if –

(i) it purports to be authenticated by his signature or initials (whether hand written or not); and

(ii) it is not shown that the signature or initials was or were placed there neither by himself nor by any person authorised to use the signature or initials for the purpose of certificating transfers on the company's behalf.

88. Duties of company with respect to issue of certificates

(1) Every company shall, within 2 months after the allotment of any of its shares, debentures or debenture stock and within 2 months after the date on which a transfer of any such shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

The expression "transfer" for the purpose of this subsection means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

(3) If any company on whom a notice has been served requiring the company to make good any default in complying with the provisions of subsection (1) fails to make good the default within 10 days after the service of the notice, the court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

89. Certificate to be evidence of title

A certificate, under the common seal of the company, specifying any shares held by any member, shall be *prima facie* evidence of the title of the member to the shares.

90. Evidence of grant of probate

The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, or confirmation as executor, of a deceased person having been granted to some person shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of the grant.

91. Issue and effect of share warrants to bearer

(1) A company limited by shares, if so authorised by its articles, may, with respect to any fully paid-up shares, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares included in the warrant.

(2) Such a warrant as aforesaid is in this Act termed a "share warrant".

(3) A share warrant shall entitle the bearer thereof to the shares therein specified, and the shares may be transferred by delivery of the warrant.

92. Penalty for personation of shareholder

If any person falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner, he shall on conviction thereof be liable to imprisonment for a term not exceeding 12 months or to a fine not exceeding VT 200,000, or to both.

Special Provisions as to Debentures

93. Register of debenture holders

(1) A company which issues or has issued debentures in a series shall maintain a register of the holders thereof.

(2) The provisions of sections 114 to 116 and 118 to 126 shall apply, with the appropriate modifications, to the register of debenture holders.

(3) A company shall, upon the demand of any trustee for debenture holders, within 7 days furnish to him the names, addresses and other particulars of such debenture holders appearing on such register, without charge.

(4) If a company contravenes subsection (3), the company and every officer of the company who is in default shall be liable to a default fine.

94. Rights of inspection of register of debenture holders and to copies of register and trust deed

(1) Every register of holders of debentures of a company shall, except when duly closed (but subject to such reasonable restrictions as the company may in general meeting impose, so that not less than 2 hours in each day shall be allowed for inspection), be open to the inspection of the registered holder of any such debentures or any holder of shares in the company without fee, and of any other person on payment of a fee of VT 100 or such less sum as may be prescribed by the company.

(2) Any such registered holder of debentures or holder of shares as aforesaid or any other person may require a copy of the register of the holders of debentures of the company or any part thereof on payment of VT 50, or such less sum as may be prescribed by the company, for every 100 words or fractional part thereof required to be copied.

(3) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment of VT 50, or such less sum as may be prescribed by the company, for every 100 words or fractional part thereof required to be copied.

(4) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of the company who is in default shall be liable to a default fine.

(5) Where a company is in default as aforesaid, the court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them.

(6) For the purposes of this section, a register shall be deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debenture stock, during such period or periods, not exceeding in the whole 30 days in any year, as may be therein specified.

95. Liability of trustees for debenture holders

(1) Subject to the following provisions of this section, any provision contained in a trust deed for securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from or indemnifying him against liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.

(2) Subsection (1) shall not invalidate –

(a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or

(b) any provision enabling such a release to be given –

(i) on the agreement thereto of a majority of not less than three-fourths in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and

(ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.

96. Perpetual debentures

A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the commencement of this Act (27 October 1986), shall not be invalid by reason only that the debentures are 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 equity to the contrary notwithstanding.

97. Power to re-issue redeemed debentures in certain cases

(1) Where either before, on or after the commencement of this Act (27 October 1986), a company has redeemed any debentures previously issued, then –

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

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

the company shall have, and shall be deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

(2) Subject to the provisions of section 98, on a re-issue of redeemed debentures the person entitled to the debentures shall have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.

(3) Where a company has either before, on or after the commencement of this Act (27 October 1986), deposited any of its debentures to secure advances from time to time on current account 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 debit whilst the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before, on or after the commencement of this Act (27 October 1986), shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

98. Specific performance of contracts to subscribe for debentures

A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

99. Payment of certain debts out of assets subject to floating charge in priority to claims under the charge

(1) Where either a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts, which in every winding up are under the provisions of Part 6 relating to preferential payments to be paid in priority to all other debts, shall be paid out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) In the application of the said provisions, section 308 shall be construed as if the provision for payment of accrued holiday remuneration becoming payable on the termination of employment before or by the effect of the winding up order or resolution were a provision for payment of such remuneration becoming payable on the termination of employment before or by the effect of the appointment of the receiver or possession being taken as aforesaid.

(3) The periods of time mentioned in the said provisions of Part 6 shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(4) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

PART 4 – REGISTRATION OF CHARGES

Registration of Charges with Registrar of Companies

100. Registration of charges created by companies

(1) Subject to the provisions of this Part of this Act, every charge created by a company and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge together with the instrument, if any, by which the charge is created or evidenced, are delivered to or received by the registrar of companies for registration in manner required by this Act within 21 days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured and when a charge becomes void under this section the money secured thereby shall immediately become payable.

(2) This section applies to the following charges –

(a) a charge for the purpose of securing any issue of debentures;

(b) a charge on uncalled share capital of the company;

(c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale;

(d) a charge on land, wherever situate, or any interest therein, but not including a charge for any rent or other periodical sum issuing out of land;

(e) a charge on book debts of the company;

(f) a floating charge on the undertaking or property of the company;

(g) a charge on calls made but not paid;

(h) a charge on a ship or any share in a ship;

(i) a charge on goodwill, on a patent or a licence under a patent, on a trademark or on a copyright or a licence under a copyright.

(3) In the case of a charge created out of Vanuatu comprising property situate outside Vanuatu, the delivery to and the receipt by the registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and 21 days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in Vanuatu shall be substituted for 21 days after the date of the creation of the charge as the time within which the particulars and instrument or copy are to be delivered to the registrar.

(4) Where a charge is created in Vanuatu but comprises property outside Vanuatu, the instrument creating or purporting to create the charge may be sent for registration under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

(5) Where a negotiable instrument has been given to secure the payment of any book debts of a company the deposit of the instrument for the purpose of securing an advance to the company shall not, for the purposes of this section, be treated as a charge on those book debts.

(6) The holding of debentures entitling the holder to a charge on land shall not for the purposes of this section be deemed to be an interest in land.

(7) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall, for the purposes of this section, be sufficient if there are delivered to or received by the registrar, within 21 days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars –

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

(b) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and

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

(d) the names of the trustees, if any, for the debenture holders;

together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(8) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent of the commission, discount or allowance so paid or made, but omission to do this shall not affect the validity of the debentures issued:

Provided that the deposit of any debentures as security for any debt of the company shall not, for the purposes of this subsection, be treated as the issue of the debentures at a discount.

101. Charges to secure fluctuating amounts

Where a charge, particulars of which require registration under section 100, is expressed to secure all sums due or to become due or some other uncertain or fluctuating amount, the particulars required under paragraph (a) of subsection (7) of the said section 100 shall state the maximum sum deemed to be secured by such charge, being the maximum capital sum covered by the stamp duty paid by the grantee, and such charge shall be void, so far as any security on the property of the company is thereby conferred, as respects any excess over the stated maximum:

Provided that if –

(a) additional stamp duty is subsequently paid on such charge or the grantee shall certify in writing that the maximum sum secured thereby has been increased; and

(b) at any time thereafter prior to the commencement of the winding up of the company amended particulars of the said charge stating the increased maximum sum deemed to be secured thereby, together with the original instrument by which the charge was created or evidenced, are delivered to the registrar for registration,

then, as from the date of such delivery the charge, if otherwise valid, shall be effective to the extent of such increased maximum sum except as regards any person who, prior to the date of such delivery, has acquired any proprietary rights in, or a fixed or floating charge on, the property subject to the charge.

102. Duty of company to register charges created by the company

(1) It shall be the duty of a company to send to the registrar of companies for registration the particulars of every charge created by the company and of the issues of debentures of a series requiring registration under the said section 100, but registration of any such charge may be effected on the application of any person interested therein.

(2) If any company makes default in sending to the registrar for registration the particulars of any charge created by the company or of the issues of debentures of a series requiring registration as aforesaid, then, unless the registration has been effected on the application of some other person, the company and every officer of the company who is in default shall be liable to a default fine of VT 10,000.

103. Duty of company to register charges existing on property acquired

(1) Where a company acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the registrar of companies for registration in manner required by this Act within 21 days after the date on which the acquisition is completed:

Provided that, if the property is situate and the charge was created outside Vanuatu, 21 days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in Vanuatu shall be substituted for 21 days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the registrar.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine of VT 10,000.

104. Register of charges to be kept by registrar

(1) The registrar shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Part of this Act, and shall enter in the register with respect to such 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 specified in section 100(7);

(b) in the case of any other charge –

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

(ii) the amount secured by the charge; and

(iii) short particulars of the property charged; and

(iv) the persons entitled to the charge.

(2) The registrar shall give a certificate under his hand or seal of the registration of any charge registered in pursuance of this Part, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Part as to registration have been complied with.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of such fee, not exceeding VT 100 for each inspection, as may be prescribed by rules made by the Minister.

105. Endorsement of certificate of registration on debentures

(1) The company shall cause a copy of every certificate of registration given under section 104 to be endorsed on every debenture or certificate of debenture stock which is issued by the company and the payment of which is secured by the charge so registered:

Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created.

(2) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock which under the provisions of this section is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he shall, without prejudice to any other liability, be liable to a fine not exceeding VT 20,000.

106. Entries of satisfaction and release of property from charge

The registrar of companies, on evidence being given to his satisfaction with respect to any registered charge –

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

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

may enter on the register a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking 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 where he enters a memorandum of satisfaction in whole he shall, if required, furnish the company with a copy thereof.

107. Rectification of register of charges

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

108. Registration of enforcement of security

(1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within 7 days from the date of the order or of the appointment under the said powers, give notice of the fact to the registrar of companies, and the registrar shall enter the fact in the register of charges.

(2) Where any person appointed receiver or manager of the property of a company under the powers contained in any instrument ceases to act as such receiver or manager, he shall, on so ceasing, give the registrar of companies notice to that effect, and the registrar shall enter the notice in the register of charges.

(3) If any person makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding VT 1,000 for every day during which the default continues.

Provisions as to Copies of Instruments Creating Charges

109. Copies of instruments creating charges to be kept by company

Every company shall cause a copy of every instrument creating any charge requiring registration under this Part of this Act to be kept at the registered office of the company:

Provided that, in the case of a series of uniform debentures, a copy of one debenture of the series shall be sufficient.

110. Right to inspect copies of instruments creating charges

(1) The copies of instruments creating any charge requiring registration under this Part shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 2 hours in each day shall be allowed for inspection) to the inspection of any creditor or member of the company without fee.

(2) If inspection of the said copies is refused, every officer of the company who is in default shall be liable to a default fine.

(3) Upon any such refusal, the court may by order compel an immediate inspection of the copies or register.

Application of Part 4 to Companies Incorporated Outside Vanuatu

111. Application of Part 4 to charges created, and property subject to charge acquired, by company incorporated outside Vanuatu

The provisions of this Part shall extend to charges on property in Vanuatu which are created, and to charges on property in Vanuatu which is acquired, by a company (whether a company within the meaning of this Act or not) incorporated outside Vanuatu which has an established place of business in Vanuatu.

PART 5 – MANAGEMENT AND ADMINISTRATION

Registered Office and Name

112. Registered office of company

(1) A company shall, as from the day on which it begins to carry on business or as from the fourteenth day after the date of its incorporation, whichever is the earlier, have a registered office in Vanuatu, to which all communications and notices must be addressed.

(2) Notice of the situation of the registered office, and of any change therein, shall be given within 14 days after the date of the incorporation of the company or of the change, as the case may be, to the registrar of companies, who shall record the same.

The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this subsection.

(3) Where under any provision of this Act any register, book of account or other document required by this Act to be kept by a company may be kept at a place other than the registered office of the company, the same shall be kept at some other premises situated in Vanuatu.

(4) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

113. Publication of name by company

(1) Every company –

(a) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible;

(b) shall have a common seal bearing its name in legible characters;

(c) shall have its name mentioned in legible characters in all business letters of the company and in all notices and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all invoices, receipts and letters of credit of the company.

(2) If a company does not paint or affix its name in the manner directed by this Act, the company and every officer of the company who is in default shall be liable to a fine not exceeding VT 10,000 and if a company does not keep its name painted or affixed in manner so directed, the company and every officer of the company who is in default shall be liable to a default fine.

(3) If a company fails to comply with paragraph (b) or paragraph (c) of subsection (1), the company shall be liable to a fine not exceeding VT 10,000.

(4) If an officer of a company or any person on its behalf –

(a) uses or authorises the use of any seal purporting to be a seal of the company which does not bear its name as aforesaid; or

(b) issues or authorises the issue of any business letter of the company or any notice or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods wherein its name is not mentioned in manner aforesaid; or

(c) issues or authorises the issue of any invoice, receipt or letter of credit of the company wherein its name is not mentioned in manner aforesaid;

he shall be liable to a fine not exceeding VT 10,000, and shall further be personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount thereof unless it is duly paid by the company.

Register of Members

114. Register of members

(1) Every company shall keep a register of its members and enter therein the following particulars –

(a) the names and addresses of the members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number so long as the share has a number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(b) the date at which each person was entered in the register as a member;

(c) the date at which any person ceased to be a member:

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the register shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified in paragraph (a).

(2) The register of members shall be kept at the registered office of the company;

Provided that –

(a) if the work of making it up is done at another office of the company, it may be kept at that other office; and

(b) if the company arranges with some other person for the making up of the register to be undertaken on behalf of the company by that other person, it may be kept at the office of that other person at which the work is done;

so, however, that it shall not be kept at a place outside Vanuatu.

(3) Every company shall send notice to the registrar of companies of the place where its register of members is kept and of any change in that place:

Provided that a company shall not be bound to send notice under this subsection where the register has, at all times since it came into existence or, in the case of a register in existence at the commencement of this Act (27 October 1986), at all times since then, been kept at the registered office of the company.

(4) Where a company makes default in complying with subsection (1) or makes default for 14 days in complying with subsection (3), the company and every officer of the company who is in default shall be liable to a default fine.

115. Index of members

(1) Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall, within 14 days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

(2) The index shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

(3) The index shall be at all times kept at the same place as the register of members.

(4) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

116. Provisions as to entries in register in relation to share warrants

(1) On the issue of a share warrant the company shall strike out of its register of members the name of the member then entered therein as holding the shares specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely –

(a) the fact of the issue of the warrant;

(b) a statement of the shares included in the warrant, distinguishing each share by its number so long as the share has a number; and

(c) the date of the issue of the warrant.

(2) The bearer of a share warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members.

(3) The company shall be responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a share warrant in respect of the shares therein specified without the warrant being surrendered and cancelled.

(4) Until the warrant is surrendered, the particulars specified in subsection (1) shall be deemed to be the particulars required by this Act to be entered in the register of members, and, on the surrender, the date of the surrender must be entered.

(5) Subject to the provisions of this Act, the bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act either to the full extent or for any purposes defined in the articles.

117. Inspection of register and index

(1) Except when the register of members is closed under the provisions of this Act, the register, and index of the names, of the members of a company shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 2 hours in each day be allowed for inspection) be open to the inspection of any member without charge and of any other person on payment of VT 100, or such less sum as the company may prescribe, for each inspection.

(2) Any member or other person may require a copy of the register, or of any part thereof, on payment of VT 50, or such less sum as the company may prescribe, for every 100 words or fractional part thereof required to be copied.

The company shall cause any copy so required by any person to be sent to that person within a period of 10 days commencing on the day next after the day on which the requirement is received by the company.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period, the company and every officer of the company who is in default shall be liable in respect of each offence to a default fine.

(4) In the case of any such refusal or default, the court may by order compel an immediate inspection of the register and index or direct that the copies required shall be sent to the persons requiring them.

118. Consequences of failure to comply with requirements as to register owing to agent's default

Where, by virtue of proviso (b) to section 114(2), the register of members is kept at the office of some person other than the company, and by reason of any default of his the company fails to comply with subsection (3) of that section, section 115(3), or section 117 or with any requirements of this Act as to the production of the register, that other person shall be liable to the same penalties as if he were an officer of the company who was in default, and the power of the court under subsection (4) of section 117 shall extend to the making of orders against that other person and his officers and servants.

119. Power to close register

A company may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole 30 days in each year.

120. Power of court to rectify register

(1) If –

(a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member;

the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register.

(2) Where an application is made under this section, the court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3) On an application under this section the court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) The court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the registrar.

121. Trusts not to be entered on register

No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the registrar.

122. Register to be evidence

The register of members shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

Branch Register

123. Power for company to keep branch register

(1) A company having a share capital may, if so authorised by its articles, cause to be kept in any country outside Vanuatu a branch register of members resident in that country or in any other country outside Vanuatu (in this Act called a "branch register").

(2) The company shall give to the registrar of companies notice of the situation of the office where any branch register is kept and of any change in its situation, and if it is

discontinued of its discontinuance, and any such notice shall be given within 14 days of the opening of the office or of the change or discontinuance, as the case may be.

(3) If default is made in complying with subsection (2), the company and every officer of the company who is in default shall be liable to a default fine.

124. Regulations as to branch register

(1) A branch register shall be deemed to be part of the company's register of members (in this section called "the principal register").

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district where the branch register is kept.

(3) The company shall –

(a) transmit to its registered office in Vanuatu a copy of every entry in its branch register as soon as may be after the entry is made; and

(b) cause to be kept at the place where the company's principal register is kept a duplicate of its branch register duly entered up from time to time.

Every such duplicate shall for all the purposes of this Act be deemed to be part of the principal register.

(4) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a branch register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a branch register shall, during the continuance of that registration, be registered in any other register.

(5) A company may discontinue to keep 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.

(6) Subject to the provisions of this Act, any company may, by its articles, make such provisions as it may think fit respecting the keeping of branch registers.

(7) If default is made in complying with subsection (3), the company and every officer of the company who is in default shall be liable to a default fine; and where by virtue of proviso (b) to section 114(2), the principal register is kept at the office of some person other than the company and by reason of any default of his the company fails to comply with subsection (3)(b), he shall be liable to the same penalty as if he were an officer of the company who was in default.

125. Stamp duty in case of shares registered in branch registers

(1) An instrument of transfer of a share in an exempted company registered in a branch register shall be deemed to be a transfer of property situate out of Vanuatu, and, unless executed in any part of Vanuatu, shall be exempt from stamp duty chargeable in Vanuatu.

(2) An instrument of transfer of a share in a local company registered in a branch register (other than a share in a public company traded on such stock exchange as may be approved by the Minister) shall, for the purposes of the Stamp Duties Act [Cap. 68], be deemed to be a transfer of property situate in Vanuatu.

126. Provisions as to branch registers kept in Vanuatu

If by virtue of the law in force in any country companies incorporated under that law have power to keep in Vanuatu branch registers of their members resident in Vanuatu, the Minister may by rules direct that sections 117 and 120 shall, subject to any modifications and

adaptations specified in such rules, apply to and in relation to any such branch registers kept in Vanuatu as they apply to and in relation to the registers of companies within the meaning of this Act.

Annual Return

127. Duty to deliver annual returns

(1) Every company, other than an exempted private company not being a company of a class specified in Schedule 3, shall each year deliver to the registrar a return made up to the company's return date.

(2) Each return shall –

(a) be in the prescribed form;

(b) contain such information as may be prescribed;

(c) be signed by a director and the secretary of the company;

(d) have annexed thereto such certificates as may be prescribed,

and shall be delivered to the registrar within 28 days after the return date.

(3) If a company fails to deliver an annual return in accordance with this section before the end of the period of 28 days after a return date, the company and every officer of the company who is in default shall be liable to a default fine.

(4) For the purpose of subsection (1), a company's return date shall be –

(a) in the case of a company registered under Part 2 or Part 12, the anniversary of the company's incorporation; and

(b) in the case of a company registered under Part 9 or Part 10, the anniversary of the company's registration.

(5) For the purposes of subsection (3) and section 400, the period of default continues until such time as an annual return made up to that return date and complying with the requirements of subsection (2) (except as to date of delivery) is delivered by the company to the registrar.

(6) For the purposes of this section the expression "officer" shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

128. *(Repealed)*

129. *(Repealed)*

130. *(Repealed)*

131. *(Repealed)*

Meetings and Proceedings

132. Annual general meeting

(1) Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than 15 months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that, so long as a company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year:

And provided that in any case where a company has held an annual general meeting later than the time prescribed by this subsection, the said period of 15 months within which the next following annual general meeting shall be held shall be calculated from the last day upon which such annual general meeting might lawfully have been held within the time prescribed as aforesaid.

(2) If default is made in holding a meeting of the company in accordance with subsection (1), the registrar may, on the application of any member of the company, call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as the registrar thinks expedient, including directions modifying or supplementing, in relation to the calling, holding and conducting of the meeting, the operation of the company's articles; and it is hereby declared that the directions that may be given under this subsection include a direction that one member of the company present in person, or by proxy shall be deemed to constitute a meeting.

(3) The registrar may, upon application on the ground that the obligation imposed by subsection (1) to hold an annual general meeting cannot for good reason be complied with within the time prescribed thereby, and on payment of the prescribed fee, grant such extension of time as he may think expedient and direct the calling of such annual general meeting within the time as extended, subject to any conditions he may in his discretion impose:

Provided that in any case where a company has by leave of the registrar granted under the foregoing provisions of this subsection held an annual general meeting later than the time prescribed by subsection (1), the period of 15 months within which the next following annual general meeting shall be held shall be calculated from the last day upon which such annual general meeting might lawfully have been held within the time prescribed as aforesaid without the application of this subsection.

(4) A general meeting held in pursuance of subsection (2) shall, subject to any directions of the registrar, be deemed to be an annual general meeting of the company; but, where a meeting so held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the company resolves that it shall be so treated.

(5) Where a company resolves that a meeting shall be so treated, a copy of the resolution shall, within 15 days after the passing thereof, be forwarded to the registrar and recorded by him.

(6) If default is made in holding a meeting of the company in accordance with subsection (1), or in complying with any directions of the registrar under subsection (2), the company and every officer of the company who is in default shall be liable to a fine not exceeding VT 10,000, and if default is made in complying with subsection (5), the company and every officer of the company who is in default shall be liable to a default fine.

133. Convening of extraordinary general meeting on requisition

(1) The directors of a company, notwithstanding anything in its articles, shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company, or, in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members

having at the said date a right to vote at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form each signed by one or more requisitionists.

(3) If the directors do not within 21 days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of 3 months from the said date.

(4) A meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(6) For the purposes of this section the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by section 142.

134. Length of notice for calling meetings

(1) Any provision of a company's articles shall be void in so far as it provides for the calling of a meeting of the company (other than an adjourned meeting) by a shorter notice than –

(a) in the case of the annual general meeting, 21 days' notice in writing; and

(b) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution, 14 days' notice in writing in the case of a company other than an unlimited company and 7 days' notice in writing in the case of an unlimited company.

(2) Save in so far as the articles of a company make other provision in that behalf (not being a provision avoided by subsection (1)) a meeting of the company (other than an adjourned meeting) may be called –

(a) in the case of the annual general meeting, by 21 days' notice in writing; and

(b) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution, by 14 days' notice in writing in the case of a company other than an unlimited company and by 7 days' notice in writing in the case of an unlimited company.

(3) A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in subsection (2) or in the company's articles, as the case may be, be deemed to have been duly called if it is so agreed –

(a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and

(b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than 95 per cent in nominal value of the shares giving a right to attend and vote at the meeting, or, in the case of a company not having a

share capital, together representing not less than 95 per cent of the total voting rights at that meeting of all the members.

135. General provisions as to meetings and votes

The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf –

(a) notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A, and for the purpose of this paragraph the expression "Table A" means that Table as for the time being in force;

(b) two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than 5 per cent in number of the members of the company may call a meeting;

(c) in the case of a private company two members, and in the case of any other company three members, personally present shall be a quorum;

(d) any member elected by the members present at a meeting may be chairman thereof;

(e) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each VT 2,000 (or the equivalent in foreign currency) of stock held by him, and in any other case every member shall have one vote.

136. Power of court to order meeting

(1) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the articles or this Act, the court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient; and it is hereby declared that the directions which may be given under this subsection include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with an order under subsection (1) shall for all purpose be deemed to be a meeting of the company duly called, held and conducted.

137. Proxies

(1) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him, and a proxy appointed to attend and vote instead of a member of a private company shall also have the same right as the member to speak at the meeting:

Provided that, unless the articles otherwise provide –

(a) this subsection shall not apply in the case of a company not having a share capital; and

(b) a member of a private company shall not be entitled to appoint more than one proxy to attend on the same occasion; and

(c) a proxy shall not be entitled to vote except on a poll.

(2) In every notice calling a meeting of a company having a share capital there shall appear with reasonable prominence a statement that a member entitled to attend and

vote is entitled to appoint a proxy or, where that is allowed, one or more proxies to attend and vote instead of him, and that a proxy need not also be a member; and if default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be liable to a fine not exceeding VT 10,000.

(3) Any provision contained in a company's articles shall be void in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than 48 hours before a meeting or adjourned meeting in order that the appointment may be effective thereat.

(4) If for the purpose of any meeting of a company invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy, every officer of the company who knowingly and wilfully authorises or permits their issue as aforesaid shall be liable to a fine not exceeding VT 20,000:

Provided that an officer shall not be liable under this subsection by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy or of a list of persons willing to act as proxy if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(5) This section shall apply to meetings of any class of members of a company as it applies to general meetings of the company.

138. Right to demand a poll

(1) Any provision contained in a company's articles shall be void in so far as it would have the effect either –

(a) of excluding the right to demand a poll at a general meeting on any question other than the election of the chairman of the meeting or the adjournment of the meeting; or

(b) of making ineffective a demand for a poll on any such question which is made either –

(i) by not less than five members having the right to vote at the meeting; or

(ii) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or

(iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

(2) The instrument appointing a proxy to vote at a meeting of a company shall be deemed also to confer authority to demand or join in demanding a poll, and for the purposes of subsection (1) a demand by a person as proxy for a member shall be the same as a demand by the member.

139. Voting on a poll

On a poll taken at a meeting of a company or a meeting of any class of members of a company, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

140. Representation of corporations at meetings of companies and of creditors

(1) A corporation, whether a company within the meaning of this Act or not, may –

(a) if it is a member of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;

(b) if it is a creditor (including a holder of debentures) of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised as aforesaid shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual shareholder, creditor or holder of debentures of that other company.

141. Circulation of members' resolutions, etc.

(1) Subject to the following provisions of this section it shall be the duty of a company, on the requisition in writing of such number of members as is hereinafter specified and (unless the company otherwise resolves) at the expense of the requisitionists –

(a) to give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting;

(b) to circulate to members entitled to have notice of any general meeting sent to them any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under subsection (1) shall be –

(a) any number of members representing not less than one-twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or

(b) not less than one hundred members holding shares in the company on which there has been paid up an average sum, per member, of not less than VT 20,000.

(3) Notice of any such resolution shall be given, and any such statement shall be circulated, to members of the company entitled to have notice of the meeting sent to them by serving a copy of the resolution or statement on each such member in any manner permitted for service of notice of the meeting, and notice of any such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company:

Provided that the copy shall be served, or notice of the effect of the resolution shall be given, as the case may be, in the same manner and, so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.

(4) A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless –

(a) a copy of the requisition signed by the requisitionists (or 2 or more copies which between them contain the signatures of all the requisitionists) is deposited at the registered office of the company –

(i) in the case of a requisition requiring notice of a resolution, not less than 6 weeks before the meeting; and

(ii) in the case of any other requisition, not less than 1 week before the meeting; and

(b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto:

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date 6 weeks or less after the copy has been deposited, the copy though not deposited within the time required by this subsection shall be deemed to have been properly deposited for the purposes thereof.

(5) The company shall also not be bound under this section to circulate any statement if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this section to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

(6) Notwithstanding anything in the company's articles, the business which may be dealt with at an annual general meeting shall include any resolution of which notice is given in accordance with this section, and for the purposes of this subsection notice shall be deemed to have been so given notwithstanding the accidental omission, in giving it, of one or more members.

(7) In the event of any default in complying with the provisions of this section, every officer of the company who is in default shall be liable to a fine not exceeding VT 100,000.

142. Extraordinary and special resolutions

(1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

(2) A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than 21 days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given:

Provided that, if it is so agreed by a majority in number of the members having the right to attend and vote at any such meeting, being a majority together holding not less than 95 per cent in nominal value of the shares giving that right, or, in the case of a company not having a share capital, together representing not less than 95 per cent of the total voting rights at that meeting of all the members, a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given.

(3) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) In computing the majority on a poll demanded on the question that an extraordinary resolution or a special resolution be passed, reference shall be had to the number of votes cast for and against the resolution.

(5) For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by this Act or the articles.

143. Resolutions requiring special notice

Where by any provision hereafter contained in this Act special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than 28 days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the articles, not less than 21 days before the meeting:

Provided that if, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice though not given within the time required by this subsection shall be deemed to have been properly given for the purposes thereof.

144. Registration and copies of certain resolutions and agreements

(1) A printed copy, or a copy in some other form approved by the registrar, of every resolution or agreement to which this section applies shall, within 15 days after the passing or making thereof, be forwarded to the registrar of companies and recorded by him.

(2) Where articles have been registered, a copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) Where articles have not been registered, a printed copy, or a copy in some other form approved by the registrar, of every such resolution or agreement shall be forwarded to any member at his request on payment of VT 100 or such less sum as the company may direct.

(4) This section shall apply to –

(a) special resolutions;

(b) extraordinary resolutions;

(c) resolutions passed as special resolutions or as extraordinary resolutions by entry in the minute book pursuant to section 41(1);

(d) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless, as the case may be, they had been passed as special resolutions or as extraordinary resolutions;

(e) resolutions or agreements which have been agreed to by all the members of some class of shareholders but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members;

(f) resolutions requiring a company to be wound up voluntarily, passed under section 274(1)(a).

(5) If a company fails to comply with subsection (1), the company and every officer of the company who is in default shall be liable to a default fine.

(6) If a company fails to comply with subsection (2) or subsection (3), the company and every officer of the company who is in default shall be liable to a default fine.

(7) For the purposes of subsections (5) and (6), a liquidator of the company shall be deemed to be an officer of the company.

145. Resolutions passed at adjourned meetings

Where a resolution is passed at an adjourned meeting of –

(a) a company;

(b) the holders of any class of shares in a company;

(c) the directors of a company;

the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

146. Minutes of proceedings of meetings of company and of directors and managers

(1) Every company shall cause minutes of all proceedings of general meetings, all proceedings at meetings of its directors and, where there are managers, all proceedings at meetings of its managers to be entered in books kept for that purpose.

(2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Where minutes have been made in accordance with the provisions of this section of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers or liquidators shall be deemed to be valid.

(4) If a company fails to comply with subsection (1), the company and every officer of the company who is in default shall be liable to a default fine.

147. Inspection of minute books

(1) The books containing the minutes of proceedings of any general meeting of a company shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than 2 hours in each day be allowed for inspection) be open to the inspection of any member without charge.

(2) Any member shall be entitled to be furnished within 7 days after he has made a request in that behalf to the company with a copy of any such minutes as aforesaid at a charge not exceeding VT 50 for every 100 words.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default shall be liable in respect of each offence to a default fine.

(4) In the case of any such refusal or default, the court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them.

Accounts and Audit

148. Keeping of books of account

(1) Every company shall cause to be kept proper books of account with respect to –

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(b) all sales and purchases of goods by the company;

(c) the assets and liabilities of the company.

(2) For the purposes of subsection (1), proper books of account shall not be deemed to be kept with respect to the matters aforesaid if there are not kept such books as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

(3) The books of account may be kept either by making entries in bound volumes, or, subject to compliance with section 396(2) and section 396(3), by a system of mechanical recording or otherwise.

(4) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors:

Provided that if books of account are kept at a place outside Vanuatu there shall be sent to, and kept at a place in Vanuatu and be at all times open to inspection by the directors such accounts and returns with respect to the business dealt with in the books of account so kept as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding 12 months and will enable to be prepared in accordance with this Act (where applicable) the company's balance sheet, its profit and loss account or income and expenditure account, and any document annexed to any of those documents giving information which is required by this Act and is thereby allowed to be so given.

(5) The books of account, or the accounts and returns, shall be kept and preserved as provided by subsection (4) for a period not less than 5 years from the date they were made, or received in Vanuatu, as the case may be.

(6) If any person being a director of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he shall, in respect of each offence, be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding VT 100,000 or to both:

Provided that –

(a) in any proceedings against a person in respect of an offence under this section consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to prove that he had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that duty; and

(b) a person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

149. Financial year

(1) Every company shall have a financial year to be determined in accordance with this section.

(2) A company's first financial year shall begin with the first day of its first accounting reference period and shall end with the last day of that period.

(3) Each subsequent year shall begin with the day immediately following the end of the company's previous financial year and end with the last day of its next accounting reference period.

149A. Accounting reference periods and accounting reference dates

(1) A company's accounting reference periods shall be determined according to its accounting reference date.

(2) A company may, at any time before the end of the period of 9 months beginning with the date of its incorporation, or in the case of a company registered under Part 10, its registration, by giving notice to the registrar in the prescribed form, specify its accounting reference date, being the date upon which its accounting reference period ends in each calendar year.

(3) If a company does not give notice to the registrar in accordance with subsection (2), a company's accounting reference date shall be –

(a) the last day of the month in which the anniversary of its incorporation or registration falls;

(b) in the case of a company incorporated or registered before 1st January, 1992 which has at any time on or after 1st January, 1989 filed an audited balance sheet with the registrar, the date up to which the last such balance sheet filed was made up;

(c) in the case of a company incorporated or registered before 1st January, 1992 which has not at any time on or after 1st January, 1989 filed an audited balance sheet with the registrar and in the case of a company incorporated or registered on or after 1st January, 1992, the last day of the month in which the anniversary of its incorporation or registration falls.

(4) A company's first accounting reference period is the period of more than six months, but not more than eighteen months, beginning with the date of its incorporation or registration and ending with its accounting reference date.

(5) A company's subsequent accounting reference periods are successive periods of twelve months beginning immediately after the end of the previous accounting reference period and ending with its accounting reference date.

