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ACTS

**INTERNATIONAL COMPANIES ACT
NO.32 OF 1992**

ARRETES

ORDERS

**INTERNATIONAL COMPANIES (MODEL
CONSTITUTION) ORDER NO.13 OF 1993.**

REPUBLIC OF VANUATU

International Companies Act No.

32 of 1992

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REPUBLIC OF VANUATU

Assent: 16/12/92
Commencement: 18/05/93

INTERNATIONAL COMPANIES ACT NO. 32 OF 1992.

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

BE IT ENACTED by the President and Parliament as follows:

PART 1

PRELIMINARY

INTERPRETATION

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

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

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

"Companies Act" means the Companies Act [Cap. 191];

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

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

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

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

- (a) in the case of members who have given a guarantee, to such amount as they have respectively undertaken to contribute to the assets of the company in the event of it being wound up; and
- (b) in the case of members who are shareholders, to the amount, if any, unpaid on the shares respectively held by them.

"court" means the Supreme Court of Vanuatu;

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

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

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

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

"Gazette" means the Official Gazette;

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

"member" means any person:-

- (a) who agrees to become a member of a company and whose name is entered in the Register of Members; or
- (b) who from time to time is the holder of any bearer shares in the company; or
- (c) who is deemed to be a member pursuant to section 6;

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

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

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

"Registered share" means any share issued by an international company standing in the register of members of the company in the name of a member;";

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

"Registrar" means the Registrar of International Companies or such other person empowered under section 119 of this Act to carry out the duties of the Registrar;

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

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

"resolution" in relation to a resolution of members means:-

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

to vote thereon and who voted; or

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

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

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

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

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

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

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

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

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

- (2) Subject to any limitations in the constitution, shares that a company purchases, redeems or otherwise acquires may be cancelled or held as treasury shares.
- (3) (a) A company satisfies the solvency test if
- (i) it is able to pay its debts as they become due in the normal course of business; and
 - (ii) the realisable value of the company's assets is greater than the aggregate of the present value of its liabilities, whether contingent or otherwise.
- (b) In determining whether a company satisfies the solvency test regard may be had either to financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances, or a fair valuation or other method that is reasonable in the circumstances.
- (c) In this subsection, "realisable value", in relation to any asset, means the price that would be paid for that asset by a purchaser in an "at arms length" transaction.

PART 2 COMPANY FORMATION AND CONSTITUTION

FORMATION

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

- (a) a company limited by shares;
- (b) a company limited by guarantee; or
- (c) a company limited both by shares and by guarantee.

CONSTITUTION

3. (1) The constitution of every company shall state:-

- (a) the name of the company;
 - (b) the address within Vanuatu of the first registered office of the company;
 - (c) the name and address within Vanuatu of the first registered agent of the company;
 - (d) the objects or purposes for which the company is to be incorporated;
 - (e) whether the company is a company limited by shares, a company limited by guarantee or a company limited both by shares and by guarantee;
 - (f) in the case of a company limited by guarantee, that each member undertakes to contribute to the assets of the company in the event of it being wound up while he is a member or within 3 months, or such longer period as may be specified in the constitution, after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.
 - (g) in the case of a company limited both by shares and by guarantee, that each member giving a guarantee undertakes to contribute to the assets of the company in the event of it being wound up while he is a member or within 3 months, or such longer period as may be specified in the constitution, after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.
- (2) For the purposes of subsections (1)(d), the constitution may contain a statement either alone or with other objects or purposes that the objects or purposes of the company are unrestricted.
- (3) The constitution may name the first directors of the company.
- (4) The Minister shall, by Order, prescribe model constitutions for each of the types of company specified in section 2(2).
- (5) The constitution of every company shall prescribe regulations for the company and the company may in its constitution adopt all or any of the regulations contained in the model constitution appropriate for its type.
- (6) In so far as the constitution does not exclude or modify them, the regulations contained in the model constitution appropriate for its type 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 its duly registered constitution.
- (7) The constitution of every company shall be:-
- (a) printed
 - (b) divided into paragraphs numbered consecutively; and

(c) signed by each incorporator.

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

NAMES

4. (1) Subject to subsection (2), an international company shall have as part of and at the end of its name:-
- (a) the word "Corporation" or the abbreviation "Corp";
 - (b) the word "Incorporated" or the abbreviation "Inc.";
 - (c) the word "Limited" or the abbreviation "Ltd";
 - (d) the words "Sendirian Berhad" or the abbreviation "Sdn Bhd";
 - (e) the words "Societe a Responsabilite Limitee" or the abbreviation "SARL";
 - (f) the words "Besloten Vennootschap" or the abbreviation "B.V."; or
 - (g) the words "Gesellschaft mit beschränkter Haftung" or the abbreviation "GmbH".
- (2) Notwithstanding the provisions of subsection (1), a company may, in lieu of any of the words or abbreviations specified therein, have as part of its name any other words or popular abbreviations of those words in any language being any words or abbreviations which a registered agent can satisfy the Registrar connotes the existence of a body corporate as distinct from any other person or entity and such words or abbreviation may appear at the beginning, the end or elsewhere in the name of the company in accordance with common practice.
- (3) No company shall have a name that :-
- (a) is identical with the name of a company registered under this Act or the Companies Act or under which a company has at any time in the previous 20 years been so registered or so nearly resembles such name as to be in the opinion of the Registrar calculated or likely to deceive or mislead;
 - (b) contains any word or expression that, in the opinion of the Registrar, suggests the patronage of or any connection with the Government of Vanuatu, a department thereof, a statutory corporation or board or a local or municipal authority;
 - (c) is, in the opinion of the Registrar, undesirable; or
 - (d) contains other than characters or numerals of any language or such other symbols as may be approved by the Registrar.
- (4) If the name of a company is to contain other than romanised characters or arabic numerals, a certified translation of the name in either the English or French languages shall be provided to the Registrar whose prior approval to the use of the name shall be obtained.
- (5) A company may, by resolution and with the written approval of the Registrar, change its name.

- (6) Where a company is registered with a name that contravenes subsections (1), (2) (3) or (4) the Registrar may give notice to the company to change its name and if it fails to do so within 60 days from the date of the notice the Registrar shall change the name of the company to such name as he deems appropriate and he shall publish a notice of the change in the Gazette.
- (7) Where the name of a company is changed the Registrar shall enter the new name in the Register in place of the former name and shall issue a certificate of change of name.
- (8) The change of name of a company shall take effect from the date of the certificate issued under subsection (6) and shall not affect any rights or obligations of the company or render defective any legal proceedings by or against it, and any legal proceedings that may have been commenced by or against it in its former name may be continued by or against it in its new name.
- (9) Subject to the Business Names Act No.6 of 1990, where a company carries on business under any name other than its registered name or continues to use its former name after it has been changed, the company and every officer who knowingly permits the use of the former name shall be liable on conviction to a daily default fine of \$10.
- (10) A change of name of a company shall be deemed not to be an amendment to its constitution;
- (11) The Registrar shall, upon a request made by any person, reserve for six months any name under which a company could be registered. The Registrar may extend the period for which a name is reserved for further periods of six months.
- (12) During a period for which a name is reserved no company, other than the company or intended company for which the name is reserved, shall be registered by that name.

INCORPORATION

5. (1) A person wishing to incorporate a company shall file its constitution with the Registrar.
- (2) Where he is satisfied that all the requirements of this Act in respect of incorporation and all matters precedent and incidental thereto have been complied with, the Registrar shall:-
 - (a) register the constitution in a register to be maintained by him and to be known as the Register of International Companies;
 - (b) issue a certificate stating that the company is incorporated with limited liability and that the company is entitled to commence business; and
 - (c) sign the certificate or authenticate it by his official seal.
- (3) A company shall, from the date of incorporation shown on the certificate, be a body corporate with perpetual succession being a person distinct from its members.
- (4) A certificate of incorporation issued by the Registrar shall be conclusive evidence that the requirements of this Act in respect of incorporation have been complied with and that the company has been incorporated under this Act on and from the date stated in the certificate, under the name contained in its constitution.

INCORPORATORS TO BE FIRST MEMBERS

6. Each incorporator shall, from the date of incorporation, be deemed to be a member of the company equally with any other incorporator until the allotment of any shares in the company at which time, unless shares are allotted to him, he shall cease to be a member.

AMENDMENT OF CONSTITUTION

7. (1) Subject to any limitations therein, a company may amend its constitution by a resolution of members or, where permitted by its constitution, by a resolution of directors.
- (2) (a) A company that amends its constitution shall within 14 days of the date of the resolution being passed file with the Registrar a certified copy of the resolution amending the constitution;
- (b) The copy of the resolution filed in accordance with this subsection shall be certified by -
- (i) the lawyer engaged in advising the company, or
- (ii) the registered agent of the company.
- (3) An amendment to a constitution shall have effect from the time the amendment is passed.
- (4) A company that contravenes subsection (2) shall be liable on conviction to a daily default fine of \$50.
- (5) A director who knowingly permits the contravention of subsection (2) shall be liable on conviction to a daily default fine of \$50.

COPIES OF CONSTITUTION

8. (1) A company shall, when requested by any member, send or provide to him a copy of its constitution being in accordance with any amendments thereto subject to payment of such amount not exceeding \$50 as the directors may determine to be reasonably necessary to defray the costs of preparing and furnishing it.
- (2) Where an amendment is made to a company's constitution, every copy of the constitution issued after the date of the amendment shall be in accordance with the amendment.
- (3) A company that contravenes this section shall be liable on conviction to a fine of \$500.
- (4) A director of a company who knowingly permits the contravention of this section shall be liable on conviction to a fine of \$500.

PART 3

COMPANY POWERS, RESTRICTIONS AND LIABILITIES

POWERS

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

- (a) guarantee a liability or obligation of any person and to secure any of its obligations by mortgage, pledge or other charge of or over any of its assets for that purpose;
 - (b) protect the assets of the company for the benefit of the company, its creditors and its members and, at the discretion of the directors, for any person having a direct or indirect interest in the company; and
 - (c) make gifts of any of the property of the company, provided that it will, after making any such gift, satisfy the solvency test.
- (2) For the purpose of subsection (1)(b), notwithstanding any other provision of this Act or of any other enactment or rule of law for the time being in force in Vanuatu to the contrary, save the law as to fraudulent preference and the law as to dispositions made with intent to defraud creditors, the directors may cause the company to transfer any of its assets, business or liabilities in trust to one or more trustees and, with respect to such transfer, the directors may provide that the company, its creditors, its members, partners or any person having a direct or indirect interest in the company, or any of them, may be the beneficiaries.

RESTRICTIONS ON INTERNATIONAL COMPANIES

10. (1) An international company shall not:-
- (a) carry on business in Vanuatu;
 - (b) acquire or own an interest in immovable property situate in Vanuatu other than a lease referred to in subsection (2)(b);
 - (c) carry on banking business as defined by the Banking Act [Cap. 63];
 - (d) carry on trust business as defined by the Trust Companies Act [Cap. 69];
 - (e) carry on insurance business as defined by the Insurance Act [Cap. 82]; or
 - (f) carry on company management business;
 - (g) at any time have less than one member;
 - (h) make any invitation to the public to -
 - (i) subscribe for any shares or debentures in the company; or
 - (ii) deposit money with or lend money to the company.
- (2) For the purposes of subsection (1)(a) an international company shall not be treated as carrying on business in Vanuatu by reason only that it:-
- (a) carries on business with another company incorporated under this Act or in furtherance of the business of the company carried on outside Vanuatu;
 - (b) leases premises from which to carry on its business as permitted by this Act;
 - (c) makes or maintains deposits with a person licensed to carry on banking business pursuant to the Banking Act [Cap. 63];

- (d) obtains professional services from its registered agent, counsel, attorneys, accountants, bookkeepers, trust companies, management companies, investment advisers, insurance brokers or agents or other similar persons carrying on business within Vanuatu;
 - (e) prepares or maintains its books and records within Vanuatu;
 - (f) holds meetings within Vanuatu of its directors or members;
 - (g) holds shares, debt obligations or other securities in a company incorporated under this Act or under the Companies Act; or
 - (h) issues shares, debt obligations or other securities to any person resident in Vanuatu or any company incorporated under this Act or under the Companies Act.
- (3) A company may be wound up by the court upon a petition presented by the Registrar if it contravenes any of the provisions of subsection (1).
 - (4) A company that contravenes subsection (1) shall be liable on conviction to a daily default fine of \$100.
 - (5) A director who knowingly permits the contravention of subsection (1) shall be liable on conviction to a daily default fine of \$100.

VALIDITY OF ACTS OF COMPANY

- 11. (1) The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything in the company's constitution.
- (2) A member of a company may bring proceedings to restrain the doing of an act which, but for subsection (1), would be beyond the company's capacity provided that no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.

POWER OF DIRECTORS TO BIND COMPANY

- 12. (1) The power of the directors to bind the company, or authorise others to do so, in favour of a person dealing with a company in good faith, shall be deemed to be free of any limitation deriving from -
 - (a) the company's constitution; or
 - (b) any resolution of the members or of any class thereof.
- (2) For the purposes of this section -
 - (a) a person deals with a company if he is a party to any transaction or other act to which the company is a party;
 - (b) a person shall not be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors as derived from the company's constitution or any resolution of the members or of any class thereof.
- (3) It remains the duty of the directors of a company to observe any limitations on their powers flowing from the company's constitution or from any resolution of members or any class thereof and subsection (1) does not affect -

- (a) any right of a member of the company to bring proceedings to restrain the doing of an act which is beyond the powers of the directors provided that no such proceedings shall lie in respect of an act to be done in fulfillment of a legal obligation arising from a previous act of the company; or
- (b) any liability incurred by the directors of the company or any other person, by reason of the directors exceeding their powers.

**NO DUTY TO ENQUIRE AS TO CAPACITY OF COMPANY OR
AUTHORITY OF DIRECTORS**

13. (1) A party to a transaction with a company is not bound to enquire as to whether it is permitted by the company's constitution or as to any limitation on the powers of the directors to bind the company or authorise others to do so.
- (2) A person having dealings with a company is, subject to subsection (4), entitled to make, in relation to those dealings, the assumptions referred to in subsection (3) and, in any proceedings in relation to those dealings, any assertion by the company that the matters that the person is so entitled to assume were not correct shall be disregarded.
- (3) The assumptions that a person is, by virtue of subsection (2), entitled to make in relation to dealings, transactions or acts with a company are -
- (a) that, at all relevant times, the constitution of the company have been complied with;
 - (b) that a person who appears, from the register of directors of the company, to be a director of that company has been duly appointed and has authority to bind the company, and authorise others to do so, free of any limitation under the constitution of the company;
 - (c) that a person who is held out by the company to be an officer or an agent of the company has been duly appointed and has authority to exercise the powers and perform the duties customarily exercisable or performed by an officer or agent of the kind concerned;
 - (d) that a document has been duly authorised and executed by the company in accordance with sections 66 and 70, whether or not the common seal of the company has been affixed and without the need to enquire as to whether or not a valid meeting of the relevant officers was, in fact, properly held; and
 - (e) that the officers of the company properly perform their duties to the company.
- (4) Notwithstanding subsection (2), a person is not entitled to make an assumption referred to in subsection (3) in relation to dealings with the company if at the relevant time he had actual knowledge, or suspected, that such assumption was not correct.

CHANGE OF STATUS

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

- (2) A company may change its status only if all of the following requirements are complied with:
- (a) the proposed change is specifically authorised by a special resolution of the members of the company and is given effect to, as provided by subsection (3) within six months from the date of such resolution; and
 - (b) the directors make a statutory declaration which is lodged with the Registrar that:
 - (i) the change of status will, in their honest belief, not result in the company thereby being incapable of meeting its obligations to its creditors as they fall due; and
 - (ii) the company has complied with all the provisions of this Act (including the payment of any fees due to the Registrar); and
 - (iii) the constitution will be duly amended within three days to reflect the change of status.
- (3) The change of status of a company shall take effect upon the day upon which it files a copy of the amended constitution with the Registrar.
- (4) Where:
- (a) any member of a company did not vote in favour of the members' special resolution to change the status of the company; and
 - (b) the change of status may have the effect of increasing the liability of that member; -
- then except in so far as that change was made in accordance with the rights of that member as were specified in the constitution of the company at the time that person became a member, that member may exercise the rights of a dissenter pursuant to Section 91.
- (5) A member who has forfeited his membership interest pursuant to subsection (4) shall receive from the company such amount as may be specified in the articles or as may be agreed or, failing that such amount as may be determined by the Registrar (or a chartered accountant approved by the Registrar, whose costs are to be paid by the company) as representing that members' proportional interest in the realisable net tangible assets of the company save however that any such amount shall be paid only to the extent to which the company would not otherwise be rendered insolvent.
- (6) A certificate of change of status, in the form of a certificate of incorporation issued by the Registrar shall be conclusive evidence that all the requirements of this Act with respect to the change of status have been complied with and that the company is henceforth of the type stated in that certificate, being a company validly incorporated pursuant to this Act.
- (7) Any change in status of a company pursuant to this section shall not operate to:-
- (a) create a new legal entity;
 - (b) prejudice or affect the identity of the body corporate, or its continuity;
 - (c) affect the property or rights or obligations of the company; or
 - (d) render defective any legal proceedings whatsoever.