149B. Alteration of accounting reference date

(1) A company may, by giving notice in the prescribed form to the registrar, specify a new accounting reference date having effect in relation to the company's current and subsequent accounting reference periods.

(2) A notice given under subsection (1) shall state whether the current accounting reference period –

(a) is to be shortened, so as to come to an end on the first occasion on which the new accounting reference date falls or fell after the beginning of the period; or

(b) is to be extended, so as to come to an end on the second occasion on which that date falls or fell after the beginning of the period.

(3) A notice given under subsection (1) stating that the current accounting reference period is to be extended shall be ineffective if given less than 5 years after the end of an earlier accounting reference period of the company which was extended by virtue of this section or if given after the period allowed for laying and delivering accounts and reports has already expired.

(4) An accounting reference period may not in any case be extended so as to exceed 18 months and a notice under this section shall be ineffective if the current accounting reference period as extended in accordance with the notice would exceed that limit.

149C. Profit and loss account and balance sheet

(1) The directors of every company to which this section applies shall prepare for each financial year of the company –

(a) a balance sheet as at the last day of the year; and

(b) a profit and loss account.

(2) The directors of every company to which this section applies shall in respect of each financial year lay before the company in general meeting and deliver to the registrar copies of the company's annual accounts, the directors' report and the auditors' report on those accounts.

(3) If any document comprised in the annual accounts or reports is in a language other than French or English, the directors shall annex to the copy of the accounts and reports delivered to the registrar, a translation of the document into French or English certified, in such manner as is acceptable to the registrar, to be a correct translation.

(4) The period allowed for laying and delivering accounts and reports in accordance with this section is –

(a) if the relevant accounting reference period is the company's first and is a period of more than 12 months, 8 months from the first anniversary of the incorporation or registration of the company or 3 months from the end of the accounting reference period, whichever expires last;

(b) in any other case 8 months after the end of the relevant accounting reference period.

(5) The registrar may, upon application being made before the expiration of the period allowed by this section, by notice in writing extend that period by such further period up to a maximum of 4 months as shall be specified in the notice.

(6) If the relevant accounting period is treated as shortened by virtue of a notice given under section 149B, the period allowed for laying and delivering the accounts and reports is that applicable in accordance with the above provisions or 3 months from the date of the notice under that section, whichever expires last.

(7) If any person being a director of a company fails to take all reasonable steps to comply with the provisions of this section, he shall in respect of each offence, be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding VT 100,000 or to both such imprisonment or fine:

Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and was in a position to discharge that duty.

(8) This section shall apply to every company that is not a private company, to every company of a class specified in Schedule 3 and to every private local company which has a turnover in excess of VT 20,000,000 in the relevant financial year or if the financial year is less than 12 months, a turnover which, calculated as an average for the financial year, exceeds VT 1,600,000 per month.

150. General provisions as to contents and form of accounts

(1) Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of its financial year, and every profit and loss account of

a company shall give a true and fair view of the profit or loss of the company for the financial year.

(2) A company's balance sheet and profit and loss account shall comply with the requirements of Schedule 6, so far as applicable thereto.

(3) Save as expressly provided in the following provisions of this section or in Part 3 or the said Schedule 6, the requirements of subsection (2) and the said Schedule 6 shall be without prejudice either to the general requirements of subsection (1) or to any other requirements of this Act.

(4) The registrar may, on the application or with the consent of a company's directors, modify in relation to that company any of the requirements of this Act as to the matters to be stated in a company's balance sheet or profit and loss account (except the requirements of subsection (1)) for the purpose of adapting them to the circumstances of the company.

(5) Subsections (1) and (2) shall not apply to a company's profit and loss account if –

(a) the company has subsidiaries; and

(b) the profit and loss account is framed as a consolidated profit and loss account dealing with all or any of the company's subsidiaries as well as the company and –

(i) complies with the requirements of this Act relating to consolidated profit and loss accounts; and

(ii) shows how much of the consolidated profit or loss for the financial year is dealt with in the accounts of the company.

(6) If any person being a director of a company fails to take all reasonable steps to secure compliance as respects any accounts laid before the company at its annual general meeting with the provisions of this section and with the other requirements of this Act as to the matters to be stated in accounts, he shall, in respect of each offence, be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding VT 100,000:

Provided that –

(a) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the said provisions or the said other requirements, as the case may be, were complied with and was in a position to discharge that duty; and

(b) a person shall not be sentenced to imprisonment for any such offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

(7) For the purposes of this section and the following provisions of this Act, except where the context otherwise requires –

(a) any reference to a balance sheet or profit and loss account shall include any notes thereon or document annexed thereto giving information which is required by this Act and is thereby allowed to be so given; and

(b) any reference to a profit and loss account shall be taken, in the case of a company not trading for profit, as referring to its income and expenditure account, and references to profit or to loss and, if the company has subsidiaries, references to a consolidated profit and loss account shall be construed accordingly.

151. Statement in holding company's accounts of identities and places of incorporation of subsidiaries, and particulars of shareholdings therein

(1) Subject to the provisions of this section, where, at the end of its financial year, a company has subsidiaries, there shall, in the case of each subsidiary, be stated in, or in a note on, or statement annexed to, the company's accounts laid before it at its annual general meeting –

(a) the subsidiary's name;

(b) its place of incorporation; and

(c) in relation to shares of each class of the subsidiary held by the company, the identity of the class and the proportion of the nominal value of the issued shares of that class represented by the shares held.

(2) For the purposes of subsection (1), shares of a body corporate shall be treated as being held, or as not being held, by another such body if they would, by virtue of section 158(3), be treated as being held or, as the case may be, as not being held by that other body for the purpose of determining whether the first-mentioned body is its subsidiary; and the particulars required by subsection (1) shall include, with reference to the proportion of the nominal value of the issued shares of a class represented by shares held by a company a statement of the extent (if any) to which it consists in shares held by, or by a nominee for, a subsidiary of the company and the extent (if any) to which it consists in shares held by, or by a nominee for, the company itself.

(3) Subsection (1) shall not require the disclosure of information with respect to a body corporate which is the subsidiary of another and is incorporated outside Vanuatu or, being incorporated in Vanuatu, carries on business outside Vanuatu if the disclosure would, in the opinion of the directors of that other, be harmful to the business of that other or of any of its subsidiaries and the registrar agrees that the information need not be disclosed.

(4) If, in the opinion of the directors of a company having, at the end of its financial year, subsidiaries, the number of them is such that compliance with subsection (1) would result in particulars of excessive length being given, compliance with that subsection shall not be requisite except in the case of the subsidiaries carrying on the businesses the results of the carrying on of which, in the opinion of the directors, principally affected the amount of the profit or loss of the company and its subsidiaries or the amount of the assets of the company and its subsidiaries.

(5) Where, in the case of a company, advantage is taken of subsection (4) –

(a) there must be included in the statement required by this section the information that it deals only with the subsidiaries carrying on such businesses as are referred to in that subsection; and

(b) the particulars given in compliance with subsection (1), together with those which, but for the fact that advantage is so taken, would have to be so given, shall be annexed to the annual return first made by the company after its accounts have been laid before it at its annual general meeting.

(6) If a company fails to satisfy an obligation imposed on it by subsection (5) to annex particulars to a return, the company and every officer of the company who is in default shall be liable to a default fine.

152. Statement in company's accounts of identities and places of incorporation of companies not subsidiaries whose shares it holds, and particulars of those shares

(1) Subject to the provisions of this section, if, at the end of its financial year, a company holds shares of any class comprised in the equity share capital of another body corporate (not being its subsidiary) exceeding in nominal value one-tenth of the

nominal value of the issued shares of that class, there shall be stated in, or in a note on, or statement annexed to, the accounts of the company laid before it at its annual general meeting –

(a) the name of that other body corporate and its place of incorporation;

(b) the identity of the class and the proportion of the nominal value of the issued shares of that class represented by the shares held; and

(c) if the company also holds shares in that other body corporate of another class (whether or not comprised in its equity share capital), or of other classes (whether or not so comprised), the like particulars as respects that other class or, as the case may be, each of those other classes.

(2) If, at the end of its financial year, a company holds shares in another body corporate (not being its subsidiary) and the amount of all the shares therein which it holds (as stated or included in its accounts laid before it at its annual general meeting) exceeds one-tenth of the amount of its assets (as so stated), there shall be stated in, or in a note on, or statement annexed to, those accounts –

(a) the name of that other body corporate and its place of incorporation;

(b) in relation to shares in that other body corporate of each class held, the identity of the class and the proportion of the nominal value of the issued shares of that class represented by the shares held.

(3) Neither of subsections (1) and (2) shall require the disclosure by a company of information with respect to another body corporate if that other body is incorporated outside Vanuatu or, being incorporated in Vanuatu, carries on business outside Vanuatu if the disclosure would, in the opinion of the directors of the company, be harmful to the business of the company or of that other body and the registrar agrees that the information need not be disclosed.

(4) If, at the end of its financial year a company falls within subsection (1) in relation to more bodies corporate than one, and the number of them is such that, in the opinion of the directors, compliance with that subsection would result in particulars of excessive length being given, compliance with that subsection shall not be requisite except in the case of the bodies carrying on the businesses the results of the carrying on of which, in the opinion of the directors, principally affected the amount of profit or loss of the company or the amount of its assets.

(5) Where, in the case of a company, advantage is taken of subsection (4) –

(a) there must be included in the statement dealing with the bodies last mentioned in that subsection the information that it deals only with them; and

(b) the particulars given in compliance with subsection (1), together with those which, but for the fact that advantage is so taken, would have to be given, shall be annexed to the annual return first made by the company after its accounts have been laid before it at its annual general meeting.

(6) If a company fails to satisfy an obligation imposed on it by subsection (5) to annex particulars to a return, the company and every officer of the company who is in default shall be liable to a default fine.

(7) For the purposes of this section, shares of a body corporate shall be treated as being held, or as not being held, by another such body if they would, by virtue of section 158(3) (but on the assumption that paragraph (b)(ii) had been omitted therefrom), be treated as being held or, as the case may be, as not being held by that other body for the purpose of determining whether the first-mentioned body is its subsidiary.

(8) In this section "equity share capital" has the meaning assigned to it by section 158(5).

153. Statement in subsidiary company's accounts of name and place of incorporation of its ultimate holding company

(1) Subject to subsection (2), where, at the end of its financial year, a company is the subsidiary of another body corporate, there shall be stated in, or in a note on, or statement annexed to, the company's accounts laid before it at its annual general meeting the name of the body corporate regarded by the directors as being the company's ultimate holding company and, if known to them, the country in which it is incorporated.

(2) Subsection (1) shall not require the disclosure by a company which carries on business outside Vanuatu of information with respect to the body corporate regarded by the directors as being its ultimate holding company if the disclosure would, in their opinion, be harmful to the business of that holding company or of the first-mentioned company or any other of that holding company's subsidiaries and the registrar agrees that the information need not be disclosed.

154. Obligation to lay group accounts before holding company

(1) Where at the end of its financial year a company has subsidiaries, accounts or statements (in this Act referred to as "group accounts") dealing as hereinafter mentioned with the state of affairs and profit or loss of the company and the subsidiaries shall, subject to subsection (2), be laid before the company at its annual general meeting when the company's own balance sheet and profit and loss account are so laid.

(2) Notwithstanding anything in subsection (1) –

(a) group accounts shall not be required where the company is at the end of its financial year the wholly owned subsidiary of another body corporate incorporated in Vanuatu; and

(b) group accounts need not deal with a subsidiary of the company if the company's directors are of the opinion that –

(i) it is impracticable, or would be of no real value to members of the company, in view of the insignificant amounts involved, or would involve expense or delay out of proportion to the value to members of the company; or

(ii) the result would be misleading, or harmful to the business of the company or any of its subsidiaries; or

(iii) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking;

and, if the directors are of such an opinion about each of the company's subsidiaries, group accounts shall not be required:

Provided that the approval of the registrar shall be required for not dealing in group accounts with a subsidiary on the ground that the result would be harmful or on the ground of the difference between the business of the holding company and that of the subsidiary.

(3) If any person being a director of a company fails to take all reasonable steps to secure compliance as respects the company with the provisions of this section, he shall, in respect of each offence, be liable to imprisonment for a term not exceeding six months or to a fine not exceeding VT 100,000 or to both:

Provided that –

(a) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to

believe and did believe that a competent and reliable person was charged with the duty of seeing that the requirement of this section were complied with and was in a position to discharge that duty; and

(b) a person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the court, the offence was committed wilfully.

(4) For the purposes of this section a body corporate shall be deemed to be the wholly owned subsidiary of another if it has no members except that other and that other's wholly owned subsidiaries and it or their nominees.

155. Form of group accounts

(1) Subject to subsection (2), the group accounts laid before a holding company shall be consolidated accounts comprising –

(a) a consolidated balance sheet dealing with the state of affairs of the company and all the subsidiaries to be dealt with in group accounts;

(b) a consolidated profit and loss account dealing with the profit or loss of the company and those subsidiaries.

(2) If the company's directors are of opinion that it is better for the purpose –

(a) of presenting the same or equivalent information about the state of affairs and profit or loss of the company and those subsidiaries; and

(b) of so presenting it that it may be readily appreciated by the company's members;

the group accounts may be prepared an a form other than that required by subsection (1), and in particular may consist of more than one set of consolidated accounts dealing respectively with the company and one group of subsidiaries and with other groups of subsidiaries or of separate accounts dealing with each of the subsidiaries, or of statements expanding the information about the subsidiaries in the company's own accounts, or any combination of those forms.

(3) The group accounts may be wholly or partly incorporated in the company's own balance sheet and profit and loss account.

156. Contents of group accounts

(1) The group accounts laid before a company shall give a true and fair view of the state of affairs and profit or loss of the company and the subsidiaries dealt with thereby as a whole, so far as concerns members of the company.

(2) Where the financial year of a subsidiary does not coincide with that of the holding company, the group accounts shall, unless the registrar on the application or with the consent of the holding company's directors otherwise direct, deal with the subsidiary's state of affairs as at the end of its financial year ending with or last before that of the holding company, and with the subsidiary's profit or loss for that financial year.

(3) Without prejudice to subsection (1), the group accounts, if prepared as consolidated accounts, shall comply with the requirements of Schedule 6, so far as applicable thereto, and if not so prepared shall give the same or equivalent information:

Provided that the registrar may on the application or with the consent of a company's directors, modify the said requirements in relation to that company for the purpose of adapting them to the circumstances of the company.

157. Financial year of holding company and subsidiary

(1) A holding company's directors shall secure that except where in their opinion there are good reasons against it, the financial year of each of its subsidiaries shall coincide with the company's own financial year.

(2) Where it appears to the registrar desirable for a holding company or a holding company's subsidiary to extend its financial year so that the subsidiary's financial year may end with that of the holding company, and for that purpose to postpone the submission of the relevant accounts to an annual general meeting from one calendar year to the next, the registrar may on the application or with the consent of the directors of the company whose financial year is to be extended direct that, in the case of that company, the submission of accounts to an annual general meeting, the holding of an annual general meeting or the making of an annual return shall not be required in the earlier of the said calendar years.

158. Meaning of "holding company" and "subsidiary"

(1) For the purposes of this Act, a company shall, subject to the provisions of subsection (3), be deemed to be a subsidiary of another if, but only if –

(a) that other either –

(i) is a member of it and controls the composition of its board of directors; or

(ii) holds more than half in nominal value of its equity share capital; or

(b) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

(2) For the purposes of subsection (1), the composition of a company's board of directors shall be deemed to be controlled by another company if, but only if, that other company by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove the holders of all or a majority of the directorships; but for the purposes of this provision that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say –

(a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power as aforesaid; or

(b) that a person's appointment thereto follows necessarily from his appointment as director of that other company; or

(c) that the directorship is held by that other company itself or by a subsidiary of it.

(3) In determining whether one company is a subsidiary of another –

(a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it;

(b) subject to the two following paragraphs any shares held or power exercisable–

(i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity); or

(ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity;

shall be treated as held or exercisable by that other;

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded;

(d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in the last foregoing paragraph) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes

the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) For the purposes of this Act, a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

(5) In this section the expression "company"' includes any body corporate, and the expression "equity share capital" means, in relation to a company, its issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

159. Signing of balance sheet

(1) Every balance sheet of a company shall be signed on behalf of the board by two of the directors of the company, or, if there is only one director, by that director.

(2) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated or published, the company and every officer of the company who is in default shall be liable to a fine not exceeding VT 10,000.

160. Accounts and auditors' report to be annexed to balance sheet

(1) The profit and loss account and, so far as not incorporated in the balance sheet or profit and loss account, any group accounts laid before the company at its annual general meeting, shall be annexed to the balance sheet, and the auditors' report, if any, shall be attached thereto.

(2) Any accounts so annexed shall be appropriated by the board of directors before the balance sheet is signed on their behalf.

(3) If any copy of a balance sheet is issued, circulated or published without having annexed thereto a copy of the profit and loss account or any group accounts required by this section to be so annexed, or without having attached thereto a copy of the auditors' report, if any, the company and every officer of the company who is in default shall be liable to a fine not exceeding VT 10,000.

161. Directors' report

(1) The directors of every company shall prepare for each financial year and lay before the company at its annual general meeting a directors' report containing such information as may be prescribed.

(2) The directors' report shall be approved by resolution of the directors and shall be signed on the directors' behalf by a director.

(3) If any person being a director of a company fails to take all reasonable steps to comply with the provisions of this section, he shall in respect of each offence, be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding VT 100,000 or to both such imprisonment and fine.

162. Right to receive copies of balance sheets, auditors' report and directors' report

(1) A copy of every balance sheet, including every document required by law to be annexed thereto, which is required to be laid before a company at its annual general meeting, together with a copy of the auditors' report, if any, and of the directors' report, shall, not less than 21 days before the date of the meeting, be sent to every member of the company (whether he is or is not entitled to receive notices of general meetings of the company), if they shall so request the legal personal representatives of any deceased member of the company, every holder of debentures of the company (whether he is or is not so entitled) and all other persons so entitled:

Provided that –

(a) in the case of a company not having a share capital this subsection shall not require the sending of a copy of the documents aforesaid to a member of the company who is not entitled to receive notices of general meetings of the company or to a holder of debentures of the company who is not so entitled;

(b) this subsection shall not require a copy of these documents to be sent –

(i) to a member of the company or a holder of debentures of the company, being in either case a person who is not entitled to receive notices of general meetings of the company and of whose address the company is unaware;

(ii) to more than one of the joint holders of any shares or debentures none of whom are entitled to receive such notices; or

(iii) in the case of joint holders of any shares or debentures some of whom are and some of whom are not entitled to receive such notices, to those who are not so entitled; and

(c) if the copies of the documents aforesaid are sent less than 21 days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting.

(2) Any member of a company, whether he is or is not entitled to have sent to him copies of the company's balance sheets, any holder of debentures of the company, whether he is or is not so entitled, and the legal personal representatives of any deceased member of the company, whether or not such member would have been so entitled, shall be entitled to be furnished on demand without charge with a copy of the last balance sheet of the company, including every document required by law to be annexed thereto, together with a copy of the auditors' report on the balance sheet, if any, and of the directors' report.

(3) If default is made in complying with subsection (1), the company and every officer of the company who is in default shall be liable to a fine not exceeding VT 5,000, and if, when any person makes a demand for any document with which he is by virtue of subsection (2) entitled to be furnished, default is made in complying with the demand within 7 days after the making thereof, the company and every officer of the company who is in default shall be liable to a default fine, unless it is proved that that person has already made a demand for and been furnished with a copy of the document.

163. Appointment and remuneration of auditors

(1) Every company to which section 149C applies shall at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that, until the conclusion of the next, annual general meeting.

(2) The directors of every private local company which is not of a class specified in Schedule 3 or the company at a general meeting shall upon the turnover of the company exceeding VT 20,000,000 in any financial year, or if the financial year is less than 12 months, if the turnover, calculated as an average for the financial year exceeds VT 1,600,000 per month, appoint an auditor or auditors to hold office for the period commencing from the last balance date or the last annual general meeting at which any auditor held appointment, whatever is the later, until the conclusion of the next annual general meeting.

(3) At any annual general meeting a retiring auditor, however appointed, shall be reappointed without any resolution being passed unless –

(a) he is not qualified for reappointment; or

(b) a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be reappointed; or

(c) he has given the company notice in writing of his unwillingness to be reappointed:

Provided that where notice is given of an intended resolution to appoint some person or persons in place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with, the retiring auditor shall not be automatically reappointed by virtue of this subsection.

(4) Where at an annual general meeting no auditors are appointed or re-appointed, the registrar may appoint a person to fill the vacancy.

(5) The company shall, within 1 week of the registrar's power under subsection (4) becoming exercisable, give him notice of that fact, and, if a company fails to give notice as required by this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(6) Subject as hereinafter provided, the first auditors of a company may be appointed by the directors at any time before the first annual general meeting, and auditors so appointed shall hold office until the conclusion of that meeting:

Provided that –

(a) the company may at a general meeting remove any such auditors and appoint in their place any other persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than 14 days before the date of the meeting; and

(b) if the directors fail to exercise their powers under this subsection, the company in general meeting may appoint the first auditors, and thereupon the said powers of the directors shall cease.

(7) The directors or the company at a general meeting may fill any casual vacancy in the office of the auditor, but while any such vacancy continues, the surviving or continuing auditor or auditors, if any, may act.

(8) The remuneration of the auditors of a company –

(a) in the case of an auditor appointed by the directors or by the registrar, may be fixed by the directors or by the registrar, as the case may be;

(b) subject to paragraph (a), shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

For the purposes of this subsection, any sums paid by the company in respect of the auditors expenses shall be deemed to be included in the expression “remuneration”.

164. Appointment of auditor optional for certain private companies

(1) The directors or members of every company other than a company specified in section 163(1) and which is not of a class specified in Schedule 3 may by ordinary resolution appoint an auditor or auditors to hold office for such period as is specified in the resolution and may by ordinary resolution terminate such appointment at any time.

(2) For a private local company with a turnover not exceeding VT 20,000,000 in any year, the registrar may, at any time if he thinks fit, on the application of any member or creditor of the company or of his own motion, apply to the Supreme Court to appoint an auditor to hold office until the conclusion of the next annual general meeting.

165. Provisions as to resolutions relating to appointment and removal of auditors

(1) Special notice shall be required for a resolution at a company's annual general meeting appointing as auditor a person other than a retiring auditor or providing expressly that a retiring auditor shall not be reappointed.

(2) On receipt of notice of such an intended resolution as aforesaid, the company shall forthwith send a copy thereof to the retiring auditor (if any).

(3) Where notice is given of such an intended resolution as aforesaid and the retiring auditor makes with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so –

(a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company);

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

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this section, to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(4) Subsection (3) shall apply to a resolution to remove the first auditors by virtue of section 163(6) as it applies in relation to a resolution that a retiring auditor shall not be reappointed.

(5) A company may by special resolution at any extraordinary meeting remove an auditor provided that where such company is a company to which section 163 applies such resolution shall be invalid unless there is passed at the same meeting an ordinary resolution appointing an auditor to replace the one so removed.

(6) Subsections (2) and (3) shall apply to any notice of special resolution given under subsection (5) and reference to retiring auditor shall be construed as reference to the auditor sought to be removed.

166. Disqualification for appointment as auditor

(1) A person shall not be qualified for appointment as auditor of a company unless either–

(a) he is a member of a body of accountants established in Vanuatu or any overseas country and for the time being recognised for the purposes of this provision by the Minister; or

(b) he is for the time being authorised by the Minister to be so appointed either as having similar qualifications obtained elsewhere or as having obtained adequate knowledge and experience in the course of his employment by a member of a body of accountants recognised for the purposes of paragraph (a).

(2) None of the following persons shall be qualified for appointment as auditor of a company –

(a) an officer or servant of the company;

(b) a person who is a partner of or in the employment of an officer or servant of the company;

(c) a body corporate.

References in this subsection to an officer or servant shall be construed as not including references to an auditor.

(3) A person shall also not be qualified for appointment as auditor of a company if he is, by virtue of subsection (2), disqualified for appointment as auditor of any other company which is that company's subsidiary or holding company or a subsidiary of that company's holding company.

(4) Notwithstanding the provisions of subsections (1), (2) and (3), a person shall not be qualified for appointment as auditor of a local company if he does not hold a valid business licence issued under the Business Licence Act, Cap. 249.

(5) A person who acts as auditor of a company without being qualified under this section for appointment shall be liable to a fine not exceeding VT 100,000.

167. Auditor's report and right of access to books and to attend and be heard at meetings

(1) The auditors of a company shall make report to the members on the accounts examined by them, and on every balance sheet, every profit and loss account, and all group accounts laid before the company at its annual general meeting during their tenure of office.

(2) The auditors' report shall be read before the company at its annual general meeting and shall be open to inspection by any member.

(3) The report shall state whether in the auditors' opinion the company's balance sheet and profit and loss account and (if it is a holding company submitting group accounts) the group accounts have been properly prepared in accordance with the provisions of this Act and whether in their opinion a true and fair view is given –

(i) in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year;

(ii) in the case of the profit and loss account (if it is not framed as a consolidated profit and loss account), of the company's profit or loss for its financial year;

(iii) in the case of group accounts submitted by a holding company, of the state of affairs and profit or loss of the company and its subsidiaries dealt with thereby, so far as concerns members of the company.

(4) The report shall contain a statement by the auditor stating that he is qualified under section 166.

(5) It shall be the duty of the auditors of a company, in preparing their report under this section, to carry out such investigations as will enable them to form an opinion as to the following matters, that is to say –

(a) whether proper books of account have been kept by the company and proper returns adequate for their audit have been received from branches not visited by them; and

(b) whether the company's balance sheet and (unless it is framed as a consolidated profit and loss account) profit and loss account are in agreement with the books of account and returns;

and if the auditors are of opinion that proper books of account have not been kept by the company or that proper returns adequate for their audit have not been received

from branches not visited by them, or if the balance sheet and (unless it is framed as a consolidated profit and loss account) profit and loss account are not in agreement with the books of account and returns the auditors shall state that fact in their report.

(6) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the officers of the company such information and explanation as he thinks necessary for the performance of the duties of the auditors.

(7) If the auditors fail to obtain all the information and explanations which, to the best of their knowledge and belief, are necessary for the purposes of their audit, they shall state that fact in their report.

(8) The auditors of a company shall be entitled to attend any general meeting of the company and to receive all notices of, and other to communications relating to, any general meeting which any member of the company is entitled to receive, and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

168. Construction of references to documents annexed to accounts

References in this Act to a document annexed or required to be annexed to a company's accounts or any of them shall not include the Directors' report or the auditors' report:

Provided that any information which is required by this Act to be given in accounts, and is thereby allowed to be given in a statement annexed, may be given in the directors' report instead of in the accounts and, if any such information is so given, the report shall be annexed to the accounts and this Act shall apply in relation thereto accordingly, except that the auditors shall report thereon only so far as it gives the information.

Inspection

169. Investigation of company's affairs

(1) The Minister may appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as he may direct if it appears to him that there are circumstances suggesting –

(a) that its business is being or has been conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive of any part of its members or that it was formed for any fraudulent or unlawful purpose; or

(b) that persons concerned with its formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members.

(2) The power of the Minister shall be exercisable with respect to a body corporate notwithstanding that it is in course of being voluntarily wound up.

170. Power of inspectors to carry investigation into affairs of related companies

If an inspector appointed under section 169 to investigate the affairs of a company thinks it necessary for the purposes of his investigation to investigate also the affairs of any other body corporate which is or has at any relevant time been the company's subsidiary or holding company or a subsidiary of its holding company or a holding company of its subsidiary, he shall have power so to do, and shall report on the affairs of the other body corporate so far as he thinks the results of his investigation thereof are relevant to the investigation of the affair of the first-mentioned company.

171. Power of inspector to inform Minister of matters tending to show commission of offence

An inspector appointed under section 169 may at any time in the course of his investigation, without the necessity of making an interim report, inform the Minister of matters coming to his knowledge as a result of the investigation tending to show that an offence has been committed.

172. Production of documents, and evidence, on investigation

(1) It shall be the duty of all officers and agents of the company and of all officers and agents of any other body corporate whose affairs are investigated by virtue of section 170 to produce to the inspectors all books and documents of or relating to the company or, as the case may be, the other body corporate which are in their custody or power, to attend before the inspectors when required so to do and otherwise to give to the inspectors all assistance in connection with the investigation which they are reasonably able to give.

(2) An inspector may examine on oath the officers and agents of the company or other body corporate in relation to its business, and may administer an oath accordingly.

(3) If any officer or agent of the company or other body corporate refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, refuses to attend before the inspectors when required so to do or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company or other body corporate, as the case may be, the inspectors may certify the refusal under their hand to the court, and the court may thereupon inquire into the case, and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the court.

(4) If an inspector thinks it necessary for the purpose of his investigation that a person whom he has no power to examine on oath should be so examined, he may apply to the court and the court may if it sees fit order that person to attend and be examined on oath before it on any matter relevant to the investigation, and on any such examination –

(a) the inspector may take part therein either personally or by legal practitioner;

(b) the court may put such questions to the person examined as the court thinks fit;

(c) the person examined shall answer all such questions as the court may put or allow to be put to him, but may at his own cost employ legal practitioner who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him;

and notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him:

Provided that, notwithstanding anything in paragraph (c), the court may allow the person examined such costs as in its discretion it may think fit, and any costs so allowed shall be paid as part of the expenses of the investigation.

(5) An answer given by a person to a question put to him in exercise of the powers conferred by this section may be used in evidence against him.

(6) In this section, any reference to officers or to agents shall include past, as well as present, officers or agents, as the case may be, and for the purposes of this section the expression "agents", in relation to a company or other body corporate, shall include the bankers and legal practitioners of the company or other body corporate

and any persons employed by the company or other body corporate as auditors, whether those persons are or are not officers of the company or other body corporate.

173. Inspectors' report

The inspectors may, and, if so directed by the Minister, shall, make interim reports to the Minister, and on the conclusion of the investigation shall make a final report to the Minister.

Any such report shall be written or printed, as the Minister directs, and the Minister may, if he thinks it in the public interest to do so, cause it to be published.

174. Power of Minister to present winding-up petition or petition under section 217 in consequence of investigation, etc.

(1) If, in the case of any body corporate liable to be wound up under this Act, it appears to the Minister from any report made under section 173 or from any information or document obtained under sections 183 to 188 (inclusive) that it is expedient in the public interest that the body should be wound up, the Minister may, unless the body is already being wound up by the court, present a petition for it to be so wound up if the court thinks it just and equitable for it to be so wound up.

(2) If, in the case of any such body corporate as aforesaid, it appears to the Minister from any report made or information or document obtained as aforesaid that its business is being conducted in a manner oppressive to any part of its members, the Minister may (in addition to, or instead of, presenting a petition under subsection (1)) present a petition for an order under section 216.

175. Power of Minister to bring civil proceedings on behalf of body corporate

(1) If, from any report made under section 173 or from any information or document obtained under sections 183 to 188 (inclusive) it appears to the Minister that any civil proceedings ought in the public interest to be brought by any body corporate, he may himself bring such proceedings in the name and on behalf of the body corporate.

(2) The Minister shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with any proceedings brought by virtue of subsection (1).

176. Expenses of investigation of company's affairs

(1) The expenses of and incidental to an investigation by an inspector appointed by the Minister under the preceding provisions of this Act shall be defrayed in the first instance by the Minister, but the following persons shall, to the extent mentioned, be liable to repay the Minister –

(a) any person, who is convicted on a prosecution instituted as a result of the investigation or who is ordered to pay damages or restore any property in proceedings brought by virtue of section 175(1), may in the same proceedings be ordered to pay the said expenses to such extent as may be specified in the order; and

(b) any body corporate in whose name proceedings are brought as aforesaid shall be liable to the amount or value of any sums or property recovered by it as a result of those proceedings;

and any amount for which a body corporate is liable by virtue of paragraph (b) of this subsection shall be a first charge on the sums or property mentioned in that paragraph.

(2) For the purposes of this section, any costs or expenses incurred by the Minister in or in connection with proceedings brought by virtue of section 175(1) (including expenses incurred by virtue of section 175(2)) shall be treated as expenses of the investigation giving rise to the proceedings.

177. Inspectors' report to be evidence

A copy of any report of any inspectors appointed under the foregoing provisions of this Act shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

178. Appointment and powers of inspectors to investigate ownership of company

(1) Where it appears to the Minister that there is good reason so to do, he may appoint one or more competent inspectors to investigate and report on the membership of any company and otherwise with respect to the company for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence the policy of the company.

(2) The appointment of an inspector under this section may define the scope of his investigation, whether as respects the matter or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular shares or debentures.

(3) Subject to the terms of an inspector's appointment his powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

(4) For the purposes of any investigation under this section, sections 170 to 173 (inclusive), shall apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate, so, however, that –

(a) the said sections shall apply in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other body corporate whose membership is investigated with that of the company, or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others, as they apply in relation to officers and agents of the company or of the other body corporate, as the case may be; and

(b) the Minister shall not be bound to furnish the company or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof if he is of opinion that there is good reason for not divulging the contents of the report or of parts thereof, but shall cause to be kept by the registrar a copy of any such report or, as the case may be, the parts of any such report, as respects which he is not of that opinion.

(5) The expenses of any investigation under this selection shall be defrayed by the Minister out of the Public Fund.

(6) This section shall not apply to an exempted private company which is not of a category specified in Schedule 3.

179. Power to require information as to persons interested in shares or debentures

(1) Where it appears to the Minister that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint an inspector for the purpose, he may require any person whom he has reasonable cause to believe –

(a) to be or to have been interested in those shares or debentures; or

(b) to act or to have acted in relation to those shares or debentures as the legal practitioner or agent of someone interested therein;

to give him any information which he has or can reasonably be expected to obtain as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures.

(2) For the purposes of this section, a person shall be deemed to have an interest in a share or debenture if he has any right to acquire or dispose of the share or debenture or any interest therein or to vote in respect thereof, or if his consent is necessary for the exercise of any of the rights of other persons interested therein, or if other persons interested therein can be required or are accustomed to exercise their rights in accordance with his instructions.

(3) Any person who fails to give any information required of him under this section, or who in giving any such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding VT 100,000 or to both.

(4) This section shall not apply to an exempted private company which is not of a class specified in Schedule 3.

180. Power to impose restrictions on shares or debentures

(1) Where in connection with an investigation under either of sections 178 and 179 it appears to the Minister that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued), and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist the investigation as required by this Act, the Minister may by order direct that the shares shall until further order be subject to the restrictions imposed by this section.

(2) So long as any shares are directed to be subject to the restrictions imposed by this section –

(a) any transfer of those shares, or in the case of unissued shares any transfer of the right to be issued therewith and any issue thereof, shall be void;

(b) no voting rights shall be exercisable in respect of those shares;

(c) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof;

(d) except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of capital or otherwise.

(3) Where the Minister makes an order directing that shares shall be subject to the said restrictions, or refuses to make an order directing that shares shall cease to be subject thereto, any person aggrieved thereby may apply to the court, and the court may, if it sees fit, direct that the shares shall cease to be subject to the said restrictions.

(4) Any order (whether of the Minister or of the court) directing that shares shall cease to be subject to the said restrictions which is expressed to be made with a view to permitting a transfer of those shares may continue the restrictions mentioned in subsections (2)(c) and (d), either in whole or in part, so far as they relate to any right acquired or offer made before the transfer.

(5) Any person who –

(a) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to the said restrictions or of any right to be issued with any such shares; or

(b) votes in respect of any such shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof; or

(c) being the holder of any such shares, fails to notify of their being subject to the said restrictions any person whom he does not know to be aware of that fact but does know to be entitled, apart from the said restrictions, to vote in respect of those shares whether as holder or proxy;

shall be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding VT 100,000 or to both.

(6) Where shares in any company are issued in contravention of the said restrictions, the company and every officer of the company who is in default shall be liable to a fine not exceeding VT 100,000.

(7) A prosecution shall not be instituted under this section except by or with the consent of the Attorney General.

(8) This section shall apply in relation to debentures as it applies in relation to shares.

181. Saving for legal practitioners and bankers

Nothing in the preceding provisions of this Part shall require disclosure to the Minister or to an inspector appointed by him –

(a) by a legal practitioner of any privileged communication made to him in that capacity, except as respects the name and address of his client; or

(b) by a company's bankers as such of any information as to the affairs of any of their customers other than the company.

182. Extension of Minister's powers of investigation to certain bodies incorporated outside Vanuatu

Sections 169 to 177 (inclusive) and 181 shall apply to all bodies corporate incorporated outside Vanuatu which are carrying on business in Vanuatu or have at any time carried on business therein as if they were companies registered under this Act, but subject to such (if any) adaptations and modifications as may be specified by rules made by the Minister.

Inspection of Company's Books and Papers

183. Power of Minister to require production of documents

(1) The Minister may at any time, if he thinks there is good reason so to do, give directions to any such body as follows, namely –

(a) a company formed and registered under this Act;

(b) an existing company;

(c) a body corporate incorporated outside Vanuatu which is carrying on business in Vanuatu or has at any time carried on business therein;

requiring the body, at such time and place as may be specified in the directions, to produce such books or papers as may be so specified, or may at any time, if he thinks there is good reason so to do, authorise any officer of his, on producing (if required so to do) evidence of his authority, to require any such body as aforesaid to produce to him forthwith any books or papers which the officer may specify.

(2) Where by virtue of subsection (1) the Minister has power to require the production of any books or papers from any body, the Minister shall have the like power to require production of those books or papers from any person who appears to the Minister to be in possession of them; but where any such person claims a lien on books or papers produced by him, the production shall be without prejudice to the lien.

(3) Any power conferred by or by virtue of this section to require a body or other person to produce books or papers shall include power –

(a) if the books or papers are produced –

(i) to take copies of them or extracts from them; and

(ii) to require that person, or any other person who is a present or past officer of, or is or was at any time employed by, the body in question, to provide an explanation of any of them;

(b) if the books or papers are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(4) If a requirement to produce books or papers or provide an explanation or make a statement which is imposed by virtue of this section is not complied with, the body or other person on whom the requirement was so imposed shall be guilty of an offence and liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding VT 50,000, or to both; but where a person is charged with an offence under this subsection in respect of a requirement to produce any books or papers, it shall be a defence to prove that they were not in his possession or under his control and that it was not reasonably practicable for him to comply with the requirement.

(5) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.

(6) This section shall not apply to an exempted private company which is not of a class specified in Schedule 3.

184. Entry and search of premises

(1) If a magistrate is satisfied by information on oath laid by a police officer, that there are reasonable grounds for suspecting that there are on any premises any books or papers of which production has been required by virtue of section 183 and which have not been produced in compliance with that requirement, the magistrate may issue a warrant authorising any police officer, together with any other persons named in the warrant and any other police officers, to enter the premises specified in the information (using such force as is reasonably necessary for the purpose) and to search the premises and take possession of any books or papers appearing to be such books or papers as aforesaid, or to take, in relation to any books or papers so appearing, any other steps which may appear necessary for preserving them and preventing interference with them.

(2) Every warrant issued under this section shall continue in force until the end of the period of 1 month after the date on which it is issued.

(3) Any books or papers of which possession is taken under this section may be retained for a period of 6 months or, if within that period there are commenced any such criminal proceedings as are mentioned in section 185(1)(a) (being proceedings to which the books or papers are relevant) until the conclusion of those proceedings.

(4) A person who obstructs the exercise of a right of entry or search conferred by virtue of a warrant issued under this section, or who obstructs the exercise of a right so conferred to take possession of any books or papers, shall be guilty of an offence and liable to imprisonment for a term not exceeding 3 months, or to a fine not exceeding VT 50,000, or to both.

185. Provision for security of information

(1) No information or document relating to a body, which has been obtained under section 183 or section 184, shall, without the previous consent in writing of that body,

be published or disclosed, except to a competent authority, unless the publication or disclosure is required –

(a) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, pursuant to, or arising out of this Act or any criminal proceedings for an offence entailing misconduct in connection with the management of the body's affairs or misapplication or wrongful retainer of any of its property;

(b) for the purpose of complying with any requirement or exercising any power, imposed or conferred by this Act with respect to reports made by inspectors appointed thereunder by the Minister;

(c) with a view to the institution by the Minister under section 175 of proceedings with reference to the body or otherwise for the purposes of such proceedings instituted by them under that section;

(d) with a view to the institution by the Minister of proceedings for the winding up under this Act of the body or otherwise for the purposes of proceedings instituted by him for that purpose; or

(e) for the purposes of proceedings under section 184.

(2) A person who publishes or discloses any information or document in contravention of this section shall be liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding VT 500,000, or to both.

(3) For the purposes of this section in relation to information or a document relating to a body which has been obtained under section 183 or section 184, each of the following shall be a competent authority, namely, the Minister, an inspector appointed under this Act by the Minister, the registrar or the Attorney General.

186. Penalization of destruction, mutilation, etc., of company documents

(1) A person, being an officer of any such body as is mentioned in section 183(1)(a) to (c), who destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification of a document affecting or relating to the property or affairs of the body, or makes or is privy to the making of a false entry in such a document, shall, unless he proves that he had no intention to conceal the state of affairs of the body or to defeat the law, be guilty of an offence.

(2) Such a person as aforesaid who fraudulently either parts with, alters or makes an omission in any such document, or who is privy to fraudulent parting with, fraudulent altering or fraudulent making of an omission in, any such document, shall be guilty of an offence.

(3) A person guilty of an offence under this section shall be liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding VT 500,000, or to both.

187. Penalization of furnishing false information

A person who, in purported compliance with a requirement imposed under section 183 of this Act to provide an explanation or make a statement, provides or makes an explanation or statement which he knows to be false in a material particular or recklessly provides or makes an explanation or statement which is so false shall be liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding VT 500,000, or to both.

188. Saving for legal practitioners and bankers

(1) Nothing in this Part of this Act shall compel the production by a legal practitioner of a document containing a privileged communication made by or to him in that capacity or authorise the taking of possession of any such document which is in his possession.

(2) The Minister shall not, under section 183, require, or authorise an officer to require, the production by a person carrying on the business of banking of a document relating to the affairs of a customer of his unless either it appears to him that it is necessary so to do for the purpose of investigating the affairs of the first-mentioned person or the customer is a person on whom a requirement has been imposed by virtue of that section.

Directors and other Officers

189. Directors

(1) A company (other than a private company) shall have at least two directors, and a private company shall have at least one director.

(2) Every company shall have at least one director who is a person resident in Vanuatu.

(3) The first directors, or director, of a company shall be the persons, or person, named in the memorandum of association.

190. Secretary

(1) Every company shall have a secretary and a sole director shall not also be secretary.

(2) Anything required or authorised to be done, by or to the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or to any officer of the company authorised generally or specially in that behalf by the directors.

191. Prohibition of certain persons being sole director or secretary

(1) No company shall –

(a) have as secretary to the company a corporation the sole director of which is a sole director of the company; or

(b) have as sole director of the company a corporation the sole director of which is secretary to the company.

(2) No company shall be qualified to be appointed as a director of another company which is a director of the first-mentioned company.

192. Avoidance of acts done by person in dual capacity as director and secretary

A provision requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as or in place of the secretary.

193. Validity of acts of directors

The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

194. Restrictions on appointment or advertisement of director

(1) A person shall not be capable of being appointed director of a company, and shall not be named as a director or proposed director of a company in the memorandum of association, or in a prospectus issued by or on behalf of the company, or as proposed director of an intended company in a prospectus issued in relation to that intended company, unless, before the registration of the memorandum or the publication of the prospectus, as the case may be, he has by himself or by his agent authorised in writing –

(a) signed and delivered to the registrar of companies for registration a consent in writing to act as such director; and

(b) either –

(i) signed the memorandum for a number of shares not less than his qualification, if any; or

(ii) taken from the company and paid or agreed to pay for his qualification shares, if any; or

(iii) signed and delivered to the registrar for registration an undertaking in writing to take from the company and pay for his qualification shares, if any; or

(iv) made and delivered to the registrar for registration a statutory declaration to the effect that a number of shares, not less than his qualification, if any, are registered in his name.

(2) Where a person has signed and delivered as aforesaid an undertaking to take and pay for his qualification shares, he shall as regards those shares, be in the same position as if he had signed the memorandum for that number of shares.

(3) References in this section to the share qualification of a director or proposed director shall be construed as including only a share qualification required on appointment or within a period determined by reference to the time of appointment, and references therein to qualification shares shall be construed accordingly.

(4) On the application for registration of the memorandum and articles of a company, the applicant shall deliver to the registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding VT 100,000.

(5) This section shall not apply to –

(a) a company not having a share capital; or

(b) a prospectus issued by or on behalf of a company after the expiration of one year from the date on which the company was entitled to commence business.

195. Share qualifications of directors

(1) Without prejudice to the restrictions imposed by section 194, it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within 2 months after his appointment, or such shorter time as may be fixed by the articles.

(2) For the purpose of any provision in the articles requiring a director or manager to hold a specified share qualification, the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.

(3) The office of director of a company shall be vacated if the director does not within 2 months from the date of his appointment, or within such shorter time as may be fixed by the articles, obtain his qualification, or if after the expiration of the said period or shorter time he ceases at any time to hold his qualification.

(4) A person vacating office under this section shall be incapable of being reappointed director of the company until he has obtained his qualification.

(5) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding VT 1,000 for every day between the expiration of the said period or shorter time or the day on which he ceased to be qualified, as the case may be, and the last day on which it is proved that he acted as a director.

196. Removal of directors

(1) A company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything its articles or in any agreement between it and him:

Provided that this subsection shall not, in the case of a private company, authorise the removal of a director holding office for life on the commencement of this Act, whether or not subject to retirement under an age limit by virtue of the articles or otherwise.

(2) Special notice shall be required of any resolution to remove a director under this section or to appoint somebody instead of a director so removed at the meeting at which he is removed, and on receipt of notice of an intended resolution to remove a director under this section the company shall forthwith send a copy thereof to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.

(3) Where notice is given of an intended resolution to remove a director under this section and the director concerned makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so –

(a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company);

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

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this section to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

(4) A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

(5) A person appointed director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed a director.

(6) Nothing in this section shall be taken as depriving a person removed thereunder of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director or as derogating from any power to remove a director which may exist apart from this section.

197. Alternate directors

(1) Unless prohibited by the articles a director may either generally or in respect of any period in which he is absent from Vanuatu or unable for any reason to act as a director, appoint another director, or any other person approved by a resolution of the

board of directors, as an alternate director. Such appointment shall be in writing signed by the appointor and appointee and lodged with the company.

(2) Every alternate director so appointed shall during the currency of such appointment be deemed for all purposes to be a director and officer of the company and not the agent of his appointor but he shall not be required to hold any share qualification notwithstanding that, under the articles, directors may be so required, nor shall he be entitled to appoint an alternate director.

(3) The company shall not be liable to pay additional remuneration by reason of the appointment of an alternate director. The articles may provide that the alternate director shall be entitled to receive from the company during the currency of his appointment the remuneration to which his appointor, but for such appointment, would have been entitled and that his appointor shall not be entitled to such remuneration, but, in the absence of such provision in the articles the alternate shall not be entitled to be remunerated otherwise than by the director appointing him.

(4) An alternate director who is himself a director shall have an additional vote for each director for whom he acts as alternate at every meeting of the directors.

(5) The appointment of an alternate director shall cease at the expiration of the period, if any, for which he was appointed, or if his appointor gives written notice to that effect to the company, or if his appointor ceases for any reason to be a director, or if the alternate resigns by notice in writing to the company.

(6) Until cessation of the appointment of an alternate director both the appointor and appointee shall be and may act as directors of the company, but no alternate, unless a director in his own right, shall attend or vote at any meeting of the directors or any committee of directors at which his appointor is present.

198. Resolution in lieu of meeting

(1) Except where this Act or the articles expressly require a meeting to be held, a resolution in writing, signed by or on behalf of all the directors entitled to vote on that resolution at a meeting of directors or committee of directors, shall be as valid as if it had been passed at a meeting of directors or committee of directors.

(2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the proceedings of the directors or committee of directors.

199. Provisions as to undischarged bankrupts acting as directors

(1) If any person being in any country an undischarged bankrupt acts as director of, or directly or indirectly takes part in or is concerned in the management of, any company except with the leave of the court, he shall be liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding VT 500,000 or to both such imprisonment and fine.

(2) The leave of the court for the purposes of this section shall not be given unless notice of intention to apply therefor has been served on the Minister, and the Minister may, if he is of opinion that it is contrary to the public interest that any such application should be granted, attend on the hearing of and oppose the granting of the application.

(3) In this section the expression "company" includes a company incorporated outside Vanuatu which has an established place of business within Vanuatu.

200. Power to restrain fraudulent persons from managing companies

(1) Where –

(a) a person is convicted of any offence in connection with the promotion, formation or management of a company; or

(b) in the course of winding up a company it appears that a person –

(i) has been guilty of any offence for which he is liable (whether he has been convicted or not) under section 319; or

(ii) has otherwise been guilty, while an officer of the company, of any fraud in relation to the company or of any breach of his duty to the company;

the court may make an order that that person shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of a company for such period not exceeding 5 years as may be specified in the order.

(2) In subsection (1) the expression "the court" in relation to the making of an order against any person by virtue of paragraph (a), thereof, includes the court before which he is convicted, as well as the court in its jurisdiction to wind up the company, and in relation to the granting of leave means the court in its jurisdiction to wind up the company as respects which leave is sought

(3) A person intending to apply for the making of an order under this section by the court in its jurisdiction to wind up a company shall give not less than 10 days' notice of his intention to the person against whom the order is sought, and on the hearing of the application the last-mentioned person may appear and himself give evidence or call witnesses.

(4) An application for the making of an order under this section by the court in its jurisdiction to wind up a company may be made by the Minister, or by the liquidator of the company or by any person who is or has been a member or creditor of the company; and on the hearing of any application for an order under this section by the Minister or the liquidator, or of any application for leave under this section by a person against whom an order has been made on the application of the Minister or the liquidator, the Minister or liquidator shall appear and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

(5) An order may be made by virtue of sub-paragraph (ii) of paragraph (b) of subsection (1) notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made, and for the purposes of the said sub-paragraph (ii) the expression "officer" shall include any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

(6) If any person acts in contravention of an order made under this section, he shall, in respect of each offence, be liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding VT 500,000, or to both.

201. Loans to directors

(1) It shall not be lawful for a company, other than a private exempted company which is not a subsidiary of a public company, to make a loan to any person who is its director or a director of its holding company, or to enter into any guarantee or provide any security in connection with a loan made to such a person as aforesaid by any other person:

Provided that nothing in this section shall apply either –

(a) to anything done by a subsidiary, where the director is its holding company; or

(b) subject to subsection (2), to anything done to provide any such person as aforesaid with funds to meet expenditure incurred or to be incurred by him for

the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company; or

(c) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business.

(2) Proviso (b) to subsection (1) shall not authorise the making of any loan, or the entering into any guarantee, or the provision of any security, except either –

(a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed; or

(b) on condition that, if the approval of the company is not given as aforesaid at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within 6 months from the conclusion of that meeting.

(3) Where the approval of the company is not given as required by any such condition, the directors authorising the making of the loan, or the entering into the guarantee, or the provision of the security, shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

(4) It shall be lawful for a private exempted company which is not a subsidiary of a public company to make a loan to any person who is its director or a director of its holding company, or to enter into any guarantee or provide any security in connection with a loan made to such person as aforesaid by another person, if –

(a) the loan or the amount guaranteed or the value of the security provided does not exceed VT 1,000,000; and

(b) particulars of the loan, or the guarantee or the security, as the case may be, have been disclosed to the members of the company and the members have by special resolution approved the making of the loan, or the entering into the guarantee or the provision of the security, as the case may be; and

(c) the company is able to pay its debts in full as and when they become due out of its own monies.

(5) Any director authorising a loan, or authorising the giving of a guarantee or authorising the provision of a security in breach of subsection (4) shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding VT 100,000, or to both; and such a director shall in addition be liable to indemnify the company against any loss arising therefrom.

202. Approval of company requisite for payment by it to director for loss of office, etc.

It shall not be lawful for a company to make to any director of the company any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, without particulars with respect to the proposed payment (including the amount thereof) being disclosed to members of the company and the proposal being approved by the company.

203. Approval of company requisite for any payment, in connection with transfer of its property, to director for loss of office, etc.

(1) It is hereby declared that it is not lawful in connection with the transfer of the whole or any part of the undertaking or property of a company for any payment to be made to any director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars

with respect to the proposed payment (including the amount thereof) have been disclosed to the members of the company and the proposal approved by the company.

(2) Where a payment which is hereby declared to be illegal is made to a director of the company, the amount received shall be deemed to have been received by him in trust for the company.

204. Duty of director to disclose payment for loss of office, etc., made in connection with transfer of shares in company

(1) Where, in connection with the transfer to any persons of all or any of the shares in a company, being a transfer resulting from –

(a) an offer made to the general body of shareholders;

(b) an offer made by or on behalf of some other body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company;

(c) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise or control the exercise of not less than one third of the voting power at any general meeting of the company; or

(d) any other offer which is conditional on acceptance to a given extent;

a payment is to be made to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, it shall be the duty of that director to take all reasonable steps to secure that particulars with respect to the proposed payment (including the amount thereof) shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(2) If –

(a) any such director fails to take reasonable steps as aforesaid; or

(b) any person who has been properly required by any such director to include the said particulars in or send them with any such notice as aforesaid fails so to do;

he shall be liable to a fine not exceeding VT 5,000.

(3) If –

(a) the requirements of subsection (1) are not complied with in relation to any such payment as is therein mentioned; or

(b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved by a meeting summoned for the purpose of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of the said shares;

any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made, and the expenses incurred by him in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.

(4) Where the shareholders referred to in paragraph (b) of subsection (3) are not all the members of the company and no provision is made by the articles for summoning or regulating such a meeting as is mentioned in that paragraph, the provisions of this Act and of the company's articles relating to general meetings of the company shall, for that purpose, apply to the meeting either without modification or with such modifications as the Minister on the application of any person concerned may direct for the purpose of adapting them to the circumstances of the meeting.

(5) If at a meeting summoned for the purpose of approving any payment as required by subsection (3)(b) of this section a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment shall be deemed for the purposes of that subsection to have been approved.

205. Provisions supplementary to sections 202 to 204

(1) Where in proceedings for the recovery of any payment as having, by virtue of sections 203(1) and (2) or of sections 204(1) and (3), been received by any person in trust it is shown that –

(a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer it question, or within 1 year before or 2 years after that agreement or the offer leading thereto; and

(b) the company or any person to whom the transfer was made was privy to that arrangement;

the payment shall be deemed, except in so far as the contrary is shown, to be one to which the subsections apply.

(2) If in connection with any such transfer as is mentioned in either section 203 or section 204 –

(a) the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares; or

(b) any valuable consideration is given to any such director;

the excess or the money value of the consideration, as the case may be, shall, for the purposes of that section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(3) It is hereby declared that references in sections 202, 203 and 204 to payments made to any director of a company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, do not include any *bona fide* payment by way of damages for breach of contract or by way of pension in respect of past services, and for the purposes of this subsection the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment.

(4) Nothing in sections 203 and 204 shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are therein mentioned or with respect to any other like payments made or to be made to the directors of a company.

206. Particulars in accounts of loans to officers, etc.

(1) The accounts which, in pursuance of this Act, are required to be laid before a company at its annual general meeting shall, subject to the provisions of this section, contain particulars showing –

(a) the amount of any loans made during the company's financial year to –

(i) any officer of the company; or

(ii) any person who, after the making of the loan, became during that year an officer of the company;

by the company or a subsidiary thereof or by any other person under a guarantee from or on a security provided by the company or a subsidiary thereof (including any such loans which were repaid during that year); and

(b) the amount of any loans made in manner aforesaid to any such officer or person as aforesaid at any time before the company's financial year and outstanding at the expiration thereof.

(2) Subsection (1) shall not require the inclusion in accounts of particulars of –

(a) a loan made in the ordinary course of its business by the company or a subsidiary thereof, where the ordinary business of the company or, as the case may be, the subsidiary, includes the lending of money; or

(b) a loan made by the company or a subsidiary thereof to an employee of the company or subsidiary, as the case may be, if the loan does not exceed VT 500,000 and is certified by the directors of the company or subsidiary, as the case may be, to have been made in accordance with any practice adopted or about to be adopted by the company or subsidiary with respect to loans to its employees;

not being, in either case, a loan made by the company under a guarantee from or on a security provided by a subsidiary thereof or a loan made by a subsidiary of the company under a guarantee from or on a security provided by the company or any other subsidiary thereof.

(3) If in the case of any such accounts as aforesaid the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

(4) References in this section to a subsidiary shall be taken as referring to a subsidiary at the end of the company's financial year (whether or not a subsidiary at the date of the loan).

207. General duty to make disclosure for purposes of section 206

(1) It shall be the duty of any director of a company to give notice to the company of such matters relating to himself as may be necessary for the purposes of section 206 except so far as it relates to loans made, by the company or by any other person under a guarantee from or on a security provided by the company, to an officer thereof.

(2) Subsection (1) shall apply –

(a) in relation to officers other than directors; and

(b) in relation to persons who are or have at any time during the preceding 5 years been officers;

as it applies in relation to directors.

(3) Any person who makes default in complying with the provisions of this section shall be liable to a fine not exceeding VT 10,000.

208. Disclosure by directors of interests in contracts

(1) Subject to the provisions of this section, it shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company.

(2) In the case of a proposed contract the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested, and in a case where the director becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the directors held after the director becomes so interested.

(3) For the purpose of this section, a general notice given to the directors of a company by a director to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm, shall be deemed to be a sufficient declaration of interest in relation to any contract so made:

Provided that no such notice shall be of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.

(4) Any director who fails to comply with the provisions of this section shall be liable to a fine not exceeding VT 50,000.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

209. Register of directors and secretaries

(1) Every company shall keep at its registered office a register of its directors and secretaries.

(2) The said register shall contain the following particulars with respect to each director, that is to say –

(a) in the case of an individual, his present full names, any former names, his usual residential address, his nationality, his business occupation, if any, particulars of any other directorships held by him; and

(b) in the case of a corporation, its corporate name and registered or principal office:

Provided that it shall not be necessary for the register to contain particulars of directorships held by a director in companies of which the company is the wholly-owned subsidiary, or which are the wholly-owned subsidiaries either of the company or of another company of which the company is the wholly-owned subsidiary, and for the purposes of this proviso –

(i) the expression "company" shall include any body corporate incorporated in Vanuatu; and

(ii) a body corporate shall be deemed to be the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees.

(3) The said register shall contain the following particulars with respect to the secretary or, where there are joint secretaries, in respect to each of them, that is to say –

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

(b) in the case of a corporation, its corporate name and registered or principal office.

(4) The company shall, within the periods respectively mentioned in subsection (5), send to the registrar of companies a return in the prescribed form containing the particulars

specified in the said register and a notification in the prescribed form of any change among its directors or in its secretary or in any of the particulars contained in the register, specifying the date of the change.

(5) The periods referred to in subsection (4) are the following, namely –

(a) the period within which the said return is to be sent shall be a period of 14 days from the appointment of the first directors of the company; and

(b) the period within which the said notification of a change is to be sent shall be 14 days from the happening thereof.

(6) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than 2 hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of VT 100, or such less sum as the company may prescribe, for each inspection.

(7) If any inspection required under this section is refused or if default is made in complying with subsections (1), (2), (3) or (4), the company and every officer of the company who is in default shall be liable to a default fine.

(8) In the case of any such refusal, the court may by order compel an immediate inspection of the register.

(9) For the purposes of this section a person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director and officer of the company.

210. Provisions as to assignment of office by directors

If in the case of any company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any assignment of office made in pursuance of the said provision shall, notwithstanding anything to the contrary contained in the said provision, be of no effect unless and until it is approved by a special resolution of the company.

Avoidance of Provisions in Articles or Contracts relieving Officers from Liability

211. Provisions as to liability of officers and auditors

Subject as hereinafter provided, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any officer of the company or any person (whether an officer of the company or not) employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void:

Provided that –

(a) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force; and

(b) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 404 in which relief is granted to him by the court.

Arrangements and Reconstructions

212. Power to compromise with creditors and members

(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them, the court may, on the application in a summary way of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

(2) If a majority in number representing three fourths in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) An order made under subsection (2) shall have no effect until an office copy of the order has been delivered to the registrar of companies for registration, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If a company makes default in complying with subsection (3), the company and every officer of the company who is in default shall be liable to a fine not exceeding VT 1,000 for each copy in respect of which default is made.

(5) In this and the next following section the expression "company" means any company liable to be wound up under this Act, and the expression "arrangement" includes a re-organisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

213. Information as to compromises with creditors and members

(1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under section 212 there shall –

(a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons; and

(b) in every notice summoning the meeting which is given by advertisement, be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.

(2) Where the compromise or arrangement affects the rights of debenture holders of the company, the said statement shall give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

(3) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be

obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making the application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

(4) Where a company makes default in complying with any requirement of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding VT 100,000, and for the purpose of this subsection any liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company:

Provided that a person shall not be liable under this subsection if that person shows that the default was due to the refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to his interests.

(5) It shall be the duty of any director of the company and of any trustee for debenture holders of the company to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section, and any person who makes default in complying with this subsection shall be liable to a fine not exceeding VT 10,000.

214. Provisions for facilitating reconstruction and amalgamation of companies

(1) Where an application is made to the court under section 212 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as "a transferor company") is to be transferred to another company (in this section referred to as "the transferee company"), the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters –

(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

(b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(d) the dissolution, without winding up, of any transferor company;

(e) the provision to be made for any persons, who within such time and in such manner as the court directs, dissent from the compromise or arrangement;

(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause an office copy thereof to be delivered to the registrar of companies for registration within 7 days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(4) In this section the expression “property” includes property, rights and powers of every description, and the expression “liabilities” includes duties.

(5) Notwithstanding the provisions of section 212(5), the expression “company” in this section does not include any company other than a company within the meaning of this Act.

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

(1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as “the transferor company”) to another company, whether a company within the meaning of this Act or not (in this section referred to as "the transferee company"), has, within 4 months after the making of the offer in that behalf by the transferee company, been approved by the holders of not less than nine tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary), the transferee company may, at any time within 2 months after the expiration of the said 4 months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and when such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within 1 month from the date on which the notice was given the court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company:

Provided that where shares in the transferor company of the same class or classes as the shares whose transfer is involved are already held as aforesaid to a value greater than one tenth of the aggregate of their value and that of the shares (other than those already held as aforesaid) whose transfer is involved, the foregoing provisions of this subsection shall not apply unless –

(a) the transferee company offers the same terms to all holders of the shares (other than those already held as aforesaid) whose transfer is involved, or, where those shares include shares of different classes, of each class of them; and

(b) the holders who approve the scheme or contract, besides holding not less than nine tenths in value of the shares (other than those already held as aforesaid) whose transfer is involved, are not less than three fourths in number of the holders of those shares.

(2) Where, in pursuance of any such scheme or contract as aforesaid, shares in a company are transferred to another company or its nominee, and those shares together with any other shares in the first-mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer comprise or include nine tenths in value of the shares in the first-mentioned company or of any class of those shares, then -

(a) the transferee company shall within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement) give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining

shares of that class, as the case may be, who have not assented to the scheme or contract; and

(b) any such holder may within 3 months from the giving of the notice to him require the transferee company to acquire the shares in question;

and where a shareholder gives notice under paragraph (b) of this subsection with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed or as the court on the application of either the transferee company or the shareholder thinks fit to order.

(3) Where a notice has been given by the transferee company under subsection (1) and the court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of 1 month from the date on which the notice has been given, or, if an application to the court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares:

Provided that an instrument of transfer shall not be required for any share for which a share warrant is for the time being outstanding.

(4) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(5) In this section the expression "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

(6) In relation to an offer made by the transferee company to shareholders of the transferor company before the commencement of this Act, this section shall have effect –

(a) with the substitution, in subsection (1), for the words “the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary)”, of the words "the shares affected" and with the omission of the proviso to that subsection;

(b) with the omission of subsection (2); and

(c) with the omission, in subsection (3), of the words “together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company” and of the proviso to that subsection.

Minorities

216. Alternative remedy to winding-up in cases of oppression

(1) Any member of a company who complains that the affairs of the company are being conducted in a manner oppressive to some part of the members (including himself)

or, in a case falling within section 174(2), the Minister, may make an application to the court by petition for an order under this section.

(2) If on any such petition the court is of opinion –

(a) that the company's affairs are being conducted as aforesaid; and

(b) that to wind up the company would unfairly prejudice that part of the members, but otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up;

the court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital, or otherwise.

(3) Where an order under this section makes any alteration in or addition to any company's memorandum or articles, then, notwithstanding anything in any other provision of this Act but subject to the provisions of the order, the company concerned shall not have power without the leave of the court to make any further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order; but, subject to the foregoing provisions of this subsection, the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company and the provisions of this Act shall apply to the memorandum or articles as so altered or added to accordingly.

(4) An office copy of any order under this section altering or adding to, or giving leave to alter or add to, a company's memorandum or articles shall, within 14 days after the making thereof, be delivered by the company to the registrar of companies for registration; and if a company makes default in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(5) In relation to a petition under this section, section 334 shall apply as it applies in relation to a winding-up petition.

PART 6 – WINDING-UP

(i) PRELIMINARY

Modes of Winding-up

217. Modes of winding-up

(1) The winding up of a company may be either –

(a) by the court; or

(b) voluntary.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in either of those modes.

Contributories

218. Liability as contributories of present and past members

In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the following qualifications –

(a) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding-up;

(b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(c) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

(d) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member:

(e) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of subsection (3), be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;

(f) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;

(g) a sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

219. Definition of "contributory"

The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

220. Nature of liability of contributory

The liability of a contributory shall create a debt of the nature of a specialty accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

221. Contribution in case of death of member

(1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment thereout of the money due.

222. Contributories in case of bankruptcy of member

If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories –

(a) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in

due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and

(b) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

(ii) WINDING-UP BY THE COURT

Jurisdiction

223. Jurisdiction to wind-up companies registered in Vanuatu
The Supreme Court shall have jurisdiction to wind up any company registered in Vanuatu.

Cases in which a Company may be Wound up by the Court

224. Circumstances in which a company may be wound up by the court
A company may be wound up by the court if –

(a) the company has by special resolution resolved that the company be wound up by the court;

(b) default is made in delivering the statutory report to the registrar or in holding the statutory meeting;

(c) the company does not commence its business within a year from its incorporation or suspends its business for a whole year;

(d) the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven;

(e) the company is unable to pay its debts;

(f) the court is of opinion that it is just and equitable that the company should be wound up;

(g) the company is in persistent breach of any of its duties or obligations under this Act;

(h) the company has failed, within the specified time provided by this Act –

(i) to appoint a secretary in accordance with section 190; or

(ii) to appoint the minimum number of directors in accordance with section 189; or

(iii) to pay the annual fee to the registrar of companies in accordance with section 392; or

(iv) to have a registered office or to keep the registers, books and other documents, where so required by the provisions of this Act, at its registered office;

(i) the company is being carried on for an unlawful purpose (which expression shall include a purpose lawful in itself but which cannot lawfully be carried out by a registered company).

225. Definition of inability to pay debts
A company shall be deemed to be unable to pay its debts –

(a) if a creditor, by assignment or otherwise to whom the company is indebted in a sum exceeding VT 10,000 then due, has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due and the company has for weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or

(b) if execution or other process issued on a judgement, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

Petition for Winding-up and Effects Thereof

226. Provisions as to application for winding up

(1) An application to the court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately:

Provided that –

(a) a contributory shall not be entitled to press a winding-up petition unless –

(i) either the number of members is reduced in the case of a private company, below two, or, in the case of any other company, below seven; or

(ii) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least 6 months during the 18 months before the commencement of the winding up, or have devolved on him through the death of a former holder; and

(b) a winding-up petition shall not, if the ground of the petition is default in delivering the statutory report to the registrar or in holding the statutory meeting, be presented by any person except a shareholder, nor before the expiration of 14 days after the last day on which the meeting ought to have been held; and

(c) the court shall not give a hearing to a winding-up petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a *prima facie* case for winding up has been established to the satisfaction of the court; and

(d) in a case falling within section 174(1) of this Act, a winding-up petition may be presented by the Minister.

(2) Where a company is being wound up voluntarily, a winding-up petition may be presented by the official receiver attached to the court as well as by any other person authorised in that behalf under the other provisions of this section, but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

(3) A winding-up petition upon any ground provided by paragraphs (g), (h), or (i) of section 224 of this Act, shall be presented by the registrar of companies.

227. Powers of court on hearing petition

(1) On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets.