PART 4

CAPITAL AND DIVIDENDS

NATURE OF SHARES

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

- (a) the right to share in the distribution of income of the company;
- (b) the right to share in the distribution of the surplus assets of the company upon its liquidation;
- (c) the right to vote at meetings of the company;
- (d) the right to repayment at a future date of any sum in consideration of which the share was issued;
- (e) the right to be paid a return at a specified rate on the sum in consideration of which the share was issued

together with such other rights and privileges and subject to such limitations or conditions as may be provided for in the constitution of the company or upon the issue of the share.

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

- (a) the right to one vote at any meeting of the company (other than a meeting of a class of members of which the holder of the share is not a member) which is held to do any one or more of the following:
 - (i) to appoint or remove a director;
 - (ii) to approve any alteration to the constitution;
- (b) the right to an equal share in dividends authorised by the directors in respect of its class or series;
- (c) the right to an equal share in the distribution of the surplus assets of the company.

TYPES OF SHARES

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

- (a) registered or bearer shares;
- (b) shares having special, conditional, enhanced, limited or no voting rights;
- (c) shares with or without par value;
- (d) numbered or unnumbered shares;
- (e) convertible common, ordinary, preferential or redeemable shares;
- (f) shares that entitle participation only in certain assets;

- (g) shares, the holders of which are entitled to forfeit them;
- (h) shares in any one or more currencies
- (i) options, warrants or rights, or instruments of a similar nature, to acquire any securities of the company;
- (j) securities that, at the option of the holder thereof or of the company or upon the happening of a specified event, are convertible into, or exchangeable for, other securities in the company or any property then owned or to be owned by the company;

or any combination thereof.

- (2) Without limiting subsection (1) shares may carry the right to suspend the voting rights of other shares.
- (3) A registered share shall be transferrable unless otherwise specified in its constitution or upon the issue of the share.

ALTERATIONS OF CAPITAL

17. Subject to its constitution a company may by resolution of members or, where permitted by its constitution, by resolution of its directors:-

- (a) purchase, redeem or otherwise acquire and hold its own shares;
- (b) increase or reduce the number of its shares;
- (c) exchange registered shares for shares issued to bearer and shares issued to bearer for shares which are registered or are to be registered;
- (d) change the currency in which any of its shares are denominated;
- (e) change par value shares to no par value and change no par value shares to par value;
- (f) increase or decrease the par value of any of its shares;
- (g) divide any shares into a larger number of shares of the same class or series or combine any of its shares into a smaller number of shares of the same class or series, provided where shares with par value are divided or combined the aggregate par value of the new shares shall be equal to the aggregate par value of the old shares;
- (h) ~~determine the number of classes and series of shares and the number of shares of each such class and series, the par value of shares with par value and the value at which shares with no par value are to be issued; and~~
- (i) determine the designations, powers, preferences, rights, qualifications, limitations or restrictions of each class and series of shares;

or any combination or variation thereof.

FRACTIONAL SHARES

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

or series.

RIGHTS OF HOLDERS OF CLASSES OF SHARES

19. (1) If the share capital of a company is divided into different classes of shares and provision is made in its constitution for authorising the variation or abrogation of the rights attached to any class of shares in the company, and subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of holders of those shares, the rights attached to any class of shares are at any time varied or abrogated in pursuance of the said provisions, the holders of not less in the aggregate than 10 per centum of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation or abrogation, may apply to the court to have the variation or abrogation cancelled and if any such application is made, the variation or abrogation shall not have effect until confirmed by the court.
- (2) An applicant shall be deemed not to have consented to or voted in favour of the resolution for the variation or abrogation if any relevant fact was not disclosed by the company to the member before he so consented or voted.
- (3) The application under this section shall be made within 28 days after the date on which consent was given or the resolution was passed or within such further time as the court may allow.
- (4) Upon hearing an application under this section, the court shall make an order confirming or setting aside the variation or abrogation on such terms as appear to it to be just.
- (5) The issue by a company of:
- (a) a First Schedule debenture; or
 - (b) shares limiting or affecting any rights previously conferred on the holders of any existing shares or class or series of shares,

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

ALLOTMENT OF SHARES

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

CONSIDERATION FOR SHARES

21. (1) Each share in a company shall be issued for valuable consideration which, subject to any limitations in its constitution, may include money, services rendered, personal property (including other shares, debt obligations and other securities in the company), an interest in real property, a promissory note or other binding obligation to contribute money or property, or any combination thereof.
- (2) Subject to any limitations in its constitution, a company may issue shares for such amount as may be determined from time to time by the directors, except that in the case of shares with par value, the amount shall not be less than the par value and, in the absence of fraud, the decision of the directors as to the value of the consideration received by the company in respect of the issue shall be conclusive, unless a question of law is involved.

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

ISSUE AND EFFECT OF BEARER SHARES

22. (1) No bearer share in a company may be issued until the consideration in respect of the share is fully paid.
- (2) A share certificate endorsed with the word "Bearer" shall be issued in respect of every bearer share issued.
- (3) Subject to any limitations in its constitution or the terms upon which the share is issued, a company shall, at the request of a holder of any bearer share and upon the surrender of the certificate of the bearer share, convert the share to a registered share.
- (4) Subject to any limitations in its constitution or the terms upon which the share is issued, a company shall, at the request of a holder of any fully paid up registered share and upon the surrender of the certificate of the registered share, if any, convert the share to a bearer share and the company shall issue a new certificate bearing the same number (if any) as the certificate so surrendered and endorsed with the word "Bearer".
- (5) Any bearer share issued by a company may carry coupons or other certificates for the payment of dividends and in respect of any other rights determined in accordance with the constitution, and subject to any limitations in the constitution or in the terms of its issue, such coupons or certificates may be divisible from any other rights attaching to that share.
- (6) The conversion of any registered share to a bearer share or vice versa in accordance with subsections (3) or (4) shall not constitute a cancellation of the existing share and the issue of a fresh share.

ISSUE AND EFFECT OF SHARE WARRANTS

23. (1) Subject to any limitations in its constitution or upon the terms which the share is issued, a company shall at the request of a holder of any fully paid up registered or bearer share and upon surrender of the certificate of the registered share, if any, or the bearer share, issue a share warrant which shall, where applicable, bear the same number as any certificate surrendered. A share warrant shall constitute conclusive evidence of the right to the title to the share specified in that share warrant.
- (2) Subject to any limitations in its constitution or upon the terms which the share is issued, a company shall at the request of a holder of any share warrant, in exchange for that share warrant, issue a share certificate or share certificates in respect of the shares specified in the share warrant.
- (3) The holder of a share warrant issued by a company shall be deemed not to be a member of that company and, subject to subsection (4), shall not be entitled to exercise any of the rights or receive any of the benefits of membership of the company unless and until such time as the share warrant is surrendered.
- (4) Any share warrant issued by a company may carry coupons or other certificates for the payment of dividends and, in respect of any other rights determined in accordance with the constitution or the terms of issue of the share warrant, such coupons or certificates may be divisible from any other rights attaching to that

share.

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

SHARE CERTIFICATES

24. (1) Subject to any provisions in the constitution of a company, the directors shall resolve whether or not share certificates shall be issued and in respect of which classes of its shares they shall be issued.
- (2) A share certificate issued by a company shall be -
- (a) signed by at least two directors of the company or, if the company only has one director, by that director; or
 - (b) under the common seal of the company, with or without the signature of any director of the company;
- and the constitution may provide for the signatures or common seal to be facsimiles.
- (3) A share certificate issued by a company specifying a share held by a member of that company shall be *prima facie* evidence of the title of the member to the share specified therein.

TRANSFER OF REGISTERED SHARES

25. (1) Subject to any limitations in the constitution:-
- (a) registered shares which are transferable may be transferred by a written instrument of transfer signed by the transferor and containing the name and address of the transferee.
 - (b) a company shall on the application of the transferor or on receipt from the transferee of a transfer as aforesaid of a registered share in the company enter in its Register of Members the name of the transferee of the share.
 - (c) In the absence of a written instrument of transfer as aforesaid the directors may accept such evidence of a transfer of shares as they consider appropriate.
- (2) A company shall not be required to treat a transferee of a registered share in the company as a member until the transferee's name has been entered in the Register of Members.
- (3) A transfer of registered shares of a deceased, or bankrupt member of a company made by his personal representative, guardian or trustee, as the case may be, or a transfer of registered shares owned by a person as a result of a transfer from a member by operation of law, shall be as valid as if the personal representative, guardian, trustee or transferee had been the registered holder of the shares at the time of the execution of the instrument of transfer.

TRANSFER OF BEARER SHARES AND SHARE WARRANTS

26. A share issued to bearer and a share warrant shall be transferable by delivery of the certificate relating thereto.

FORFEITURE OF SHARES

27. When a holder of a share, being so entitled, forfeits that share, his liability in respect of the share shall be limited to the amount of any calls of amounts, if any, unpaid on those

shares where the call is made within a period of three months after the date of forfeiture provided that a forfeiture, or where there have been previous forfeitures, the last forfeiture shall not be effective if the forfeiture by itself or in combination with any other forfeiture results in the reduction of the number of members of the company to less than one.

SEIZURE

28. (1) Where a governmental authority, whether it is legally constituted or not, in any jurisdiction outside Vanuatu by or in connection with:-
- (a) any nationalisation, expropriation, confiscation, coercion, force or duress, or similar action; or
 - (b) the imposition of any tax, assessment or other governmental charge, takes or seizes any shares or other interest in a company incorporated under this Act,

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

- (2) Without affecting subsection (1), where a person whose shares or other interest have been taken or seized as referred to in subsection (1) is other than a natural person, the person making the application under subsection (1) or the company itself, may apply to the court for an additional order for the company to treat the persons believed by the company to have held the direct or indirect beneficial interests in the shares or other interests in the company as the holder of those shares or other interest.
- (3) The court may, upon application made to it under subsection (1) or (2) grant such relief as it considers just, equitable and proper and may order that any shares of or other interest in the company vest in the company as trustee or in such other trustees as the court may appoint upon such trusts and for such purposes as the court may determine.

DISTRIBUTIONS

29. (1) Subject to any limitations in its constitution, the directors of a company may by resolution authorise a distribution by the company at such time and of such amount and to such members as they think fit, provided that they are satisfied that the company will, after the distribution, satisfy the solvency test.
- (2) In applying the solvency test for the purposes of this section,
- (a) "debts" shall include fixed preferential returns on shares ranking ahead of those in respect of which a distribution is made; and
 - (b) "liabilities" shall include the amount that would be required, if the company was to be wound up immediately after the distribution, to satisfy the fixed entitlements of all members or other persons at that time;

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

DIVIDENDS

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

property.

- (2) Any person entitled to receive a dividend of shares may elect not to receive such shares.
- (3) A division of the shares of a class or series into a larger number of shares of the same class or series, having in the case of shares with par value a proportionately smaller par value, shall not constitute a dividend of shares.

ACQUISITION OF OWN SHARES

31. (1) Subject to any limitations in its constitution and to Section 29 a company may purchase, redeem or otherwise acquire and hold its own shares provided that such transaction does not result in the company being the sole member.
- (2) Subject to any provision to the contrary in its constitution, a company may provide financial assistance, whether directly or indirectly, and whether by way of loan, guarantee, or otherwise, for the purpose of, or in connection with, the purchase or subscription of its own shares, the shares of any subsidiary or of any holding company.
- (3) There shall be no requirement to meet the solvency test where shares are purchased, redeemed or otherwise acquired -
- (a) pursuant to a right of a member to have his shares redeemed or to have his shares exchanged for money or other property of the company;
 - (b) in exchange for newly issued shares in the company;
 - (c) by virtue of the provisions of section 89; or
 - (d) pursuant to an order of the court.
- (4) Subject to any limitations in the constitution, shares that a company purchases, redeems or otherwise acquires may be cancelled or held as treasury shares.

SHARES DISABLED IN RESPECT OF VOTING AND DIVIDENDS

32. Where shares in a company are held:-

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

INCREASE OR REDUCTION OF CAPITAL

33. (1) Subject to any limitations in the constitution the capital of a company may by resolution of directors, be -
- (a) increased; or
 - (b) reduced by -
 - (i) returning to members any amount received by the company upon the issue of any of its shares;

- (ii) cancelling any capital that is lost or not represented by assets having a realisable value.
- (2) A company may if so authorised by its constitution and with the consent of the members affected, convert any amount of the capital of the company to debt obligations owed by the company to the holder of those shares (whether by repayment or by direct conversion to an instrument).
- (3) A reduction of capital is a distribution and shall be subject to Section 29.
- (4) Any capital reduction transaction effected otherwise than in accordance with the provisions of this section shall be void at the absolute discretion of a liquidator or any creditor of the company.

PART 5

REGISTERED OFFICE AND AGENT

REGISTERED OFFICE

- 34. (1) A company shall at all times have a registered office in Vanuatu.
- (2) Upon incorporation the address of the registered office set out in the constitution shall be the first registered office of the company.
- (3) The directors of a company may by resolution change the address of the registered office of the company, which change shall be notified by the company in writing to the Registrar within 14 days of the change occurring.
- (4) A company that wilfully fails to notify the Registrar of the change of address of the registered office of the company shall be liable on conviction to a daily default fine of \$25.
- (5) A director who knowingly permits the failure to notify the Registrar of the change of registered office address of a company shall be liable on conviction to a daily default fine of \$25.

REGISTERED AGENT

- 35. (1) A company shall at all times have a registered agent in Vanuatu.
- (2) Upon incorporation the person named in the constitution as the registered agent shall be the first registered agent of the company.
- (3) The directors of a company may by resolution change the registered agent of the company which change shall be notified in writing to the Registrar within 14 days of the change occurring.
- (4) Being a registered agent shall not by itself make the registered agent an officer of the company.

PART 6

DIRECTORS AND OFFICERS

MANAGEMENT BY DIRECTORS

- 36. Subject to any limitations in its constitution, the business and affairs of a company shall be managed by or under the direction of a board of directors that consists of one or

more persons who may be natural persons or bodies corporate.

APPOINTMENT, TERM AND REMOVAL OF DIRECTORS

37. (1) The first directors of a company shall and any subsequent directors may be appointed by the members for such term as the members may determine or where permitted by its constitution, the directors may also appoint directors for such term as they may determine.
- (2) A director shall cease to hold office on the expiry of his term or on his death, resignation or removal or, in the case of a corporate director, upon its entering liquidation or upon its ceasing to be a body corporate.
- (3) Subject to any limitations in the constitution -
- (a) a director shall cease to hold office if the other directors, being not less than the majority thereof, request his resignation in writing;
 - (b) a director may resign his office by giving written notice of his resignation to the company and the resignation shall have effect from the date the notice is received by the company or from such later date as may be specified in the notice;
 - (c) if a director shall cease to hold office before the expiry of his term of office the remaining directors may by resolution appoint a new director in his place to complete his term;
 - (d) a director shall not be required to hold shares in the company;
 - (e) the members may at any time remove a director from office.

NUMBER OF DIRECTORS

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

POWER OF DIRECTORS

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

EMOLUMENTS OF DIRECTORS

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

COMMITTEE OF DIRECTORS

41. (1) The directors may, by resolution, designate one or more committees, each consisting of one or more directors.
- (2) Subject to any limitations in the constitution, each committee shall have such powers and authority as are set forth in the resolution establishing the committee, except that no committee shall have power or authority to appoint or remove directors.

MEETINGS OF DIRECTORS

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

- (2) A director shall be deemed to be present at a meeting of directors if -
- (a) he participates by telephone or other real time electronic means of audio interactive communication time; and
 - (b) all directors participating in the meeting are able to hear each other and recognise each other's voice.

NOTICE OF MEETINGS OF DIRECTORS

43. (1) Subject to any requirement in the constitution to give longer notice, each director shall be given not less than 2 days notice of meetings of directors.
- (2) Subject to any limitations in the constitution, a meeting of directors held otherwise than in accordance with subsection (1) shall be valid if all the directors, or such majority thereof entitled to vote at the meeting as may be specified in the constitution, have waived the notice of the meeting; and for this purpose, the presence of a director at the meeting shall be deemed to constitute waiver on his part.
- (3) The inadvertent failure to give notice of a meeting to a director, or the fact that a director has not received the notice, shall not invalidate the meeting.

QUORUM FOR MEETINGS OF DIRECTORS

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

RESOLUTION OF DIRECTORS

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

ALTERNATE DIRECTORS

46. (1) Subject to any limitations in the constitution, a director may by written instrument appoint an alternate who need not be another director.
- (2) An alternate appointed under subsection (1) shall be entitled to attend meetings in the absence of the director who appointed him and to vote and act in his place.
- (3) ~~An alternate director shall be responsible as a director for all his acts or omissions when acting in the place of the director who appointed him.~~

OFFICERS AND AGENTS

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

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

STANDARD OF CARE

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

RELIANCE ON RECORDS AND REPORTS

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

CONFLICT OF INTERESTS

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

(a) a company; and

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

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

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

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

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

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

INDEMNIFICATION

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

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

- (a) is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was a director or an officer of the company; or
- (b) is or was, at the request of the company, serving as a director or an officer of, or in any other capacity is or was acting for, another company or body corporate or a partnership, joint venture, trust or other enterprise.

PERSONAL LIABILITY

52. (1) The liability of a member of a company is limited to any amount expressly provided for in the constitution, including any amount unpaid on any share held by the member.
- (2) Where a share is issued and the constitution or the terms of the issue applying hereto render the member liable to calls, or otherwise imposes a liability on its holder, that liability attaches to the holder of the share for the time being, and not to any prior holder of the share, whether or not the liability became enforceable before the share became the property of the current holder.
- (3) Where all or part of the consideration for the issue of a share remains unsatisfied and the person to whom the share was issued no longer holds that share liability in respect of that unsatisfied consideration does not attach to subsequent holders of the share, but remains the liability of the person to whom the share was issued, or any other person who assumed that liability at the time of issue.
- (4) Subsection (2) and (3) shall not apply to bearer shares.
- (5) A member is not liable for any obligation of the company by virtue only of his status as a member.
- (6) Nothing in this section shall affect a member's liability to the company on any contract (including a contract for the issue of shares) or for any tort or breach of fiduciary duty or other actionable wrong committed by him.
- (7) Save as may be specified by this Act or by contract, the members of a company do not owe any duty, liability or obligation to the company, any creditor of the company or any other company related to the company.
- (8) Until such time as a company is dissolved pursuant to the provisions of this Act, the company shall continue its corporate existence (without rendering defective any legal or other proceedings instituted against the company or affecting any property, rights, powers, authorities, duties, functions, liabilities or obligations of the company or any other person).

PART 7

COMPANY ADMINISTRATION

MEETINGS OF MEMBERS

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

- (2) Subject to any provision in the constitution for a lesser percentage, upon the written request of members holding not less than 25 per cent of the votes of the outstanding voting shares in the company, the directors shall convene a meeting of members.
- (3) Subject to any limitations in the constitution, a member shall be deemed to be present at a meeting of members if -
 - (a) he participates by telephone or other real time electronic means of audio interactive communication; and
 - (b) all members participating in the meeting are able to hear each other and recognise each other's voice.
- (4) A member may be represented at a meeting of members by a proxy who may speak and vote on behalf of the member.
- (5) Subject to there being no provisions to the contrary in the constitution, the following provisions shall apply in respect of joint ownership of shares:
 - (a) if 2 or more persons hold shares jointly each of them may be present in person or by proxy at a meeting of members and may each speak as a member;
 - (b) if only one of them is present in person or by proxy, he may vote on behalf of all of them; and
 - (c) if 2 or more are present in person or by proxy, the first of them named in the Register of Members in respect of the share shall vote on behalf of all of them.

NOTICE OF MEETINGS OF MEMBERS

54. (1) Subject to a requirement in the constitution to give longer notice, the directors shall give not less than 7 days notice of meetings of members to those persons whose names on the date the notice is given appear as members in the Register of Members and are entitled to vote at the meeting.
- (2) Notwithstanding subsection (1) but subject to any limitations in the constitution, a meeting of members called at shorter notice shall be valid if members, holding not less than a 90 per cent majority or such lesser majority as may be specified in the constitution of -
- (a) the total number of the shares of the members entitled to vote on all the matters to be considered at the meeting; or
 - (b) the votes of each class or series of shares where members are entitled to vote thereon as a class or series
- have waived notice of the meeting and for this purpose, the presence of a member in person or by proxy at the meeting shall be deemed to constitute waiver on his part.
- (3) The failure of a member to receive notice of a meeting or the inadvertent failure of the directors to give notice of a meeting to a member, shall not invalidate a meeting or any actions taken at such meeting.

QUORUM FOR MEETING OF MEMBERS

55. Except as otherwise provided in the constitution a meeting of members shall be

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

VOTING BY MEMBERS

56. (1) Except as otherwise provided in the constitution, all shares vote as one class and each whole share has one vote.
- (2) The directors of a company may, in the notice of a meeting, fix any date being on or before the meeting as the record date for determining those shares that are entitled to vote at the meeting and unless so fixed it shall be 7 days prior to the meeting.

SERVICE OF NOTICE ON MEMBERS

57. (1) Any notice, information or written statement required under this Act to be given to members by a company shall be served in the manner prescribed in its constitution, or in the absence of any such provision
- (a) in the case of members holding registered shares, by personal service or by mail addressed to each member at the address shown in the Register of Members; or
- (b) in the case of members holding shares issued to bearer, by notice posted at the principal office of the company in Vanuatu.
- (2) Subject to a requirement in the constitution to give a specific length of notice, the directors shall give sufficient notice of meetings of members to members holding shares issued to bearer to allow a reasonable opportunity for them to take action in order to secure or exercise the right or privilege, other than the right or privilege to vote, that is the subject of the notice.
- (3) Notwithstanding any other provisions of this Act and subject to the constitution, notice to the person first named in the Register of Members for any share jointly held shall be deemed to be notice to all holders of that share.

REGISTER OF MEMBERS

58. (1) A company shall cause to be kept one or more registers to be known as the Register of Members containing -
- (a) the names and addresses of the persons who hold registered shares in the company;
- (b) the number of each class and series of registered shares held by each person;
- (c) the date on which the name of each person was entered in the Register of Members;
- (d) the date on which any person ceased to be a member;
- (e) in the case of shares issued to bearer, the total number of each class and series of shares issued to bearer;
- (f) with respect to each certificate for shares issued :-
- (i) the identifying number of the certificate,
- (ii) the number of each class or series of shares issued specified

therein, and

(iii) the date of issue of the certificate;

provided that the company may delete from the Register of Members information relating to shares issued that have been cancelled.

- (2) The Register of Members may be in such form as the directors may approve but if it is magnetic, electronic or other data storage form, the company must be able to produce legible evidence of its contents within a reasonable time when required by the Registrar.
- (3) A copy of the Register of Members, commencing from the date of the incorporation of the company, shall be kept at the registered office of the company.
- (4) The Register of Members shall be *prima facie* evidence of any matters directed or authorised by this Act to be contained therein.
- (5) A company that wilfully contravenes this section shall be liable on conviction to a daily default fine of \$25.
- (6) A director who knowingly permits the contravention of this section shall be liable on conviction to a daily default fine of \$25.

PARTICULARS IN REGISTER IN RELATION TO BEARER SHARES

59. (1) Upon the issue of a bearer share or the conversion of a registered share to a bearer share, the company shall -
- (a) in the case of a conversion strike out of its register of members and any branch register wherein the share is registered the name of the member entered therein as holding the share in respect of which the bearer share is issued; and
 - (b) enter in the register of members the following particulars:
 - (i) the fact of the issue of the bearer share or the conversion of a registered share; and
 - (ii) the date of the issue of the bearer share or the conversion of a registered share.
- (2) Upon the surrender of a certificate of a bearer share, the date of such surrender shall be entered as if it were the date on which the person ceased to be a member.

PARTICULARS IN REGISTER IN RELATION TO SHARE WARRANTS

60. (1) Upon the issue of a share warrant in respect of any share, the company shall -
- (a) in the case of the surrender of a certificate of a registered share, strike out of its register of members and any branch register wherein the share is registered the name of the member entered therein as holding the share in respect of which the share warrant is issued; and
 - (b) enter in the register of members the following particulars:
 - (i) the fact of the issue of the share warrant and the surrender of the share certificate;
 - (ii) the date of the issue of the share warrant.

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

RECTIFICATION OF REGISTER OF MEMBERS

61. (1) If there is unreasonable delay in entering any information in the Register of Members or information that is required to be entered in the Register of Members is omitted therefrom or inaccurately entered therein any member of the company, or any person who is aggrieved by any omission, inaccuracy or delay in the entering of any information may apply to the court for an order that the Register of Members be rectified;
- (2) The court may in any proceedings under subsection (1):-
- (a) either grant or refuse the application, with or without costs to be paid by the applicant; and
 - (b) order the rectification of the Register of Members; and
 - (c) direct the company to pay all costs of the application and any damages the applicant may have sustained; and
 - (d) determine any question relating to the right of a person who is a party to the proceedings to have his name entered in or omitted from the Register of Members, whether the question arises between -
 - (i) two or more members or alleged members; or
 - (ii) between members or alleged members and the company,
- and generally the court may in the proceedings determine any question that may be necessary or expedient for the rectification of the Register of Members.

SERVICE OF DOCUMENTS ON COMPANY

62. (1) Any summons, notice, order, document, process, information or written statement may be served on a company by leaving it at, or sending it by registered mail addressed to the registered office of the company, or by leaving it with, or sending it by registered mail to, the registered agent of the company.
- (2) Service of any summons, notice, order, document, process, information or written statement served on a company by registered mail may be proved by showing that it:-
- (a) was mailed in such time as to permit its being delivered in the normal course of delivery, within the period prescribed for service; and
 - (b) was correctly addressed and the postage was prepaid.

BOOKS AND RECORDS

63. (1) A company shall keep such accounts and records as are necessary in order to reflect its financial position.
- (2) A company shall keep -
- (a) minutes of all meetings of, and copies of all resolutions consented to by -
 - (i) directors;
 - (ii) members,
 - (iii) committees of directors;and

- (iv) committees of members; and
- (b) a register of all its directors which shall contain the following particulars in respect of each director:-
 - (i) in the case of an individual, his present, full names, any former names, his usual residential address and citizenship; and
 - (ii) in the case of a company, its full name and registered office in its country of legal existence.
- (3) The accounts, records, minutes, copies of resolutions and register required by this section shall be kept at the registered office of the company or at such other place as the directors may determine.
- (4) A company that wilfully contravenes this section shall be liable on conviction to a daily default fine of \$25.
- (5) An officer who knowingly permits the contravention of this section shall be liable on conviction to a daily default fine of \$25.

SEAL

- 64. (1) A company may have a seal which shall have on its face the full name of the company and the words "Common Seal" or "Corporate Seal" and an imprint thereof shall be kept at the registered office of the company.
- (2) The directors may, subject to the constitution, prescribe a method for the attestation of the affixing of the seal which may, with the authority of the directors, be affixed anywhere in the world.

INSPECTION OF BOOKS AND RECORDS

- 65. (1) A member of a company may, in person or by some other person, inspect during normal business hours the Register of Members, minutes of all meetings of members and resolutions of members of the company and to make copies or extracts therefrom.
- (2) A person other than a member may only carry out an inspection under subsection (1) if he is authorised to do so by power of attorney granted to him by the member or some other form of written authority acceptable to the directors.

EXECUTION OF CONTRACTS

- 66. (1) Contracts on behalf of a company may be made as follows -
 - (a) ~~A contract which if made by natural persons would by law be required to be in writing under seal, may be made on behalf of the company either -~~
 - (i) in writing under the common seal of the company and signed by a director or by some other person appointed by the directors for the purpose: provided that such signature need not be made contemporaneously with the affixing of the common seal of the company; or
 - (ii) in the case of a company having only one director, under the signature of that director or
 - (iii) in the case of a company having two or more directors, under the signature of any two directors;

- (b) A contract which if made between natural persons would by law be required to be in writing signed by the parties to be charged therewith, may be made on behalf of the company in writing and signed by any person acting under its authority, express or implied;
 - (c) A contract which if made between natural persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority express or implied.
- (2) A contract entered into in accordance with this section -
- (a) is valid and binding on the company and its successors and all other parties to it; and
 - (b) may be varied or discharged in the same manner in which it is authorised by this section to be made.

PRE-INCORPORATION CONTRACTS

67. (1) In this section, the term "pre-incorporation contract" means
- (a) a contract purporting to be made by a company before its incorporation;
 - (b) a contract made by a person on behalf of a company before and in contemplation of its incorporation.
- (2) Notwithstanding any enactment or rule of law, a pre-incorporation contract may be ratified within such period as may be specified in the contract, or if no period is specified, then within a period of 90 days after the incorporation of the company in the name of which, or on behalf of which, it has been made. A contract so ratified shall, upon ratification, be valid and enforceable as if the company had been a party to the contract when it was made.
- (3) A pre-incorporation contract may be ratified by a company in the same manner as a contract may be entered into on behalf of a company under section 66.
- (4) Notwithstanding any enactment or rule of law, in a pre-incorporation contract, unless a contrary intention is expressed in the contract, there is an implied warranty by the person who purports to make the contract in the name of, or on behalf of, the company
- (a) that the company will be incorporated within such period as may be specified in the contract, or if no period is specified, then within 90 days after the making of the contract; and
 - (b) that the company will ratify the contract within such period as may be specified in the contract, or if no period is specified, then within 90 days after the incorporation of the company.
- (5) The amount of any damages recoverable in an action for breach of a warranty implied by virtue of subsection (4) shall be the same as the amount of damages that would be recoverable in an action against the company for damages for breach by the company of the unperformed obligations under the contract if the contract had been ratified and cancelled.
- (6) Where a company after its incorporation does not ratify a pre-incorporation contract, any party to that contract may apply to the Court for an order
- (a) directing the company to return any property, whether real or personal,

acquired pursuant to the contract to that party; or

- (b) for any other relief in favour of that party respecting any such property;
or
- (c) validating the contract, whether in whole or in part;

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

- (7) In any proceedings against a company for breach of a pre-incorporation contract which has been ratified by the company, the Court may, on the application of the company, any other party to the proceedings, or of its own motion, make such order for the payment of damages or other relief, in addition to or in substitution for any order which may be made against the company, against any person by whom that contract was made in the name of, or on behalf of the company, as the Court considers just and equitable.
- (8) Where a company, after its incorporation, enters into a contract with the same parties in the same terms as, or in substitution for, a pre-incorporation contract (not being a contract ratified by the company under this section), the liability of any person under subsection (4) (including any liability under an order made by the Court thereunder for the payment of damages) shall be discharged.
- (9) If a pre-incorporation contract has not been ratified by a company, or validated by the court under subsection (6), the company may not enforce or otherwise take the benefit of that contract.

NOTES AND BILLS OF EXCHANGE

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

- (a) by or on behalf or on account of the company; or
- (b) by a person acting under the authority of the company;

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

APPOINTMENT OF AGENTS

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

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

AUTHENTICATION OR ATTESTATION

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

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

CORPORATE REPRESENTATIVE AT MEETINGS

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

PART 8

REGISTRATION OF CHARGES

FILING OF CHARGES

72. (1) In this Part -

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

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

- (2) Subject to this Part, where a company acquires any property subject to a charge to which this section applies or such a charge is created by a company, the company or any other person interested in the charge may cause to be lodged with the registrar for filing within 42 days after the relevant date -
- (a) A copy of the instrument, if any, by which the charge is created or evidenced; or
- (b) A statement in the prescribed form giving a short description of the property charged, the amount thereby secured, the nature of the instrument, and the names of the chargees or persons entitled to the benefit thereof.
- (3) The relevant date is in the case of a charge over property acquired by the company, the date of the acquisition and in the case of a charge created by the company, the date upon which the charge is created.
- (4) Where the instrument or a statement is not lodged with the Registrar in accordance with subsection (2), the charge shall, so far as any security on the company's property or undertaking is conferred thereby, but without prejudice to any contract or obligations for repayment of the money thereby secured, be void against a liquidator and any creditor of the company.
- (5) Nothing in subsection (2) shall prejudice any contract or obligation for repayment of the money secured by the charge and, when a charge becomes void under this section, the money secured thereby shall immediately become payable.
- (6) The charges to which this section applies are all charges (including any charge securing a contingent debt or obligation) whether fixed or floating on any property of a company other than a charge under which the chargee is entitled to possession either of the goods or of a document of title to them.
- (7) (a) Where a charge created in Vanuatu affects property outside Vanuatu the instrument creating or purporting to create a charge or a copy thereof accompanied by a statutory declaration verifying the same may be lodged for filing under and in accordance with subsection (2) notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the place in which the property is situated.

- (b) A charge is not excluded from this section because the chargee is entitled to take possession in case of default or on the occurrence of some other event.
- (8) When a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by company, it shall be sufficient if there is lodged with the Registrar within 42 days after the execution of the instrument creating the charge, or, if there is no such instrument, after the execution of the first debenture of the series, a statement containing the following particulars -
 - (a) The total amount secured by the whole series;
 - (b) The date of the resolution authorising the issue of the series and the date of the covering instrument, if any, by which the security is created or defined.
 - (c) A general description of the property charged; and
 - (d) The name of the trustee, if any, for the debenture holders together with -
 - (e) The instrument creating the charge; or
 - (f) A copy of the instrument and a statutory declaration verifying the execution of the instrument and verifying the copy to be a true copy.
 - (9) For the purposes of subsection (7) where more than one issue is made of debentures in the series, there may be lodged with the Registrar within 42 days after each issue particulars of the date and amount of each issue, but an omission so to do shall not affect the validity of the debentures issued.
 - (10) Where a charge requiring registration under this section is created before the lapse of 42 days after the creation of a prior unregistered charge, and comprises all or any part of the property comprised in the prior charge, and the subsequent charge is given as a security for the same debt as is secured by the prior charge, or any part of the debt, then to the extent to which the subsequent charge is a security for the same debt or part thereof and so far as it related to the property comprised in the prior charge, the subsequent charge shall not be operative or have any validity unless it is proved to the satisfaction of the Registrar that it was given in good faith for the purpose of correcting some material error in the prior charge or under other proper circumstances and not for the purpose of avoiding or evading the provisions of this Part.