(2) Where the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court, if it is of opinion –

(a) that the petitioners are entitled to relief either by winding up the company or by some other means; and

(b) that in the absence of any other remedy it would be just and equitable that the company should be wound up;

shall make a winding-up order, unless it is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(3) Where the petition is presented on the ground of default in delivering the statutory report to the registrar or in holding the statutory meeting, the court may –

(a) instead of making a winding-up order, direct that the statutory report shall be delivered or that a meeting shall be held; and

(b) order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

228. Power to stay or restrain proceedings against company

At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company, or any creditor or contributory, may –

(a) where any action or proceeding against the company is pending in the Supreme Court or Court of Appeal, apply to the court in which the action or proceeding is pending for a stay of proceedings therein; and

(b) where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding;

and the court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

229. Avoidance of dispositions of property, etc., after commencement of winding-up

In a winding up by the court, any disposition of the property of the company, including things in action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

230. Avoidance of attachments, etc.

Where any company is being wound up by the court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

Commencement of Winding-up

231. Commencement of winding-up by the court

(1) Where, before the presentation of a petition for the winding up of a company by the court, a resolution has been passed by the company for voluntary winding-up, the winding-up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding-up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding-up.

Consequences of Winding-up Order

232. Copy of order to be forwarded to registrar
On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall make a minute thereof in his books relating to the company.

233. Actions stayed on winding-up order
When a winding-up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose.

234. Effect of winding-up order
An order for winding-up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

Official Receiver in Winding-up

235. Official receiver in bankruptcy to be official receiver for winding-up purposes
(1) For the purposes of this Act so far as it relates the winding up of companies by the court, the term "official receiver" means the official receiver, if any, attached to the court for bankruptcy purposes, or, if there is more than one such official receiver, then such one of them as the Minister may appoint, or, if there is no such official receiver, then an officer appointed for the purpose by the Minister.

(2) Any such officer shall, for the purpose of his duties under this Act, be styled "the official receiver".

236. Appointment of official receiver by court in certain cases
If, in the case of the winding-up of any company by the court, it appears to the court desirable, with a view to securing the more convenient and economical conduct of the winding up, that some officer other than the person who would by virtue of section 235 be the official receiver should be the official receiver for the purposes of that winding up, the court may appoint that other officer to act as official receiver in that winding up, and the person so appointed shall be deemed to be the official receiver in that winding up for all the purposes of this Act.

237. Statement of company's affairs to be submitted to official receiver
(1) Where the court has made a winding-up order or appointed a provisional liquidator, there shall, unless the court thinks fit to order otherwise and so orders, be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require:

Provided that in the event that the court shall appoint a liquidator upon the making of a winding-up order under the provisions of section 241(2), the statement as to the affairs of the company shall be submitted to such liquidator and this section shall be read and construed accordingly.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary of the company, or by such of the persons hereinafter in this subsection mentioned as

the official receiver, subject to the direction of the court, may require to submit and verify the statement, that is to say, persons –

(a) who are or have been officers of the company;

(b) who have taken part in the formation of the company at any time within 1 year before the relevant date;

(c) who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the official receiver capable of giving the information required;

(d) who are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within 14 days from the relevant date or within such extended time as the official receiver or the court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver or provisional liquidator, as the case may be, out of the assets of the company such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding VT 2,000 for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of a fee of VT 100 to inspect the statement submitted in pursuance of this section, and to make a copy thereof or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and shall, an the application of the liquidator or of the official receiver, be punishable accordingly.

(8) A statement required by the foregoing provisions of this section may be used in evidence against any person making or concurring in making it.

(9) In this section the expression "the relevant date" means, in a case where a provisional liquidator is appointed, the date of his appointment, and, in the case where no such appointment is made, the date of the winding-up order.

238. Report by official receiver

(1) In a case where a winding-up order is made, the official receiver shall, as soon as practicable after receipt of the statement to be submitted under the last foregoing section, or, in a case where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court–

(a) as to the amount of capital issued, subscribed and paid up, and the estimated amount of assets and liabilities; and

(b) if the company has failed, as to the causes of the failure; and

(c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of the business thereof.

(2) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation or by any officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

(3) If the official receiver states in any such further report as aforesaid that in his opinion a fraud has been committed as aforesaid, the court shall have the further powers provided in section 269.

Liquidators

239. Power of court to appoint liquidators

For the purpose of conducting the proceedings in winding-up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.

240. Appointment and powers of provisional liquidator

(1) Subject to the provisions of this section, the court may appoint a liquidator provisionally at any time after the presentation of a winding-up petition.

(2) The appointment of a provisional liquidator may be made at any time before the making of a winding-up order, and either the official receiver or any other fit person may be appointed.

(3) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.

241. Appointment, style, etc., of liquidators

(1) The following provisions with respect to liquidators shall have effect on a winding-up order being made –

(a) the official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;

(b) the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver;

(c) the court may make any appointment and order required to give effect to any such determination and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the court shall decide the difference and make such order thereon as the court may think fit;

(d) in a case where a liquidator is not appointed by the court, the official receiver shall be the liquidator of the company;

(e) the official receiver shall by virtue of his office be the liquidator during any vacancy;

(f) a liquidator shall be described, where a person other than the official receiver is liquidator, by the style of "the liquidator", and, where the official receiver is liquidator, by the style of "the official receiver and liquidator", of the particular company in respect of which he is appointed and not by his individual name.

(2) Notwithstanding the provisions of subsection (1) the court shall have power, where in the circumstances of any case it appears appropriate, to appoint a liquidator

immediately upon the making of a winding-up order. Where the petitioner intends to apply for such an order he shall give notice thereof in his petition.

242. Provisions where a person other than official receiver is appointed liquidator

Where, in the winding up of a company by the court, a person other than the official receiver is appointed liquidator, that person –

(a) shall not be capable of acting as liquidator until he has notified his appointment to the registrar of companies and given security if security has been ordered to be given in the prescribed manner to the satisfaction of the Minister;

(b) shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

243. General provisions as to liquidators

(1) A liquidator appointed by the court may resign or, on cause shown, be removed by the court.

(2) Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct, and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportion as the court directs.

(3) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

(4) If more than one liquidator is appointed by the court, the court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) Subject to the provisions of section 322, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

244. Custody of company's property

Where a winding-up order has been made or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator, as the case may be, shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled.

245. Vesting of property of company in liquidator

Where a company is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon the property to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity, if any, as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding-up the company and recovering its property.

246. Powers of liquidator

(1) The liquidator in a winding-up by the court shall have power, with the sanction either of the court or of the committee of inspection –

(a) to bring or defend any action or other legal proceeding in the name and on behalf of the company;

(b) to carry on the business of the company so far as may be necessary for the beneficial winding- up thereof;

(c) to appoint a legal practitioner to assist him in the performance of his duties;

(d) to pay any classes of creditors in full;

(e) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company or whereby the company may be rendered liable;

(f) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect thereof.

(2) The liquidator in a winding-up by the court shall have power –

(a) to sell the real and personal property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company or to sell the same in parcels;

(b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal;

(c) to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors;

(d) to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business;

(e) to raise on the security of the assets of the company any money requisite;

(f) to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself;

(g) to appoint an agent to do any business which the liquidator is unable to do himself;

(h) to do all such other things as may be necessary for winding-up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding-up by the court of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

247. Exercise and control of liquidator's powers

(1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories; for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be.

(3) The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding-up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse or modify the act or decision complained of, and make such order in the premises as it thinks just.

248. Books to be kept by liquidator

Every liquidator of a company which is being wound up by the court shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books.

249. Payments of liquidator into trust account etc.

(1) Every liquidator of a company which is being wound up by the court shall pay the moneys received by him into a trust account, whether special or existing, with any licensed trading bank carrying on business in Vanuatu and shall pay all outgoings by cheque from that account.

(2) Every liquidator to whom the provisions of subsection (1) apply shall, if he holds moneys not required for immediate disbursement, have power to place such moneys upon fixed deposit at the said bank, so however that the funds of each company of which he is acting as liquidator shall be separately so invested.

250. Audit of liquidator's accounts

(1) Every liquidator of a company which is being wound up by the court shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Minister, or as he directs, an account of his receipts and payments as liquidator.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3) The Minister shall cause the account to be audited, and for the purpose of the audit the liquidator shall furnish the Minister with such vouchers and information as the Minister may require, and the Minister may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed and kept by the Minister, and the other copy shall be delivered to the court for filing, and each copy shall be open to the inspection of any person on payment of the prescribed fee.

(5) The Minister may by notice in writing under his hand grant the Official Receiver exemption from the provisions of subsection (1) either generally or in relation to the winding up by the Court of any company.

251. Control of Minister over liquidators

(1) The Minister shall take cognizance of the conduct of liquidators of companies which are being wound up by the court, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules or otherwise with respect to the performance of his duties or if any complaint is made to the Minister by any creditor or contributory in regard thereto, the Minister shall inquire into the matter, and take such action thereon as he may think expedient.

(2) The Minister may at any time require any liquidator of a company which is being wound up by the court to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Minister thinks fit, apply to the court to examine him or any other person on oath concerning the winding-up.

(3) The Minister may also direct a local investigation to be made of the books and vouchers of the liquidator.

252. Release of liquidators

(1) When the liquidator of a company which is being wound up by the court has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Minister shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Minister, shall take into consideration the report and any objection which may be urged by any creditor or contributory or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the Supreme Court. A copy of the report on the accounts of the liquidator shall, unless the Minister otherwise directs, be sent by post to every creditor and contributory.

(2) Where the release of a liquidator is withheld, the court may, on the application of any creditor or contributory or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of the Minister releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

Committees of Inspection

253. Meetings of creditors and contributories to determine whether committee of inspection shall be appointed

(1) When a winding-up order has been made by the court, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the court for appointing a liquidator in place of the official receiver, to determine further whether or not an

application is to be made to the court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

(2) The court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters aforesaid the court shall decide the difference and make such order thereon as the court may think fit.

254. Constitution and proceedings of committee of inspection

(1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories or as, in case of difference, may be determined by the court.

(2) The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting but shall not act unless a majority of the committee are present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt or compounds or arranges with his creditors or is absent from 5 consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which 7 days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, reappoint the same or appoint another creditor or contributory to fill the vacancy:

Provided that if the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy to be filled he may apply to the court and the court may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

255. Powers of Minister where no committee of inspection

Where in the case of a winding up there is no committee of inspection, the Minister may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the committee.

General Powers of Court in case of Winding-up by Court

256. Power to stay winding-up

(1) The court may at any time after an order for winding-up, on the application either of the liquidator or the official receiver or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be

stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

(2) On any application under this section the court may, before making an order, require the official receiver to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall make a minute of the order in his books relating to the company.

257. Settlement of list of contributories and application of assets

(1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities:

Provided that, where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

258. Delivery of property to liquidator

The court may, at any time after making a winding-up order, require any contributory for the time being on the list of contributories and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to the liquidator any money, property or books and papers in his hands to which the company is *prima facie* entitled.

259. Payment of debts due by contributory to company and extent to which set-off allowed

(1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The court in making such an order may –

(a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and

(b) in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.

(3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

260. Power of court to make calls

(1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers

necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding-up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

261. Payment into bank of moneys due to company

(1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into any specified bank account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into the bank account of the liquidator in the event of a winding-up by the court shall be subject in all respects to the orders of the court.

262. Order on contributory conclusive evidence

(1) An order made by the court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

263. Appointment of special manager

(1) Where in proceedings the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court, and the court may on such application appoint a special manager of the said estate or business to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

(2) The special manager shall give such security and account in such manner as the Minister directs.

(3) The special manager shall receive such remuneration as may be fixed by the court.

264. Power to exclude creditors not proving in time

The court may fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.

265. Adjustment of rights of contributories

The court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

266. Inspection of books by creditors and contributories

(1) The court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

(2) Nothing in this section shall be taken as excluding or restricting any statutory rights of the Government or person acting on behalf of the Government.

267. Power to order costs of winding-up to be paid out of assets

The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding-up in such order of priority as the court thinks just.

268. Power to summon persons suspected of having property of company, etc.

(1) The court may, at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

(2) The court may examine him on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require him to produce any books and papers in his custody or power relating to the company, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding-up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting and allowed by it), the court may cause him to be apprehended and brought before the court for examination.

269. Power to order public examination of promoters and officers

(1) Where an order has been made for winding-up a company by the court, and the official receiver has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that that person or officer shall attend before the court on a day appointed by the court for that purpose and be publicly examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as officer thereof.

(2) The official receiver shall take part in the examination, and for that purpose may, if specifically authorised by the Minister in that behalf, employ a legal practitioner.

(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory may also take part in the examination either personally or by legal practitioner.

(4) The court may put such questions to the person examined as the court thinks fit.

(5) The person examined shall be examined on oath and shall answer all such questions as the court may put or allow to be put to him.

(6) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ a legal practitioner, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

Provided that, if any such person applies to the court to be exculpated from any charges made or suggested against him, it shall be the duty of the official receiver to appear on the hearing of the application and call the attention of the court to any matters which appear to the official receiver to be relevant, and if the court, after

hearing any evidence given or witnesses called by the official receiver, grants the application, the court may allow the applicant such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The court may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the court so directs be held before the Registrar of the court and the powers of the court under this section may in such case be exercised by the Registrar.

270. Power to arrest absconding contributory

The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that any officer, manager or contributory is about to quit Vanuatu or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the officer, manager or contributory to be arrested and his books and papers and movable personal property to be seized and him and them to be safely kept until such time as the court may order.

271. Powers of court cumulative

Any powers by this Act conferred on the court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company or the estate of any contributory or debtor, for the recovery of any call or other sums.

272. Delegation to liquidator of certain powers of court

Provision may be made by rules for enabling or requiring all or any of the powers and duties conferred and imposed on the court by this Act in respect of the following matters –

(a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;

(b) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets;

(c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;

(d) the making of calls;

(e) the fixing of a time within which debts and claims must be proved;

to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court:

Provided that the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

273. Dissolution of company

(1) When the affairs of a company have been completely wound-up, the court, if the liquidator makes an application in that behalf, shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) A copy of the order shall within 14 days from the date thereof be forwarded by the liquidator to the registrar of companies who shall make in his books a minute of the dissolution of the company.

(3) If the liquidator makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding VT 1,000 for every day during which he is in default.

(iii) VOLUNTARY WINDING-UP

Resolutions for, and Commencement of, Voluntary Winding-up

274. Circumstances in which company may be wound-up voluntarily

(1) A company may be wound-up voluntarily –

(a) when the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound-up voluntarily;

(b) if the company resolves by special resolution that the company be wound-up voluntarily;

(c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind-up.

(2) In this Act the expression "a resolution for voluntary winding-up" means a resolution passed under any of the provisions of subsection (1) of this section.

275. Notice of resolution to wind-up voluntarily

(1) When a company has passed a resolution for voluntary winding-up, it shall, within 14 days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine, and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company.

276. Commencement of voluntary winding-up

A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

Consequences of Voluntary Winding-up

277. Effect of voluntary winding-up on business and status of company

In case of a voluntary winding up, the company shall, from the commencement of the winding-up, cease to carry on its business, except so far as may be required for the beneficial winding-up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

278. Avoidance of transfers, etc., after commencement of voluntary winding-up

Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding-up, shall be void.

Declaration of Solvency

279. Declaration of solvency in case of proposal to wind up voluntarily

(1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors, may, at a meeting of the directors, make a declaration to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within such period not exceeding 12 months from the commencement of the winding-up as may be specified in the declaration.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Act unless –

(a) it is made within the 5 weeks immediately preceding the date of the passing of the resolution for winding up the company and is delivered to the registrar of companies for registration before that date; and

(b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

(3) Any director of a company, making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration shall be liable to imprisonment for a period not exceeding 6 months or to a fine not exceeding VT 100,000, or to both; and if the company is wound-up in pursuance of a resolution passed within the period of 5 weeks after the making declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

(4) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as "a members' voluntary winding-up", and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in this Act referred to as "a creditors' voluntary winding up".

Provisions Applicable to a Members' Voluntary Winding-up

280. Provisions applicable to a members' winding up

The provisions contained in sections 281 to 287 of this Act shall, subject to the provisions of section 287, apply in relation to a members' voluntary winding-up.

281. Power of company to appoint and fix remuneration of liquidators

(1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting or the liquidator sanctions the continuance thereof.

282. Power to fill vacancy in office of liquidator

(1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

283. Power of liquidator to accept shares, etc., as consideration for sale of property of company

(1) Where a company is proposed to be, or is in course of being, wound-up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called "the transferee company"), the liquidator of the first-mentioned company (in this section called "the transferor company") may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies or other like interests in the transferee company for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may in lieu of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within 7 days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.

(4) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding-up or for appointing liquidators, but, if an order is made within a year for winding up the company by the court, the special resolution shall not be valid unless sanctioned by the court.

(6) For the purposes of an arbitration under this section, the general law as to arbitration for the time being in force shall apply as if there were a submission for reference to two arbitrators, one to be appointed by each party, and the appointment of an arbitrator may be made under the hand of the liquidator, or, if there is more than one liquidator, then of any two or more of the liquidators; and the court may give any directions necessary for the initiation and conduct of the arbitration and such direction shall be binding on the parties.

284. Duty of liquidator to call creditors' meeting in case of insolvency

(1) If, in the case of a winding-up commenced after the commencement of this Act (27 October 1986), the liquidator is at any time of opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section 279 he shall forthwith summon a meeting of the creditors, and shall lay before the meeting a statement of the assets and liabilities of the company.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding VT 10,000.

285. Duty of liquidator to call general meeting at the end of each year

(1) Subject to the provisions of section 287, in the event of the winding-up continuing for more than 1 year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year or such longer period as the Minister may allow, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding-up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding VT 10,000.

286. Final meeting and dissolution

(1) Subject to the provisions of section 287, as soon as the affairs of the company are fully wound-up, the liquidator shall make up an account of the winding up, showing how the winding-up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement in the Gazette, specifying the time, place and object thereof, and published 1 month at least before the meeting.

(3) Within 1 week after the meeting, the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to a fine not exceeding VT 1,000 for every day during which the default continues:

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return herein before mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall be deemed to have been complied with.

(4) The registrar on receiving the account and either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of 3 months from the registration of the return the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within 7 days after the making of the order, to deliver to the registrar an office copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding VT 1,000 for every day during which the default continues.

(6) If the liquidator fails to call a general meeting of the company as required by this section, he shall be liable to a fine not exceeding VT 10,000.

287. Alternative provisions as to annual and final meetings in case of insolvency

Where section 284 has effect, sections 295 and 296 shall apply to the winding-up to the exclusion of sections 285 and 286, as if the winding up were a creditors' voluntary winding-up and not a members' voluntary winding-up:

Provided that the liquidator shall not be required to summon a meeting of creditors under section 295 at the end of the first year from the commencement of the winding-up, unless the meeting held under section 284 is held more than 3 months before the end of that year.

Provisions Applicable to a Creditors' Voluntary Winding-up

288. Provisions applicable to a creditors' winding-up

The provisions contained in sections 289 to 296 shall apply in relation to a creditors' voluntary winding-up.

289. Meeting of creditors

(1) Subject to the provisions of section 41(8), the company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding-up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once in the Gazette and once at least in one local newspaper circulating in the district where the registered office or principal place of business of the company is situate.

(3) The directors of the company shall –

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of the creditors to be held as aforesaid; and

(b) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) shall have effect as if it had been passed immediately after the passing of the resolution for winding-up the company.

(6) If default is made –

(a) by the company in complying with subsections (1) and (2);

(b) by the directors of the company in complying with subsection (3);

(c) by any director of the company in complying with subsection (4);

the company, directors or director, as the case may be, shall be liable to a fine not exceeding VT 20,000, and, in the case of default by the company, every officer of the company who is in default shall be liable to the like penalty.

290. Appointment of liquidator

The creditors and the company at their respective meetings mentioned in section 289 may nominate a person to be liquidator for the purpose of winding-up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator:

Provided that in the case of different persons being nominated; any director, member or creditor of the company may, within 7 days after the date on which the nomination was made by the creditors, apply to the court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors or appointing some other person to be liquidator instead of the person appointed by the creditors.

291. Appointment of committee of inspection

(1) The creditors at the meeting to be held in pursuance of section 289 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding-up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to the provisions of this section and to general rules, the provisions of section 254 (except subsection (1) thereof) shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding-up by the court.

292. Fixing of liquidators' remuneration and cesser of directors' powers

(1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

293. Power to fill vacancy in office of liquidator

If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the court, the creditors may fill the vacancy.

294. Application of section 283 to a creditors' voluntary winding-up

The provisions of section 283 shall apply in the case of a creditors' voluntary winding-up as in the case of a members' voluntary winding-up, with the modification that the powers of the liquidator under the said section shall not be exercised except with the sanction either of the court or of the committee of inspection.

295. Duty of liquidator to call meetings of company and of creditors at the end of each year

(1) In the event of the winding-up continuing for more than 1 year the liquidator shall summon a general meeting of the company and a meeting of the creditors to be held at the end of the first year from the commencement of the winding-up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year or such longer period as the Minister may allow, and shall lay before the meetings an account of his acts and dealing and of the conduct of the winding-up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding VT 10,000.

296. Final meeting and dissolution

(1) As soon as the affairs of the company are fully wound-up, the liquidator shall make up an account of the winding-up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement in the Gazette specifying the time, place and object thereof, and published 1 month at least before the meeting.

(3) Within 1 week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to a fine not exceeding VT 1,000 for every day during which the default continues:

Provided that, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return herein before mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat and upon such a return being made the provisions of this subsection as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(4) The registrar on receiving the account and, in respect of each such meeting, either of the returns herein before mentioned, shall forthwith register them, and on the expiration of 3 months from the registration thereof the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within 7 days after the making of the order, to deliver to the registrar an office copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding VT 1,000 for every day during which the default continues.

(6) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he shall be liable to a fine not exceeding VT 10,000.

Provisions Applicable to every Voluntary Winding-up

297. Provisions applicable to every voluntary winding-up

The provisions contained in sections 298 to 305 shall apply to every voluntary winding-up whether a members' or a creditors' winding-up.

298. Distribution of property of company

Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu*, and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

299. Powers and duties of liquidator in voluntary winding-up

(1) The liquidator may –

(a) in the case of a members' voluntary winding-up, with the sanction of an extraordinary resolution of the company and, in the case of a creditors' voluntary winding-up, with the sanction of the court or the committee of inspection or (if there is no such committee) a meeting of the creditors, exercise any of the powers given by sections 246(1)(d), 246(1)(e) and 246(1)(f) to a liquidator in a winding-up by the court;

(b) without sanction, exercise any of the other powers by this Act given to the liquidator in a winding up by the court;

(c) exercise the power of the court under this Act of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;

(d) exercise the power of the court of making calls;

(e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two.

300. Power of court to appoint and remove liquidator in voluntary winding-up

(1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator.

(2) The court may, on cause shown, remove a liquidator and appoint another liquidator.

301. Notice by liquidator of his appointment

(1) The liquidator shall, within 14 days after his appointment, publish in the Gazette and deliver to the registrar of companies for registration a notice of his appointment in the form prescribed by the Minister.

(2) If the liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding VT 1,000 for every day during which the default continues.

302. Arrangement – when binding on creditors

(1) Any arrangement entered into between a company about to be, or in the course of being, wound-up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution and on the creditors if acceded to by three fourths in number and value of the creditors.

(2) Any creditor or contributory may, within 3 weeks from the completion of the arrangement, appeal to the court against it, and the court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

303. Power to apply to court to have questions determined or powers exercised

(1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding-up of a company, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the court might exercise if the company were being wound-up by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

(3) A copy of an order made by virtue of this section staying the proceedings in the winding-up shall forthwith be forwarded by the company to the registrar of companies, who shall make a minute of the order in his books relating to the company.

304. Costs of voluntary winding-up

All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

305. Saving for rights of creditors and contributories
The winding-up of a company shall not bar the right of any creditor or contributory to have it wound-up by the court, but in the case of an application by a contributory the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding-up.

(iv) PROVISIONS APPLICABLE TO EVERY MODE OF WINDING-UP

Proof and Ranking of Claims

306. Debts of all descriptions may be proved
In every winding-up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

307. Application of bankruptcy rules in winding-up of insolvent companies
In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding-up and make such claims against the company as they respectively are entitled to by virtue of this section.

308. Preferential payments
(1) Notwithstanding any provision in any other law in a winding-up there shall be paid in priority to all other debts –

(a) all wages or salary (whether or not earned wholly or in part by way of commission) of any clerk or servant in respect of services rendered to the company during 4 months next before the relevant date and all wages (whether payable for time or for piece work) of any workman or labourer in respect of services so rendered including severance allowance calculated and payable pursuant to the provisions of the Employment Act [Cap. 160];

(b) all accrued holiday remuneration becoming payable to any clerk, servant, workman or labourer (or in the case of his death to any other person in his right) on the termination of his employment before or by the effect of the winding-up order or resolution;

(c) unless the company is being wound-up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has at the commencement of the winding up under a contract with insurers rights capable of being transferred to and vested in the workman, all amounts due in respect of personal injury to workmen under any law in force relating to workmen's compensation accrued before the relevant date, and all amounts in respect of contributions payable by the company to any provident fund established by law.

(d) all rates, taxes, duties and other sums due at the relevant date from the company under the Acts specified in the list in Schedule 8 that have become due and payable within the twelve months next before the relevant date.

(2) Notwithstanding anything in subsection (1)(a), the sum to which priority is to be given under that paragraph shall not, in the case of any one claimant, exceed VT1,000,000.

(3) Where any compensation under any law in force relating to workmen's compensation is a weekly payment, the amount due in respect thereof shall, for the purposes of subsection (1)(c), be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said law.

(4) Where any payment has been made –

(a) to any clerk, servant, workman or labourer in the employment of a company, on account of wages or salary; or

(b) to any such clerk, servant, workman or labourer or, in the case of his death, to any other person in his right, on account of accrued holiday remuneration;

out of money advanced by some person for that purpose, the person by whom the money was advanced shall in a winding-up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which the clerk, servant, workman or labourer, or other person in his right, would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(5) The foregoing debts shall –

(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(6) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding-up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(7) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within 3 months next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds, of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(8) For the purposes of this section –

(a) any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period;

(b) the expression "accrued holiday remuneration" includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any law), are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday had his employment with the company continued until he became entitled to be allowed the holiday;

(c) the expression “the relevant date” means –

(i) in the case of a company ordered to be wound-up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator, or, if no such appointment was made, the date of the winding-up order, unless in either case the company had commenced to be wound-up voluntarily before that date; and

(ii) in any case where sub-paragraph (i) does not apply, means the date of the passing of the resolution for the winding-up of the company.

Effect of Winding-up on Antecedent and other Transactions

309. Fraudulent preference

(1) Any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company within 6 months before the commencement of its winding-up which, had it been made or done by or against an individual within 6 months before the presentation of a bankruptcy petition on which he is adjudged bankrupt, would be deemed in his bankruptcy a fraudulent preference, shall in the event of the company being wound-up be deemed a fraudulent preference of its creditors and be invalid accordingly.

(2) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

310. Liabilities and rights of certain fraudulently preferred persons

(1) Where, in the case of a company being wound-up, anything made or done is void under section 309 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from this provision) the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less.

(2) The value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all encumbrances other than those to which the charge for the company's debt was then subject.

(3) On any application made to the court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the court shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding-up, and for that purpose may give leave to bring in the surety or guarantor as a third-party as in the case of an action for the recovery of the sum paid.

This subsection shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments.

311. Effect of floating charge

Where a company is being wound-up, a floating charge on the undertaking or property of the company created within 12 months of the commencement of the winding-up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of 10 per cent per annum or such other rate as may for the time being be prescribed by the Minister.

312. Disclaimer of onerous property of a company

(1) Where any part of the property of a company which is being wound-up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may, with the leave of the court and subject to the provisions of this section, by writing signed by him, at any time within 12 months after the commencement of the winding-up or such extended period as may be allowed by the court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the liquidator within 1 month after the commencement of the winding-up, the power under this section of disclaiming the property may be exercised at any time within 12 months after he has become aware thereof or such extended period as may be allowed by the court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim and the liquidator has not, within a period of 28 days after the receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he intends to apply to the court for leave to disclaim, and, in the case of a contract, if the liquidator, after such an application as aforesaid, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it.

(5) The court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding-up.

(6) The court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that, where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee by demise, including a chargee by way of legal mortgage, except upon the terms of making that person –

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up;

(b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the court shall have power to vest the estate and interest of the company in the property in any person liable either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, freed and discharged from all estates, encumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding-up.

313. Restriction of rights of creditor as to execution or attachment in the case of a company being wound up

(1) Where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company, and the company is subsequently wound-up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding-up of the company unless he has completed the execution or attachment before the commencement of the winding-up:

Provided that –

(a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding-up is to be proposed, the date on which the creditor so had notice shall, for the purposes of the foregoing provision, be substituted for the date of the commencement of the winding-up;

(b) a person who purchases in good faith under a sale by the bailiff any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator; and

(c) the rights conferred by this subsection on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court may think fit.

(2) For the purposes of this section, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by the receipt of the debt, and an execution against land shall be deemed to be completed by seizure and, in the case of an equitable interest, by the appointment of a receiver.

(3) In this section the expression “goods” includes all chattels personal, and the expression “bailiff” includes any officer charged with the execution of a writ or other process.

314. Duties of bailiff as to goods taken in execution

(1) Subject to the provisions of subsection (3), where any goods of a company are taken in execution, and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the bailiff that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding-up has been passed, the bailiff shall, on

being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying the charge.

(2) Subject to the provisions of subsection (3), where under an execution in respect of a judgment for a sum exceeding VT 10,000 the goods of a company are sold or money is paid in order to avoid sale, the bailiff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for 14 days, and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding-up of the company and an order is made or a resolution is passed, as the case may be, for the winding-up of the company, the bailiff shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(3) The rights conferred by this section on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.

(4) In this section the expression "goods" includes all chattels personal, and the expression "bailiff" includes any officer charged with the execution of a writ or other process.

Offences Antecedent to or in Course of Winding Up

315. Offences by officers of companies in liquidation

(1) If any person, being a past or present officer of a company which at the time of the commission of the alleged offence is being wound up, whether by the court or voluntarily, or is subsequently ordered by be wound-up by the court or subsequently passes a resolution for voluntary winding-up –

(a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, movable and immovable, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company; or

(b) does not deliver up to the liquidator, or as he directs, all such part of the movable and immovable property of the company as is in his custody or under his control, and which he is required by law to deliver up; or

(c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up; or

(d) within 12 months next before the commencement of the winding-up or at any time thereafter conceals any part of the property of the company to the value of VT 5,000 or upwards, or conceals any debt due to or from the company; or

(e) within 12 months next before the commencement of the winding-up or at any time thereafter fraudulently removes any part of the property of the company to the value of VT 5,000 or upwards; or

(f) makes any material omission in any statement relating to the affairs of the company; or

(g) knowing or believing that a false debt has been proved by any person under the winding-up, fails for the period of a month to inform the liquidator thereof; or

(h) after the commencement of the winding-up prevents the production of any book or paper affecting or relating to the property or affairs of the company; or

(i) within 12 months next before the commencement of the winding-up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company; or

(j) within 12 months next before the commencement of the winding-up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company; or

(k) within 12 months next before the commencement of the winding-up or at any time thereafter fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company; or

(l) after the commencement of the winding-up or at any meeting of the creditors of the company within 12 months next before the commencement of the winding-up attempts to account for any part of the property of the company by fictitious losses or expenses; or

(m) has within 12 months next before the commencement of the winding-up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for; or

(n) within 12 months next before the commencement of the winding-up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or

(o) within 12 months next before the commencement of the winding-up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging, or disposing is in the ordinary way of the business of the company; or

(p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding-up;

he shall be guilty of an offence and shall, in the case of the offences mentioned respectively in paragraphs (m), (n) and (o), be liable on conviction to imprisonment for a term not exceeding 5 years or to a fine not exceeding VT 1,000,000, or to both, and in the case of any other offence shall be liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding VT 500,000, or to both:

Provided that it shall be a good defence to a charge under any paragraphs (a), (b), (c), (d), (f), (n) and (o) if the accused proves that he had no intent to defraud, and to a charge under any of paragraphs (h), (i) and (j), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1)(a), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall be guilty of an offence, and on conviction thereof liable to imprisonment for a term not exceeding 3 months, or to a fine not exceeding VT 50,000, or to both.

(3) For the purposes of this section, the expression "officer" shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

316. Penalty for falsification of books

If any officer or contributory of any company being wound-up destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of an offence and be liable to imprisonment for a term not exceeding 2 years or to a fine not exceeding VT 500,000, or to both.

317. Frauds by officers of companies which have gone into liquidation

If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound-up by the court or subsequently passes a resolution for voluntary winding up –

(a) has by false pretences or by means of any other fraud induced any person to give credit to the company;

(b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company;

(c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within 2 months before, the date of any unsatisfied judgment or order for payment of money obtained against the company;

he shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 2 years, or to a fine not exceeding VT 500,000, or to both.

318. Liability where proper accounts not kept

(1) If where a company is wound-up it is shown that proper books of account were not kept by the company throughout the period of 2 years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is the shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on the default was excusable, be liable on conviction to imprisonment for a term not exceeding 1 year, or to a fine not exceeding VT 200,000, or to both.

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stock takings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

319. Responsibility for fraudulent trading of persons concerned

(1) If in the course of the winding-up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court, on the application of the official receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any persons who were knowingly parties to the carrying on of the business in manner aforesaid shall be

personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct.

On the hearing of an application under this subsection the official receiver or the liquidator, as the case may be, may himself give evidence or call witnesses.

(2) Where the court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the person liable or any company or person acting on his behalf, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

For the purpose of this subsection, the expression "assignee" includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1), every person who was knowingly a party to the carrying on of the business in manner aforesaid, shall be liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding VT 500,000, or to both.

(4) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made.

320. Power of court to assess damages against delinquent directors, etc.

(1) If in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the court thinks just.

(2) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.

321. Prosecution of delinquent officers and members of a company

(1) If it appears to the court in the course of a winding-up by the court that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the court may, either on the application of any person interested in the winding-up or of its own motion, direct the liquidator to refer the matter to the Attorney General or to the Commissioner of Police.

(2) If it appears to the liquidator in the course of a voluntary winding-up that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Attorney General or the Commissioner of Police, and shall furnish to him

such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as he may require.

(3) Where any report is made under subsection (2) to the Attorney General or the Commissioner of Police he may, if he thinks fit, refer the matter to the Minister for further enquiry, and the Minister shall thereupon investigate the matter and may, if he thinks it expedient, apply to the court for an order conferring on the Minister or any person designated by the Minister for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding-up by the court.

(4) If it appears to the court in the course of a voluntary winding-up that any past or present officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Attorney General or the Commissioner of Police under subsection (2), the court may, on the application of any person interested in the winding-up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of subsection (2).

(5) If, where any matter is reported or referred to the Attorney General or the Commissioner of Police under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give.

For the purposes of this subsection, the expression "agent" in relation to a company shall be deemed to include any banker or legal practitioner of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(6) If any person fails or neglects to give assistance in manner required by subsection (5), the court may, on the application of the Attorney General or the Commissioner of Police, direct that person to comply with the requirements of the said subsection, and where any such application is made with respect to a liquidator the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

Supplementary Provisions as to Winding up

322. Disqualification for appointment as liquidator

A body corporate shall not be qualified for appointment as liquidator of a company, whether in a winding-up by the court or in a voluntary winding-up, and –

(a) any appointment made in contravention of this provision shall be void; and

(b) any body corporate which acts as liquidator of a company shall be liable to a fine not exceeding VT 50,000.

323. Corrupt inducement affecting appointment as liquidator

Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator shall be liable to a fine not exceeding VT 20,000.

324. Enforcement of duty of liquidator to make returns, etc.

(1) If any liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the court may, on an application made to the court by any contributory or creditor of the company or by the registrar of companies, make an order directing the liquidator to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default as aforesaid.

325. Notification that a company is in liquidation

(1) Where a company is being wound-up, by the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound-up.

(2) If default is made in complying with this section, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be liable to a fine of VT 10,000.

326. Exemption of certain documents from stamp duty on winding up of companies

(1) In the case of a winding-up by the court of a company or of a creditors' voluntary winding-up of a company –

(a) every assurance relating solely to movable or immovable property, or to any mortgage, charge or other encumbrance on, or any estate, right or interest in, any movable or immovable property, which forms part of the assets of the company and which, after the execution of the assurance, either at law or in equity, is or remains part of the assets of the company; and

(b) every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any company which is being so wound-up, or to any proceeding under any such winding-up;

shall be exempt from duties chargeable under the Stamp Duties Act, Cap. 68.

(2) In subsection (1) the expression “assurance” includes deed, conveyance, assignment and surrender.

327. Books of company to be evidence

Where a company is being wound-up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

328. Disposal of books and papers of company

(1) When a company has been wound-up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, that is to say –

(a) in the case of a winding-up by the court, in such way as the court directs;

(b) in the case of a members' voluntary winding-up, in such way as the company by extraordinary resolution directs, and, in the case of a creditors' voluntary

winding-up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the company, may direct.

(2) After 5 years from the dissolution of the company no responsibility shall rest on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) Provision may be made by general rules for enabling the Minister to prevent, for such period (not exceeding 5 years from the dissolution of the company) as the Minister thinks proper, the destruction of the books and papers of a company which has been wound-up, and for enabling any creditor or contributory of the company to make representations to the Minister and to appeal to the court from any direction which may be given by the Minister in the matter.

(4) If any person acts in contravention of any general rules made for the purposes of this section or of any direction of the Minister thereunder, he shall be liable to a fine not exceeding VT 20,000.

329. Information as to pending liquidations

(1) If where a company is being wound-up the winding-up is not concluded within 1 year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding-up is concluded, send to the registrar of companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) If a liquidator fails to comply with this section, he shall be liable to a fine not exceeding VT 10,000 for each day during which the default continues.

330. Unclaimed assets in Vanuatu to be paid to Companies Liquidation Account

(1) If, where a company is being wound-up, it appears either from any statement sent to the registrar under section 329 or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for 6 months after the date of their receipt or any money held by the company in trust in respect of dividends or other sums due to any person as a member of the company, the liquidator shall forthwith pay the said money to the Companies Liquidation Account, and shall be entitled to an official certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(2) Any person claiming to be entitled to any money paid into the Companies Liquidation Account in pursuance of this section may apply to the Minister for payment thereof, and the Minister may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.

(3) Any person dissatisfied with the decision of the Minister in respect of a claim made in pursuance of this section may appeal to the Supreme Court.

331. Resolutions passed at adjourned meetings of creditors and contributories

Where a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Supplementary Powers of Court

332. Meetings to ascertain wishes of creditors or contributories

(1) The court may, as to all matters relating to the winding-up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any

sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

Provisions as to Dissolution

333. Power of court to declare dissolution of company void

(1) Where a company has been dissolved, the court may at any time within 2 years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within 7 days after the making of the order, or such further time as the court may allow, to deliver to the registrar of companies for registration an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding VT 1,000 for every day during which the default continues.

334. On registrar's winding-up petition, the court may order dissolution of a company

(1) Upon the hearing of a winding-up petition presented by the registrar of companies under any of the provisions of this Act, the court may, upon the application of the registrar, if it is satisfied that grounds exist for making a winding-up order, and if, having regard to the assets and affairs of the company and any other relevant circumstances, it is of the opinion that a winding-up would not be appropriate, order instead that the company be struck off the register and dissolved and the court may make such consequential orders and give such directions incidental thereto as it may think fit.

(2) Where the court has made a winding-up order on a petition presented by the registrar of companies under any of the provisions of this Act the court may, on the application of the liquidator or the provisional liquidator, if it is of the opinion, having regard to the assets and affairs of the company and any other relevant circumstances, that to continue the winding-up would not be appropriate, order instead that the company be struck off the register and dissolved, and the court may make such consequential orders and give such directions incidental thereto as it may think fit.

(3) The provisions of section 335(4) shall apply where a company has been struck off under this section.

335. Registrar may strike defunct company off register

(1) Where the registrar of companies of his own knowledge, or upon information supplied by an officer or member of a company or any other person, has reasonable cause to believe that a company is not carrying on business or in operation, he may publish in the Gazette and send to the company by post, a notice that at the expiration of 3 months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(2) If, in any case where a company is being wound-up, the registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company

are fully wound up, and the returns required to be made by the liquidator have not been made for a period of 6 consecutive months, the registrar shall publish in the Gazette and send to the company or the liquidator, if any, a like notice as is provided in subsection (1).

(3) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Gazette, and on the publication in the Gazette of this notice the company shall be dissolved:

Provided that -

(a) the liability, if any, of every director, managing officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and

(b) nothing in this subsection shall affect the power of the court to wind up a company the name of which has been struck off the register.

(4) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court on an application made by the company or member or creditor before the expiration of 20 years from the publication in the Gazette of the notice aforesaid may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon an office copy of the order being delivered to the registrar for registration the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(5) A notice or letter to be sent under this section to a company may be addressed to the company at its registered office or, if no office has been registered, to its last known place of business, if any, or to the care of some officer of the company or, if there is no officer of the company whose name and address are known to the registrar, may be sent to the person or each of the persons who subscribed the memorandum of association of the company addressed to him at the address mentioned in the subscription to the memorandum.

(6) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has been registered, to the care of some officer of the company, or, if there is no officer of the company whose name and address are known to the registrar of companies, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

(7) No liability shall attach for any act performed or thing done, or for the omission of any act or thing which should have been performed or done, by the registrar of companies under this section.

(8) The costs incurred by the registrar in the exercise of his powers under this section shall be payable by the company and recoverable from it.

336. Property of dissolved company to be forfeited to Republic

(1) Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property but not including property held by the company on trust for any other person) shall, subject and without prejudice to any order which may at any time be made by

the court under sections 334 and 335, be deemed to be forfeited and shall accordingly belong to the Republic.

(2) Where any property vests in the Republic under subsection (1), the Republic's title thereto under that section may be disclaimed by a notice signed by the Minister.

(3) Where a notice of disclaimer under this section is executed as respects any property, that property shall be deemed not to have vested in the Republic under subsection (1) and sections 312(2) and 312(6) shall apply in relation to the property as if it had been disclaimed under section 312 immediately before the dissolution of the company.

(4) The right to exercise a notice of disclaimer under this section may be waived by or on behalf of the Republic either expressly or by taking possession or other act evincing that intention.

(5) A notice of disclaimer under this section shall be of no effect unless it is executed within 12 months of the date on which the vesting of the property as aforesaid came to the notice of the Minister, or, if an application in writing is made to the Minister by any person interested in the property requiring him to decide whether he will or will not disclaim, within a period of 3 months after the receipt of the application or such further period as may be allowed by the court which would have had jurisdiction to wind-up the company if it had not been dissolved.

(6) A statement in a notice of disclaimer of any property under this section that the vesting of the property came to the notice of the Minister on a specified date or that no such application as aforesaid was received by him with respect to the property before a specified date shall, until the contrary is proved, be sufficient evidence of the fact stated.

(7) A notice of disclaimer under this section shall be delivered to the registrar of companies and retained and registered by him, and copies thereof shall be published in the Gazette and sent to any persons who have given the Minister notice that they claim to be interested in the property.

Companies Liquidation Account

337. Companies Liquidation Account

An account, to be called the Companies Liquidation Account shall be kept by the Treasury, and all moneys received by him in respect of proceedings under this Act in connexion with the winding-up of companies shall be paid to that account.

Rules and Fees

338. Rules and fees

(1) The Chief Justice may, with the approval of the Minister, from time to time, make rules consistent with this Act and with the law for the time being relating to civil procedure in the Supreme Court concerning the mode of proceedings to be had for winding-up a company in the court, and for giving effect to the provisions hereinbefore contained as to the reduction of the capital of a company.

(2) There shall be paid in respect of proceedings under this Act in relation to the winding up of companies such fees as the Chief Justice may, with the approval of the Minister, prescribe.

PART 7 – RECEIVERS AND MANAGERS

339. Disqualification of body corporate for appointment as receiver

A body corporate shall not be qualified for appointment as receiver of the property of a company, and any body corporate which acts as such a receiver shall be liable to a fine not exceeding VT 100,000.

340. Disqualification of undischarged bankrupt from acting as receiver or manager

(1) If any person being an undischarged bankrupt acts as receiver or manager of the property of a company on behalf of debenture holders, he shall, subject to subsection (2), be liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding VT 500,000, or to both.

(2) Subsection (1) shall not apply to a receiver or manager where –

(a) the appointment under which he acts and the bankruptcy were both before the commencement of this Act; or

(b) he acts under an appointment made by order of the court.

341. Power to appoint official receiver as receiver for debenture holders or creditors

Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound-up by the court, the official receiver may be so appointed.

342. Receivers and managers appointed out of court

(1) A receiver or manager of the property of a company appointed under the powers contained in any instrument may apply to the court for directions in relation to any particular matter arising in connection with the performance of his functions, and on any such application the court may give such directions, or may make such order declaring the rights of persons before the court or otherwise, as the court thinks just.

(2) A receiver or manager of the property of a company appointed as aforesaid shall, to the same extent as if he had been appointed by order of the court, be personally liable on any contract entered into by him in the performance of his functions, except in so far as the contract otherwise provides, and entitled in respect of that liability to indemnity out of the assets; but nothing in this subsection shall be taken as limiting any right to indemnity which he would have apart from this subsection, or as limiting his liability on contracts entered into without authority or as conferring any right to indemnity in respect of that liability.

(3) This section shall apply whether the receiver or manager was appointed before, on or after the commencement of this Act (27 October 1986), but subsection (2) shall not apply to contracts entered into before the commencement of this Act (27 October 1986).

343. Notification that receiver or manager appointed

(1) Where a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.

(2) If default is made in complying with the requirements of this section, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be liable to a fine of VT 5,000.

344. Power of court to fix remuneration on application of liquidator

(1) The court may, on an application made to the court by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company.

(2) The power of the court under subsection (1) shall, where no previous order has been made with respect thereto under that subsection –

(a) extend to fixing the remuneration for any period before the making of the order or the application therefor; and

(b) be exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application therefor; and

(c) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extend to requiring him or his personal representatives to account for the excess or such part thereof as may be specified in the order:

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

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

(4) This section shall apply whether the receiver or manager was appointed before, on or after the commencement of this Act (27 October 1986), and to periods before, as well as to periods after, that date.

345. Provisions as to information where receiver or manager appointed

(1) Where a receiver or manager of the whole or substantially the whole of the property of a company (hereinafter in this section and in section 346 referred to as "the receiver") is appointed on behalf of the holders of any debentures of the company secured by a floating charge, then subject to the provisions of this section and section 346 –

(a) the receiver shall forthwith send notice to the company of his appointment; and

(b) there shall, within 14 days after receipt of the notice, or such longer period as may be allowed by the court or by the receiver, be made out and submitted to the receiver in accordance with section 346 a statement in the prescribed form as to the affairs of the company; and

(c) the receiver shall within 2 months after receipt of the said statement send –

(i) to the registrar of companies and to the court, a copy of the statement and of any comments he sees fit to make thereon and in the case of the registrar of companies also a summary of the statement and of his comments (if any) thereon; and

(ii) to the company, a copy of any such comments as aforesaid, or if he does not see fit to make any comment, a notice to that effect; and

(iii) to any trustees for the debenture holders on whose behalf he was appointed and, so far as he is aware of their addresses, to all such debenture holders a copy of the said summary.

(2) The receiver shall within 2 months, or such longer period as the court may allow after the expiration of the period of 12 months from the date of his appointment and of

every subsequent period of 12 months, and within 2 months or such longer period as the court may allow after he ceases to act as receiver or manager of the property of the company, send to the registrar of companies, to any trustees for the debenture holders of the company on whose behalf he was appointed, to the company and (so far as he is aware of their addresses) to all such debenture holders an abstract in the prescribed form showing his receipts and payments during that period of 12 months or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amounts of his receipts and of his payments during all preceding periods since his appointment.

(3) Where the receiver is appointed under the powers contained in any instrument, this section shall have effect –

(a) with the omission of the references to the court in subsection (1); and

(b) with the substitution of the references to the court in subsection (2) of references to the Minister.

(4) Subsection (1) shall not apply in relation to the appointment of a receiver or manager to act with an existing receiver or manager or in place of a receiver or manager dying or ceasing to act, except that, where that subsection applies to a receiver or manager who dies or ceases to act before it has been fully complied with, the references in paragraphs (b) and (c) thereof to the receiver shall (subject to subsection (5)) include references to his successor and to any continuing receiver or manager.

Nothing in this subsection shall be taken as limiting the meaning of the expression "the receiver" where used in, or in relation to, subsection (2).

(5) The provisions of this section and of section 346, where the company is being wound-up, shall apply notwithstanding that the receiver or manager and the liquidator are the same person, but with any necessary modifications arising from that fact.

(6) Nothing in subsection (2) shall be taken to prejudice the duty of the receiver to render proper accounts of his receipts and payments to the persons to whom, and at the times at which, he may be required to do so apart from that subsection.

(7) If the receiver makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding VT 1,000 for every day during which the default continues.

346. Special provisions as to statement submitted to receiver

(1) The statement as to the affairs of a company required by section 345 to be submitted to the receiver (or his successor) shall show as at the date of the receiver's appointment the particulars of the company's assets, debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed.

(2) The said statement shall be submitted by, and be verified by affidavit of, one or more of the persons who are at the date of the receiver's appointment the directors and by the person who is at that date the secretary of the company, or by such of the persons hereafter in this subsection mentioned as the receiver (or his successor), subject to the direction of the court, may require to submit and verify the statement, that is to say, persons –

(a) who are or have been officers of the company;

(b) who have taken part in the formation of the company at any time within 1 year before the date of the receiver's appointment;

(c) who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the receiver capable of giving the information required;

(d) who are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) Any person making the statement and affidavit shall be allowed, and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the receiver (or his successor) may consider reasonable, subject to an appeal to the court.

(4) When the receiver is appointed under the powers contained in any instrument, this section shall have effect with the substitution for references to the court of references to the Minister.

(5) If any person without reasonable excuse makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding VT 2,000 for every day during which the default continues.

(6) References in this section to the receiver's successor shall include a continuing receiver or manager.

347. Delivery to registrar of accounts of receivers and managers

(1) Except where section 345(2) applies, every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall, within 1 month, or such longer period as the registrar of companies may allow, after the expiration of the period of 6 months from the date of his appointment and of every subsequent period of 6 months, and within 1 month after he ceases to act as receiver or manager, deliver to the registrar of companies for registration an abstract in the prescribed form showing his receipts and his payments during that period of 6 months, or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amount of his receipts and of his payments during all preceding periods since his appointment.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a fine not exceeding VT 1,000 for every day during which the default continues.

348. Enforcement of duty of receivers and managers to make returns, etc.

(1) If any receiver or manager of the property of a company –

(a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver or manager is by law required to file, deliver, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so; or

(b) having been appointed under the powers contained in any instrument, has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to vouch the same and to pay over to the liquidator the amount properly payable to him;

the court may, on an application made for the purpose, make an order directing the receiver or manager, as the case may be, to make good the default within such time as may be specified in the order.

(2) In the case of any such default as is mentioned in subsection (1)(a), an application for the purposes of this section may be made by any member or creditor of the company or by the registrar of companies, and in the case of any such default as is mentioned

in subsection (1)(b), the application shall be made by the liquidator, and in either case the order may provide that all costs of and incidental to the application shall be borne by the receiver or manager, as the case may be.

(3) Nothing in this section shall be taken to prejudice the operation of any enactments imposing penalties on receivers in respect of any such default as is mentioned in subsection (1).

349. Construction of references to receivers and managers

It is hereby declared that, except where the context otherwise requires –

(a) any reference in this Act to a receiver or manager of the property of a company, or to a receiver thereof, includes a reference to a receiver or manager, or (as the case may be) to a receiver, of part only of that property and to a receiver only of the income arising from that property or from part thereof; and

(b) any reference in this Act to the appointment of a receiver or manager under powers contained in any instrument includes a reference to an appointment made under powers which, by virtue of any enactment, are implied in, and have effect as if contained in an instrument.

PART 8 – WINDING-UP OF UNREGISTERED COMPANIES

350. Meaning of unregistered company

For the purposes of this Part, the expression "unregistered company" shall include any partnership, any association and any company with the following exceptions, namely –

(a) a company registered in Vanuatu under the Companies Act, 1929, the Companies Act, 1948, the Companies Regulation (Q.R. No. 9 of 1971) or this Act;

(b) a partnership, association or company (other than a French company) which consists of less than eight members and is not a partnership, association or company formed outside Vanuatu.

351. Winding-up of unregistered companies

(1) Subject to the provisions of this Part of this Act, any unregistered company may be wound-up under this Act, and all the provisions of this Act with respect to winding-up shall apply to an unregistered company, with the exceptions and additions mentioned in the following provisions of this section.

(2) No unregistered company shall be wound-up under this Act voluntarily.

(3) The circumstances in which an unregistered company may be wound-up are as follows –

(a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding-up its affairs;

(b) if the company is unable to pay its debts;

(c) if the court is of opinion that it is just and equitable that the company should be wound-up.

(4) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts –

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding VT 10,000 then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a demand under his hand

requiring the company to pay the sum so due, and the company has for 3 weeks after the service of the demand neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;

(b) if any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, manager or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within 10 days after service of the notice paid, secured or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;

(c) if execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied;

(d) if it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.

352. Oversea companies may be wound-up although dissolved

Where a company incorporated outside Vanuatu which has been carrying on business in Vanuatu ceases to carry on business in Vanuatu, it may be wound-up as an unregistered company under this Part, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

353. Saving of provisions of former law as to winding-up of unregistered companies

Nothing in this Part shall effect the operation of any enactment which provides for any partnership, association or company being wound-up, or being wound up as a company or as an unregistered company, under any enactment repealed or replaced by this Act, except that a reference in any such first-mentioned enactment to any such repealed or replaced enactment shall be read as a reference to the corresponding provision, if any, of this Act.

354. Contributories in winding-up of unregistered company

(1) In the event of an unregistered company being wound-up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding-up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid.

(2) In the event of the death, bankruptcy or insolvency of any contributory, the provisions of this Act with respect to the legal personal representatives and heirs of deceased contributories and to the trustees of bankrupt or insolvent contributories, shall apply.

355. Power of court to stay or restrain proceedings

The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding-up and before the making of a winding-up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

356. Actions stayed on winding-up order

Where an order has been made for winding-up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

357. Provisions of Part 8 cumulative

The provisions of this Part of this Act with respect to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore in this Act contained with respect to winding-up companies by the court, and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding-up companies formed and registered under this Act:

Provided that an unregistered company shall not, except in the event of its being wound-up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

PART 9 – COMPANIES INCORPORATED OUTSIDE VANUATU

Provisions as to Establishment of Place of Business in Vanuatu

358. Application of Part 9

This Part shall apply to all oversea companies, that is to say, companies incorporated outside Vanuatu which, after the commencement of this Act (27 October 1986), desire to establish a place of business within Vanuatu, and companies incorporated outside Vanuatu which have, on or before the commencement of this Act (27 October 1986), established a place of business within Vanuatu and continued to have an established place of business within Vanuatu on that date:

Provided that any such oversea company having established and continuing to have a place of business in Vanuatu immediately prior to the commencement of this Act (27 October 1986), which has complied with the requirements of Part IX of the Companies Regulation (Q.R. No. 9 of 1971) shall be exempt from compliance with section 359 of this Act.

359. Oversea companies to apply for permit to be registered under Part 9

(1) Every oversea company to which this Part applies shall, before establishing a place of business in Vanuatu, apply in writing to the Minister for a permit to be registered as an oversea company entitled to establish a place of business in Vanuatu.

(2) Such application shall be made in writing signed by a director or by the secretary of the oversea company, and shall be accompanied by –

(a) a certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English or French language, a certified translation thereof in either language;

(b) a list of the directors and secretary of the company containing the particulars mentioned in subsection (3);

(c) the names and addresses of not less than two natural persons resident in Vanuatu who are to be the authorised agents of the company in Vanuatu and each of whom is authorised to accept on behalf of the company service of process and any notices or documents to be served on the company; and

(d) a statement of the nature and place of the business intended to be carried on in Vanuatu by the oversea company.

(3) The list referred to in subsection (2)(b) shall contain the following particulars, that is to say –

(a) with respect to each director –

(i) in the case of an individual, his full names and any former names, his usual residential address, his nationality and his business occupation, if any, or if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships; and,

(ii) in the case of a corporation, its corporate name and registered or principal office;

(b) with respect to the secretary or, where there are joint secretaries, with respect to each of them –

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

(ii) in the case of a corporation, its corporate name and registered or principal office:

Provided that, where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be stated instead of the particulars mentioned in paragraph (b) of this subsection.

(4) The Minister may require the company to furnish such further information relevant to the application as he may think necessary.

(5) The Minister, having considered an application made under the provisions of subsection (1), may in his discretion grant or refuse a permit and need not give any reasons for his decision.

(6) Upon the granting of a permit under subsection (5), the Minister shall endorse the certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company accordingly and return it as soon as possible together with the documents referred to in subsections (2)(b), (2)(c) and (2)(d) to the company, which may within 3 months from the date of the granting of the permit lodge the said documents with the registrar for registration of the company under this Part.

(7) Upon the due lodging of the said documents in accordance with subsection (6), the registrar shall retain the same and shall enter the particulars thereof in a register to be maintained by him for the purpose; and he shall forthwith issue to the company a certificate of registration under his hand or seal with the date of its registration under this Part and its date and place of incorporation outside Vanuatu specified therein.

(8) It shall be unlawful for any oversea company to which this Part of this Act applies to establish a place of business, or to continue to have an established place of business, within Vanuatu save by and under the authority of a permit granted by the Minister under the provisions of subsection (5); and any oversea company acting in contravention of this subsection shall be liable to a fine not exceeding VT 200,000 and every officer or agent of the company who knowingly and wilfully authorises or permits such contravention shall be liable to the like fine or to imprisonment for a term not exceeding 12 months, or to both such fine and imprisonment.

360. Return to be delivered to registrar by oversea company where documents etc., altered

If any alteration is made in –

(a) the charter, statutes, or memorandum and articles of an oversea company or any such instrument as aforesaid; or

(b) the directors or secretary of an oversea company or the particulars contained in the list of the directors and secretary; or

(c) the names or addresses of the persons authorised to accept service on behalf of an oversea company;

the company shall, within 1 month, deliver to the registrar for registration a return containing the prescribed particulars of the alteration.

361. Accounts of oversea company

(1) Every oversea company shall, in every calendar year, make out a balance sheet and profit and loss account and, if the company is a holding company, group accounts, in such form, and containing such particulars and including such documents, as under the provisions of this Act (subject, however, to any prescribed exceptions) it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company at its annual general meeting, and deliver copies of those documents to the registrar of companies not later than 3 months after the date of the annual general meeting for the year to which they relate.

(2) If any such document as is mentioned in subsection (1) is not written in the English or French language, there shall be annexed to it a certified translation thereof in either language.

362. Obligation to state name of oversea company, whether limited, and country where incorporated

Every oversea company shall –

(a) in every prospectus inviting subscriptions for its shares or debentures in Vanuatu state the country in which the company is incorporated; and

(b) conspicuously exhibit on every place where it carries on business in Vanuatu the name of the company and the country in which the company is incorporated; and

(c) cause the name of the company and of the country in which the company is incorporated to be stated in legible characters in all bill-heads and letter paper, and in all notices and other official publications of the company; and

(d) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters in every such prospectus as aforesaid and in all bill-heads, letter paper, notices and other official publications of the company in Vanuatu, and to be affixed on every place where it carries on its business.

363. Service on oversea company

Any process or notice required to be served on an oversea company shall be sufficiently served if addressed to any person whose name has been delivered to the registrar under the foregoing provisions of this Part of this Act and left at or sent by post to the address which has been so delivered:

Provided that –

(a) where any such company makes default in delivering to the registrar the name and address of a person resident in Vanuatu who is authorised to accept on behalf of the company service of process or notices; or

(b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason cannot be served;

a document may be served on the company by leaving it at or sending it by post to any place of business established by the company in Vanuatu.

364. Cessation of business

If any oversea company ceases to have a place of business in Vanuatu, it shall forthwith give notice of the fact to the registrar of companies and as from the date on which notice is so given the obligation of the company to deliver any document to the registrar shall cease.

365. Penalties

If any oversea company fails to comply with any of the foregoing provisions of this Part of this Act, other than section 359(8), the company, and every officer or agent of the company who knowingly and wilfully authorises or permits the default, shall be liable to a fine not exceeding VT 10,000, or, in the case of a continuing offence, VT 1,000 for every day during which the default continues.

366. Interpretation

For the purposes of the foregoing provisions of this Part of this Act –

the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation;

the expression "director" in relation to a company includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

the expression "place of business" includes a share transfer or share registration office;

the expression "prospectus" has the same meaning as when used in relation to a company incorporated under this Act;

the expression "secretary" includes any person occupying the position of secretary by whatever name called.

Prospectuses

367. Approval of prospectus and particulars to be contained therein

(1) It shall not be lawful for any person to issue, circulate or distribute in Vanuatu any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Vanuatu, whether the company has or has not established, or when formed will or will not establish, a place of business in Vanuatu unless the Minister has first given his approval, and the prospectus is dated and –

(a) contains particulars with respect to the following matters –

(i) the instrument constituting or defining the constitution of the company;

(ii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;

(iii) an address in Vanuatu where the said instrument, enactments or provisions, or copies thereof , and if the same are in a foreign language a translation thereof in English or French certified in the prescribed manner, can be inspected;

(iv) the date on which and the country in which the company was incorporated;

(v) whether the company has established a place of business in Vanuatu, and, if so, the address of its principal office in Vanuatu;

(b) subject to the provisions of this section, states the matters specified in Part 1 of Schedule 4 and sets out the reports specified in Part 2 of that Schedule, subject always to the provisions contained in Part 3 of that Schedule:

Provided that the provisions of sub-paragraphs (i), (ii) and (iii) of paragraph (a) of this subsection shall not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business, and, in the application of Part 1 of Schedule 4 for the purposes of this subsection, paragraph 2 thereof shall have effect with the substitution, for the reference to the articles, of a reference to the constitution of the company.

(2) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement imposed by virtue of paragraph (a) or (b) of subsection (1), or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) It shall not be lawful for any person to issue to any person in Vanuatu a form of application for shares in or debentures of such a company or intended company as is mentioned in subsection (1) unless the form is issued with a prospectus which complies with this Part of this Act and the issue whereof in Vanuatu does not contravene the provisions of section 369:

Provided that this subsection shall not apply if it is shown that the form of application was issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(4) In the event of non-compliance with or contravention of any of the requirements imposed by paragraphs (a) and (b) of subsection (1), a director or other person responsible for the prospectus shall not incur any liability, by reason of the non-compliance or contravention, if –

(a) as regards any matter not disclosed, he proves that he was not cognisant thereof; or

(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

(c) the non-compliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 16 of Schedule 4, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) This section –

(a) shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; and

(b) except in so far as it requires a prospectus to be dated, shall not apply to the issue of a prospectus relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on an approved stock exchange;

but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act, apart from this section.

368. Exclusion of section 367 and relaxation of Schedule 4 in case of certain prospectuses

(1) Where –

(a) it is proposed to offer to the public by a prospectus issued generally any shares in or debentures of a company incorporated or to be incorporated outside Vanuatu, whether the company has or has not established, or when formed will or will not establish, a place of business in Vanuatu; and

(b) application is made to an approved stock exchange for permission for those shares or debentures to be dealt in or quoted on that stock exchange;

there may on the request of the applicant be given by or on behalf of that stock exchange a certificate of exemption, that is to say, a certificate that, having regard to the proposals (as stated in the request) as to the size and other circumstances of the issue of shares or debentures and as to any limitation on the number and class of persons to whom the offer is to be made, compliance with the requirements of Schedule 4 to this Act would be unduly burdensome.

(2) If a certificate of exemption is given, and if the proposals aforesaid are adhered to and the particulars and information required to be published in connection with the application for permission to the stock exchange are so published, then –

(a) a prospectus giving the particulars and information aforesaid in the form in which they are so required to be published shall be deemed to comply with the requirements of Schedule 4; and

(b) except in so far as it requires a prospectus to be dated, and that the Minister shall have first given his approval, section 367 shall not apply to any issue, after the permission applied for is given, of a prospectus or form of application relating to the shares or debentures.

369. Provisions as to expert's consent and allotment

(1) It shall not be lawful for any person to issue, circulate or distribute in Vanuatu any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Vanuatu, whether the company has or has not established, or when formed will or will not establish, a place of business in Vanuatu –

(a) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or

(b) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions (other than penal provisions) of sections 62 and 63 so far as applicable.

(2) In this section the expression "expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him, and for the purposes of this section a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

370. Registration of prospectus

(1) It shall not be lawful for any person to issue, circulate or distribute in Vanuatu any prospectus offering for subscription shares in or debentures of a company

incorporated or to be incorporated outside Vanuatu, whether the company has or has not established, or when formed will or will not establish, a place of business in Vanuatu, unless before the issue, circulation or distribution of the prospectus in Vanuatu, a copy thereof certified by the chairman and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the registrar of companies, and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy –

(a) any consent to the issue of the prospectus required by section 369;

(b) a copy of any contract required by paragraph 14 of Schedule 4 to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof or, if in the case of a prospectus deemed by virtue of a certificate granted under section 368 to comply with the requirements of that Schedule, a contract or a copy thereof or a memorandum of a contract is required to be available for inspection in connection with the application under that section to the stock exchange in question, a copy or, as the case may be, a memorandum of that contract; and

(c) where the persons making any report required by Part 2 of that Schedule have made therein or have, without giving the reasons, indicated therein any adjustments as are mentioned in paragraph 29 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(2) The references in subsection (1)(b) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a foreign language, be taken as references to a copy of a translation of the contract in English or French or a copy embodying a translation in English or French of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation, and the reference to a copy of a contract required to be available for inspection shall include a reference to a copy of a translation thereof or a copy embodying a translation of parts thereof.

371. Penalty for contravention of sections 367 to 370

Any person who is knowingly responsible for the issue, circulation or distribution of a prospectus, or for the issue of a form of application for shares or debentures, in contravention of any of the provisions of sections 367 to 370 shall be liable to a fine not exceeding VT 100,000.

372. Civil liability for mis-statements in prospectus

Section 56 shall extend to every prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Vanuatu, whether the company has or has not established, or when formed will or will not establish, a place of business in Vanuatu, with the substitution, for references to section 54, of references to section 369.

373. Interpretation of provisions as to prospectuses

(1) Where any document by which any shares in or debentures of a company incorporated outside Vanuatu are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section 58 to be a prospectus issued by the company, that document shall be deemed to be, for the purpose of this Part of this Act, a prospectus issued by the company.

(2) An offer of shares or debentures for subscription or sale to any person whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this Part.

(3) In this Part the expressions “prospectus”, “shares” and “debentures” have the same meanings as when used in relation to a company incorporated under this Act.

PART 10 – TRANSFER OF COMPANIES FROM AND TO ANOTHER JURISDICTION

374. Continuation in Vanuatu of corporation incorporated elsewhere

(1) Subject to subsection (10), a corporation incorporated as a company or corporation under the laws of any country, other than Vanuatu, or of any jurisdiction within any such country other than Vanuatu (in this section referred to as a "foreign corporation"), may if it appears to the Minister that there is no provision in the laws of that country or jurisdiction preventing such application, apply to the Minister to be registered as being continued in Vanuatu as if it had been incorporated under this Act.

(2) An application for registration in accordance with subsection (1) shall be made in the manner prescribed in sections 2 and 3 and subject to the provisions of section 4:

Provided that the requirement in section 3 that an application be accompanied by the original memorandum of association, duly subscribed, and articles of association, if any, shall be deemed to be complied with if the application is accompanied by a certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English or French language, a certified translation thereof in either language.

(3) Such application shall in addition be supported by such material as the Minister may require to satisfy himself –

(a) that such application is not prohibited by the country or jurisdiction in which the foreign corporation has been incorporated; and

(b) that the consent of such number or proportion of the shareholders, debenture holders and creditors of the foreign corporation as may be required by the laws of the country or jurisdiction of incorporation to such application has been obtained.

(4) Subject to the provisions of this Act, the Minister may in his discretion grant a permit for the registration of such foreign corporation as one which may be continued in Vanuatu:

Provided that no such permit for the registration of a foreign corporation may be granted if –

(a) its winding-up has commenced;

(b) a receiver of its property has been appointed;

(c) there is any scheme or order in relation thereto whereby the rights of creditors are suspended or restricted; or

(d) any proceedings for breach of the laws of the country or jurisdiction of incorporation have been commenced against such foreign corporation, not being proceedings arising out of an event which on the date of the occurrence thereof did not constitute such a breach.