VALIDITY OF CHARGES IN CERTAIN CIRCUMSTANCES

73. (1) ~~Notwithstanding any rule of law to the contrary, any charge or security given, or purported to be given, by any person ("the chargor") in favour of another person ("the chargee") where -~~
- (a) the charged property is or includes a debt due or to become due to the chargor from the chargee; and
 - (b) which debt is situated in Vanuatu
- shall be deemed to be a charge over an asset and shall be as valid and enforceable to the same extent as if the charge or security had been given over that debt in favour of any other person.
- (2) For the purpose of subsection (1) of this section, a debt shall be deemed to be situated in Vanuatu if either -

- (a) the chargor is an international company; or
 - (b) the chargee is an international company and
 - (i) the contract or deed evidencing the debt has been entered into (by one or all of the parties) in Vanuatu; or
 - (ii) the contract or deed evidencing the debt is, or is to be, given effect to (whether in whole or in part) in Vanuatu.
- (3) Nothing in this section shall be construed in any way to limit the validity or effect of -
- (a) any contractual, legal or equitable right of set off arising between the parties (including any right of a bank and the rules relating to matters of account between parties); or
 - (b) any provision creating other rights, powers, obligations) between a debtor and a creditor;

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

- (4) For the purposes of this section any reference to a debt becoming due includes a reference to -
- (a) a credit balance of an account (whether or not ascertained at any particular time);
 - (b) a contingent claim;
 - (c) proceeds and receivables due from time to time.
- (5) Where a charge or security of the type referred to in subsection (1) has been given, or purported to have been given, by a company which has not been registered in accordance with this Part, the charge may be registered pursuant to this Part within 42 days of the commencement of this Act.

REGISTER OF CHARGES

74. (1) The Registrar shall keep a register of all the charges lodged for filing under this Division and shall enter in the register with respect to those charges the following particulars --
- (a) In the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are required to be contained in a statement furnished under section 72(8); and
 - (b) In the case of any other charge --
 - (i) If the charge is a charge created by an international company, the date of its creation and, if the charge was a charge existing on property acquired by an international company, the date of the acquisition of the property;
 - (ii) The amount secured by the charge;
 - (iii) A description sufficient to identify the property charged; and
 - (iv) The name of the person entitled to the charge.
- (2) The Registrar shall upon payment of the prescribed fee issue a certificate of

every charge filed stating, if applicable, the amount secured by the charge and the certificate shall be conclusive evidence that the requirements as to filing have been complied with.

ENDORSEMENT OF CERTIFICATE OF REGISTRATION ON DEBENTURES

75. (1) A company shall cause to be endorsed on every debenture forming one of a series of debentures, or certificate of debenture stock, which is issued by the company and the payment of which is secured by a charge so registered --
- (a) A copy of the certificate of filing under section 74(2); or
 - (b) A statement that filing has been effected and the date of filing.
- (2) Subsection (1) shall not apply to any debenture or certificate of debenture stock issued by a company before the charge was filed.
- (3) Every person who knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock which is not endorsed as required by this section commits an offence against this Act.

SATISFACTION AND RELEASE CHARGES

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

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

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

EXTENSIONS AND RECTIFICATIONS

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

DOCUMENTS MADE OUTSIDE VANUATU

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

PART 9

DEBENTURES

POWER TO ISSUE DEBENTURES

79. (1) Subject to this Part and to the terms and conditions of its constitution a company shall have power to issue debentures on such terms and conditions as it thinks fit and in particular but without limiting the generality of the foregoing may issue debentures --
- (a) Constituting a charge on any or all the assets of the company;
 - (b) As bearer debentures;
 - (c) Convertible from bearer debentures to registered debentures;
 - (d) As a First Schedule debentures.
- (2) The debt payable under any debenture whether sealed or signed on behalf of the company shall be a specialty debt of the company and where issued by a branch of a company shall be located at that branch.
- (3) Each First Schedule debenture issued by a company shall, so far as it does not exclude or modify the terms contained in the First Schedule, be deemed to have been issued upon such terms and conditions.
- (4) Where a debenture is issued as a First Schedule debenture it shall, subject to the terms of the debenture, have the following effect -
- (a) The holders of such debentures shall have the right and power to vote and to demand a poll and thereby to determine all those matters in respect of which the members had the right and power to vote and to demand a poll before those rights and powers of the members became suspended in accordance with the terms of the debenture;
 - (b) Every holder of such debenture, or the trustee for any such holder, shall have one vote for each whole dollar, or its equivalent in any other currency, of the principal sum the subject of the debenture outstanding at the time when the votes are counted;
 - (c) The holders of such debentures may cast their votes by proxy in writing without attending a meeting;
 - (d) A resolution in writing signed by a majority in value of the holders of such debentures shall be as effectual as would a resolution passed by a similar majority at a meeting duly convened and held for the purpose;
 - (e) The constitution of the company may not be altered without the consent of the debenture holders;
 - (f) Any provision in this Act or the constitution of the company by which anything is required or permitted to be done by general meeting or by a resolution of the members shall be construed as requiring or permitting the same to be done by a resolution of those debenture holders in whom the right and power to vote are for the time being vested, passed by such majority of votes as would, if the votes were votes of members, be the majority necessary to pass the resolution;
 - (g) Subject to paragraph (d) notice of a meeting of those debenture holders, in whom the right and power to vote are for the time being vested shall

be given to such debenture holders and their trustees, if any, in the same manner as notice of a meeting of members is required to be given to members;

- (h) Unless it is otherwise provided by the terms of the debenture, the quorum for any meeting of the holders of such debentures shall be 2;
 - (i) Upon the redemption of any such debenture the rights and powers referred to above of the holders of such debentures shall cease and determine; and
 - (j) The holder of a First Schedule debenture shall not be deemed to be or to have been a member of a company by reason only of the holding of such debenture or the exercise by him or on his behalf of any rights or powers or discretions pursuant to the terms of the debenture or the dealing in any way with the debenture;
- (5) Notwithstanding any other provision of this Act or any implication which apart from this subsection might arise or would arise at law or in equity, the holding or dealing with any First Schedule debenture shall not impose or imply and shall be deemed (subject to any express provision contained in the terms of issue of such debenture or arising as a necessary implication therefrom) never to have imposed or implied any duty on the part of the holder of the First Schedule debenture to exercise any right or power or discretion contained in or arising out of or connected with the First Schedule debenture for any particular purpose or to exercise any such right or power or discretion whether or not subject to any fiduciary or other like obligations whatsoever;
- (6) Every debenture of a company shall bear a serial number, shall be sealed or signed on behalf of the company or the branch of the company which issues it and shall contain --
- (a) The name of the company;
 - (b) The date of issue of the debenture;
 - (c) A statement of the quorum for meeting of debenture holders;
 - (d) A statement of the name of the debenture holder where the debenture is not issued to bearer;
 - (e) A statement of the amount of principal (if any) for which such debenture is issued;
 - (f) The date upon which such principal is due and payable, if not payable on demand;
 - (g) The currency or currencies in which the principal and interest are payable; and
 - (h) The rate of interest, if any, per annum payable thereon.
- (7) Where the provisions of this Act and of the constitution of a company which give the members of the company the right and power to vote and to demand a poll have been suspended or have otherwise been modified pursuant to the terms of a First Schedule debenture then (subject to there being no other unredeemed First Schedule debentures under the terms of which such provisions are to remain suspended) those provisions shall upon redemption of that First Schedule debenture resume full force and effect in respect of that company in the same manner and to the same extent as before those provisions were suspended or were modified. Where such provisions resume full force and effect in any other circumstances then in the absence of any provisions to the contrary in the

constitution or in any relevant First Schedule debenture they shall likewise resume full force and effect in the same manner and to the same extent as before those provisions were suspended or modified.

- (8) Subject to the provisions of section 80(9) any bearer debenture issued by a company may be converted by the holder into an ordinary debenture unless the terms of the debenture or the constitution as at the date of issue of the debenture by the company otherwise provided.

COMPANY TO MAINTAIN REGISTER OF DEBENTURES

80. (1) Subject to the provisions of this section every company which issues debentures shall keep and maintain --
- (a) A register of debentures at the registered office of the company in Vanuatu containing the information required pursuant to section 79(5);
 - (b) A copy of all the terms of the debentures issued by the company with the register of holders of debentures at that registered office.
- (2) A company may cause to be kept in any place outside Vanuatu a branch register of debentures.
- (3) A branch register of debentures of a company shall be kept in the same manner in which the principal register is by this Act required to be kept.
- (4) A company may discontinue a branch register and thereupon all entries in that register shall be transferred to some other branch register kept by the company or to the principal register.
- (5) Where a debenture is registered on a branch register the debenture and all rights arising therefrom shall be situated in the place where it is registered and unless otherwise expressed in the debenture the principal and interest is payable in the money of the place of registration calculated at the exchange rate at noon on the date on which it becomes due and payable.
- (6) A debenture registered in a branch register shall be distinguished from a debenture registered in the principal register.
- (7) The costs of maintaining branch registers shall, unless the debenture otherwise provides, be borne rateably according to the amount of the principal represented by the debentures registered therein by the holders of those debentures.
- (8) Debentures may be transferred from one register to another either by the holder or the company provided the written consent of the other party is first obtained, which consent shall not be unreasonably withheld provided further that the company shall not be obliged to obtain such consent from the holder for the time being of a bearer debenture unless the holder shall have advised the company in writing of his address for notice.
- (9) Any debenture issued to bearer may be converted to a registered debenture and in the absence of any provision to the contrary contained in that debenture or in the constitution as at the date of issue of that debenture, then the conversion shall be effected in the following manner:-
- (a) A certified copy of the bearer debenture or the negotiable documents in respect of the same, as the case may be, shall be delivered to the registered office of the company in Vanuatu together with a direction as to the name and address of the person who is to be recorded as the holder of the debenture;
 - (b) Thereupon the directors of the company shall resolve to record on the

register the person so named as the holder of the debenture;

- (c) Recording pursuant to such a resolution shall be undertaken upon receipt by the company of the original bearer debenture or the negotiable documents in respect of the same, as the case may be, within the time specified in paragraph (e), and shall have effect as from the date of the directors resolution;
 - (d) Upon the resolution of the directors referred to in paragraph (b) the original bearer debenture shall cease to be a security of the company but in the event of the original bearer debenture or the negotiable documents in respect of it, as the case may be, not being received within the time specified in paragraph (e) the original bearer debenture shall be deemed at all times to have been a security from its original date of issue;
 - (e) Upon the original bearer debenture or the negotiable documents in respect of the same, as the case may be, being received by the company for cancellation within 1 month of the passing of the resolution the company shall issue a certificate to the person entitled thereto in respect of the registered debenture into which the bearer debenture has been converted; and
 - (f) Should the original bearer debenture or the negotiable documents in respect of the same, as the case may be, not be received by the company for cancellation within 1 month of the passing of the resolution the registered debenture and the resolution for recording and any recording in respect of the conversion shall be deemed to be cancelled.
- (10) A company shall be responsible for any loss incurred by any person by reason of the company recording in its register of debentures the name of the holder of any bearer debenture without the original bearer debenture or the negotiable documents in respect of the same, as the case may be, being surrendered to that company and cancelled prior to or contemporaneously with that entry.
- (11) Upon the surrender to a company of a registered debenture, the company shall enter in the appropriate register of debentures the fact and date of its surrender.

PERPETUAL DEBENTURES

81. (1) A condition contained in a debenture or in a deed for securing a debenture shall not be invalid by reason only that the debenture is thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of law or equity to the contrary notwithstanding.
- (2) ~~Subject to subsection (3), notwithstanding anything in any debenture or trust deed, the security for a debenture issued by a company which is irredeemable or redeemable only on the happening of a contingency shall, if the Court so orders, be enforceable forthwith or at such other time as the Court directs if, on the application of the trustee for the holder of the debenture or, where there is no trustee, on the application of the holder of the debenture, the Court is satisfied that --~~
- (a) At time of the issue of the debenture the assets of the company which constituted or where intended to constitute the security therefore were sufficient to discharge the principal debt and any interest thereon;
 - (b) The security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than 60 per centum of the principal sum of monies outstanding, regard being had to all prior charges and charges ranking pari passu, if any; and

- (c) The assets covered by the security, on a fair valuation, on the basis of a going concern, after allowing a reasonable amount for depreciation are worth less than the principle sum and the company is not making sufficient profit to pay the interest due on the principle sum or, where no definite rate of interest is payable, interest thereon at such rate as the Court considers would be a fair rate to expect from a similar investment.
- (3) Subsection (2) shall not affect any power to vary rights, except any compromise or arrangement created by the terms of a debenture or the relevant trust deed or under a compromise or arrangement between the company and its creditors.

REISSUE OF REDEEMED DEBENTURES

82. (1) Where a company has redeemed any debentures:-

- (a) Unless any provision to the contrary, whether express or implied, is contained in any contract entered into by the company; or
- (b) Unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

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

- (2) After the reissue, the person entitled to the debenture shall have and shall be deemed always to have had the same priorities as if the debenture had never been redeemed.
- (3) Where a company has deposited any of its debentures to secure advances on current accounts or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debt while the debentures remain so deposited.

PART 10

MERGER, CONSOLIDATION, SALE OF ASSETS FORCED REDEMPTIONS, ARRANGEMENTS AND DISSENTERS

INTERPRETATION FOR PURPOSES OF PART 10

83. In this Part -

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

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

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

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

"parent company" means a company that owns more than 50 percent of the outstanding

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

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

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

MERGER AND CONSOLIDATION

84. (1) Two or more companies may merge or consolidate in accordance with this section.
- (2) The directors of each constituent company that proposes to participate in a merger or consolidation shall approve a written plan of merger or consolidation containing, as the case requires -
- (a) the name of each constituent company and the name proposed for the surviving company or the consolidated company;
 - (b) in respect of each constituent company -
 - (i) the designation and number of outstanding shares of each class and series of shares specifying each such class and series entitled to vote on the merger or consolidation; and
 - (ii) a specification of each such class and series, if any, entitled to vote as a class or series;
 - (c) the terms and conditions of the proposed merger or consolidation, including the manner and basis of converting shares in each constituent company into shares, debt obligations or other securities in the surviving company or consolidated company, or into money or other property, or a combination thereof;
 - (d) in respect of a merger, a statement of any amendment to the constitution of the surviving company to be brought about by the merger; and
 - (e) in respect of a consolidation, everything required to be included in the constitution for a company except statements as to facts not available at the time the plan of consolidation is approved by the directors.
- (3) ~~Some or all shares of the same class or series of shares in each constituent company may be converted into a particular or mixed kind of property and other shares of the class or series, or all shares of other classes or series of shares, may be converted into other property.~~
- (4) (a) Approval of the plan of merger or consolidation shall be by a resolution of the members and for the purpose thereof outstanding shares of a class or series of shares shall be entitled to vote on the merger or consolidation as a class or series if:-
- (i) the constitution so provides; or
 - (ii) the plan of merger or consolidation contains any provisions that, if contained in a proposed amendment to the constitution, would entitle the class or series to vote on the proposed amendment as a class or series;

- (b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of merger or consolidation, shall be given to each member whether or not entitled to vote on the merger or consolidation;
 - (c) if it is proposed to obtain the written consent of members, a copy of the plan of merger or consolidation shall be given to each member, whether or not entitled to consent to the plan of merger or consolidation;
 - (d) after approval of the plan of merger or consolidation by the directors and members of each constituent company, articles of merger or consolidation shall be executed by each company and shall contain -
 - (i) the plan of merger or consolidation and, in the case of consolidation, any statement required to be included in the constitution for a company ,
 - (ii) the date on which the constitution of each constituent company was registered by the Registrar,
 - (iii) the manner in which the merger or consolidation was authorised with respect to each constituent company;
 - (e) the articles of merger or consolidation shall be submitted to the Registrar who shall retain and register them in the Register;
 - (f) upon the registration of the articles of merger or consolidation, the Registrar shall issue a certificate under his hand and seal certifying that the articles of merger or consolidation have been registered.
- (5) A certificate of merger or consolidation issued by the Registrar shall be prima facie evidence of compliance with all requirements of this Act in respect of the merger or consolidation.

MERGER WITH SUBSIDIARY

85. (1) A parent company may merge with one or more subsidiary companies registered under this Act without the authorisation of the members of any such subsidiary company in accordance with this section.
- (2) The parent company shall approve a written plan of merger containing -
- (a) the name of each constituent company and the name of the surviving company;
 - (b) in respect of each constituent company -
 - (i) the designation and number of outstanding shares of each class and series of shares, and
 - (ii) the number of shares of each class and series of shares in each subsidiary company owned by the parent company; and
 - (c) the terms and conditions of the proposed merger, including the manner and basis of converting shares in each company to be merged into shares, debt obligations or other securities in the surviving company, or money or other property, or a combination thereof.
- (3) Some or all shares of the same class or series of shares in each company to be merged may be converted into property of a particular or mixed kind and other shares of the class or all shares of other classes or series of shares may be

converted into other property; but, if the parent company is not the surviving company, shares of each class and series of shares in the parent company may only be converted into similar shares of the surviving company.

- (4) A copy of the plan of merger or an outline thereof shall be given to every member of each subsidiary company to be merged unless the giving of that copy or outline has been waived by that member.
- (5) Articles of merger shall be executed by the parent company and shall contain -
 - (a) the plan of merger;
 - (b) the date on which the constitution of each constituent company was registered by the Registrar;
 - (c) if the parent company does not own all the shares in each subsidiary company to be merged, the date on which a copy of the plan of merger or an outline thereof was made available to the members of each subsidiary company.
- (6) The articles of merger shall be submitted to the Registrar who shall retain and register them in the Register.
- (7) Upon the registration of the articles of merger, the Registrar shall issue a certificate under his hand and seal certifying that the articles of merger have been registered.
- (8) A certificate of merger issued by the Registrar shall be *prima facie* evidence of compliance with all the requirements of this Act in respect of the merger.

EFFECT OF MERGER OR CONSOLIDATION

86. (1) A merger or consolidation shall be effective on the date the articles of merger or consolidation are registered by the Registrar or such date subsequent thereto, not exceeding 30 days, as is stated in the articles of merger or consolidation.
- (2) As soon as a merger or consolidation becomes effective -
- (a) the surviving company or the consolidated company insofar as is consistent with its constitution, as amended or established by the articles of merger or consolidation, has all the rights, privileges, immunities, powers, objects and purposes of each of the constituent companies;
 - (b) in the case of a merger, the constitution of the surviving company is automatically amended to the extent, if any, that changes in its constitution are contained in the articles of merger;
 - (c) in the case of a consolidation, the statements contained in the articles of consolidation that are required or authorised to be contained in the constitution of a company incorporated under this Act, shall be the constitution of the consolidated company;
 - (d) property of every description, including choses in action and the business of each of the constituent companies, immediately vests in the surviving company or the consolidated company; and
 - (e) the surviving company or the consolidated company shall be liable for all claims, debts, liabilities and obligations of each of the constituent companies.
- (3) Where a merger or consolidation occurs -

- (a) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against a constituent company or against any member, director, officer or agent thereof, shall be released or impaired by the merger or consolidation; and
- (b) no proceedings, whether civil or criminal pending at the time of a merger or consolidation by or against a constituent company, or against any member director, officer or agent thereof, shall be abated or discontinued by the merger or consolidation, but -
 - (i) the proceedings may be enforced, prosecuted, settled or compromised by or against the surviving company or the consolidated company or against the member, director, officer or agent, as the case may be, or
 - (ii) the surviving company or the consolidated company may be substituted in the proceedings for a constituent company.
- (4) The Registrar shall strike off the Register -
 - (a) a constituent company that is not the surviving company in a merger;
 - (b) a constituent company that participates in a consolidation.

MERGER OR CONSOLIDATION WITH FOREIGN COMPANY

87. (1) One or more companies incorporated under this Act may merge or consolidate with one or more companies incorporated under the laws of jurisdictions outside Vanuatu in accordance with this section, including where one of the constituent companies is a parent company and the other constituent companies are subsidiary companies, if the merger or consolidation is permitted by the laws of the jurisdiction in which the companies incorporated outside Vanuatu are incorporated.
- (2) The following provisions shall apply in respect of a merger or consolidation under this section -
- (a) a company incorporated under this Act shall comply with the provisions of this Act with respect to the merger or consolidation, as the case may be, of companies incorporated under this Act and a company incorporated under the laws of a jurisdiction outside Vanuatu shall comply with the laws of that jurisdiction; and
 - (b) if the surviving company or the consolidated company is to be incorporated under the laws of a jurisdiction outside Vanuatu, it shall submit to the Registrar -
 - (i) an agreement that a service of process may be effected on it in Vanuatu in respect of proceedings for the enforcement of any claim, debt, liability or obligation of a constituent company incorporated under this Act or in respect of proceedings for the enforcement of the rights of a dissenting member of a constituent company incorporated under this Act against the surviving company or the consolidated company,
 - (ii) an irrevocable appointment of the Registrar as its agent to accept service of process in proceedings referred to in subparagraph (i),
 - (iii) an agreement that it will promptly pay to the dissenting members of a constituent company incorporated under this Act the amount, if any, to which they are entitled under this Act with respect to

the rights of dissenting members, and

- (iv) a certificate of merger or consolidation issued by the appropriate authority of the foreign jurisdiction where it is incorporated; or if no certificate of merger or consolidation is issued by the appropriate authority of the foreign jurisdiction, then, such evidence of the merger or consolidation as the Registrar considers acceptable.
- (3) The effect under this section of a merger or consolidation shall be the same as in the case of a merger or consolidation under section 84 if the surviving company or the consolidated company is incorporated under this Act, but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside Vanuatu, the effect of the merger or consolidation shall be the same as in the case of a merger or consolidation under section 84 except insofar as the laws of the other jurisdiction otherwise provide.
- (4) If the surviving company or the consolidated company is incorporated under this Act, the merger or consolidation shall be effective on the date the articles of merger or consolidation are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of merger or consolidation; but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside Vanuatu, the merger or consolidation shall be effective as provided by the laws of that other jurisdiction.

DISPOSITION OF ASSETS

88. Any sale, transfer, exchange or other disposition of more than 75 per cent, by value, of the assets of a company, other than a transfer pursuant to the power described under section 9(2), if not made in the usual manner or regular course of the business carried on by the company, shall be as follows:
- (a) the proposed sale, transfer, exchange or other disposition shall be approved by the directors;
 - (b) upon approval of the proposed sale, transfer, exchange or other disposition, the directors shall submit the proposal to the members for it to be authorised by a resolution of members;
 - (c) if a meeting of members is to be held, notice of the meeting, accompanied by an outline of the proposal, shall be given to each member, whether or not he is entitled to vote on the sale, transfer, exchange or other disposition; and
 - (d) if it is proposed to obtain the written consent of members, an outline of the proposal shall be given to each member, whether or not he is entitled to consent to the sale, transfer, exchange or other disposition.

REDEMPTION OF MINORITY SHARES

89. (1) Subject to any limitations in the constitution -
- (a) members holding 90 per cent of the votes of the outstanding shares entitled to vote; and
 - (b) members holding 90 per cent of the votes of the outstanding shares of each class and series of shares entitled to vote as a class or series,
- on a merger or consolidation under section 84, may give a written instruction to a company incorporated under this Act directing the company to redeem the shares held by the remaining members.

- (2) Upon receipt of the written instruction referred to in subsection (1), the company shall redeem the shares specified in the written instruction irrespective of whether or not the shares are by their terms redeemable.
- (3) The company shall give written notice to each member whose shares are to be redeemed stating the redemption price and the manner in which the redemption is to be effected.

ARRANGEMENTS

90. (1) In this section "arrangement" means -
- (a) a reorganisation or reconstruction of a company incorporated under this Act;
 - (b) a merger or consolidation of one or more companies incorporated under this Act with one or more other companies, if the surviving company or the consolidated company is a company incorporated under this Act;
 - (c) a separation of two or more businesses carried on by a company incorporated under this Act;
 - (d) any combination of any of the things specified in paragraphs (a) to (c).
- (2) The directors of the company may, by a resolution of directors, approve a plan of arrangement that contains the details of the proposed arrangement.
 - (3) Upon approval of the plan of arrangement by the directors, the company shall make application to the court for approval of the proposed arrangement.
 - (4) The court may, upon an application made to it under subsection (3), make an interim or final order that is not subject to an appeal unless a question of law is involved in which case notice of appeal shall be given within the period of 20 days immediately following the date of the order, and in making the order the court may -
 - (a) determine to whom notice of the proposed arrangement is to be given;
 - (b) determine whether any person's approval of the proposed arrangement should be obtained and the manner of obtaining such approval;
 - (c) determine whether any holder of shares, debt obligations or other securities in the company may dissent from the proposed arrangement and receive payment of the fair value of his shares, debt obligations or other securities under section 91;
 - (d) conduct a hearing and permit any interested persons to appear; and
 - (e) approve or reject the plan of arrangement as proposed or with such amendments as it may direct.
 - (5) Where the court makes an order approving a plan of arrangement, the directors of the company if they are still desirous of executing the plan shall confirm the plan of arrangement as approved by the court including any amendments directed to be made by the court.
 - (6) The directors of the company, upon confirming the plan of arrangement, shall -
 - (a) give notice to the persons to whom the order of the court requires notice to be given; and

- (b) submit the plan of arrangement to those persons for such approval, if any, as the order of the court requires.
- (7) After the plan of arrangement has been approved by those persons by whom the order of the court may require approval, articles of arrangement shall be executed by the company and shall contain -
- (a) the plan of arrangement;
 - (b) the order of the court approving the plan of arrangement; and
 - (c) the manner in which the plan of arrangement was approved, if approval was required by the order of the court.
- (8) The articles of arrangement shall be submitted to the Registrar who shall retain and register them in the Register.
- (9) Upon registration of the articles of arrangement, the Registrar shall issue a certificate under his hand and seal certifying that the articles of arrangement have been registered.
- (10) A certificate of arrangement issued by the Registrar shall be *prima facie* evidence of compliance with all the requirements of this Act in respect of the arrangement.
- (11) An arrangement shall be effective on the date the articles of arrangement are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as shall be stated in the articles of arrangement.

RIGHTS OF DISSENTERS

91. (1) A member of a company shall be entitled to payment of the fair value of his shares upon dissenting from -
- (a) a merger, if the company is a constituent company, unless the company is the surviving company and the member continues to hold the same or similar shares;
 - (b) a consolidation, if the company is a constituent company;
 - (c) any sale, transfer, exchange or other disposition of more than 75 per cent of the assets or business of the company, if not made in the usual or regular course of the business carried on by the company, but not including -
 - (i) a disposition pursuant to an order of the court having jurisdiction in the matter;
 - (ii) a disposition at fair value for money on terms requiring all or substantially all net proceeds to be distributed to the members in accordance with their respective interests within one year after the date of disposition; or
 - (iii) a transfer pursuant to the power described in section 9(2);
 - (d) a redemption of his shares by the company pursuant to section 89; and
 - (e) an arrangement, if approved by the court.
- (2) A member who desires to exercise his entitlement under subsection (1) shall give to the company, before the meeting of members at which the proposed action is submitted to a vote, or at the meeting but before the vote, written objection to

the action; but a written objection shall not be required from a member to whom the company did not give notice of the meeting in accordance with this Act or where the proposed action is authorised by written consent of members without a meeting.

- (3) An objection under subsection (2) shall include a statement that the member proposes to demand payment for his shares if the proposed action is taken.
- (4) Within 20 days immediately following the date on which the vote of members authorising the action is taken, or the date on which written consent of members without a meeting is obtained, the company shall give written notice of the authorisation or consent to each member who gave written objection or from whom written objection was not required, except those members who voted for, or consented to in writing, the proposed action.
- (5) A member to whom the company was required to give notice who elects to dissent shall, within 20 days immediately following the date on which the notice referred to in subsection (4) is given, give to the company a written notice of his decision to elect to dissent, stating -
 - (a) his name and address;
 - (b) the number and classes or series of shares in respect of which he dissents; and
 - (c) a demand for payment of the fair value of his shares;

and a member who elects to dissent from a merger under section 84 shall give to the company a written notice of his decision to elect to dissent within 20 days immediately following the date on which the copy of the plan of merger or an outline thereof is given to him in accordance with section 84.

- (6) A member who dissents shall do so in respect of all shares that he holds in the company.
- (7) Upon the giving of a notice of election to dissent, the member to whom the notice relates shall cease to have any of the rights of a member except the right to be paid the fair value of his shares.
- (8) Within 7 days immediately following the date of the expiration of the period within which members may give their notices of election to dissent, or within 7 days immediately following the date on which the proposed action is put into effect, whichever is later, the company or, in the case of a merger or consolidation, the surviving company or the consolidated company, shall make a written offer to each dissenting member to purchase his shares at a specified price that the company determines to be their fair value; and if, within 30 days immediately following the date on which the offer is made, the company making the offer and the dissenting member agree upon the price to be paid for his shares, the company shall pay to the member the amount in money upon the surrender of the certificates representing his shares.
- (9) If the company and a dissenting member fail within the period of 30 days referred to in subsection (8) to agree on the price to be paid for the shares owned by the member, within 20 days immediately following the date on which the period of 30 days expires, the following shall apply -
 - (a) the company and the dissenting member shall each appoint an arbitrator willing to so act;
 - (b) the two arbitrators shall fix the fair value of the shares owned by the dissenting member as of the close of business on the day prior to the date on which the vote of members authorising the action was taken or the

date on which written consent of members was obtained, excluding any appreciation or depreciation directly or indirectly induced by the action or its proposal, and that value is binding on the company and the dissenting member for all purposes;

- (c) In the event they, two appointed arbitrators cannot within 90 days or such longer period as agreed by the dissenting members and the company agree upon the fair value of the shares pursuant to subparagraph (b), the dissenting members may upon giving the company 14 days notice apply to the Court to appoint a single arbitrator who shall determine the fair value in accordance with paragraph (b); and
 - (d) the company shall pay to the member the amount in money upon the surrender by him of the certificates representing his shares.
- (10) Shares acquired by the company pursuant to subsection (8) or (9) shall be cancelled but if the shares are shares of a surviving company, they shall be available for re-issue.
- (11) The enforcement by a member of his entitlement under this section excludes the enforcement by the member of a right to which he might otherwise be entitled by virtue of his holding shares, except that this section does not exclude the right of the member to institute proceedings to obtain relief on the ground that the action is illegal.

PART 11

CONTINUATION

CONTINUATION

92. (1) A company incorporated under:-
- (a) the laws of a jurisdiction other than Vanuatu which does not prohibit the continuation of companies outside that jurisdiction; or
 - (b) the Companies Act;
- may continue as a company incorporated under this Act provided that on continuation it will not be in breach of section 10.
- (2) A company applying to be continued under this Act shall file with the Registrar:
- (a) a constitution which complies with this section and section 3 to be effective upon continuance, (the new constitution);
 - (b) ~~a certified copy of its existing constitution and certificate of incorporation;~~
 - (c) a certified copy of a resolution passed by a simple majority in value of the members entitled to vote, to -
 - (i) continue the company under this Act;
 - (ii) approve the new constitution;
 - (iii) appoint one or more persons to sign the new constitution; and
 - (iv) authorise one or more persons who may give notice to the Registrar by telefax, telex, telegram, cable or registered mail, that the new constitution be registered; and

- (d) in the case of a local company, written approval from the Registrar of Companies appointed under the Companies Act for the company to continue under this Act.
- (3) The new constitution, in addition to complying with the provisions of section 3 shall contain:
 - (a) the existing name and subject to section 4, the name under which it is to be continued;
 - (b) the jurisdiction in which it is incorporated; and
 - (c) the date it was incorporated.
- (4) Provided he is satisfied that all requirements in respect of continuation and all matters precedent and incidental thereto have been complied with the Registrar shall retain the documents filed under subsection (2) and grant a permit to continue the company under this Act.
- (5) Subject to subsection (4), upon receipt of notice of exercise of the authority pursuant to subsection (2)(c)(iv) which may be contemporaneous with the filing of the documents required by subsection (2) the Registrar shall issue a dated certificate of continuation under his hand and seal certifying that the company is incorporated under this Act.
- (6) The Registrar shall not prior to the receipt of the notice referred to in subsection (2)(c)(iv), permit any person to inspect the documents referred to in subsection (2) and shall not divulge any information in respect thereof.
- (7) Prior to the registration of the new constitution a company may rescind or amend the written authorisation referred to in subsection (2)(c)(iv) by delivering to the Registrar a written notice of rescission or amendment.
- (8) If the Registrar does not receive a notice referred to in subsection (2)(c)(iv) from a person named in the written authorisation within three years immediately following the date on which the permit to continue is granted by the Registrar under subsection(4), the permit shall lapse.

CERTIFICATE OF CONTINUATION

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

EFFECT OF CONTINUATION

94. (1) ~~From the time of the issue by the Registrar of a certificate of continuation under section 92(5) -~~
- (a) the company to which the certificate relates -
 - (i) continues to be a body corporate incorporated under this Act, under the name designated in the articles of continuation,
 - (ii) is capable of exercising all powers of a company incorporated under this Act, and
 - (iii) is no longer to be treated as a company incorporated under the Companies Act or a company incorporated under the laws of a jurisdiction outside Vanuatu;

- (b) the constitution of the company, or its equivalent, as amended by the articles of continuation, shall be the constitution of the company;
 - (c) property of every description, including choses in action and the business of the company, shall continue to be vested in the company; and
 - (d) the company shall continue to be liable for all of its claims, debts, liabilities, and obligations.
- (2) Where a company is continued under this Act -
- (a) no conviction, judgment, ruling, order, claim, debt, liability, or obligation due or to become due and no cause existing, against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under this Act; and
 - (b) no proceedings, whether civil or criminal, pending at the time of the issue by the Registrar of a certificate of continuation under section 92(5) by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under this Act, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be.
- (3) All shares in the company that were outstanding prior to the issue by the Registrar of a certificate of continuation under section 92(5) in respect of the company shall be deemed to have been issued in conformity with this Act, but a share that at the time of the issue of the certificate of continuation was not fully paid remains unpaid, and until the share is paid up, the member holding the share remains liable for the amount unpaid on the share.
- (4) If at the time of the issue by the Registrar of a certificate of continuation under section 92(5) in respect of the company any provisions of the constitution of the company do not in any respect accord with this Act -
- (a) the provisions of the constitution continue to govern the company until the provisions are amended to accord with this Act or for a period of 2 years immediately following the date of the issue of the certificate of continuation, whichever is the sooner;
 - (b) any provisions of the constitution of the company that are in any respect in conflict with this Act cease to govern the company when the provisions are amended to accord with this Act or after expiration of a period of 2 years after the date of issue of the certificate of continuation whichever is the sooner; and
 - (c) ~~the company shall make such amendments to its constitution as may be necessary to accord with this Act within a period that is not later than 2 years immediately following the date of the issue of the certificate of continuation.~~

CONTINUATION UNDER FOREIGN LAW

95. (1) Subject to any limitations in its constitution a company may, by a resolution of directors or by a resolution of members, be continued as a company incorporated under the laws of a jurisdiction outside Vanuatu in the manner provided under those laws.
- (2) A company that continues its jurisdiction outside Vanuatu shall, provided that the laws of the jurisdiction outside Vanuatu permit the continuation, cease to be a company incorporated under this Act upon the company complying with those

- laws.
- (3) Where a company continues under the laws of a jurisdiction outside Vanuatu -
- (a) the company continues to be liable for all of its claims, debts, liabilities and obligations that existed prior to this continuation as a company under the laws of the jurisdiction outside Vanuatu;
 - (b) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under the laws of the jurisdiction outside Vanuatu; and
 - (c) no proceedings, whether civil or criminal, pending by or against the company, or against any member, director, officer or agent thereof, and abated or discontinued by its continuation as a company under the laws of the jurisdiction outside Vanuatu, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be.