(5) A permit for the registration of a foreign corporation as one which may be continued in Vanuatu shall be endorsed on the memorandum submitted to the Minister and shall be in such form as the Minister shall determine and such memorandum endorsed with

the permit shall as soon as possible be returned to the applicant or the person or persons acting on its behalf.

(6) If such permit is endorsed on the memorandum of a foreign corporation, such corporation may, within 3 years after the date of the grant of the permit, file the memorandum with the registrar, who before accepting such memorandum for filing shall satisfy himself that it is duly endorsed with a permit and that it conforms with the requirements of this Act.

(7) Upon the due filing of the memorandum the registrar shall retain and forthwith register the memorandum and the name of the company, specifying whether it is registered as a local company or an exempted company, in a register of foreign corporations continued in Vanuatu, and shall then forthwith issue under his hand or seal a certificate of continuation in Vanuatu with the date of registration and its status as a local or exempted company, as the case may be, specified therein, and, subject to this section, upon the issue of such certificate of continuation the company shall be deemed thereafter to be a company incorporated under this Act and domiciled in Vanuatu.

(8) The registration of a corporation under this section shall not operate –

(a) to create a new legal entity;

(b) to prejudice or affect the continuity of the corporation;

(c) to affect the property of the corporation;

(d) to render defective any legal or other proceedings instituted, or to be instituted, by or against the corporation or any other person; or

(e) to affect any rights, powers, authorities, duties, functions, liabilities or obligations of the corporation or any other person.

(9) Upon the registration of a corporation under this section –

(a) so much of its constitution as would, if it had been incorporated under this Act, have been required by this Act to be included in its memorandum of association shall be deemed to be the registered memorandum of association of the corporation; and

(b) so much of its constitution as does not, by virtue of paragraph (a), comprise its memorandum of association shall be deemed to be the registered articles of association of the corporation,

and shall be binding on the corporation and its members accordingly.

(10) No corporation which could not have been incorporated under this Act shall be registered under this section.

(11) An application for registration made in accordance with subsections (1) and (2) shall specify whether it is desired that the corporation be registered with the status of a local or an exempted company, and if the certificate of continuation specifies the status of an exempted company, the provisions of Part 11 of this Act shall be applied to such foreign corporation registered as being continued in Vanuatu.

(12) In this section "corporation" includes an entity having a legal personality separate and distinct from its members or founders.

375. Continuation outside Vanuatu of company incorporated under Act

(1) A company registered under this Act may, where the laws of such country or jurisdiction so allow, upon obtaining the consent of the Minister apply to the proper officer of any other country than Vanuatu or any jurisdiction within such country for an instrument of continuation permitting such company to continue in being as if it had

been incorporated under the laws of that other country or jurisdiction; and on and after the date of the instrument of continuation the company shall become a corporation under the laws of that other country or jurisdiction and be domiciled therein and shall be subject to such laws as is permitted or required (as the case may be) by the laws of that other country or jurisdiction.

(2) No company may apply to the Minister for his consent under subsection (1) unless –

(a) the holders of not less than three quarters of the debentures of the company, if any, of each class, and where any shares of the company are in existence, the holders of not less than three quarters of such shares of each class, have authorised such application; and

(b) the company has caused to be published in the Gazette not less than 14 days before submitting an application to the Minister a notice of its intention to make such application; and

(c) it lodges with the Minister an affidavit sworn by a director of the company in which are set out the names and addresses of its creditors and the total amount of its indebtedness to creditors.

(3) The Minister shall not give his approval to a company applying for its continuation in another country or jurisdiction unless he is satisfied that –

(a) the requirements of subsection (2) have been complied With;

(b) the intended transfer of domicile is unlikely to be detrimental to the rights or proper interests of any of the members, debenture-holders or creditors of the company; and

(c) the company at the time of such application is not in breach of any of its duties or obligations under this Act;

and may make his approval conditional upon such provision as he thinks necessary being made by the company to safeguard the rights and proper interests of any member, debenture holder or creditor of the company or any class of such members, debenture holders or creditors or upon the company taking such steps as he considers necessary to remedy any such breach as aforesaid.

(4) Upon an instrument of continuation continuing the company in another country or jurisdiction being executed by the proper officer of that other country or jurisdiction, the company shall forthwith notify the registrar of the particulars of such instrument and the company shall be deemed to have ceased to be a company incorporated in Vanuatu from the date when its continuation in that other country or jurisdiction takes effect, and the registrar shall remove its name from the register:

Provided that nothing in this subsection shall –

(a) prevent such a company from being registered in Vanuatu as an oversea company at any time after it has ceased to be a company incorporated in Vanuatu; or

(b) take away or affect the jurisdiction of any court in Vanuatu to hear and determine any proceedings commenced therein by or against the company before it ceased to be a company registered in Vanuatu.

(5) For the purposes of this section –

(a) a person who has, in Vanuatu or elsewhere, commenced proceedings against a company, other than proceedings to recover a debt alleged to be owed by the company to the taxation or revenue authority of any country or jurisdiction or has counter claimed against a company in proceedings commenced by the company shall be deemed to be a creditor of the company;

(b) no person shall be deemed to be a creditor of a company in respect of any debt owed to the taxation or revenue authority of any country or jurisdiction.

PART 11 – EXEMPTED COMPANIES

376. Certain companies may be registered as exempted companies

(1) In any case where, upon application to the Minister under the provisions of section 2 for a permit to form an incorporated company, the proposed business of the company is to be carried on, or the proposed objects of the company are to be carried out, outside Vanuatu, the company may, upon the granting of a permit by the Minister under the provisions of section 16, be registered as an exempted company.

(2) For the purposes of this Part, the expression "outside Vanuatu" shall be construed with reference to the provisions of section 378.

377. Annual return to be filed by every exempted company

(1) Upon each anniversary of its registration, an exempted company shall forward to the registrar a return containing the particulars and in the form prescribed by the Minister. Every return shall be treated as a confidential official document by the registrar and all other public servants having access thereto and the provisions of section 381 shall apply with respect to the information therein contained:

Provided that particulars of persons for whom a member of the company has acted as an agent or nominee shall not be required in the case of an exempted private company which is not a class specified in Schedule 3.

(2) If default shall be made for more than 14 days in complying with the provisions of subsection (1), the exempted company and every officer in default shall be liable to a default fine.

(3) If any declaration under subsection (1) contains any wilfully false statement or misrepresentation, every director and officer of the company who knowingly made or permitted the making thereof shall be liable to a fine of VT 100,000 or to imprisonment for a term not exceeding 6 months, or to both.

378. Restrictions on business of exempted companies

(1) An exempted company shall not –

(a) acquire any shares issued by any company incorporated in Vanuatu, other than by another exempted company, or acquire any interest in any business or undertaking in Vanuatu;

(b) make any invitation to the public in Vanuatu to subscribe for any of its shares or debentures;

(c) trade or do business in Vanuatu with any person, firm or corporation, except with another exempted company or in furtherance of the business of the company carried on outside Vanuatu:

Provided that nothing in this subsection shall be construed –

(i) so as to prevent the company from buying or selling shares in any other exempted company or from effecting and concluding contracts in Vanuatu and exercising in Vanuatu all of its powers necessary for the carrying on of its business outside Vanuatu; and

(ii) so as to enable the company to engage in retail trade in Vanuatu whether with another exempted company or any other person or otherwise; and

(iii) so as to prevent the company from carrying on any trade or business or any class of trade or business in Vanuatu prohibited by the foregoing provisions of this subsection in respect of which the Minister is of opinion that the same should be permitted on the grounds that it would be of economic or social benefit to Vanuatu and has granted his approval thereof in writing.

(1A) Nothing in subsection (1) is to be construed so as to prohibit an exempted company from:

(a) offering goods or services electronically from a place of business in Vanuatu or through an internet or other electronic service provider located in Vanuatu; or

(b) making 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 uses a Vanuatu domain address.

(2) In addition to the grounds provided by section 224, an exempted company may be wound-up by the court upon a petition presented by the registrar of companies, if it has at any time following its registration as an exempted company contravened any of the provisions of subsection (1).

(3) Without prejudice to the generality of the definition of "company" in section 1, in this section "company" includes any other legal entity incorporated, formed, registered or licensed in Vanuatu and having a legal personality (whether for limited purposes or otherwise) which is separate and distinct from the individual members thereof.

379. Directors' meetings in Vanuatu

The board of directors of every exempted company shall hold at least one meeting in Vanuatu in each calendar year.

380. Penalty for carrying on business contrary to this Part

If an exempted company carries on any business in Vanuatu in contravention of the provisions of this Part, then (without prejudice to any other proceedings which may be taken in respect of the contravention) the exempted company, and every director and officer of the exempted company who is responsible for the contravention, shall be liable to a fine not exceeding VT 10,000 for every day during which the contravention occurs or continues.

381. Application of Act to exempted companies, preservation of secrecy

(1) Save as is provided by subsection (2), the provisions of Parts 2, 3, 4, 5, 6, 7, and 14 shall apply to and in respect of every exempted company.

(2) The provisions of this Act which entitle any person, not being a person so entitled by virtue of his relationship with the company as a creditor or member thereof, to inspect and to make or require copies of or extracts from any register, index or other document required to be kept by the company, and which entitle any person to inspect and to make or obtain copies of or extracts from the documents and registers held by the registrar with respect to any company, shall not apply with respect to exempted companies and the provisions of section 110, section 117, section 209 and section 393 and all other provisions of this Act shall be read and construed accordingly.

(3) Except for the purpose of the performance of his duties or the exercise of his functions under this Act, or when lawfully required to do so by any court of competent jurisdiction within Vanuatu for the purpose of any proceeding under this Act or otherwise, or under the provisions of any law, or for the purpose of audit of government accounts, no person shall disclose to any other person or body any

information acquired by him respecting the affairs of any, exempted company whatsoever in the course of the administration of this Act, or any information furnished to the Minister under the provisions of sections 2, 3 or 4 upon an application for a permit to form an exempted company, whether while employed in any official capacity or after he has ceased to be so employed:

Provided that a liquidator or provisional liquidator appointed by the court under the provisions of Part 6 may, upon the request in writing of a public officer in any country or territory and with the consent of the Attorney General, disclose to such public officer such information respecting the affairs of an exempted company which is the subject of winding-up proceedings under the said Part if the liquidator or provisional liquidator has reason to believe that such information is or may be relevant to the liquidation of any company in such country or territory the affairs of which are or have been, directly or indirectly, related to the affairs of such exempted company, to any investigation into the affairs of such other company or to proceedings against its officers or former officers.

(4) Except when lawfully required to do so by any court of competent jurisdiction within Vanuatu or under the provisions of any law, no auditor of an exempted company shall, unless specifically so authorised by the directors thereof, disclose to any other person any information whatsoever respecting the affairs of that exempted company acquired by him while acting in the capacity of auditor, whether while acting in such capacity or after having ceased to act in such capacity and whether such information was acquired by him before or after the commencement of this subsection:

Provided that nothing in this section shall prevent an auditor from making his report to the members and from fulfilling his other functions and duties under this Act.

For the purposes of this subsection, the expression "auditor" shall be deemed to include every partner, associate and employee of an auditor.

(5) In any case where evidence is admitted in a court in any proceedings, which would otherwise result in the public disclosure of information as to the affairs of an exempted company or proposed exempted company the court shall direct that such evidence shall be heard *in camera* and shall order that the relevant part of the proceedings be not published or made available as public record.

(6) Any person who shall contravene the provisions of subsection (3) or subsection (4) or any order of a court under subsection (5) shall be liable to a fine not exceeding VT 1,000,000 or to imprisonment for a term not exceeding 5 years, or to both.

382. Certain provisions of Act to be modified in regard to private exempted companies not specified in schedule 3

In the case of a private exempted company which is not of a class specified in Schedule 3, the following provisions shall apply:

(a) the company may issue bearer shares;

(b) the company may issue shares without par value, notwithstanding section 5(5), provided that its accounts are kept in accordance with acceptable accounting standards in regard to the maintenance of its stated capital and otherwise;

(c) the company need not send with its annual return the certificate required by section 131(b);

(d) the company shall not be required to comply with sections 151 to 153.

383. Local companies may apply to Minister to be re-registered as exempted companies

(1) Any local company which, if it had been incorporated after the commencement of this Act (27 October 1986), would have been entitled by virtue of the provisions of this

Part to apply to the Minister for a permit to be formed and registered as an exempted company, may, if a special resolution that it should be re-registered as an exempted company is passed, make application, signed by a director or by the secretary of the company, to the Minister for a permit that the company should be so re-registered, not earlier than the day on which the copy of the resolution forwarded to the registrar of companies in pursuance of section 144 is received by him.

(2) The Minister may require the company to furnish such information relevant to the application as he may think necessary.

(3) The Minister shall not grant a permit to any local company upon an application under the provisions of subsection (1) unless he is satisfied that it is intended that in the future the business of the company will be carried on, outside Vanuatu and not otherwise.

(4) Subject to the provisions of subsection (3), the Minister, having considered an application made under the provisions of subsection (1), may in his discretion grant or refuse a permit and need not give any reasons for his decision.

(5) Upon the granting of a permit under subsection (4), the Minister shall endorse the application accordingly and return it as soon as possible to the company, which may within 3 months from the date of the permit lodge it, together with the certificate of incorporation of the company, with the registrar of companies for re-registration of the company as an exempted company.

(6) The registrar shall retain the application and the certificate of incorporation of the company lodged with him under subsection (5), shall issue to the company a new certificate of incorporation specifying its re-registration with the status of an exempted company and shall enter the particulars thereof in the register maintained by him pursuant to section 20.

(7) Subject to subsection (8), upon the issue of such new certificate of incorporation, the status of the company shall, by virtue thereof, be changed from a local company to an exempted company and all the provisions of this Part of this Act shall thereafter apply in respect of such company as if it had been originally registered under this Act as an exempted company.

(8) The provisions of section 381 requiring the preservation of secrecy as to the affairs of exempted companies and the immunity from inspection by the public of the registers, indexes, books and documents of the company and of the documents of the company held by the registrar of companies, shall apply with respect to any company so re-registered as an exempted company whether such registers, indexes, books or documents were made before or after such re-registration.

(9) A certificate of incorporation issued by virtue of this section shall be conclusive evidence that the requirements of this section with respect to re-registration and of matters precedent and incidental thereto have been complied with, and that the company was authorised to be re-registered under this Act and was duly so re-registered.

384. Exempted companies may apply to Minister to be re-registered as local companies

(1) Any exempted company may, if a special resolution that it should be re-registered as a local company is passed, make application, signed by a director or by the secretary of the company, to the Minister for a permit that the company should be so re-registered, not earlier than the day on which the copy of the resolution forwarded to the registrar of companies in pursuance of section 144 is received by him.

(2) The Minister may require the company to furnish such information relevant to the application as he may think necessary, and for this purpose the provisions of section 4 shall apply to an application under this section.

(3) The Minister, having considered an application made under the provisions of subsection (1), may in his discretion grant or refuse a permit and need not give any reasons for his decision.

(4) Upon the granting of a permit under subsection (3), the Minister shall endorse the application accordingly and return it as soon as possible to the company, which may within 3 months from the date of the permit lodge it, together with the certificate of incorporation of the company, with the registrar of companies for re-registration of the company as a local company.

(5) The registrar shall retain the application and the certificate of incorporation of the company lodged with him under subsection (4), shall issue to the company a new certificate of incorporation specifying its re-registration with the status of a local company and shall enter the particulars thereof in the register maintained by him pursuant to section 20.

(6) Subject to subsection (7), upon the issue of such new certificate of incorporation, the status of the company shall, by virtue thereof, be changed from an exempted company to a local company and all the provisions of this Part of this Act shall thereafter cease to apply in respect of such company.

(7) The provisions of section 381 requiring the preservation of secrecy as to the affairs of exempted companies and the immunity from inspection by the public of the registers, indexes, books and documents of the company and of the documents of the company held by the registrar of companies, shall cease to apply with respect to any company so re-registered as a local company whether such registers, indexes, books or documents were made before or after such re-registration.

(8) A certificate of incorporation issued by virtue of this section shall be conclusive evidence that the requirements of this section with respect to re-registration and of matters precedent and incidental thereto have been complied with, and that the company was authorised to be re-registered under this Act and was duly so re-registered.

PART 12 – FRENCH COMPANIES

385. Meaning of "French company"

In this Part, "French company" means a corporation formed or registered under French law as applied in Vanuatu, and includes any société anonyme, a société à responsabilité limitée and a société civile.

386. French companies to re-register under this Act

(1) Every French company shall, within 12 months of the commencement of this Act (27 October 1986), or such extended time, not exceeding 12 months, as the registrar may allow with the approval of the Minister on application, re-register under this Act by delivering to the registrar an application stating the name under which it is proposed to re-register the company, together with –

(a) a certified copy of the acts or statutes, or memorandum and articles of association, or other instrument constituting or defining the constitution of the company;

(b) a list of the members of the company at the date of the application, giving the particulars specified in sections 114(1)(a) and 114(1)(b);

(c) a list of the directors, and managers of the company, giving the particulars specified in section 209 and references therein to secretaries shall be read and construed as references to managers;

(d) the address of the registered office of the company;

(e) a statement of the amount of the company's capital at the date of the application, distinguishing between unissued and issued capital, and between paid-up and unpaid capital, and the number and classes of shares into which it is divided;

(f) a summary, distinguishing between shares issued for cash and shares issued as fully paid or partly paid otherwise than in cash, and between the shares of different classes, of –

(i) the number of shares held in the company at the date of the application;

(ii) the amount paid up on each share;

(iii) the total amount of shares for which share warrants are outstanding, and the total number of shares held in registered form;

(g) particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the registrar of companies under this Act;

(h) whether the liability of the members is limited and, if so, the nature of the limitation of the liability of the members;

(i) whether the company is to be re-registered as a public company or a private company;

(j) such particulars and copies of any charges on the property of the company as are required to be delivered for registration in accordance with sections 100 and 103; or, if there are no such charges, a statement to that effect.

(2) The application shall be supported by such information and additional documentation as the registrar may require to satisfy himself that the company conforms to this Act and can lawfully be re-registered under this Act in the manner and form sought.

(3) The application shall be signed by or on behalf of all the persons named as directors in the list specified in subsection (1)(c), and shall state that each person so signing consents to act as director.

(4) The provisions of sections 5(2)(b) and 26 to 29 shall apply to the name under which a company is re-registered under this section.

(5) A company shall not, by re-registration under this section, be or become an exempted company.

(6) Upon the due filing of the documents required by this section and the payment of such fees as may be prescribed, the registrar shall retain and forthwith register the application and the documents delivered therewith and shall issue to the company a certificate of incorporation in the name of and appropriate to the status to be assumed by the company; and upon the issue of the certificate the company shall be for all purposes a company registered and incorporated under this Act, and shall thereafter be governed in all respects by the provisions of this Act; and the provisions of French law, as applied in Vanuatu, shall cease to have effect in relation to that company.

(7) The registrar shall enter the particulars of charges specified in subsection (1)(j) in the register of charges kept by him pursuant to section 104 and the provisions of Part 4 of this Act shall apply to every such charge and the registration, satisfaction and enforcement thereof.

(8) A certificate of incorporation issued by virtue of this section shall be conclusive evidence that the requirements of this section with respect to the company's re-registration and of all matters precedent and incidental thereto have been complied with, and that the company was authorised to be re-registered under this Act and was duly so registered.

(9) Re-registration of a company pursuant to this section shall not alter the identity of the company or its corporate status, nor affect any rights or obligations of the company or render defective any legal proceedings by or against the company.

387. Effect of re-registration as regards constitution

Upon the re-registration of a company under this Part of this Act –

(a) so much of its constitution as would, if it had been incorporated under this Act, have been required by this Act to be included in its memorandum of association shall be deemed to be the memorandum of association of the company; and

(b) so much of its constitution as does not, by virtue of paragraph (a), comprise its memorandum of association shall be deemed to be the articles of association of the company.

388. French companies no longer to be formed in Vanuatu

From the date of commencement of this Act (27 October 1986), no company shall be formed or registered in Vanuatu under French law as applied in Vanuatu.

389. French companies which have not been re-registered to be dissolved or wound-up

Where a French company fails to register within the time allowed by section 386, the registrar shall publish in the Gazette and send to the company by post at its last known address, a notice that at the expiration of 3 months from the date of that notice, the company will be dissolved:

Provided that where the registrar having regard to the assets and affairs of the company and any other relevant circumstances, is of the opinion that the dissolution of the company would not be appropriate, the registrar may instead present a petition to the court that the company be wound-up under the provisions of Part 8 of this Act.

PART 13 – PROVISION WITH RESPECT TO PARTNERSHIPS

390. Prohibition of associations etc., with more than twenty members

No association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership, or by the individual members thereof, unless it is registered as a company under this Act or is formed in pursuance of some other Act, in force for the time being.

PART 14 – GENERAL PROVISIONS

Registration

391. Registration office

(1) For the purposes of registration of companies under this Act, there shall be an office in Vanuatu at such place as the Minister shall think fit.

(2) There shall be a registrar of companies and such assistant registrars, clerks and servants as are necessary for the registration of companies under this Act who shall be public servants.

(3) The Minister may approve a seal or seals to be used for the authentication of documents required for or connected with the registration of companies.

(4) Whenever by this Act any act is directed to be done to or by the registrar of companies, it shall be done to or by the person holding the office of registrar, or in his absence to or by the deputy registrar or the acting registrar, as the case may be.

392. Fees

(1) There shall be paid to the registrar of companies, as provided by this section –

(a) subject to paragraph (c), upon the registration or re-registration of every company (other than the re-registration of a French company under section 386), and upon the registration of every oversea company under this Act, a registration fee;

(b) upon the granting of a permit to register a foreign corporation as being continued in Vanuatu, a permit fee and upon such registration the fees set forth in paragraph (a);

(c) upon the re-registration of a French company under section 386, a re-registration fee of VT 5,000;

(d) on or before 1st April of each year, by each company on the register on 31 December of the previous year, an annual fee;

(e) *(repealed)*

(2) In respect of the several matters mentioned in the first column of the table set out in Part 1 of Schedule 7, there shall, subject to the exemptions imposed by Part 2 of that Schedule, be paid to the registrar of companies the several sums for the fees and penalties specified in the second column of that table.

(3) Upon the re-registration of any company, pursuant to section 22 as an unlimited company, pursuant to section 23 as a company limited by shares, pursuant to section 383 as an exempted company, or pursuant to section 384 as a local company, as the case may be, there shall be paid to the registrar a re-registration fee equal to the difference between the registration fee which would be payable on the original registration of a company with such status and the fee actually paid on the original registration of the company together with the fees paid on any subsequent re-registrations of the company.

Where the fee which would be payable on the original registration of a company with such status is exceeded by the sum required to be set off in accordance with this subsection, the company shall not be entitled to any refund or credit.

(3A) The Minister may prescribe fees to be paid to the Registrar of Companies –

(a) upon application being made by a company for the approval by the Minister of a prospectus pursuant to section 51, whether or not approval is granted; and

(b) for the registration of a prospectus pursuant to section 55.

(3B) The fees referred to in subsection (3A) may be proportionate to the amount intended to be raised by the share issue, to the amount actually raised or to the minimum subscription and the fee for registration of the prospectus may be conditional in whole or in part upon the minimum subscription being received.

(4) Every company which contravenes any of the foregoing provisions of this section, and every officer of such company who is in default, shall be liable to a default fine.

(5) All fees paid to the registrar in pursuance of this Act shall be paid to the Treasury on account of the Public Fund.

393. Inspection, production and evidence of documents kept by registrar

(1) Any person may –

(a) inspect the documents kept by the registrar of companies, on payment of such fee as is prescribed in Schedule 7;

(b) require a certificate of the incorporation, or a copy or extract of any other document or any part of any other document, to be certified by the registrar, on payment of such fee as is prescribed in Schedule 7:

Provided that –

(i) in relation to documents delivered to the registrar with a prospectus in pursuance of section 55(1)(b)(i), the rights conferred by this subsection shall be exercisable only during the 14 days beginning with the date of publication of the prospectus or with the permission of the Minister, and in relation to documents so delivered in pursuance of section 370(1)(b) such right shall be exercisable only during the 14 days beginning with the date of the prospectus or with the permission of the Minister; and

(ii) the right conferred by paragraph (a) of this subsection shall not extend to any copy sent to the registrar under section 345 of a statement as to the affairs of a company or of any comments of the receiver or his successor or a continuing receiver or manager thereon, but only to the summary thereof, except where the person claiming the right either or is the agent of a person stating himself in writing to be a member or creditor of the company to which the statement relates, and the right conferred by paragraph (b) of this subsection shall be similarly limited.

(2) No process for compelling the production of any document kept by the registrar shall issue from the court except with the leave of the court, and any such process if issued shall bear thereon a statement that it is issued with the leave of the court.

(3) A copy of, or extract from, any document kept and registered at the office of the registrar of companies, certified to be a true copy under the hand of the registrar (whose official position it shall not be necessary to prove), shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

(4) Any person untruthfully stating himself in writing for the purposes of proviso (ii) to subsection (1) to be a member or creditor of a company shall be liable to a fine not exceeding VT 10,000.

394. No constructive notice

No person shall be affected by or deemed to have notice or knowledge of the existence or contents of a document concerning a company by reason only that the document has been registered with the registrar or is available for inspection at an office of the company or elsewhere by virtue of this Act.

395. Enforcement of duties of company and officers

(1) If a company, or any officer of a company, having made default in complying with any duty, obligation or requirement imposed by this Act, fails to make good the default within 14 days after the service of a notice on the company requiring it to do so, the court may, on an application made to the court by any member or creditor of the company or by the registrar of companies, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.

Form of Registers, etc.

396. Form of registers, etc.

(1) Any register, index, minute book or book or account required by this Act to be kept by a company may be kept either by making entries in bound volumes, or by a system of mechanical or electronic recording or otherwise.

(2) Where any such register, index, minute book or book of account is not kept by making entries in bound volumes, adequate precautions shall be taken for guarding against the risk of falsification which might arise from the method of recording and for facilitating discovery.

(3) Where any system of mechanical or electronic recording is adopted, adequate arrangements shall be made for making the information therein available in an intelligible form to anyone lawfully inspecting the register, index, minute book or book of account.

(4) Where default is made in complying with the requirements of subsection (2) or subsection (3), the company and every officer of the company who is in default shall be liable to a default fine.

Service of Documents

397. Service of documents on any company

A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

Offences

398. Penalty for false statements

If any person in any return, report, certificate, balance sheet, or other document, required by or for the purposes of any of the provisions of this Act, wilfully 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 500,000 or to imprisonment for a term not exceeding 2 years, or to both.

399. Penalty for improper use of word "limited"

If any person or persons trade or carry on business under any name or title of which "limited", or any contraction or imitation or the equivalent in a foreign language of that word, is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding VT 1,000 for every day upon which that name or title has been used.

400. Provision with respect to default fines and meaning of "officer in default"

(1) Where by any provision in this Act it is provided that a company and every officer of the company who is in default shall be liable to a default fine, the company and every such officer shall, for every day during which the default, refusal or contravention continues, be liable to a fine not exceeding such amount as is specified in the said enactment, or, if the amount of the fine is not so specified, to a fine not exceeding VT 1,000.

(2) For the purpose of any provision in this Act which provides that an officer of a company who is in default shall be liable to a fine or penalty, the expression "officer who is in default" means any officer of the company who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the enactment.

401. Place of proceedings against body corporate

Proceedings for any offence under this Act may (without prejudice to any jurisdiction exercisable apart from this subsection) be taken against a body corporate at any place at which the body has a place of business, and against any other person at any place at which he is for the time being.

402. Production and inspection of books where offence suspected

(1) If on an application made to a judge of the court in chambers by the Attorney General or the Commissioner of Police, there is shown to be reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made –

(a) authorising any person named therein to inspect the said books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or

(b) requiring the secretary of the company or such other officer thereof as may be named in the order to produce the said books or papers or any of them to a person named in the order at a place so named.

(2) Subsection (1) shall apply also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in paragraph (ii) thereof shall be made by virtue of this subsection.

(3) The decision of a judge of the court on an application under this section shall not be appealable.

Legal Proceedings

403. Costs in actions by certain limited companies

Where a limited company is plaintiff in any action or other legal proceedings, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

404. Power of court to grant relief in certain cases

(1) If in any proceedings for negligence, default, breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor (whether he is or is not an officer of the company) it appears to the court hearing the case that that officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court may think fit.

(2) Where any such officer or person aforesaid has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief, and the court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

Application of Act to Existing Companies

405. Act to apply to companies incorporated prior to Act

(1) Every existing company shall be deemed on and from the commencement of this Act (27 October 1986), to have been lawfully and validly incorporated and shall from that date be for all purposes a company to which this Act applies in like manner as a company registered under section, 20.

(2) In the application of this Act to existing companies, it shall apply in the same manner–

(a) in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares;

(b) in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee; and

(c) in the case of a company other than a limited company, as if the company had been formed and registered under this Act as an unlimited company:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Companies Act, 1929, the Companies Act, 1948, the New Hebrides Companies (Incorporation) Regulation, 1970, or the Companies Regulation (Q.R. No. 9 of 1971), as the case may be.

Application of Companies (Winding-Up) Rules

406. Application of Companies (Winding-Up) Rules

(1) Unless and until the Chief Justice shall make rules under the powers conferred by section 338, the Companies (Winding-Up) Rules, 1949, made under the Companies Act, 1948 as from time to time amended down to the commencement of this Act (27 October 1986), and the scale of winding-up fees prescribed under the Companies Fees Order 1983, are declared to be in force in Vanuatu and shall be read with and considered part of this Act:

Provided that –

(a) it shall be lawful for the Chief Justice by rule to amend or revoke any of the said rules; and

(b) it shall be lawful for the court to construe the said rules with such verbal alteration not affecting the substance as may be deemed expedient to render the same applicable to any matters before the court, provided always that any such construction or alteration shall not be inconsistent with the provisions of this Act.

(2) In any proceedings taken in Vanuatu for the winding-up of any company, the decision of the court on the construction to be placed on any of the provisions of the said rules with respect to practice and procedure shall be final and no action, suit or other legal proceedings or process shall be brought, taken, issued or allowed in Vanuatu against any person in respect of any act or thing done or purporting to be done in pursuance of any order or direction of the court under the aforesaid rules.

Miscellaneous

407. Exemption from Part 4 of the Act granted to ship-owning companies

(1) Notwithstanding anything in this Act, a private exempted ship-owning company shall be exempted from registering under Part 4 of this Act any charge created by the company and registered in the office of the Commissioner or 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 solely in the business of shipowners, bareboat charterers, shippers or businesses directly related thereto.

408. Minister may delegate powers

The Minister may delegate the exercise of the several powers vested in him by the foregoing provisions of this Act (other than the power to make rules or regulations, or to delegate under this section), or such of them as he may deem expedient, to the Attorney General or any other Minister and he may delegate all such powers (other than the power to make rules or regulations, or to delegate under this section, or to grant or refuse any permit in relation to a public company, or a private company of a class specified in Schedule 3, or to appoint inspectors) to the registrar.

409. Exercise of Minister's discretion under certain sections not to be questioned in any court proceedings

The exercise by the Minister of the discretion conferred upon him by section 16, section 22(4), section 23(4), section 359(5), section 374(4), section 383(4) or section 384(3) shall not be called into question in any court proceedings whatsoever.

410. Rules

The Minister shall have power to make rules –

(a) in respect of all matters stated or required in this Act to be prescribed;

(b) prescribing forms to be used for any matter under the provisions of this Act.

SCHEDULE 1

(Section 3)

THE COMPANIES ACT, Cap. 191

Application for a Permit to Form an Incorporated Company with or without Limited Liability in Vanuatu

1. The name of the proposed company is –

.....

The said name has/has not been reserved.

2. The proposed company is to be –
a company limited by shares
a company limited by guarantee
an unlimited company

3. The proposed company is to be –
a local company
an exempted company

4. The registered office of the proposed company will be at –

.....

.....

5. The registers and books of account of the proposed company will be kept at –

.....

.....

.....

6. The name in full (including any former names), address, occupation, and nationality of each applicant are –

.....

.....

.....

7. The other companies (excepting exempted companies) of which each applicant is a director are –

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.....

(Note: The registrar may upon application in respect of persons permanently resident in Vanuatu who are directors of 3 or more companies (other than exempted companies) grant exemption from listing such directorships more than once in any period of 6 months.)

8. The following applicants are acting as agent or nominee of another person –

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9. The name in full (including any former names), address, occupation, and nationality of each person for whom an applicant is acting as agent or nominee, are –

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(Note: This information need not be given in the case of a proposed exempted private company which is not of a class specified in Schedule 3.)

10. The applicants have or intend to have the following interest in the proposed company –

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11. The name (including any former names), address, occupation, and nationality of each of the first directors of the proposed company are -

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12. The name (including any former names), address, occupation, and nationality of each person other than the applicants who has or intends to have an interest (whether beneficial or otherwise) in the company to be incorporated, are –

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(Note: This information need not be given in the case of a proposed exempted private company which is not of a class specified in Schedule 3.)

13. The precise nature and fields of operation and place of the business to be carried on by the proposed company are –

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14. It is/is not intended that shares or stock of the proposed company shall be offered on the public market.

It is acknowledged by the applicants that they are familiar with or have been advised upon the principal features of the Companies Act Cap. 191, and that the terms in this form of application have the same meaning as they have in that Act.

The undersigned applicants hereby apply to the Minister pursuant to section 2 of the Act for a permit to form an incorporated company in Vanuatu in accordance with the particulars herein before set out, which particulars are, to the best of their information, knowledge and belief, true and correct.

Dated at this day of , 20 .

Note: This application must be signed by such persons as subscribed their names to the memorandum of association.

The original memorandum of association, duly subscribed and the articles of association (if any), duly signed, together with two facsimile copies thereof, shall be submitted with this application.

If the proposed company's shares or stock are to be offered on the public market, a copy of the prospectus backing the issue must be submitted.

After initial consideration of this application, the applicants may be required to furnish bank or other references as to their financial and personal standing.

SCHEDULE 2

(Sections 1, 15)

Tables A, B, C and D.

TABLE A

PART 1

Regulations for Management of a Company Limited by Shares, not being a Private Company

INTERPRETATION

1. In these regulations –

   "the Act" means the Companies Act, Cap. 191;

   "the seal" means the common seal of the company;

   "secretary" means any person appointed to perform the duties of the secretary of the company.

   Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

   Unless the context otherwise requires, words or expressions contained in these regulations shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company.

SHARE CAPITAL AND VARIATION OF RIGHTS

2. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, any share in the company may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise as the company may from time to time by ordinary resolution determine.

3. Subject to the provisions of section 70 of the Act, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the company are liable, to be redeemed on such terms and in such manner as the company before the issue of the shares may by special resolution determine.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the company is being wound-up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

5. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.

6. The company may exercise the powers of paying commissions conferred by section 65 of the Act, provided that the rate per cent or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the said section and the rate of the commission shall not exceed the rate of 10 per cent of the price at which the shares in respect whereof the same is paid are issued or an amount equal to 10 per cent of such price (as the case may be). Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other. The company may also on any issue of shares pay such brokerage as may be lawful.

7. Except as required by law, no person shall be recognised by the company as holding any share upon any trust, and the company shall not be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share or any interest in any fractional part of a share or (except only as by these regulations or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

8. Every person whose name is entered as a member in the register of members shall be entitled without payment to receive within 2 months after allotment or lodgment of transfer (or within such other period as the conditions of issue shall provide) one certificate for all his shares or several certificates each for one or more of his shares upon payment of VT 100 for every certificate after the first or such less sum as the directors

shall from time to time determine. Every certificate shall be under the seal and shall specify the shares to which it relates and the amount paid up thereon:

Provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

9. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of a fee of VT 100 or such less sum and on such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the company of investigating evidence as the directors think fit.

10. The company shall not give, whether directly or indirectly, and whether by means of a loan, guarantee, the provisions of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company or in its holding company nor shall the company make a loan for any purpose whatsoever on the security of its shares or those of its holding company, but nothing in the regulation shall prohibit transactions mentioned in the proviso to section 66(1) of the Act.

LIEN

11. The company shall have a first and paramount lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a first and paramount lieu on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's lien, if any, on a share shall extend to all dividends payable thereon.

12. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is presently payable, nor until the expiration of 14 days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.

13. To give effect to any such sale the directors may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer, and he shall not be bound to see the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

14. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue, if any, shall (subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

CALLS ON SHARES

15. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times, provided that no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call, and each member shall (subject to receiving at least 14 days' notice specifying the time or times and place of payment) pay to the company at the time or times and place so specified the amount called on his shares. A call may be revoked or postponed as the directors may determine.

16. A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed and may be required to be paid by instalments.

17. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

18. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment thereof to the time of actual payment at such rate not exceeding 10 per cent per annum as the directors may determine, but the directors shall be at liberty to waive payment of such interest wholly or in part.

19. Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall for the purposes of these regulations be deemed to be a call duly made and payable on the date on which by the terms of issue the same becomes payable, and in case of non-payment all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.

20. The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

21. The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the moneys uncalled and unpaid upon any shares held by him, and upon all or any of the moneys so advanced may (until the same would, but for such advance, become payable) pay interest at such rate not exceeding (unless the company in general meeting shall otherwise direct) 10 per cent per annum, as may be agreed upon between the directors and the member paying such sum in advance.

TRANSFER OF SHARES

22. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

23. Subject to such of the restrictions of these regulations as may be applicable, any member may transfer all or any of his shares by instrument in writing in any usual or common form or any other form which the directors may approve.

24. The directors may decline to register the transfer of a share (not being a fully paid share) to a person of whom they shall not approve, and they may also decline to register the transfer of a share on which the company has a lien.

25. The directors may also decline to recognise any instrument of transfer unless –

    (a) a fee of VT 100 or such lesser sum as the directors may from time to time require is paid to the company in respect thereof;

    (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer; and

    (c) the instrument of transfer is in respect of only one class of share.

26. If the directors refuse to register a transfer they shall within 2 months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

27. The registration of transfers may be suspended at such times and for such periods as the directors may from time to time determine:

    Provided always that such registration shall not be suspended for more than 30 days in any year.

28. The company shall be entitled to charge a fee not exceeding VT 100 on the registration of every probate, letters of administration, certificate of death or marriage, power of attorney, or other instrument.

TRANSMISSION OF SHARES

29. In case of the death of a member the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

30. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by him registered as the transferee thereof, but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that member before his death or bankruptcy, as the case may be.

31. If the person so becoming entitled shall elect to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects. If he shall elect to have another person registered he shall testify his election by executing to that person a transfer of the share. All the limitations, restrictions and provisions of these regulations relating to the right to transfer and the registration of transfer of shares shall be applicable to any such notice or transfer as aforesaid as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

32. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company:

    Provided always that the directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within 90 days the directors may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

FORFEITURE OF SHARES

33. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

34. The notice shall name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

35. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

36. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

37. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were payable by him to the company in respect of the shares, but his liability shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares.

38. A statutory declaration in writing that the declarant is a director or the secretary of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

39. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

CONVERSION OF SHARES INTO STOCK

40. The company may by ordinary resolution convert any paid-up shares into stock, and reconvert any stock into paid-up shares of any denomination.

41. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as and subject to which the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; and the directors may from time to time fix the minimum amount of stock transferable but so that such minimum shall not exceed the nominal amount of the shares from which the stock arose.

42. The holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company and in the assets on winding up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.

43. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include “stock” and “stockholder”.

ALTERATION OF CAPITAL

44. The company may from time to time by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

45. The company may by ordinary resolution –

    (a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

    (b) sub-divide its existing shares, or any of them, into shares of smaller amount than is fixed by the memorandum of association subject, nevertheless, to the provisions of section 72(1)(d) of the Act;

    (c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

46. The company may by special resolution reduce its share capital, any capital redemption reserve fund or any share premium account in any manner and with, and subject to, any incident authorised, and consent required, by law.

GENERAL MEETINGS

47. The company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than 15 months shall elapse between the date of one annual general meeting of the company and that of the next. Provided that so long as the company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The annual general meeting shall be held at such time and place as the directors shall appoint.

48. All general meetings other than annual general meetings shall be called extraordinary general meetings.

49. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 133 of the Act. If at any time there are not within Vanuatu sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

NOTICE OF GENERAL MEETINGS

50. An annual general meeting and a meeting called for the passing of a special resolution shall be called by 21 days' notice in writing at the least, and a meeting of the company other than an annual general meeting or a meeting for the passing of a special resolution shall be called by 14 days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business, and shall be given, in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company:

    Provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in this regulation, be deemed to have been duly called if it is so agreed –

    (a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and

    (b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than 95 per cent in nominal value of the shares giving that right.

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

PROCEEDINGS AT GENERAL MEETINGS

52. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets, and the reports of the directors and auditors, the election of directors in the place of those retiring and the appointment of, and the fixing of the remuneration of, the auditors.

53. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members present in person shall be a quorum.

54. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

55. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he shall not be present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act the directors present shall elect one of their number to be chairman of the meeting.

56. If at any meeting no director is willing to act as chairman or if no director is present within 15 minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

57. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the

adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

58. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded–

(a) by the chairman; or

(b) by at least three members present in person or by proxy; or

(c) by any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or

(d) by a member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid equal to not less than one-tenth of the total sum paid-up on all the shares conferring that right.

Unless a poll be so demanded a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost and an entry to that effect in the book containing the minutes of the proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

The demand for a poll may be withdrawn.

59. Except as provided in regulation 61, if a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

60. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

61. A poll demanded on the election of a chairman or on a question of adjournment shall be taken at such time as the chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

VOTES OF MEMBERS

62. Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every member present in person shall have one vote, and on a poll every member shall have one vote for each share of which he is the holder.

63. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

64. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, receiver, curator bonis, or other person in the nature of a committee, receiver or curator bonis appointed by that court, and any such committee, receiver, curator bonis or other person may, on a poll, vote by proxy.

65. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

66. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given, or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

67. On a poll votes may be given either personally or by proxy.

68. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing, or, if the appointer is a corporation, either under seal, or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the company.

69. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company or at such other place within Vanuatu as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting, at which the person named in the: instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

70. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit –

" Limited

I/We , of
being a member/members of the above-named company, hereby appoint
of or, failing him, of
, as my/our proxy to vote for me/us on my/our behalf at the (annual or extraordinary, as the case may be) general meeting of the company to be held on the
day of , 20 , and at any adjournment thereof.

Signed this day of , 20 ."

71. Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit –

" Limited

I/We , of
being a member/members of the above-named company, hereby appoint
of or, failing him, of
, as my/our proxy to vote for me/us on my/our behalf at the (annual or extraordinary, as the case may be) general meeting of the company to be held on the
day of , 20 , and at any adjournment thereof.

Signed this day of , 20 .

This form is to be used *in favour of the resolution.
against

Unless otherwise instructed, the proxy will vote as he thinks fit.

*(Strike out whichever is not desired)."

72. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

73. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the share in respect of which the proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS

74. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

DIRECTORS

75. The number of the directors and the names of the first directors shall be determined in writing by the subscribers to the memorandum of association.

76. The remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connection with the business of the company.

77. The shareholding qualification for directors may be fixed by the company in general meeting, and unless and until so fixed no qualification shall be required.

78. A director of the company may be or become a director or other officer of, or otherwise interested in, any company promoted by the company or in which the company may be interested as shareholder or otherwise, and no such director shall be accountable to the company for any remuneration or other benefits received by him as a director or officer of, or from his interest in, such other company unless the company otherwise direct.

BORROWING POWERS

79. The directors may exercise all the powers of the company to borrow money, and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and to issue debentures, debenture stock,

and other securities whether outright or as security for any debt, liability or obligation of the company or of any third party:

Provided that the amount for the time being remaining undischarged of moneys borrowed or secured by the directors as aforesaid (apart from temporary loans obtained from the company's bankers in the ordinary course of business) shall not at any time, without the previous sanction of the company in general meeting, exceed the nominal amount of the share capital of the company for the time being issued, but nevertheless no lender or other person dealing with the company shall be concerned to see or inquire whether this limit is observed. No debt incurred or security given in excess of such limit shall be invalid or ineffectual except in the case of express notice to the lender or the recipient of the security at the time when the debt was incurred or security given that the limit hereby imposed had been or was thereby exceeded.

POWERS AND DUTIES OF DIRECTORS

80. The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Act or by these regulations, required to be exercised by the company in general meeting, subject, nevertheless, to any of these regulations, and to the provisions of the Act.

81. The directors may from time to time and at any time by power of attorney appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these regulations) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

82. The company may exercise the powers conferred by section 49 of the Act with regard to having an official seal for use abroad, and such powers shall be vested in the directors.

83. The company may exercise the powers conferred upon the company by sections 123 to 126 (both inclusive) of the Act with regard to the keeping of a branch register, and the directors may (subject to the provisions of those sections) make and vary such regulations as they may think fit respecting the keeping of any such register.

84. (1) A director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company shall declare the nature of his interest at a meeting of the directors in accordance with section 208 of the Act.

(2) A director shall not vote in respect of any contract or arrangement in which he is interested, and if he shall do so his vote shall not be counted, nor shall he be counted in the quorum present at the meeting, but neither of these prohibitions shall apply to –

(a) any arrangement for giving any director any security or indemnity in respect of money lent by him to or obligation undertaken by him for the benefit of the company; or

(b) any arrangement for the giving by the company of any security to a third party in respect of a debt or obligation of the company for which the director himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or

(c) any contract by a director to subscribe for or underwrite shares or debentures of the company; or

(d) any contract or arrangement with any other company in which he is interested only as an officer of the company or as holder of shares or other securities;

and these prohibitions may at any time be suspended or relaxed to any extent, and either generally or in respect of any particular contract, arrangement or transaction, by the company in general meeting.

(3) A director may hold any other office or place of profit under the company (other than the office of auditor) in conjunction with his office of director for such period and on such terms (as to remuneration and otherwise) as the directors may determine and no director or intending director shall be disqualified by his office from contracting with the company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract, or any contract or arrangement entered into by or on behalf of the company in which any director is in any way interested, be liable to be avoided, nor shall any director so contracting or being so interested be liable to account to the company for any profit realised by any such contract or arrangement by reason of such director holding that office or of the fiduciary relation thereby established.

(4) A director, notwithstanding his interest, may be counted in the quorum present at any meeting whereat he or any other director is appointed to hold any such office or place of profit under the company or whereat the terms of any such appointment are arranged, and he may vote on any such appointment or arrangement other than his own appointment or the arrangement of the terms thereof.

(5) Any director may act by himself or his firm in a professional capacity for the company, and he or his firm shall be entitled to remuneration for professional services as if he were not a director:

Provided that nothing herein contained shall authorise a director or his firm to act as auditor to the company.

85. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the directors shall from time to time by resolution determine.

86. The directors shall cause minutes to be made in books provided for the purpose –

(a) of all appointments of officers made by the directors;

(b) of the names of the directors present at each meeting of the directors and of any committee of the directors;

(c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

87. The directors on behalf of the company may pay a gratuity or pension or allowance on retirement to any director who has held any other salaried office or place of profit with the company or to his widow or dependants and may make contributions to any fund and pay premiums for the purchase or provisions of any such gratuity, pension or allowance.

DISQUALIFICATION OF DIRECTORS

88. The office of director shall be vacated if the director –

(a) ceases to be a director by virtue of section 195 of the Act; or

(b) becomes bankrupt or makes any arrangement or composition with his creditors generally; or

(c) becomes prohibited from being a director by reason of any order made under section 200 of the Act; or

(d) becomes of unsound mind; or

(e) resigns his office by notice in writing to the company; or

(f) shall for more than 6 months have been absent without permission of the directors from meetings of the directors held during that period.

ROTATION OF DIRECTORS

89. At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

90. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

91. A retiring director shall be eligible for re-election.

92. The company at the meeting at which a director retires in manner aforesaid may fill the vacated office by electing a person thereto, and in default the retiring director shall if offering himself for re-election be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost.

93. No person other than a director retiring at the meeting shall unless recommended by the directors be eligible for election to the office of director at any general meeting unless not less than 3 nor more than 21 days before the date appointed for the meeting there shall have been left at the registered office of the company notice in writing, signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.

94. The company may from time to time by ordinary resolution increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

95. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these regulations. Any director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for re-election but shall not be taken into account in determining the directors who are to retire by rotation at such meeting.

96. The company may by ordinary resolution, of which special notice has been given in accordance with section 143 of the Act, remove any director before the expiration of his period of office notwithstanding anything in these regulations or in any agreement between the company and such director. Such removal shall be without prejudice to any claim such director may have for damages for breach of any contract of service between him and the company.

97. The company may by ordinary resolution appoint another person in place of a director removed from office under regulation 96, and without prejudice to the powers of the directors under resolution 95 the company in general meeting may appoint any person to be a director either to fill a casual vacancy or as an additional director. A person appointed in place of a director so removed or to fill such a vacancy shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

PROCEEDINGS OF DIRECTORS

98. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Vanuatu.

99. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

100. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

101. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

102. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

103. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of this meeting.

104. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.

105. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

106. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

MANAGING DIRECTOR

107. The directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment. A director so appointed shall not, whilst holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors, but his appointment shall be automatically determined if he ceases from any cause to be a director.

108. A managing director shall receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the directors may determine.

109. The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers and may from time to time revoke, withdraw, alter or vary all or any of such powers.

SECRETARY

110. The secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

111. No person shall be appointed or hold office as secretary who is –

(a) the sole director of the company; or

(b) a corporation the sole director of which is the sole director of the company; or

(c) the sole director of a corporation which is the sole director of the company.

112. A provision of the Act or these regulations requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

THE SEAL

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

DIVIDENDS AND RESERVE

114. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

115. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

116. No dividend shall be paid otherwise than out of profits.

117. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either the employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit. The directors may also without placing the same to reserve carry forward any profits which they may think prudent not to divide.

118. Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.

119. The directors may deduct from any dividend payable to any member all sums of money (if any) presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

120. Any general meeting declaring a dividend or bonus may direct payment of such dividend or bonus wholly or partly by the distribution of specific assets and in particular of paid up shares, debentures or debenture stock of any other company or in any one or more of such ways, and the directors shall give effect to such resolution, and where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient, and in particular may issue fractional certificates and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as may seem expedient to the directors.

121. Any dividend, interest or other moneys payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses or other moneys payable in respect of the shares held by them as joint holders.

122. No dividend shall bear interest against the company.

ACCOUNTS

123. The directors shall cause proper books of account to be kept with respect to -

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(b) all sales and purchases of goods by the company; and

(c) the assets and liabilities of the company.

Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

124. The books of account shall be kept at the registered office of the company, or, subject to section 148(4) of the Act, at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

125. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

126. The directors shall from time to time, in accordance with sections 149, 154 and 161 of the Act, cause to be prepared and to be laid before the company at its annual general meeting such profit and loss accounts, balance sheets, group accounts (if any) and reports as are referred to in those sections.

127. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company at its annual general meeting, together with a copy of the auditors' report, shall not less than 21 days before the date of the meeting be sent to every member of, and every holder of debentures of, the company and to every person registered under regulation 31:

Provided that this regulation shall not require a copy of those documents to be sent to any person of whose address the company is not aware or to more than one of the joint holders of any shares or debentures.

CAPITALISATION OF PROFITS

128. The company in general meeting may upon the recommendation of the directors resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of the profit and loss account or otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportions on condition that the same be not paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by such members respectively or paying up in full unissued shares or debentures of the company to be allotted and distributed credited as fully paid up to and amongst such members in the proportion aforesaid, or partly in the one way and partly in the other, and the directors shall give effect to such resolution:

Provided that a share premium account and a capital redemption reserve fund may, for the purposes of this regulation, only be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.

129. Whenever such a resolution as aforesaid shall have been passed the directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully-paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, with full power to the directors to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions, and also to authorise any person to enter on behalf of all the members entitled thereto into an agreement with the company providing for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalisation, or (as the case may require) for the payment up by the company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalised, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.

AUDIT

130. Auditors shall be appointed and their duties regulated in accordance with sections 163 to 167 of the Act.

NOTICES

131. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within Vanuatu) to the address, if any, within Vanuatu supplied by him to the company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 24 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

132. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.

133. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within Vanuatu supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

134. Notice of every general meeting shall be given in any manner herein before authorised to –

(a) every member except those members who (having no registered address within Vanuatu) have not supplied to the company an address within Vanuatu for the giving of notices to them;

(b) every person upon whom the ownership of a share devolves by reason of his being a legal personal representative or a trustee in bankruptcy of a member where the member but for his death or bankruptcy would be entitled to receive notice of the meeting; and

(c) the auditor for the time being of the company.

No other person shall be entitled to receive notices of general meetings.

WINDING UP

135. If the company shall be wound-up the liquidator may, with the sanction of an extraordinary resolution of the company and any other sanction required by the Act, divide amongst the members in specie or kind the whole or any part of the assets of the company (whether they shall consist of property of the same kind or not) and may, for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, shall think fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

INDEMNITY

136. Every director, managing director, agent, auditor, secretary and other officer for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 404 of the Act in which relief is granted to him by the court.

PART 2

Regulations for the Management of a Private Company Limited by Shares

1. The regulations contained in Part 1 of Table A (with the exception of regulations 24 and 53) shall apply.

2. The company is a private company and accordingly –

(a) the right to transfer shares is restricted in manner hereinafter prescribed;

(b) the number of members of the company (exclusive of persons who are in the employment of the company and of persons who having been formerly in the employment of the company were while in such employment and have continued after the determination of such employment to be members of the company) is limited to fifty:

Provided that where two or more persons hold one or more shares in the company jointly they shall for the purpose of this regulation be treated as a single member;

(c) any invitation to the public to subscribe for any shares or debentures of the company is prohibited;

(d) the company shall not have power to issue share warrants to bearer.

3. The directors may, in their absolute discretion and without assigning any reason therefor, decline to register any transfer of any share, whether or not it is a fully paid share.

4. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided two members present in person or by proxy shall be a quorum.

Note: Regulations 3 and 4 of this Part are alternative to regulations 24 and 53, respectively, of Part 1.

TABLE B

Form of Memorandum of Association of a Company Limited by Shares

1st. The name of the company is "West Pacific Steamship Company Limited".

2nd. The registered office of the company will be situate in Port Vila in Vanuatu.

3rd. The business which the company is authorised to carry on is unrestricted.

4th. The liability of the members is limited.

5th. The share capital of the company is VT 2,000,000 divided into 1,000 shares of VT 2,000 each.

6th. The company is a local company.

7th. The first directors of the company will be Victor Karie and Jimmy Malo.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Signatures, Names, Addresses Descriptions, Nationalities of Subscribers	**Number of Shares Taken by each Subscriber**
1. "V. Karie" Victor Karie, 10 Kumul Highway, Port Vila. Storekeeper. Ni-Vanuatu.	200
2. "J. Malo" Jimmy Malo, 5 Tukutuku Drive, Luganville. Fisherman. Ni-Vanuatu.	200
Total shares taken:	400

Dated the day of , 20 .

Witness to the above signatures: "B. Silas"
Boe Silas,
Law Clerk,
50 Independence Park,
Port Vila.

TABLE C

Form of Memorandum and Articles of Association of a Company Limited by Guarantee

Memorandum of Association

1st. The name of the company is "Vila School Association Limited".

2nd. The registered office of the company will be situate in Port Vila, in Vanuatu.

3rd. The objects of the company are –

(a) to establish and operate a school for boys in Port Vila;

(b) generally to promote education, art, science, religion and other charitable and useful objects;

(c) to apply the income and property of the company solely towards the promotion of the above objects, so that no portion thereof shall be paid or transferred to the members of the company either directly or indirectly except as remuneration for services rendered or otherwise as may be consistent with the above objects;

(d) for the furtherance of the purposes aforesaid, to operate any business and do all other such things as may be conducive or incidental to such objects.

4th. The liability of the members is limited.

5th. The company is a local company.

6th. The first directors of the company will be Victor Karie and Jimmy Malo.

7th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound-up while he is a member, or within 1 year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding VT 2,000.

8th. If upon the winding-up or dissolution of the company there remains after the discharge of all its debts and liabilities any property of the company, such property shall not be distributed among the members but shall be transferred to some other company limited by guarantee having objects similar to the objects of the company or applied to some charitable object, such other company or charity to be determined by ordinary resolution of the members of the company prior to the dissolution of the company.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Signatures, Names, Addresses, Descriptions, Nationalities of Subscribers

1. "V. Karie"
Victor Karie, 10 Kumul Highway, Port Vila. Storekeeper. Ni-Vanuatu.

2. J. Malo"
Jimmy Malo, 5 Tukutuku Drive, Luganville. Fisherman. Ni-Vanuatu.

Dated the day of , 20 .

Witness to the above signatures: "B. Silas"
Boe Silas,
Law Clerk,
50 Independance Park,
Port Vila.

Articles of Association to accompany preceding Memorandum of Association

INTERPRETATION

1. In these articles –

   "the Act" means the Companies Act, Cap. 191;

   "the seal" means the common seal of the company;

   "secretary" means any person appointed to perform the duties of the secretary of the company.

   Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

   Unless the context otherwise requires, words or expressions contained in these articles shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these articles become binding on the company.

MEMBERS

2. The number of members with which the company proposes to be registered is five hundred, but the directors may from time to time register an increase of members.

3. The subscribers to the memorandum of association and such other persons as the directors shall admit to membership shall be members of the company.

GENERAL MEETINGS

4. The company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than 15 months shall elapse between the date of one annual general meeting of the company and that of the next:

   Provided that so long as the company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The annual general meeting shall be held at such time and place as the directors shall appoint.

5. All general meetings other than annual general meetings shall be called extraordinary general meetings.

6. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 133 of the Act. If at any time there are not within Vanuatu sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

NOTICE OF GENERAL MEETINGS

7. An annual general meeting and a meeting called for the passing of a special resolution shall be called by 21 days' notice in writing at the least, and a meeting of the company other than an annual general meeting or a meeting for the passing of a special resolution shall be called by 14 days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business and shall be given, in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the articles of the company, entitled to receive such notices from the company:

   Provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in this article be deemed to have been duly called if it is so agreed –

   (a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and

   (b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together representing not less than 95 per cent of the total voting rights at that meeting of all the members.

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

PROCEEDINGS AT GENERAL MEETINGS

9. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of the consideration of the accounts, balance

sheets, and the reports of the directors and auditors, the election of directors in the place of those retiring and the appointment of, and the fixing of the remuneration of, the auditors.

10. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members present in person shall be a quorum.

11. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

12. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he shall not be present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act the directors present shall elect one of their number to be chairman of the meeting.

13. If at any meeting no director is willing to act as chairman or if no director is present within 15 minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

14. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting and from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

15. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded–

    (a) by the chairman; or

    (b) by at least three members present in person or by proxy; or

    (c) by any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting.

    Unless a poll be so demanded a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost and an entry to that effect in the book containing the minutes of proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

    The demand for a poll may be withdrawn.

16. Except as provided in article 18, if a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

17. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting, at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

18. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

VOTES OF MEMBERS

19. Every member shall have one vote.

20. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, receiver, or other person in the nature of a committee or receiver appointed by that court, and any such committee, receiver, or other person may, on a poll, vote by proxy.

21. No member shall be entitled to vote at any general meeting unless all moneys presently payable by him to the company have been paid.

22. On a poll votes may be given either personally or by proxy.

23. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing, or, if the appointer is a corporation, either under seal or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the company.

24. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company or at such other place within Vanuatu as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

25. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit –

" Limited

I/We , of
being a member/members of the above-named company, hereby appoint
of or, failing him, of
, as my/our proxy to vote for me/us on my/our behalf at the (annual or extraordinary, as the case may be) general meeting of the company to be held on the
day of , 20 , and at any adjournment thereof.

Signed this day of , 20 ."

26. Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit –

" Limited

I/We , of
being a member/members of the above-named company, hereby appoint
of or, failing him, of
, as my/our proxy to vote for me/us on my/our behalf at the (annual or extraordinary, as the case may be) general meeting of the company to be held on the
day of , 20 , and at any adjournment thereof.

Signed this day of , 20 .

This form is to be used *in favour of the resolution.
against

Unless otherwise instructed, the proxy will vote as he thinks fit.

*(Strike out whichever is not desired)."

27. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

28. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed:

Provided that no intimation in writing of such death, insanity, or revocation as aforesaid shall have been received by the company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS

29. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

DIRECTORS

30. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them.

31. The remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors shall also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connection with the business of the company.

BORROWING POWERS

32. The directors may exercise all the powers of the company to borrow money, and to mortgage or charge its undertaking and property, or any part thereof, and to issue debentures, debenture stock and other securities, whether outright or as security for any debt, liability or obligation of the company or of any third party.

POWERS AND DUTIES OF DIRECTORS

33. The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Act or by these articles, required to be exercised by the company in general meeting, subject nevertheless to the provisions of the Act or these articles.

34. The directors may from time to time and at any time by power of attorney appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

35. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the directors shall from time to time by resolution determine.

36. The directors shall cause minutes to be made in books provided for the purpose –

    (a) of all appointments of officers made by the directors;

    (b) of the names of the directors present at each meeting of the directors and of any committee of the directors;

    (c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;

    and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

DISQUALIFICATION OF DIRECTORS

37. The office of director shall be vacated if the director –

    (a) without the consent of the company in general meeting holds any other office of profit under the company; or

    (b) becomes bankrupt or makes any arrangement or composition with his creditors generally; or

    (c) becomes prohibited from being a director by reason of any order made under section 200 of the Act; or

    (d) becomes of unsound mind; or

    (e) resigns his office by notice in writing to the company; or

    (f) is directly or indirectly interested in any contract with the company and fails to declare the nature of his interest in manner required by section 208 of the Act.

    A director shall not vote in respect of any contract in which he is interested or any matter arising there out, and if he does so vote his vote shall not be counted.

ROTATION OF DIRECTORS

38. At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

39. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

40. A retiring director shall be eligible for re-election.

41. The company at the meeting at which a director retires in manner aforesaid may fill the vacated office by electing a person thereto, and in default the retiring director shall, if offering himself for re-election, be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost.

42. No person other than a director retiring at the meeting shall unless recommended by the directors be eligible for election to the office of director at any general meeting unless, not less than 3 nor more than 21 days before the date appointed for the meeting, there shall have been left at the registered office of the company notice in writing, signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.

43. The company may from time to time by ordinary resolution increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

44. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these articles. Any director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for re-election, but shall not be taken into account in determining the directors who are to retire by rotation at such meeting.

45. The company may by ordinary resolution, of which special notice has been given in accordance with section 143 of the Act, remove any director before the expiration of his period of office notwithstanding anything in these articles or in any agreement between the company and such director. Such removal shall be without prejudice to any claim such director may have for damages for breach of any contract of service between him and the company.

46. The company may by ordinary resolution appoint another person in place of a director removed from office under article 45. Without prejudice to the powers of the directors under article 44 the company in general meeting may appoint any person to be a director either to fill a casual vacancy or as an additional director. The person appointed to fill such a vacancy shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

PROCEEDINGS OF DIRECTORS

47. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Vanuatu.

48. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

49. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the articles of the company as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

50. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

51. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

52. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

53. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.

54. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

55. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

SECRETARY

56. The secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

57. A provision of the Act or these articles requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

THE SEAL

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

ACCOUNTS

59. The directors shall cause proper books of account to be kept with respect to –

    (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

    (b) all sales and purchases of goods by the company; and

    (c) the assets and liabilities of the company.

    Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

60. The books of account shall be kept at the registered office of the company, or, subject to section 148(4) of the Act, at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

61. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

62. The directors shall from time to time in accordance with sections 149, 154 and 161 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets, group accounts (if any) and reports as are referred to in those sections.

63. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting, together with a copy of the auditors' report, shall not less than 21 days before the date of the meeting be sent to every member of, and every holder of debentures of, the company:

    Provided that this article shall not require a copy of those documents to be sent to any person of whose address the company is not aware or to more than one of the joint holders of any debentures.

AUDIT

64. Auditors shall be appointed and their duties regulated in accordance with sections 163 to 167 of the Act.

NOTICES

65. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within Vanuatu) to the address, if any, within Vanuatu supplied by him to the company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 24 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

66. Notice of every general meeting shall be given in any manner hereinbefore authorised to –

    (a) every member except those members who (having no registered address within Vanuatu) have not supplied to the company an address within Vanuatu for the giving of notices to them;

    (b) every person being a legal personal representative or a trustee in bankruptcy of a member where the member but for his death or bankruptcy could be entitled to receive notice of the meeting; and

    (c) the auditor for the time being of the company.

    No other person shall be entitled to receive notices of general meetings.

Signatures, Names, Addresses, Descriptions, Nationalities of Subscribers

1. "V. Karie"
Victor Karie, 10 Kumul Highway, Port Vila. Storekeeper. Ni-Vanuatu.

2. J. Malo"
Jimmy Malo, 5 Tukutuku Drive, Luganville. Fisherman. Ni-Vanuatu.

Dated the day of , 20 .

Witness to the above signatures: "B. Silas"
Boe Silas,
Law Clerk,
50 Independance Park,
Port Vila.

TABLE D

Memorandum and Articles of Association of an Unlimited Company having a Share Capital

Memorandum of Association

1st. The name of the company is "Patent Stereotype Company".

2nd. The registered office of the company will be situate in Luganville in Vanuatu.

3rd. The objects for which the company is established are unrestricted.

4th. The company is an exempted company.

5th. The first directors of the company will be Victor Karie and Jimmy Malo.

We, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Signatures, Names, Addresses Descriptions, Nationalities of Subscribers	**Number of Shares taken by each Subscriber**
1. "V. Karie" Victor Karie, 10 Kumul Highway, Port Vila. Storekeeper. Ni-Vanuatu.	3
2. "J. Malo" Jimmy Malo, 5 Tukutuku Drive, Luganville. Fisherman. Ni-Vanuatu.	2
Total shares taken:	5

Dated the day of , 20 .

Witness to the above signatures: "B. Silas"
Boe Silas,
Law Clerk,
50 Independence Park,
Port Vila.

Articles of Association to accompany preceding Memorandum of Association

1. The number of members with which the company proposes to be registered is twenty, but the directors may from time to time register an increase of members.

2. The share capital of the company is VT 2,000,000 divided into 20 shares of VT 100,000 each.

3. The company may by special resolution –
   (a) increase the share capital by such sum to be divided into shares of such amount as the resolution may prescribe;
   (b) consolidate its shares into shares of a larger amount than its existing shares;
   (c) sub-divide its shares into shares of a smaller amount than its existing shares;
   (d) cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person;
   (e) reduce its share capital in any way.

4. The regulations of Table A, Part 1, set out in Schedule 2 to the Companies Act, Cap. 191 (other than regulations 40 to 46 inclusive) shall be deemed to be incorporated with these articles and shall apply to the company.

Signatures, Names, Addresses, Descriptions, Nationalities of Subscribers

1. "V. Karie"
   Victor Karie,
   10 Kumul Highway,
   Port Vila. Storekeeper.
   Ni-Vanuatu.

2. "J. Malo"
   Jimmy Malo,
   5 Tukutuku Drive,
   Luganville.
   Fisherman.
   Ni-Vanuatu.

Dated the day of , 20 .

Witness to the above signatures: "B. Silas"
Boe Silas,
Law Clerk,
50 Independence Park,
Port Vila.

SCHEDULE 3

(Sections 38, 130, 163, 164, 178, 179, 183, 378, 382)

Companies not entitled to the full Privileges Accorded to Private Companies by this Act

1. Any private company which is the subsidiary of a company which is not a private company.

2. Any company holding a licence under any of the following -
   (a) the Banking Act Cap. 63;
   (b) the Trust Companies Act Cap. 69;
   (c) the Insurance Act Cap. 82;
   (d) the Prevention of Fraud (Investments) Act Cap. 70.

SCHEDULE 4

(Sections 52, 53, 55, 60, 367, 368, 370)

Matters to be Specified in Prospectus and Reports to be set out therein

PART 1

MATTERS TO BE SPECIFIED

1. The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.
2. The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors.
3. The names, descriptions and addresses of the directors or proposed directors.
4. Where shares are offered to the public for subscription, particulars as to –
   (a) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters –
      (i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;
      (ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;
      (iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;
      (iv) working capital; and
   (b) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.
5. The time of the opening of the subscription lists.
6. The amount payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.
7. The number, description and amount of any shares in or debentures of the company which any person has, or is entitled to be given, an option to subscribe for, together with the following particulars of the option, that is to say –
   (a) the period during which it is exercisable;
   (b) the price to be paid for shares or debentures subscribed for under it;
   (c) the consideration (if any) given or to be given for it or for the right of it;
   (d) the names and addresses of the persons to whom it or the right to it was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.
8. The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.
9. (1) As respects any property to which this paragraph applies –
      (a) the names and addresses of the vendors;
      (b) the amount payable in cash, shares or debentures to the vendor and, where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor;
      (c) short particulars of any transaction relating to the property completed within the two preceding years in which any vendor of the property to the company or any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the company had any interest direct or indirect.
   (2) The property to which this paragraph applies is property purchased or acquired by the company or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of

the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of the issue of the prospectus, other than property –

(a) the contract for the purchase or acquisition whereof was entered into in the ordinary course of the company's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract; or

(b) as respects which the amount of the purchase money is not material.