PART 12

WINDING UP, DISSOLUTION AND STRIKING-OFF

WINDING-UP BY EXPIRY OF TIME

96. A company shall commence to wind up and dissolve upon the expiration of such time as may be prescribed in its constitution for its existence.

MEMBERS VOLUNTARY WINDING-UP AND DISSOLUTION

97. (1) A company with a share capital that has never issued shares may voluntarily commence to wind up and dissolve by a resolution of directors.
- (2) A company that has previously issued shares or a company limited by guarantee may voluntarily commence to wind up and dissolve by a resolution of members.

POWERS OF DIRECTORS IN A MEMBERS VOLUNTARY WINDING-UP AND DISSOLUTION

98. Upon the commencement of a winding-up and dissolution required under section 96 or permitted under section 97 the directors powers shall be limited -
- (a) ~~to authorising a liquidator, by resolution, to carry on the business of the company provided that the liquidator determines that to do so would be necessary or in the best interests of the creditors or members of the company; and~~
 - (b) to rescinding the articles of dissolution as permitted under section 102.

DUTIES OF LIQUIDATOR IN A MEMBERS VOLUNTARY WINDING UP

99. (1) A liquidator shall, upon his appointment in accordance with this Part and upon the commencement of a winding-up and dissolution, proceed -
- (a) to identify all assets of the company;
 - (b) to identify all creditors of and claimants against the company;
 - (c) to pay or provide for payment of, or to discharge, all claims, debts,

- (d) liabilities and obligations of the company;
to distribute any surplus assets of the company in accordance with the constitution;
 - (e) to prepare or cause to be prepared a statement of account in respect of the actions and transactions of the liquidator; and
 - (f) to send a copy of the statement of account to members if so required by the plan of dissolution required by section 101.
- (2) A transfer, including a prior transfer, described in section 9(2) of all or substantially all of the assets of a company incorporated under this Act for the benefit of the creditors and members of the company, is sufficient to satisfy the requirements of subsection (1)(c) and (d).

POWERS OF LIQUIDATOR

100. (1) In order to perform the duties imposed on him under section 99, a liquidator has all powers of the company that are not reserved to the members under this Act or in the constitution, including, but not limited to, the power -
- (a) to take custody of the assets of the company and, in connection therewith, to register any property of the company in the name of the liquidator or that of his nominee;
 - (b) to sell any assets of the company at public auction or by private sale without any notice;
 - (c) to collect the debts and assets due or belonging to the company;
 - (d) to borrow money from any person for any purpose that will facilitate the winding-up and dissolution of the company and to pledge or mortgage any property of the company as security for any such borrowing;
 - (e) to negotiate, compromise and settle any claim, debt, liability or obligation of the company;
 - (f) to prosecute and defend, in the name of the company or in the name of the liquidator or otherwise, any action or other legal proceedings;
 - (g) to retain counsel and attorneys, accountants and other advisers and appoint agents;
 - (h) to carry on the business of the company, if the liquidator has received authorisation to do so in the plan of liquidation or by a resolution of directors permitted under section 98, as the liquidator may determine to be necessary or to be in the best interest of the creditors or members of the company;
 - (i) to execute any contract, agreement or other instrument in the name of the company or in the name of the liquidator; and
 - (j) to make any distribution in money or in other property or partly in each, and if in other property, to allot the property, or an undivided interest therein, in equal or unequal proportions.
- (2) Notwithstanding subsection (1)(h), a liquidator shall not, without the permission of the court, carry on for a period in excess of two years the business of a company that is being wound up and dissolved under this Act.

PROCEDURE ON WINDING-UP AND DISSOLUTION

101. (1) The directors of a company required under section 96 or proposing under section 97 to wind up and dissolve the company shall approve a plan of dissolution containing -
- (a) a statement of the reason for the winding-up and dissolving;
 - (b) a statement that the company is, and will continue to be, able to discharge or pay or provide for the payment of all claims, debts, liabilities and obligations in full;
 - (c) a statement that the winding-up will commence on the date when articles of dissolution are submitted to the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of dissolution;
 - (d) a statement of the estimated time required to wind up and dissolve the company;
 - (e) a statement as to whether the liquidator is authorised to carry on the business of the company if the liquidator determines that to do so would be necessary or in the best interest of the creditors or members of the company;
 - (f) a statement of the name and address of each person to be appointed a liquidator and the remuneration proposed to be paid to each liquidator; and
 - (g) a statement as to whether the liquidator is required to send to all members a statement of account prepared or caused to be prepared by the liquidator in respect of his actions or transactions.
- (2) If a winding-up and dissolution is being effected in a case where section 97 is applicable -
- (a) the plan of dissolution shall be authorised by a resolution of members, and the holders of the outstanding shares of a class or series of shares are entitled to vote on the plan of dissolution as a class or series only if the constitution so provides;
 - (b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of dissolution shall be given to each member, whether or not entitled to vote on the plan of dissolution; and
 - (c) if it is proposed to obtain the written consent of members, a copy of the plan of dissolution shall be given to each member, whether or not entitled to consent to the plan of dissolution.
- (3) After approval of the plan of dissolution by the directors, and if required by the members in accordance with subsection (2), articles of dissolution shall be executed by the company and shall contain -
- (a) the plan of dissolution; and
 - (b) the manner in which the plan of dissolution was authorised.
- (4) Articles of dissolution shall be submitted to the Registrar who shall retain and register them in the Register and within 30 days immediately following the date on which the articles of dissolution are submitted to the Registrar, the company shall cause to be published, in the Gazette, a notice stating -

- (a) that the company is in dissolution;
 - (b) the date of commencement of the dissolution; and
 - (c) the names and addresses of the liquidators.
- (5) A winding-up and dissolution commences on the date the articles of dissolution are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of dissolution.
- (6) A liquidator shall, upon completion of a winding-up and dissolution submit to the Registrar a statement that the winding-up and dissolution has been completed and upon receiving the notice, the Registrar shall -
- (a) strike the company off the Register; and
 - (b) issue a certificate of dissolution under his hand and seal certifying that the company has been dissolved.
- (7) Where the Registrar issues a certificate of dissolution under his hand and seal certifying that the company has been dissolved -
- (a) the certificate shall be prima facie evidence of compliance with all requirements of this Act in respect of dissolution; and
 - (b) the dissolution of the company is effective from the date of the issue of the certificate.
- (8) Immediately following the issue by the Registrar of a certificate of dissolution under subsection (6), the liquidator shall cause to be published in the Gazette, in a publication of general circulation in Vanuatu and in a publication of general circulation in the country or place where the company has its principal office, a notice that the company has been dissolved and has been struck off the Register.
- (9) A company that wilfully contravenes subsection (4) shall be liable to a penalty of \$50 for every day or part thereof during which the contravention continues.
- (10) A director or liquidator who knowingly permits the contravention shall be liable on conviction to a penalty of \$50 for every day or part thereof during which the contravention continues.

RESCISSION OF WINDING-UP AND DISSOLUTION

102. (1) In the case of a winding-up and dissolution permitted under section 97, a company may prior to submitting to the Registrar a notice specified in section 101(4), rescind the articles of dissolution by -
- (a) a resolution of directors in the case of a winding-up and dissolution under section 97(1); or
 - (b) a resolution of members in the case of a winding-up and dissolution under section 97(2).
- (2) A copy of a resolution referred to in subsection (1) shall be submitted to the Registrar who shall retain and register it in the Register.
- (3) Within 30 days immediately following the date on which the resolution referred to in subsection (1) has been submitted to the Registrar, the company shall cause a notice stating that the company has rescinded its intention to wind up and dissolve to be published in the Gazette, in a publication of general circulation in Vanuatu and in a publication of general circulation in the country or place where the company has its principal office.

WINDING-UP AND DISSOLUTION OF COMPANY UNABLE TO PAY ITS CLAIMS, ETC.

103. (1) Where - at the commencement of a members voluntary winding up
- (a) the directors or, as the case may be, the members of a company at the time of the passing of the resolution to wind up and dissolve the company, have reason to believe that the company will not be able to pay or provide for the payment of or discharge all claims, debts, liabilities and obligations of the company in full; or
 - (b) the liquidator after his appointment has reason so to believe,
- then, the directors, the members or the liquidator, as the case may be, shall immediately give notice of the fact to the Registrar.
- (2) Where a notice has been given to the Registrar under subsection (1), all winding-up and dissolution proceedings after the notice has been given shall be in accordance with the provisions of the Companies Act relating to winding-up and dissolution and those provisions shall apply *mutatis mutandis* to the winding-up and dissolution of the company.

WINDING-UP AND DISSOLUTION BY THE COURT

104. Notwithstanding the provisions of this Act relating to winding-up and dissolution, a company may be wound up by the court under any of the circumstances, insofar as they are applicable to a company incorporated under this Act in which a company incorporated under the Companies Act may be wound up by the court and, in that case the provisions of the Companies Act relating to winding-up and dissolution apply *mutatis mutandis* to the winding-up and dissolution of the company.

RECEIVERS AND MANAGERS

105. The provisions of the Companies Act regarding receivers and managers shall govern *mutatis mutandis* the appointment, duties, powers and liabilities of receivers and managers of the assets of any company incorporated under this Act.

STRIKING OFF

106. (1) Where the Registrar has reasonable cause to believe that a company is no longer an International Company, the Registrar shall serve on the company a notice that the name of the company may be struck off the Register if the company no longer satisfies those requirements.
- (2) If the Registrar does not receive a reply within 30 days immediately following the date of the service of the notice referred to in subsection (1), he shall serve on the company another notice that the name of the company may be struck off the Register if a reply to the notice is not received within 30 days immediately following the date thereof and that a notice of the contemplated striking-off will be published in the Gazette.
- (3) If the Registrar -
- (a) receives from the company a notice stating that the company no longer satisfies the requirements prescribed for an international company by section 10, in reply to a notice served on the company under subsection (1) or (2); or
 - (b) does not receive a reply to a notice served on the company under subsection (2) as required by the subsection,
- he shall publish a notice in the Gazette that the name of the company will be

struck off the Register unless the company or another person satisfies the Registrar that the name of the company should not be struck off.

- (4) At the expiration of a period of 90 days immediately following the date of the publication of the notice under subsection (3), the Registrar shall strike the name of the company off the Register, unless the company or any other person has within the period of 90 days satisfied the Registrar that the name of the company should not be struck off, and the Registrar shall publish notice of the striking-off in the Gazette.
- (5) If a company has failed to pay the increased annual fee payable by virtue of section 112(2) the Registrar shall, within 30 days immediately following the date specified in that subsection, publish in the Gazette and serve on the company a notice stating the amount of the licence fee payable by virtue of section 112 and stating that the name of the company will be struck off the Register if the company fails to pay the licence fee on or before the 31st December next ensuing.
- (6) If a company fails to pay the increased annual fee stated in the notice referred to in subsection (5) by the 31st December referred to in that subsection, the Registrar shall strike the name of the company off the Register from the 1st January next ensuing.
- (7) A company that has been struck off the Register under this section remains liable for all claims, debts, liabilities and obligations of the company, and the striking-off does not affect the liability of any of its members directors, officers or agents.
- (8) A company that has been struck off the Register pursuant to this section shall be deemed to have been dissolved.

RESTORATION TO REGISTER

107. (1) If the name of a company has been struck off the Register under section 106 the Registrar, or a creditor, member or liquidator thereof, may at any time apply within 20 years of the date of striking off to the court to have the name of the company restored to the Register:
- (2) If upon an application under subsection (1) the court is satisfied that:
 - (a) at the time the name of the company was struck off the Register, the company was an international company; and
 - (b) it would be fair and reasonable for the name of the company to be restored to the Register,

the court may order the name of the company to be restored to the Register upon payment to the Registrar of all fees payable by virtue of section 111 and all licence fees payable by virtue of section 112 or such lesser amounts as the court may order, without any increase for late payment, and upon restoration of the name of the company to the Register, the name of the company shall be deemed never to have been struck off the Register.
 - (3) If the name of a company has been struck off the Register under section 106(6) the company, or a creditor, member or liquidator thereof, may within 3 years immediately following the date of the striking-off, apply to the Registrar to have the name of the company restored to the Register, and upon payment to the Registrar of:
 - (a) all fees due under section 111;
 - (b) the licence fee stated in the notice referred to in section 106(5); and

- (c) a licence fee in the amount stated in the notice referred to in paragraph (b) for each year or part thereof during which the name of the company remained struck off the Register,

the Registrar shall restore the name of the company to the Register and upon restoration of the name of the company to the Register, the name of the company shall be deemed never to have been struck off the Register but the name must be changed if that name then exists on the Register.

- (4) For purposes of this Part, the appointment of an official liquidator under section 109 operates as an order to restore the name of the company to the Register.

EFFECT OF STRIKING-OFF

108. (1) Where the name of a company has been struck off the Register, neither the company nor a director, member, liquidator or receiver thereof, may -
- (a) commence or defend any legal proceedings in the name of the company;
 - (b) carry on any business or in any way deal with the assets of the company;
 - (c) make any claim or claim any right for, or in the name of, the company; or
 - (d) act in any way with respect to the affairs of the company.
- (2) Notwithstanding subsection (1), where the name of the company has been struck off the Register, the company, or a director, member, liquidator or receiver thereof, may -
- (a) continue to defend proceedings that were commenced against the company prior to the date of the striking-off;
 - (b) continue to carry on legal proceedings that were instituted on behalf of the company prior to the date of striking-off; and
 - (c) make application for restoration of the name of the company to the Register.

APPOINTMENT OF OFFICIAL LIQUIDATOR

109. The court may appoint a person to be the official liquidator in respect of a company the name of which has been struck off the Register.

DISSOLUTION OF COMPANY STRUCK OFF

110. (1) ~~If the name of a company has been struck off the Register under section 106 the Registrar may, if he determines that it is in the best interest of Vanuatu to do so, apply to the court to have the company put into liquidation and a person shall be appointed as the official liquidator thereof.~~
- (2) The duties of an official liquidator in respect of a company in liquidation pursuant to subsection (1) shall be limited to:
- (a) identifying and taking possession of all assets of the company;
 - (b) calling for claims by advertisement in the Gazette and in such other manner as he deems appropriate, requiring all claims to be submitted to him within such period as he may determine not exceeding 90 days from the date of the advertisement; and

- (c) applying those assets that he recovers in satisfaction of all other claims admitted by him and in determining the priority of those claims the provisions of Part VI of the Companies Act shall apply *mutatis mutandis*.
- (3) In order to perform the duties with which he is charged under subsection (2), the official liquidator may exercise such powers as the court may consider reasonable to confer on him.
- (4) The official liquidator may require such proof as he considers necessary to substantiate any claim submitted to him and he may admit, reject or settle claims on the basis of the evidence submitted to him.
- (5) When the official liquidator has completed his duties, he shall submit a written report of his conduct of the liquidation proceedings to the Registrar and, upon receipt of the report by the Registrar, all assets of the company, wherever situate, that are not disposed of, vest in the Government and the company shall be dissolved.
- (6) The official liquidator shall be entitled to such remuneration out of the assets of the company for his services as the court approves, but if the company is unable to discharge all of its claims, debts, liabilities and obligations, payment of the official liquidator's remuneration shall be a charge on the Revenue Fund.
- (7) No liability shall attach to an official liquidator:
 - (a) to account to creditors of the company who have not submitted claims within the time allowed by him; or
 - (b) for any failure to locate any assets of the company.

PART 13

FEES AND PENALTIES

FEES

111. (1) Where a company incorporated under the Companies Act is continued as an international company under this Act that company shall be required to pay such fees as are specified in subsection (2) and shall not be required to pay any fees prescribed under the Companies Act.
- (2) There shall be paid to the Registrar the following fees:
- (a) \$150 upon the registration of a company;
 - (b) \$50 upon the registration of an amendment to the constitution of a company;
 - (c) \$500 upon the registration of articles of merger or consolidation or articles of arrangement;
 - (d) \$150 upon the issue of a permit to continue a company under this Act;
 - (e) \$100 upon the issue of a certificate of continuation of a company under this Act;
 - (f) \$100 upon the registration of articles of dissolution;
 - (g) \$100 upon the registration of a resolution rescinding articles of dissolution;

- (h) \$25 upon the issue of a certificate of good standing;
 - (i) \$25 upon the issue of a copy or extract, whether or not certified, of a document or a part of a document;
 - (j) \$25 for the issue of a replacement document or certificate;
 - (k) \$100 upon the issue of a certificate of change of name;
 - (l) \$10 for an inspection of the documents kept by the Registrar pursuant to this Act;
 - (m) \$250 upon the restoration to the Register of a company incorporated under this Act, the name of which was struck off the Register;
 - (n) \$10 for each inspection of the Register;
 - (o) \$10 upon the filing of any other document under this Act.
- (3) The Registrar may charge a fee in respect of costs reasonably incurred in the performance of his duties under this Act.

ANNUAL FEES

112. (1) Each company shall, on or before 30th June each year, pay to the Registrar an annual fee of \$300.
- (2) If a company fails to pay the amount due under subsection (1) by the 30th June, the annual fee shall be increased by 10 per cent of that amount for each month or part thereof during which the fee remains unpaid up to a maximum of 50%.