10. The amount, if any, paid or payable as purchase money in cash, shares or debentures for any property to which paragraph 9 applies, specifying the amount if any, payable for goodwill.

11. The amount, if any, paid within the two preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in or debentures of the company, or the rate of any such commission.

12. The amount or estimated amount of preliminary expenses and the persons by whom any of those expenses have been paid or are payable, and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable.

13. Any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter, and the consideration for the payment or the giving of the benefit.

14. The dates of, parties to and general nature of every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than 2 years before the date of issue of the prospectus.

15. The names and addresses of the auditors of the company.

16. Full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

17. If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares, respectively.

18. In the case of a company which has been carrying on business, or of a business which has been carried on for less than 3 years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

PART 2

REPORTS TO BE SET OUT

19. (1) A report by the auditors of the company with respect to –

(a) profits and losses and assets and liabilities, in accordance with subparagraph (2) or (3), as the case requires; and

(b) the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the five financial years immediately preceding the issue of the prospectus, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years;

and, if no accounts have been made up in respect of any part of the period of 5 years ending on a date 3 months before the issue of the prospectus, containing a statement of that fact.

(2) If the company has no subsidiaries, the report shall –

(a) so far as regards profits and losses, deal with the profits or losses of the company in respect of each of the five financial years immediately preceding the issue of the prospectus; and

(b) so far as regards assets and liabilities, deal with the assets and liabilities of the company at the last date to which the accounts of the company were made up.

(3) If the company has subsidiaries, the report shall –

(a) so far as regards profits and losses, deal separately with the company's profits and losses as provided by subparagraph (2), and in addition, deal either –

(i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the company; or

(ii) individually with the profits or losses of each subsidiary, so far as they concern members of the company;

or, instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company and, so far as they concern members of the company, with the combined profits or losses of its subsidiaries; and

(b) so far as regards assets and liabilities, deal separately with the company's assets and liabilities as provided by subparagraph (2) and, in addition, deal either –

(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the company's assets and liabilities; or

(ii) individually with the assets and liabilities of each subsidiary;

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

20. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants (who shall be named in the prospectus) upon –

(a) the profits or losses of the business in respect of each of the five financial years immediately preceding the issue of the prospectus; and

(b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

21. (1) If –

(a) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other body corporate; and

(b) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith that body corporate will become a subsidiary of the company;

a report made by accountants (who shall be named in the prospectus) upon –

(i) the profits or losses of the other body corporate in respect of each of the five financial years immediately preceding the issue of the prospectus; and

(ii) the assets and liabilities of the other body corporate at the last date to which the accounts of the body corporate were made up.

(2) the said report shall –

(a) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired; and

(b) where the body corporate has subsidiaries, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner provided by paragraph 19(3) of this Schedule in relation to the company and its subsidiaries.

PART 3

PROVISIONS APPLYING TO PARTS 1 AND 2 OF SCHEDULE

22. Paragraphs 2, 3, 12 (so far as it relates to preliminary expenses) and 16 of this Schedule shall not apply in the case of a prospectus issued more than 2 years after the date at which the company has commenced business.

23. Every person shall for the purposes of this Schedule, be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where –

(a) the purchase money is not fully paid at the date of the issue of the prospectus;

(b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;

(c) the contract depends for its validity or fulfilment on the result of that issue.

24. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

25. References in paragraph 7 of this Schedule to subscribing for shares or debentures shall include acquiring them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.

26. For the purposes of paragraph 9 of this Schedule where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

27. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than 5 years, the accounts of the company or business have only been made up in respect of 4 years, 3 years, 2 years or 1 year, Part 2 of this Schedule shall have effect as if references to 4 years, 3 years, 2 years or 1 year, as the case may be, were substituted for references to 5 years.

28. The expression "financial year" in Part 2 of this Schedule means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of that Part of this Schedule be deemed to be a financial year.

29. Any report required by Part 2 of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

30. Any report by accountants required by Part 2 of this Schedule shall be made by accountants qualified under this Act for appointment as auditors of a company and shall not be made by any accountant who is an officer or servant, or a partner of or in the employment of an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor.

SCHEDULE 5

(Repealed)

SCHEDULE 6

(Sections 68, 150, 156, 161)

Accounts

PRELIMINARY

Paragraphs 1 to 11 of this Schedule apply to the balance sheet and 12 to 16 to the profit and loss account, and are subject to the exceptions and modifications provided for by Part 2 of this Schedule in the case of a holding or subsidiary company; and this Schedule has effect in addition to the provisions of section 206 of this Act.

PART 1

GENERAL PROVISIONS AS TO BALANCE SHEET AND PROFIT AND LOSS ACCOUNT

Balance Sheet

1. The authorised share capital, issued share capital, liabilities and assets shall be summarised, with such particulars as are necessary to disclose the general nature of the assets and liabilities, and there shall be specified –

   (a) any part of the issued capital that consists of redeemable preference shares, the earliest and latest dates on which the company has power to redeem those shares, whether those shares must be redeemed in any event or are liable to be redeemed at the option of the company and whether any (and, if so, what) premium is payable on redemption;

   (b) so far as the information is not given in the profit and loss account, any share capital on which interest has been paid out of capital during the financial year, and the rate at which interest has been so paid;

   (c) the amount of the share premium account;

   (d) particulars of any redeemed debentures which the company has power to re-issue.

2. There shall be stated under separate headings, so far as they are not written off –

   (a) the preliminary expenses;

   (b) any expenses incurred in connection with any issue of share capital or debentures;

   (c) any sums paid by way of commission in respect of any shares or debentures; and

   (d) any sums allowed by way of discount in respect of any debentures.

3. (1) The reserves, provisions, liabilities and assets shall be classified under headings appropriate to the company's business:

   Provided that –

   (a) where the amount of any class is not material, it may be included under the same heading as some other class; and

   (b) where any assets of one class are not separable from assets of another class, those assets may be included under the same heading.

   (2) Fixed assets, current assets and assets that are neither fixed nor current shall be separately identified.

   (3) The method or methods used to arrive at the amount of the fixed assets under each heading shall be stated.

4. (1) The method of arriving at the amount of any fixed asset shall, subject to the next following subparagraph, be to take the difference between –

   (a) its cost or, if it stands in the company's books at a valuation, the amount of the valuation; and

   (b) the aggregate amount provided or written off since the date of acquisition or valuation, as the case may be, for depreciation or diminution in value;

   and for the purposes of this paragraph the net amount at which any assets stand in the company's books at the commencement of this Act (after deduction of the amounts previously provided or written off for depreciation or diminution in value) shall, if the figures relating to the period before the commencement of this Act cannot be obtained without unreasonable expense or delay, be treated as if it were the amount of a valuation of those assets made at the commencement of this Act and, where any of those assets are sold, the said net amount less the amount of the sales shall be treated as if it were the amount of a valuation so made of the remaining assets.

   (2) Subparagraph (1) shall not apply –

   (a) to assets for which the figures relating to the period beginning with the commencement of this Act cannot be obtained without unreasonable expense or delay; or

   (b) to assets the replacement of which is provided for wholly or partly –

   (i) by making provision for renewals and charging the cost of replacement against the provision so made; or

   (ii) by charging the cost of replacement direct to revenue; or

   (c) to any quoted investments or to any unquoted investments of which the value as estimated by the directors is shown either as the amount of the investments or by way of note; or

   (d) to goodwill, patents or trade marks.

   (3) For the assets under each heading whose amount is arrived at in accordance with subparagraph (1), there shall be shown –

   (a) the aggregate of the amounts referred to in subparagraph (1)(a); and

   (b) the aggregate of the amounts referred to in subparagraph (1)(b).

   (4) As respects the assets under each heading whose amount is not arrived at in accordance with the said subparagraph (1) because their replacement is provided for as mentioned in subparagraph (2)(b), there shall be stated –

   (a) the means by which their replacement is provided for; and

   (b) the aggregate amount of the provision (if any) made for renewals and not used.

5. In the case of unquoted investments consisting in equity share capital (as defined by section 158(5) of this Act) of other bodies corporate (other than any whose values as estimated by the directors are separately shown, either individually or collectively or as to some individually and as to the rest collectively, and are so shown either as the amount thereof, or by way of note), the matters referred to in the following heads shall, if not otherwise shown, be stated by way of note or in a statement or report annexed –

   (a) the aggregate amount of the company's income for the financial year that is ascribable to the investments;

(b) the amount of the company's share of the net aggregate amount of the profits of the bodies in which the investments are held, being profits for the several periods to which accounts sent by them during the financial year to the company related, after deducting those bodies' losses for those periods (or vice versa);

(c) the amount of the company's share of the net aggregate amount of the undistributed profits accumulated by the bodies in which the investments are held since the time when the investments were acquired, after deducting the losses accumulated by them since that time (or vice versa);

(d) the manner in which any losses incurred by the said bodies have been dealt with in the company's accounts.

6. The aggregate amounts respectively of reserves and provisions (other than provisions for depreciation, renewals or diminution in value of assets) shall be stated under separate headings:

Provided that –

(a) this paragraph shall not require a separate statement of either of the said amounts which is not material; and

(b) the Minister may direct that he shall not require a separate statement of the amount of provisions where he is satisfied that that is not required in the public interest and would prejudice the company, but subject to the condition that any heading stating an amount arrived at after taking into account a provision (other than as aforesaid) shall be so framed or marked as to indicate that fact.

7. (1) There shall also be shown (unless it is shown in the profit and loss account or a statement or report annexed thereto, or the amount involved is not material) –

(a) where the amount of the reserves or of the provisions (other than provisions for depreciation, renewals or diminution in value of assets) shows an increase as compared with the amount at the end of the immediately preceding financial year, the source from which the amount of the increase has been derived; and

(b) where –

(i) the amount of the reserves shows a decrease as compared with the amount at the end of the immediately preceding financial year; or

(ii) the amount at the end of the immediately preceding financial year of the provisions (other than provisions for depreciation, renewals or diminution in value of assets) exceeded the aggregate of the sums since applied and amounts still retained for the purposes thereof;

the application of the amount derived from the difference.

(2) Where the heading showing the reserves or any of the provisions aforesaid is divided into sub-headings, this paragraph shall apply to each of the separate amounts shown in the sub-headings instead of applying to the aggregate amount thereof.

8. (1) There shall be shown under separate headings –

(a) the aggregate amounts respectively of the company's quoted investments and unquoted investments;

(b) if the amount of the goodwill and of any patents and trade marks or part of that amount is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company relating to the stamp duty payable in respect of any such contract or the conveyance of any such property, the said amount so shown or ascertained so far as not written off or, as the case may be, the said amount so far as it is so shown or ascertainable and as so shown or ascertained, as the case may be;

(c) the aggregate amount of any outstanding loans made under the authority of provisos (b) and (c) of section 65(1) of this Act;

(d) the aggregate amount of bank loans and overdrafts and the aggregate amount of loans made to the company which –

(i) are repayable otherwise than by instalments and fall due for repayment after the expiration of the period of 5 years beginning with the day next following the expiration of the financial year; or

(ii) are repayable by instalments any of which fall due for payment after the expiration of that period;

not being, in either case, bank loans or overdrafts;

(e) the aggregate amount which is recommended for distribution by way of dividend.

(2) Nothing in head (b) of subparagraph (1) shall be taken as requiring the amount of the goodwill, patents and trade marks to be stated otherwise than as a single item.

(3) The heading showing the amount of the quoted investments shall be subdivided, where necessary, to distinguish the investments as respects which there has, and those as respect which there has not, been granted a quotation or permission to deal on a recognised stock exchange.

(4) In relation to each loan falling within head (d) of subparagraph (1) (other than a bank loan or overdraft), there shall be stated by way of note (if not otherwise stated) the terms on which it is repayable and the rate at which interest is payable thereon:

Provided that if the number of loans is such that, in the opinion of the directors, compliance with the foregoing requirement would result in a statement of excessive length, it shall be sufficient to give a general indication of the terms on which the loans are repayable and the rates at which interest is payable thereon.

9. Where any liability of the company is secured otherwise than by operation of law on any assets of the company, the fact that that liability is so secured shall be stated, but it shall not be necessary to specify the assets on which the liability is secured.

10. Where any of the company's debentures are held by a nominee of or trustee for the company, the nominal amount of the debentures and the amount at which they are stated in the books of the company shall be stated.

11. (1) The matters referred to in the following subparagraphs shall be stated by way of note, or in a statement or report annexed, if not otherwise shown.

(2) The number, description and amount of any shares in the company which any person has an option to subscribe for, together with the following particulars of the option, that is to say –

(a) the period during which it is exercisable;

(b) the price to be paid for shares subscribed for under it.

(3) The amount of any arrears of fixed cumulative dividends on the company's shares and the period for which the dividends or, if there is more than one class, each class of them are in arrear.

(4) Particulars of any charge on the assets of the company to secure the liabilities of any other person, including, where practicable, the amount secured.

(5) The general nature of any other contingent liabilities not provided for and, where practicable, the aggregate amount or estimated amount of those liabilities, if it is material.

(6) Where practicable the aggregate amount or estimated amount, if it is material, of contracts for capital expenditure, so far as not provided for and, where practicable, the aggregate amount or estimated amount, if it is material, of capital expenditure authorised by the directors which has not been contracted for.

(7) In the case of fixed assets under any heading whose amount is required to be arrived at in accordance with paragraph 4(1) (other than unquoted investments) and is so arrived at by reference to a valuation, the years (so far as they are known to the directors) in which the assets were severally valued and the several values, and, in the case of assets that have been valued during the financial year, the names of the persons who valued them or particulars of their qualifications for doing so and (whichever is stated) the bases of valuation used by them.

(8) If there are included amongst fixed assets under any heading (other than investments) assets that have been acquired during the financial year, the aggregate amount of the assets acquired as determined for the purpose of making up the balance sheet, and if during that year any fixed assets included under a heading in. the balance sheet made up with respect to the immediately preceding financial year (other than investments) have been disposed of or destroyed, the aggregate amount thereof as determined for the purpose of making up that balance sheet.

(9) Of the amount of fixed assets consisting of land, how much is ascribable to land of freehold tenure and how much to land of leasehold tenure, and, of the latter, how much is ascribable to land held on long lease and how much to land held on short lease.

(10) If in the opinion of the directors any of the current assets have not a value, on realization in the ordinary course of the company's business, at least equal to the amount at which they are stated, the fact that the directors are of that opinion.

(11) The aggregate market value of the company's quoted investments where it differs from the amount of the investments as stated, and the stock exchange value of any investments of which the market value is shown (whether separately or not) and is taken as being higher than their stock exchange value.

(12) If the amount carried forward for stock in trade or work in progress is material for the appreciation by its members of the company's state of affairs or of its profit or loss for the financial year, the manner in which that amount has been computed.

(13) The basis on which foreign currencies have been converted into the currency of account where the amount of the assets or liabilities affected is material.

(14) Except in the case of the first balance sheet laid before the company after the commencement of this Act, the corresponding amounts at the end of the immediately preceding financial year for all items shown in the balance sheet.

Profit and Loss Account

12. (1) There shall be shown –

(a) the amount charged to revenue by way of provision for depreciation, renewals or diminution in value of fixed assets;

(b) the amount of the interest on loans of the following kinds made to the company (whether on the security of debentures or not), namely, bank loans, overdrafts and loans which, not being bank loans or overdrafts –

(i) are repayable otherwise than by instalments and fall due for repayment before the expiration of the period of 5 years beginning with the day next following the expiration of the financial year; or

(ii) are repayable by instalments the last of which falls for payment before the expiration of that period;

and the amount of the interest on loans of other kinds so made (whether on the security of debentures or not);

(c) the amounts respectively provided for redemption of share capital and for redemption of loans;

(d) the amount, if material, set aside or proposed to be set aside to, or withdrawn from, reserves;

(e) subject to subparagraph (2), the amount, if material, set aside to provisions other than provisions for depreciation, renewals or diminution in value of assets or, as the case may be, the amount, if material, withdrawn from such provisions and not applied for the purposes thereof;

(f) the amounts respectively of income from quoted investments and income from unquoted investments;

(g) if a substantial part of the company's revenue for the financial year consists in rents from land, the amount thereof (after deduction of ground-rents, rates and other out-goings);

(h) the amount, if material, charged to revenue in respect of sums payable in respect of the hire of plant and machinery;

(i) the aggregate amount of the dividends paid and proposed.

(2) The registrar may direct that a company shall not be obliged to show an amount set aside to provisions in accordance with subparagraph (1)(e), if the registrar is satisfied that that is not required in the public interest and would prejudice the company, but subject to the condition that any heading stating an amount arrived at after taking into account the amount set aside as aforesaid shall be so framed or marked as to indicate that fact.

(3) If, in the case of any assets in whose case an amount is charged to revenue by way of provision for depreciation or diminution in value, an amount is also so charged by way of provision for renewal thereof, the last-mentioned amount shall be shown separately.

(4) If the amount charged to revenue by way of provision for depreciation or diminution in value of any fixed assets (other than investments) has been determined otherwise than by reference to the amount of those assets as determined for the purpose of making up the balance sheet, that fact shall be stated.

13. The amount of any charge arising in consequence of the occurrence of an event in a preceding financial year and of any credit so arising shall, if not included in a heading relating to other matters, be stated under a separate heading.

14. The amount of the remuneration of the auditors shall be shown under a separate heading, and for the purposes of this paragraph, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration".

15. (1) The matters referred to in subparagraphs (2) and (4) below shall be stated by way of note, if not otherwise shown.

(2) The turnover for the financial year, except in so far as it is attributable to the business of such class as may be prescribed for the purposes of this subparagraph.

(3) If some or all of the turnover is omitted by reason of its being attributable as aforesaid, the fact that it is omitted.

(4) The method by which turnover stated is arrived at.

(5) A company shall not be subject to the requirements of this paragraph if it is neither a holding company nor a subsidiary of another body corporate and the turnover which, apart from this subparagraph, would be required to be stated does not exceed VT 10,000,000.

16. (1) The matters referred to in the following subparagraphs shall be stated by way of note, if not otherwise shown.

(2) If depreciation or replacement of fixed assets is provided for by some method other than a depreciation charge or provision for renewals, or is not provided for, the method by which it is provided for or the fact that it is not provided for, as the case may be.

(3) Except in the case of the first profit and loss account laid before the company after the commencement of this Act the corresponding amounts for the immediately preceding financial year for all items shown in the profit and loss account.

(4) Any material respects in which any items shown in the profit and loss account are affected –

(a) by transactions of a sort not usually undertaken by the company or otherwise by circumstances of an exceptional or non-recurrent nature; or

(b) by any change in the basis of accounting.

PART 2

SPECIAL PROVISIONS WHERE THE COMPANY IS A HOLDING OR SUBSIDIARY COMPANY

Modifications of and Additions to Requirements as to Company's own Accounts

17. (1) This paragraph shall apply where the company is a holding company, whether or not it is itself a subsidiary of another body corporate.

(2) The aggregate amount of assets consisting of shares in, or amounts owing (whether on account of a loan or otherwise) from, the company's subsidiaries, distinguishing shares from indebtedness, shall be set out in the balance sheet separately from all the other assets of the company, and the aggregate amount of indebtedness (whether on account of a loan or otherwise) to the company's subsidiaries shall be so set out separately from all its other liabilities and –

(a) the references in Part 1 of this Schedule to the company's investments (except those in paragraphs 11(8) and 12(4)) shall not include investments in its subsidiaries required by this paragraph to be separately set out; and

(b) paragraph 4, paragraph 12(1)(a), and paragraph 16(2) of this Schedule shall not apply in relation to fixed assets consisting of interests in the company's subsidiaries.

(3) There shall be shown by way of note on the balance sheet or in a statement or report annexed thereto the number, description and amount of the shares in and debentures of the company held by its subsidiaries or their nominees, but excluding any of those shares or debentures in the case of which the subsidiary is concerned as personal representative or in the case of which it is concerned as trustee and neither the company nor any subsidiary thereof is beneficially interested under the trust, otherwise than by way of security only for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(4) Where group accounts are not submitted, there shall be annexed to the balance sheet a statement showing –

(a) the reasons why subsidiaries are not dealt with in group accounts;

(b) the net aggregate amount, so far as it concerns members of the holding company and is not dealt with in the company's accounts, of the subsidiaries' profits after deducting the subsidiaries' losses (or vice versa) –

(i) for the respective financial years of the subsidiaries ending with or during the financial year of the company; and

(ii) for their previous financial years since they respectively became the holding company's subsidiary;

(c) the net aggregate amount of the subsidiaries' profits after deducting the subsidiaries' losses (or vice versa) –

(i) for the respective financial years of the subsidiaries ending with or during the financial year of the company; and

(ii) for their previous financial years since they respectively became the holding company's subsidiary;

so far as those profits are dealt with, or provision is made for those losses, in the company's accounts;

(d) any qualifications contained in the report of the auditors of the subsidiaries on their accounts for their respective financial years ending as aforesaid, and any note or saving contained in those accounts to call attention to a matter which, apart from the note or saving, would properly have been referred to in such a qualification, is so far as the matter which is the subject of the qualification or note is not covered by the company's own accounts and is material from the point of view of its members;

or, in so far as the information required by this subparagraph is not obtainable, a statement that it is not obtainable:

Provided that the Minister may, on the application or with the consent of the company's directors, direct that in relation to any subsidiary this subparagraph shall not apply or shall apply only to such extent as may be provided by the direction.

(5) Paragraphs (b) and (c) of subparagraph (4) shall apply only to profits and losses of a subsidiary which may properly be treated in the holding company's accounts as revenue profits or losses, and the profits or losses attributable to any shares in a subsidiary for the time being held by the holding company or any other of its subsidiaries shall not (for that or any other purpose) be treated as aforesaid so far as they are profits or losses for the period before the date on or as from which the shares were acquired by the company or any of its subsidiaries, except that they may in a proper case be so treated where –

(a) the company is itself the subsidiary of another body corporate; and

(b) the shares were acquired from that body corporate or a subsidiary of it;

and for the purpose of determining whether any profits or losses are to be treated as profits or losses for the said period the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reasonable accuracy by reference to the facts, be treated as accruing from day to day during that year and be apportioned accordingly.

(6) Where group accounts are not submitted, there shall be annexed to the balance sheet a statement showing, in relation to the subsidiaries (if any) whose financial years did not end with that of the company –

(a) the reasons why the company's directors consider that the subsidiaries' financial years should not end with that of the company; and

(b) the dates on which the subsidiaries' financial years ending last before that of the company respectively ended or the earliest and latest of those dates.

18. (1) The balance sheet of a company which is a subsidiary of another body corporate, whether or not it is itself a holding company, shall show the aggregate amount of its indebtedness to all bodies corporate of which it is a subsidiary or a fellow subsidiary and the aggregate amount of indebtedness of all such bodies corporate to it, distinguishing in each case between indebtedness in respect of debentures and otherwise, and the aggregate amount of assets consisting of shares in fellow subsidiaries.

(2) For the purposes of this paragraph a company shall be deemed to be a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is the other's.

Consolidated Accounts of Holding Company and Subsidiaries

19. Subject to the following paragraphs of this Part of this Schedule, the consolidated balance sheet and profit and loss account shall combine the information contained in the separate balance sheets and profit and loss accounts of the holding company and of the subsidiaries dealt with by the consolidated accounts, but with such adjustments (if any) as the directors of the holding company think necessary.

20. Subject as aforesaid, the consolidated accounts shall, in giving the said information, comply so far as practicable, with the requirements of this Act as if they were the accounts of an actual company.

21. Sections 152 and 206 of this Act shall not, by virtue of paragraphs 19 and 20, apply for the purpose of the consolidated accounts.

22. Paragraph 7 of this Schedule shall not apply for the purpose of any consolidated accounts laid before a company with the first balance sheet so laid after the commencement of this Act.

23. In relation to any subsidiaries of the holding company not dealt with by the consolidated accounts–

(a) subparagraphs (2) and (3) of paragraph 17 shall apply for the purpose of those accounts as if those accounts were the accounts of an actual company of which they were subsidiaries; and

(b) there shall be annexed the like statement as is required by subparagraph (4) of paragraph 17 where there are no group accounts, but as if references therein to the holding company's accounts were references to the consolidated accounts.

24. In relation to any subsidiaries (whether or not dealt with by the consolidated accounts), whose financial years did not end with that of the company, there shall be annexed the like statement as is required by subparagraph (6) of paragraph 17 where there are no group accounts.

PART 3

Interpretation of Schedule

25. (1) For the purposes of this Schedule, unless the context otherwise requires –

(a) the expression "provision" shall, subject to subparagraph (2), mean any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability of which the account cannot be determined with substantial accuracy;

(b) the expression "reserve" shall not, subject as aforesaid, include any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability;

and in this paragraph the expression "liability" shall include all liabilities in respect of expenditure contracted for and all disputed or contingent liabilities.

(2) Where –

(a) any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, not being an amount written off in relation to fixed assets before the commencement of this Act; or

(b) any amount retained by way of providing for any known liability;

is in excess of that which in the opinion of the directors is reasonably necessary for the purpose, the excess shall be treated for the purposes of this Schedule as a reserve and not as a provision.

26. For the purposes aforesaid, the expression “quoted investment” means an investment as respects which there has been granted a quotation or permission to deal on an approved stock exchange, or on any stock exchange of repute outside Vanuatu, and the expression “unquoted investment” shall be construed accordingly.

27. For the purposes aforesaid, the expression "long lease" means a lease in the case of which the portion of the term for which it was granted remaining unexpired at the end of the financial year is not less than 50 years; the expression “short lease” means a lease which is not a long lease; and the expression “lease” includes an agreement for a lease.

28. For the purposes aforesaid, a loan shall be deemed to fall due for repayment, and an instalment of a loan shall be deemed to fall due for payment, on the earliest date on which the lender could require repayment or, as the case may be, payment if he exercised all options and rights available to him.

SCHEDULE 7

(Sections 26, 392, 393)

Fees

PART 1

TABLE OF FEES TO BE PAID TO THE REGISTRAR

Matter in respect of which fee is payable			Amount of Fee (VT)
Local companies:			
1.	Registration fee upon registration of company with an authorised capital of –		
	(i)	VT 35,000,000 or less	30,000
	(ii)	more than VT 35,000,000, but not more than VT 50,000,000	50,000
	(iii)	more than VT 50,000,000, but not more than VT 100,000,000	100,000
	(iv)	more than VT 100,000,000, but not more than VT 200,000,000	150,000
	(v)	more than VT 200,000,000, but not more than VT 300,000,000	200,000
	(vi)	more than VT 300,000,000	250,000
2.	Annual fee payable in accordance with section 392 by a company with an authorised capital of –		
	(i)	VT 35,000,000 or less	30,000
	(ii)	more than VT 35,000,000, but not more than VT 50,000,000	50,000
	(iii)	more than VT 50,000,000, but not more than VT 100,000,000	100,000
	(iv)	more than VT 100,000,000, but not more than VT 200,000,000	150,000
	(v)	more than VT 200,000,000, but not more than VT 300,000,000	200,000
	(vi)	more than VT 300,000,000	250,000
3.	Registration fee upon registration of a company not having a share capital –		
	For the first twenty-five members stated in the Articles		30,000
	For each subsequent twenty-five members or less		7,500
4.	Annual fee payable in accordance with section 392 by every company not having a share capital –		
	For the first twenty-five members stated in the Articles		30,000
	For each subsequent twenty-five members or less		7,500
5.	Registration fee upon registration of a company limited by guarantee or an unlimited company having a share capital		The same amount as would be payable for registration if the company were limited by shares or the same amount as would be so charged if the company had not a share capital, whichever is the higher.
6.	Annual fee payable in accordance with section 392 by every company limited by guarantee or by every unlimited company having a share capital		The same amount as would be payable for the annual fee if the company were limited by shares or the same amount as would be charged if the company had not a share capital, whichever is the higher.

Exempted companies:			
7.	Registration fee upon registration of a company limited by shares with an authorised capital of –		
	(i)	VT 50,000,000 or less	50,000
	(ii)	more than VT 50,000,000, but not more than VT 100,000,000	75,000
	(iii)	more than VT 100,000,000, but not more than VT 200,000,000	150,000
	(iv)	more than VT 200,000,000, but not more than VT 300,000,000	200,000
	(v)	more than VT 300,000,000	250,000
8.	Annual fee, upon each anniversary of registration of a company with an authorised capital of –		
	(i)	VT 50,000,000 or less	50,000
	(ii)	more than VT 50,000,000, but not more than VT 100,000,000	75,000
	(iii)	more than VT 100,000,000, but not more than VT 200,000,000	150,000
	(iv)	more than VT 200,000,000, but not more than VT 300,000,000	200,000
	(v)	more than VT 300,000,000	250,000
9.	Registration fee upon registration of a company not having a share capital–		
	For the first twenty-five members stated in the Articles		50,000
	For each subsequent twenty-five members or less		10,000
10.	Annual fee payable in accordance with section 392 by every company not having a share capital –		
	For the first twenty-five members stated in the Articles		50,000
	For each subsequent twenty-five members or less		10,000
11.	Registration fee upon registration of a company limited by guarantee or an unlimited company having a share capital	The same amount as would be payable for registration if the company were limited by shares or the same amount as would be so charged if the company had not a share capital, whichever is the higher.	
12.	Annual fee payable in accordance with section 392 by every company limited by guarantee or by every unlimited company having a share capital	The same amount as would be payable for the annual fee if the company were limited by shares or the same amount as would be payable if the company had not a share capital, whichever is the higher.	
Overseas companies:			
13.	Registration fee upon delivery of documents required by section 359		30,000
14.	Annual fee in accordance with section 392		30,000
Redomiciled companies:			
15.	Fee payable upon granting of a permit to register a foreign corporation as being continued in Vanuatu		12,500
16.	Fee upon registration of a foreign corporation as being continued in Vanuatu:		
	(i)	as a local company	The same amount as is payable by a local company.
	(ii)	as an exempt company	The same amount as is payable by an exempt company.

17.	Annual fee payable in accordance with section 392:		
	(i)	as a local company	The same amount as is payable by a local company.
	(ii)	as an exempt company	The same amount as is payable by an exempt company.
All companies			
18.	Reservation of name		2,000
19.	Fee for registration of an increase in authorised capital		The difference between the fee paid on the initial registration and the fee which would have been payable had the company been registered with the total of the increased capital.
20.	Fee for certifying as a true copy any memorandum of any article of association by the registrar		3,000
21.	Fee for certifying as a true copy any other documents by the registrar		2,000
22.	Fee for changing name of company		15,000 Provided that the registrar may, in his absolute discretion, reduce or remit this fee.
23.	Fee for each extract from company's file –		
	Certified		3,500
	Uncertified		1,500
Out of time fees			
24.	Upon every application for an extension of time made pursuant to Sections 127, 132, or 149		3,000
25.	(i)	Upon holding an annual general meeting more than 8 months after the date to which the annual accounts have been made:	If the annual general meeting is held or the annual return is lodged or the fee is paid:
	(ii)	Upon holding an annual general meeting later than the last due date for the holding of the annual general meeting:	(a) less than 31 days after the due date 5,000
	(iii)	Upon lodging late an annual return under section 127:	(b) more than 30 days but less than 61 days after due date 5,000
	(iv)	Upon the late payment of any fee payable under this Schedule:	(c) more than 60 days but less than 91 days after due date 15,000
	(v)	Upon lodging late an annual return under section 377	(d) more than 90 days but less than 121 days after due date 20,000 (e) more than 120 days after the due date 25,000 or in any case such lesser fee as the registrar may fix which shall be in addition to any other fee payable under any other item in this Schedule.

PART 2

(*Repealed*)

SCHEDULE 8

(Section 308)

PREFERENTIAL DEBTS
LIST OF ACTS REFERRED TO IN SECTION 308

1. Customs Act [Cap. 3]*
2. Gambling (Prohibition) Act [Cap. 10]
3. Hotel and Licensed Premises Tax Act [Cap. 141]*
4. Gaming Control Act [Cap. 172]
5. Business Licence Act [Cap. 173]*
6. Video Cassettes (Tax on Hiring) Act [Cap. 180]*
7. Rent Taxation Act [Cap. 196]
8. Lotteries Act [Cap. 205]

Table of Amendments (since the Revised Edition 1988)

1	*Amended by Act 31 of 1992*	*308(2)*	*Amended by Act 4 of 1997*
125(1)	*Amended by Act 4 of 1990*	*377 (Heading)*	*Amended by Act 4 of 1990*
125(2)	*Inserted by Act 4 of 1990*	*377(1)*	*Amended by Act 4 of 1990*
127(1)	*Amended by Act 4 of 1990*	*378(1A)*	*Inserted by Act 27 of 2000*
127	*Substituted by Act 31 of 1992*	*392(1)(d)*	*Amended by Act 4 of 1990; Substituted by Act 31 of 1992*
128(1)	*Amended by Act 4 of 1990*		
130(1)	*Amended by Act 4 of 1990*	*392(1)(e)*	*Repealed by Act 4 of 1990*
128-131	*Repealed by Act 31 of 1992*	*392(3)*	*Amended by Act 4 of 1990*
149	*Substituted by Act 31 of 1992*	*392(3A),(3B)*	*Inserted by Act 27 of 1993*
149A-149C	*Inserted by Act 31 of 1992*	*408*	*Substituted by Act 4 of 1990, amended by Act 31 of 1992*
161	*Substituted by Act 31 of 1992*		
163(1),(2)	*Amended by Act 31 of 1992*	*Schedule 5*	*Repealed by Act 31 of 1992*
250(5)	*Inserted by Act 4 of 1990*	*Schedule 7*	*Amended by Acts 4 of 1990, 31 of 1992*
308(1)(a)	*Amended by Act 4 of 1997*	*Schedule 8*	*Inserted by Act 31 of 1992*
308(1)(d)	*Inserted by Act 31 of 1992*		

* *Editor's note: Caps. 14 and 180 have since been repealed; Cap. 3 has been repealed and replaced by Cap. 257; Cap. 173 has been repealed and replaced by Cap. 249.*