PENALTIES PAYABLE TO REGISTRAR

113. Any penalty incurred under this Act shall be paid to the Registrar who may in his absolute discretion waive or remit the whole or any part thereof.

RECOVERY OF PENALTIES ETC.

114. Any fee or penalty payable under this Act shall from and after the day on which the same became due and payable be deemed to be debts due to the government from every person liable to the payment of same and may be recovered in any court of competent jurisdiction.

COMPANY STRUCK OFF LIABLE FOR FEES, ETC.

115. A company shall continue to be liable for all fees and penalties payable under this Act notwithstanding that the name of the company has been struck off the Register and all those fees and penalties shall have priority to all other claims against the assets of the company.

FEES, AND PENALTIES TO BE PAID INTO REVENUE FUND

116. All fees and penalties paid under this Act shall be paid by the Registrar into the Treasury on account of the Revenue Fund.

FEES PAYABLE TO REGISTRAR

117. (1) The Registrar may refuse to take action required of him under this Act for which a fee is prescribed until all fees and penalties have been paid.
- (2) The Registrar may refuse to continue under this Act a company incorporated under the Companies Act until all fees and penalties payable by the company under the Companies Act have been paid.

PART 14

EXEMPTIONS

EXEMPTIONS FROM CERTAIN TAXES, DUTIES AND EXCHANGE CONTROL RESTRICTIONS

118. (1) A company shall not unless carrying on business in Vanuatu be subject to any business licence fee. A company or a shareholder thereof shall not be subject to any tax on income, profits, capital gains, distributions accruing to or derived by or from such company.
- (2) No estate, inheritance, succession or gift tax, rate, duty, levy or other charge shall be payable in Vanuatu with respect to any shares, debt obligations or other securities of a company registered under this Act.
- (3) Notwithstanding any provision of the Stamp Duties Act -
- (a) all transfers of property other than real property situate in Vanuatu to or by a company;
 - (b) all transactions and declarations in respect of the shares, debt obligations or other securities of a company; and
 - (c) all other transactions relating to the business of a company;
- shall be exempt from the payment of stamp duty.
- (4) No exchange controls shall be applied to any company nor to any transactions relating to the securities of or in such company between the holders of such securities.
- (5) The exemptions granted to a company by this section shall remain in force for a period of twenty years from the date of its registration under this Act.

PART 15

MISCELLANEOUS

REGISTRAR OF COMPANIES AND DEPUTIES

119. (1) There shall be appointed by the Minister a Registrar of International Companies to carry out the duties and functions and exercise the powers vested in him by or under this or any other Act.
- (2) The Registrar may appoint one or more Deputy Registrars to carry out such of the duties and functions and to exercise such of the powers of the Registrar as may be specified in the appointment.
- (3) Every Deputy Registrar shall be subject to the control of the Registrar.

DOCUMENTS

120. Every document, save as otherwise provided, filed with the Registrar shall be in either the English or French language.

PRESCRIBED FORMS

121. The Registrar may by order advertised in the Gazette -

- (a) Prescribe forms for the purposes of this Act;
- (b) Require the inclusion in or attachment to any such form, when used for the purposes of this Act, of any information or document; and
- (c) Require the signing of any such form by specified persons.

CERTIFICATE OF GOOD STANDING

122. (1) Subject to section 124 the Registrar shall, upon request by any person issue a certificate of good standing under his hand and seal certifying that a company is of good standing if he is satisfied that:
- (a) the name of the company is on the Register; and
 - (b) the company has paid all fees and penalties due and payable.
- (2) The certificate of good standing issued under subsection (1) shall contain a statement as to whether -
- (a) the company has submitted to the Registrar articles of merger or consolidation that have not yet become effective;
 - (b) the company has submitted to the Registrar articles of arrangement that have not yet become effective;
 - (c) the company is in the process of being wound-up and dissolved; or
 - (d) any proceedings to strike the name of the company off the Register have been instituted.

REPLACEMENT OF DOCUMENTS

123. Where it is proved to the satisfaction of the Registrar that any document or certificate issued by him has been lost or destroyed he shall upon application made by any person entitled thereto, issue a duplicate thereof.

INSPECTION OF DOCUMENTS

124. (1) Except as provided in subsection 2 any person upon payment of the prescribed fee:
- (a) inspect the documents kept by the Registrar pursuant to this Act; and
 - (b) require a copy or an extract of any document or any part of a document of which he has custody, to be certified by the Registrar a certified copy or extract shall be prima facie evidence of the matters contained therein.
- (2) A document or a copy or an extract of any document or any part of a document certified by the Registrar under subsection (1) shall be admissible in evidence in any proceedings as if it were the original document.

SECRECY

125. (1) Any person who, except when required by a court of competent jurisdiction, with respect to any company otherwise than for the purposes of the administration of this Act or for the carrying on of the business of the company, in Vanuatu or elsewhere, divulges, attempts, offers or threatens to divulge or induces or attempts to induce other persons to divulge any information concerning or respecting:
- (a) the shareholding in, or beneficial ownership of any share or shares in

- (b) a company;
the management of such company; or
- (c) any of the business, financial or other affairs or transactions of the company;

shall be guilty of an offence.

- (2) Any person who contravenes the provisions of subsection (1) shall, on conviction, be liable to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both such fine and imprisonment.

JURISDICTION

- 126. Subject to any provisions to the contrary in any agreement, between the parties thereto, for the purposes of determining matters relating to title and jurisdiction but not for purposes of taxation, the situs of the ownership of shares, debt obligations or other securities of a company incorporated under this Act shall be Vanuatu.

PENALTY FOR FALSE STATEMENTS

- 127. If any person in any return, report, certificate or other document, required by or for the purposes of any of the provisions of this Act 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 \$50,000 or to a term of imprisonment not exceeding three years, or to both.

PRODUCTION AND INSPECTION OF BOOKS WHERE OFFENCE SUSPECTED

- 128. (1) If on an application made to a judge of the court in chambers by the Attorney General 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 the 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.
- (3) No books or papers or any of them or any of the information contained therein obtained pursuant to subsection (1) shall be revealed to any person without further order of the court.

DECLARATION BY COURT

- 129. (1) A company may without the necessity of joining any other party, apply to the court, by summons supported by an affidavit, for a declaration on any question of interpretation of this Act or of the constitution of the company.
- (2) A person acting on a declaration made by the court as a result of an application made in good faith under subsection (1) shall be deemed, in so far as regards the discharge of any fiduciary or professional duty, to have properly discharged his duties in the subject matter of the application.

JUDGE IN CHAMBERS

130. (1) A Judge of the Supreme Court may exercise in Chambers any jurisdiction that is vested in the court by this Act and in exercise of that jurisdiction, the Judge may award such costs as may be just.
- (2) All proceedings before the court shall be heard *in camera* and no evidence or documents submitted to the court by any party shall, without the consent of that party and the court being first obtained, be made available to any other person not a party to the proceedings.

REGULATIONS

131. The Minister may, by order, make regulations providing for such matters, not inconsistent with this Act, as are contemplated by or necessary for giving full effect to this Act and for its due administration.

MINISTER MAY VARY FEES

132. The Minister may by Order vary any fee prescribed under any provision of this Act.

COMMENCEMENT

133. This Act shall come into force on the date of its publication in the Gazette.

FIRST SCHEDULE

DEBENTURE

1. This Debenture secures the principal sum shown on its face and any interest accrued thereon from time to time. It is payable in the currency set out in this Debenture.
 2. The principal sum is payable by the Debenture Holder at the time or times set out in this Debenture.
 3. Until payment in full, this Debenture will carry interest payable yearly on the principal sum at the rate (if any) shown in the Debenture.
 4. The company is not entitled to redeem this Debenture without the Holder's consent.
 5. The provisions of the Constitution of the company giving the members or any class of the members of the company the right and power to vote and to demand a poll shall, so far as they relate to the company for the period while this Debenture is unredeemed, be void and of no effect for any purpose whatsoever and the provisions contained in the International Companies Act 1992 shall apply.
-

REPUBLIC OF VANUATU

INTERNATIONAL COMPANIES (MODEL CONSTITUTION)
ORDER NO. 13 OF 1993

IN EXERCISE of the powers conferred by section 3(4) of the International Companies Act No. 32 of 1992, I, WILLIE JIMMY, Minister of Finance, make the following Order:-

MODEL CONSTITUTION OF A COMPANY LIMITED BY SHARES

1. The Constitution of every company limited by shares shall be in the form prescribed in the Schedule to this Order.

COMMENCEMENT

2. This Order shall come into force on the date of its publication in the Gazette.

MADE at Port Vila this 27th day of April, 1993.

WILLIE JIMMY
Minister of Finance



SCHEDULE
MODEL CONSTITUTION
OF
A COMPANY LIMITED BY SHARES

Name

1. The name of the Company is _____

Registered Office

2. The first registered office of the Company is located at _____

Registered Agent

3. The first registered agent of the Company is _____ of

Objects and Purposes

4. Save as provided in paragraph 5 herein, the objects and purposes of the Company and the types of business it is authorised to carry on are unrestricted.

Restrictions

5. (1) The Company shall not engage in any activity that is prohibited by or contrary to any enactment or rule of law for the time being in force in Vanuatu.
- (2) The Company, being an international company, shall not—
- (a) carry on business in Vanuatu;
 - (b) acquire or own an interest in immovable property situate in Vanuatu other than a lease referred to in subparagraph (3)(b);
 - (b) carry on banking, insurance, trust or company management business;
 - (c) at any time have less than one member;

- (d) make any invitation to the public to
 - (i) subscribe for any shares or debentures in the Company; or
 - (ii) deposit money with or lend money to the Company.
- (3) For the purposes of subparagraph (2)(a) the Company shall not be treated as carrying on business in Vanuatu by reason only that it -
 - (a) carries on business with another company incorporated under the Act or in furtherance of the business of the Company carried on outside Vanuatu;
 - (b) leases premises from which to carry on its business as permitted by the Act;
 - (c) makes or maintains deposits with a person licensed to carry on banking business in Vanuatu;
 - (d) obtains professional services from its registered agent, counsel, attorneys, accountants, bookkeepers, trust companies, management companies, investment advisers, insurance brokers or agents or other similar persons carrying on business within Vanuatu.
 - (e) prepares or maintains its books or records within Vanuatu;
 - (f) holds meetings within Vanuatu of its directors or members;
 - (g) holds shares, debt obligations or other securities in a company incorporated under the Act;
 - (h) issues shares, debt obligations or other securities to any person resident in Vanuatu or any company incorporated under the Act or under the Companies Act.

Type of Company

6. The Company is limited by shares.

First Directors

7. The first directors of the Company will be:

(1) _____ of _____

(2) _____ of _____

Amendment of Constitution

8. The Company may, by a resolution of members, amend this Constitution .

Change of Status

9. (1) The Company may change its status from being limited by shares to being limited by guarantee

or being limited both by shares and guarantee in accordance with this paragraph and such change may be effected notwithstanding that at some earlier time the Company has been any other (or the same) type of company provided that -

- (a) the proposed change is authorised by a resolution of the members of the Company and is given effect to within six months from the date of such resolution, and
 - (b) the directors make a statutory declaration in accordance with the Act which is lodged with the Registrar.
- (2) Where any member does not vote in favour of the members' special resolution to change the status of the Company and the change of status may have the effect of increasing the liability of that member then, except in so far as that change was made in accordance with the rights of that member as are specified in this Constitution at the time that person became a member, that member may exercise the rights of a dissenter pursuant to Section 91 of the Act.

SHARE CAPITAL AND MEMBERS

Rights Attaching to Shares

10. Unless otherwise specified upon its issue, each share has attached to it:-

- (a) the right to one vote at any meeting of the Company (other than a meeting of a class of members of which the holder of the share is not a member);
- (b) the right to an equal share in dividends authorised by the directors in respect of its class or series;
- (c) the right to an equal share in the distribution of the capital and surplus assets of the Company.

Types of Shares

11. (1) The Company may issue on such terms and in such manner as the directors before or at the time of the issue of the shares may, by resolution, determine -
- (a) registered or bearer shares;
 - (b) shares having special, conditional, enhanced, limited or no voting rights;
 - (c) shares with or without par value;
 - (d) numbered or unnumbered shares;
 - (e) convertible common, ordinary, preferential or redeemable shares;
 - (f) shares that entitle participation only in certain assets;
 - (g) shares, the holders of which are entitled to forfeit them;
 - (h) shares in any one or more currencies

- (i) options, warrants or rights, or instruments of a similar nature, to acquire any securities of the Company;
 - (j) securities that, at the option of the holder thereof or of the Company or upon the happening of a specified event, are convertible into, or exchangeable for, other securities in the Company or any property then owned or to be owned by the Company;
 - (k) shares that carry the right to suspend the voting rights of other shares;
- or any combination thereof.
- (2) Unless otherwise specified by the directors upon its issue, a registered share shall be transferable.

Allotment and Issue of Shares

12. (1) Subject to the provisions of this Constitution, the unissued and treasury shares of the company shall be at the disposal of the directors who may offer, allot, grant options over or otherwise dispose of them to such persons, at such times, for such consideration (subject to section 21 of the Act) and upon such terms and conditions as the directors may by resolution determine.
- (2) Unless the directors otherwise determine before or at the time of its issue, the joint holders of a share shall be jointly and severally liable for the consideration due in respect thereof.

Calls on Shares

13. (1) Subject to the terms of issue:
- (a) the directors may, by resolution, make calls upon the members in respect of any monies unpaid on their shares and each member shall, subject to receiving at least 14 days notice specifying when and where payment is to be made, pay to the company as required by the notice the amount called on his shares;
 - (b) a call may be required to be paid by installments and may, before receipt by the company of any sum due thereunder, be revoked in whole or in part and payment of a call may be postponed in whole or in part;
 - (c) the directors may determine when making the call that if the call remains unpaid after it has become due and payable, the person from whom it is due shall pay interest on the amount unpaid from the date it fell due to the date of payment and provided that the liability to pay interest is contained in the notice of the call interest shall be paid in such circumstances;
 - (d) the directors may waive the payment of interest due in whole or in part.
- (2) A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed.
- (3) The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.
- (4) An amount payable in respect of the issue of a share or on any fixed date, including an installment of a call, shall be deemed to be a call and if it is not paid the provisions of this Constitution shall apply as if that amount had become due and payable by virtue of a call.

- (5) The directors may issue shares to holders subject to different amounts and different times of payment of calls thereon.

Forfeiture of Shares by Company

14. (1) If a call remains unpaid after it has become due and payable the directors may give the person from whom it is due not less than 14 days notice requiring payment of the amount unpaid together with any interest that may have accrued thereon.
- (2) The notice shall name the place where the call is to be paid and shall state that if the notice is not complied with the shares in respect of which the call was made will be liable to be forfeited.
- (3) If the notice is not complied with the directors may, by resolution, before the payment required by the notice has been made, forfeit the share. The forfeiture shall include all dividends or other monies payable in respect of the share which have not been paid before the forfeiture.
- (4) 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 directors may, by resolution, cancel the forfeiture on such terms as they think fit.
- (5) A person whose shares have been forfeited shall cease to be a member in respect of those shares, but shall, notwithstanding, remain liable for the call, installment of call or consideration due at the date of forfeiture but his liability shall cease if and when the company shall have received payment in full (or monies of an equivalent value to the consideration outstanding) in respect of the shares.
- (6) Where for the purposes of its disposal a forfeited share is to be transferred to any person, the directors may authorise some person to execute an instrument of transfer to that person.
- (7) A statutory declaration by a director that a share has been forfeited on a specified date shall be conclusive evidence of the facts stated therein as against all persons claiming to be entitled to the share and the declaration shall, subject to the execution of an instrument of transfer (if necessary) constitute a good title to the share and the person to whom the share is disposed of shall not be bound to see to the application of the consideration, if any, nor shall his title to the share be affected by any irregularity in or invalidity of the proceedings in reference to the forfeiture or disposal of the share.

Forfeiture of Shares by Holder

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

Lien

16. (1) The directors may issue a registered share (not being a fully paid share) subject to the company having a lien on the share for all monies (whether presently payable or not) payable at a fixed

time or called in respect of that share. The company's lien on a share shall extend to any amount payable in respect of it.

- (2) The company may sell in such manner as the directors may determine any shares on which the company has a lien if a sum in respect of which the lien exists is presently payable and is not paid within 14 days after written notice has been given to the registered holder of the share or to the person entitled to it in consequence of the death or bankruptcy of the holder, demanding payment and stating that if the notice is not complied with the shares may be sold.
- (3) To give effect to any such sale the directors may authorise some person to execute a transfer of the share sold to or in accordance with the directions of the purchaser. The title of the transferee to the shares shall not be affected by any irregularity in or invalidity of the proceedings in reference to the sale or the application of the proceeds thereof.
- (4) The net proceeds of sale, after payment of the costs, shall be applied in payment of so much of the sum for which the lien exists as is presently payable, and any residue shall (subject to a like lien for consideration not presently due as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

Variation of Rights

17. (1) 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 not less than 75 per cent of the issued shares of that class and of the holders of not less than 75 per cent of the issued shares of any other class of shares which may be affected by such variation.
- (2) 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.
- (3) Any variation of the rights attached to any shares pursuant to this paragraph shall be subject to section 19 of the Act.

Alterations of Capital

18. Subject, where appropriate, to the provisions in the Act with regard to distributions, the Company may by resolution of its members:-
 - (a) purchase, redeem or otherwise acquire and hold its own shares;
 - (b) increase or reduce the number of its shares;
 - (c) exchange registered shares for shares issued to bearer and shares issued to bearer for shares which are registered or are to be registered;
 - (d) change the currency in which any of its shares are denominated;
 - (e) change par value shares to no par value and change no par value shares to par value;
 - (f) increase or decrease the par value of any of its shares;

- (g) divide any shares into a larger number of shares of the same class or series or combine any of its shares into a smaller number of shares of the same class or series, provided where shares with par value are divided or combined the aggregate par value of the new shares shall be equal to the aggregate par value of the old shares;
- (h) determine the number of classes and series of shares and the number of shares of each such class and series, the par value of shares with par value and the value at which shares with no par value are to be issued; and
- (i) determine the designations, powers, preferences, rights, qualifications, limitations or restrictions of each class and series of shares;

or any combination or variation thereof.

Fractional Shares

19. Any fractional share issued by the Company shall have the corresponding fractional liabilities, limitations, preferences, privileges, qualifications, restrictions, rights and other attributes of a whole share of the same class or series.

Share Certificates

20. (1) Every person whose name is entered as a member in the register of members and every person who subscribes for shares issued to bearer shall, without payment, be entitled to a certificate signed by at least two directors or, if the company only has one director, by that director, or under the seal of the Company with or without the signature of any director of the Company specifying the share or shares held and, if appropriate, the par value thereof.
- (2) 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.
- (3) Each certificate issued in respect of a bearer share shall carry an identifying number.
- (4) If a share certificate is defaced, lost or destroyed, it may be renewed on such terms, if any, as to evidence and indemnity and the payment of out-of-pocket expenses of investigating the loss, defacement or destruction of the share certificates as the directors think fit.
- (5) Any member receiving a certificate shall hold the company and its director harmless from any loss or liability which it or they may incur by reason of wrongful or fraudulent use or representation made by any person by virtue of the possession of such certificate.

Non-Recognition of Trusts

21. Except as required by law, no person shall be recognized 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 any other rights in respect of any share except an absolute right to the entirety thereof by the registered holder.

Transfer of Registered Shares

22. (1) Registered shares which are transferable may be transferred by a written instrument of transfer signed by the transferor and containing the name and address of the transferee.
- (2) The Company shall, on the application of the transferor or on receipt from the transferee of a transfer as aforesaid of a registered share, enter in its Register of Members the name and address of the transferee of the share.
- (3) In the absence of a written instrument of transfer as aforesaid, the directors may accept such evidence of a transfer of shares as they consider appropriate.
- (4) The Company shall not be required to treat a transferee of a registered share as a member until the transferee's name has been entered in the Register of Members.
- (5) The directors may, in their absolute discretion and without assigning any reason therefore, decline to register any transfer of a registered share whether or not it is fully paid.
- (6) If the directors refuse to register a share transfer they shall, within 2 months after the date on which the transfer was lodged with the company, send to the transferee notice of their refusal.

Transfer of Bearer Shares and Share Warrants

23. A share or a share warrant issued to bearer shall be transferred by delivery of the certificate relating thereto.

Transmission of Shares

24. The personal representative, guardian or trustee as the case may be of a deceased, incompetent or bankrupt sole holder of a registered share shall be the only person recognised by the Company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivor or survivors, and the personal representative, guardian or trustee, as the case may be, of the deceased, incompetent or bankrupt holder, shall be the only persons recognised by the Company as having any title to the share but they shall not be entitled to exercise any rights as a member until they have proceeded as set forth below:
- (1) Any person becoming entitled by operation of law or otherwise to a share or shares in consequence of the death, incompetence or bankruptcy of any member may be registered as a member upon such evidence being produced as may reasonably be required by the directors. An application by any such person to be registered as a member for all purposes shall be deemed to be a transfer of shares of the deceased, incompetent or bankrupt member and the directors shall treat it as such; or
- (2) Any person who has become entitled to a share or shares in consequence of the death, incompetence or bankruptcy of any member may, instead of being registered himself, request in writing that some person to be named by him be registered as a transferee of such share or shares and such request shall likewise be treated as if it were a transfer.

Distributions and the Solvency Test

25. (1) Subject to any special or limited rights attaching to any shares, the directors may, by resolution, authorise a distribution by the company at such time and of such amount and to such members as they think fit, provided that they are satisfied that the Company will, after the distribution, satisfy the solvency test.
- (2) (a) The Act provides that the Company will satisfy the solvency test if -
- (i) it is able to pay its debts as they become due in the normal course of business; and
 - (ii) the realisable value of the Company's assets is greater than the aggregate of the present value of its liabilities, whether contingent or otherwise.
- (b) In determining whether the Company satisfies the solvency test regard may be had either to financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances, or a fair valuation or other method that is reasonable in the circumstances.
- (c) "Realisable value", in relation to any asset, means the price that would be paid for that asset by a purchaser in an "at arms length" transaction.
- (3) In applying the solvency test for the purposes of the Act and this Constitution, "debts" shall include fixed preferential returns on shares ranking ahead of those in respect of which a distribution is made, and "liabilities" shall include the amount that would be required, if the Company was to be wound up immediately after the distribution, to satisfy the fixed entitlements of all members or other persons at that time, except to the extent where that fixed preferential return or entitlement is by the terms upon which those shares were issued, subject to the power of the directors to make the distribution.

Dividends

26. (1) Subject to the provisions of the Act with regard to the solvency test, the Company may, by a resolution of directors, declare and pay dividends in money, shares or other property in accordance with the respective rights of the members. Where a dividend is to be satisfied wholly or partly by the distribution of assets other than money, and where any difficulty arises with regard to the distribution, the directors may settle the same and in particular may issue fractional certificates and fix the value for distribution of any assets and may determine that cash shall be paid to any member upon the basis of the value so fixed in order to adjust the rights of members and may vest any assets in trustees.
- (2) ~~The directors may, before declaring any dividend, set aside out of the distributable monies 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 meeting contingencies or for any other purpose to which the monies may be properly applied and pending such application may, at the like discretion, the monies may either be employed in the business of the Company or be invested in such investments as the directors may from time to time think fit.~~
- (3) The directors may pay interim dividends if it appears to them that they are justified having regard to the financial state of the company.
- (4) Except as otherwise provided by the rights attached to a share upon its issue and except as provided in subparagraph (5), all shares shall rank equally for dividend.

- (5) The directors may, by resolution, reduce the dividend payable in respect of registered shares which are not fully paid by a proportion equal to that proportion of the total consideration payable for the share which was unpaid at the end of the period in respect of which the dividend was paid.
- (6) Any person entitled to receive a dividend of shares may elect not to receive such shares.
- (7) Notice of any dividend that may be declared shall be given to each member in the same manner as notice of a meeting of members, as provided in paragraph 48, and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the Company.
- (8) If several persons are registered as joint holders of any share, any of them may give effectual receipt for any dividend or other monies payable on or in respect of the share.
- (9) No dividend shall bear interest against the Company.

Acquisition of Own Shares

27. (1) Subject to the provisions of the Act with regard to the solvency test, the Company may, by a resolution of directors, purchase, redeem or otherwise acquire and hold its own shares provided that such transaction does not result in the Company becoming the sole member.
- (2) The Company may provide financial assistance, whether directly or indirectly and whether by way of loan, guarantee, or otherwise, for the purpose of or in connection with the purchase or subscription of its shares, the shares of any subsidiary or of its holding company (if any).
- (3) There shall be no requirement to meet the solvency test where shares are purchased, redeemed or otherwise acquired:-
 - (a) pursuant to a right of a member to have his shares redeemed or to have his shares exchanged for money or other property of the Company;
 - (b) in exchange for newly issued shares in the Company;
 - (c) by virtue of the provisions of Section 89 of the Act; or
 - (d) pursuant to an order of the court.
- (4) Any shares that the Company purchases, redeems or otherwise acquires may be canceled or held as Treasury shares

Shares Disabled in Respect of Voting and Dividends

28. (1) Where shares in the Company are held by the Company as treasury shares, those shares are not entitled to vote or to have dividends paid thereon.
- (2) Where shares in the Company are held by another company of which the Company holds, directly or indirectly, shares having more than 50 per cent of the votes in the election of directors of that other company, the shares of the Company held by that other company are not entitled to vote or to have dividends paid thereon and the shares shall not be treated as outstanding for any

purpose under the Act or except for the purpose of determining the capital of the Company.

Increase or Reduction of Capital

29. (1) The capital of the Company may, by resolution of directors, be -
- (a) increased; or
 - (b) subject to the provisions of the Act with regard to the solvency test, reduced by returning to members any amount received by the Company upon the issue of any of its shares or canceling any capital that is lost or not represented by assets having a realisable value.
- (2) The Company may, with the consent of the members affected, convert any amount of its capital to debt obligations owed by it to the holder of those shares (whether by repayment or by direct conversion to an instrument).

REGISTERED OFFICE AND REGISTERED AGENT

Registered Office and Agent

30. (1) As required by the Act, every company shall have a registered office and registered agent in Vanuatu.
- (2) The directors may, by resolution, change the address of the registered office or change the registered agent of the Company.

DIRECTORS AND OFFICERS

Appointment, Term and Removal of Directors

31. (1) The first directors shall, and any subsequent directors may, be appointed by the members for such term as they may determine.
- (2) A director shall cease to hold office on the expiry of his term or on his death, resignation or upon the vacation of his office pursuant to subparagraph (3) herein.
- (3) The office of director shall be vacated if -
- (a) he is removed from office by a resolution of the members or of the directors of the Company;
 - (b) in the case of a corporate director, it enters liquidation or it ceases to be a body corporate;
 - (c) in the case of an individual, he becomes bankrupt or makes any arrangement or composition with his creditors generally;
 - (d) he becomes of unsound mind, or of such infirm health as to be incapable of managing his affairs; or

- (e) he resigns his office by giving written notice to the Company, in which case the resignation shall have effect from the date the notice is received by the Company or from such later date as may be specified in the notice.
- (4) If a director shall cease to hold office before the expiry of his term of office, the remaining directors may, by resolution, appoint a new director in his place to complete his term.
- (5) Until directors are appointed, the incorporators shall have the power to act as directors.
- (6) A director shall not be required to hold shares in the Company but nevertheless shall be entitled to attend and speak at any meeting of the members and at any separate meeting of the holders of any class of shares.

Number of Directors

32. The number of directors shall be not less than one nor more than seven.

Powers of Directors

33. (1) Subject to any directions given by resolution of the members of the company, the business of the Company shall be managed by the directors who may exercise all the powers of the company that are not reserved to the members by the Act or by this Constitution.
- (2) No amendment of this Constitution and no direction given by resolution of the members shall invalidate any prior act of the directors which would have been valid had the amendment not been made or the direction not been given.
- (3) The Board may entrust to and confer upon any director or officer any of the powers exercisable by it upon such terms and conditions and with such restrictions as it thinks fit and either collaterally with, or to the exclusion of, its own powers and may from time to time revoke, withdraw, alter or vary all or any of such powers.
- (4) The directors may from time to time and at any time appoint any company, firm, person or body of persons 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 this Constitution) 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 attorney as the directors may think fit and may also authorise any attorney to delegate all or any of the powers, authorities and discretions vested in him.
- (5) 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, to issue debentures, debenture stock and other securities whenever money is borrowed or as security for any debt, liability or obligation of the Company or of any third party.

Emoluments and Expenses of Directors

34. (1) The emoluments of any director in respect of services to be rendered by him as a director shall be determined by a resolution of directors.

- (2) The directors may be paid all traveling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of directors or committees of directors or any meetings of members or of a class of members or of debenture holders, or otherwise in connection with the discharge of their duties.
- (3) The Company may pay to a director who at the request of the Company holds any office (including a directorship) in or renders services to any company in which the Company may be interested, such remuneration (whether by way of salary, commission, participation in profits or otherwise) in respect of such office or services as shall be approved by resolution of the directors.

Committees of Directors

35. (1) The directors may, by resolution, designate one or more committees each consisting of one or more directors.
- (2) Each committee shall have such powers and authority as are set forth in the resolution establishing it except that no committee shall have power or authority to appoint or remove directors.
- (3) The directors may, by resolution, at any time revoke or amend the powers given to a committee pursuant to this paragraph.
- (4) Subject to any conditions imposed by the directors, the proceedings of a committee with two or more members shall be governed by the provisions of this Constitution regulating the proceedings of directors so far as they are capable of applying.

Notice of Meetings of Directors

36. (1) Each director shall be given not less than 2 days notice of meetings of directors.
- (2) A meeting of directors held otherwise than in accordance with sub-paragraph (1) shall be valid if the majority of directors entitled to vote at the meeting have waived the notice of the meeting and for this purpose the presence of a director at the meeting shall be deemed to constitute waiver on his part.
- (3) The inadvertent failure to give notice of a meeting to a director, or the fact that a director has not received the notice, shall not invalidate the meeting.

Quorum for Meetings of Directors

37. (1) The quorum for a meeting of directors may be fixed by the directors, but where no quorum is so fixed a meeting shall be properly constituted for all purposes if at the commencement of the meeting two directors are present in person or by alternate, provided that if the Company has only one director at the time, that director shall constitute a quorum.
- (2) A director shall be deemed to be present at a meeting if he participates by telephone or other real time electronic means of audio interactive communication and all directors participating in the meeting are able to hear each other and recognise each other's voice.
- (3) If within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall be dissolved.

- (4) A director shall not be counted in the quorum present at a meeting in relation to a resolution on which he is not entitled to vote.

Proceedings of Directors

38. (1) The directors shall meet at such times and in such manner and places within or outside Vanuatu as they may determine to be necessary or desirable.
- (2) Subject to the provisions of the Act and of this Constitution, the directors may regulate their proceedings as they think fit.
- (3) The directors may elect one of their number to be the chairman of the board of directors and may at any time remove him from that office. The director elected as chairman shall, provided that he is willing to do so, preside at every meeting of directors at which he is present. If there is no director holding that office, or if the director holding the office is unwilling to preside or is not present within 5 minutes after the time appointed for the meeting, the directors present may appoint one of their number to be chairman of the meeting.
- (4) Questions arising at any meeting shall be decided by a majority of votes. In case of any equality of votes, the chairman shall have a second or casting vote.
- (5) Any director may at any time summon a meeting of the directors.
- (6) If the Company shall have only one director the provisions herein contained for meetings of the directors shall not apply but such sole director shall have full power to represent and act for the Company in all matters and in lieu of minutes of a meeting shall record in writing and sign a note or memorandum of all matters requiring a resolution of the directors. Such note or memorandum shall constitute sufficient evidence of such resolution for all purposes.
- (7) All acts done by a 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 director, or that they or any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director and had been entitled to vote.
- (8) Any director which is a body corporate may appoint any person its duly authorised representative for the purpose of representing it at Board Meetings and of transacting any of the business of the directors.

Resolutions of Directors

39. (1) A resolution, notice of which has been given to all directors entitled to receive notice of meetings of directors or of a committee of directors, which has been consented to in writing by an absolute majority of all directors or of all members of a committee of directors as the case may be, shall be as valid and effectual as if it had been passed at a meeting of the directors or a committee of directors duly convened and held.
- (2) The resolution may consist of several documents in like form each signed by one or more directors.
- (3) A resolution signed by an alternate director need not be signed by the director who appointed

him.

Managing Director

40. (1) The directors may from time to time, by resolution, appoint one of their body to the office of Managing Director.
- (2) Any such appointment shall be for such period and on such terms as the directors think fit. Subject to the terms of any agreement entered into in any particular case, the directors may, by resolution, revoke such appointment.
- (3) Any director appointed as Managing Director or to any other executive office 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.
- (4) The directors may entrust to or confer upon a Managing Director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they 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.

Alternate Directors

41. (1) A director may by written instrument -
- (a) appoint any person willing to act to be an alternate director, and
- (b) remove from office an alternate director so appointed by him.
- (2) An alternate appointed under sub-paragraph (1) shall be entitled to receive notice of all meetings of directors and of all meetings of committees of directors of which his appointor is a member, to attend and vote at any such meeting at which the director who appointed him is not personally present and generally to perform all the functions of a director in his absence.
- (3) An alternate director shall be responsible as a director for all his acts or omissions when acting in the place of the director who appointed him and shall be deemed to be an officer of the company, but not an agent of the director who appointed him.
- (4) If undue delay or difficulty would be occasioned by giving notice to a director of a resolution of which his approval is sought, his alternate (if any) shall be entitled to signify approval of the same on behalf of that director.
- (5) ~~The remuneration of an alternate shall be payable out of the remuneration payable to the Director appointing him and shall consist of such portion thereof as shall be agreed between the alternate and the director appointing him.~~
- (6) The appointment of an alternate shall be canceled and he shall cease to hold office if the director who appointed him ceases to be a director.
- (7) Any appointment or removal of an alternate director shall be by notice to the Company signed by the director making or revoking the appointment or in any other manner approved by the directors.

Standard of Care

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

Directors' Appointments and Conflict of Interest

43. Subject to section 50 of the Act-

- (1) A director may hold any other office or position of profit under the Company (except that of auditor) in conjunction with his office of director, and may act in a professional capacity to the Company on such terms as to remuneration and otherwise as the directors may, by resolution decide.
- (2) A director 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 a member or otherwise, and no such director shall be accountable for any remuneration or other benefits received by him as director or officer or from his interest in such other company. The directors may also exercise the voting powers conferred by the shares in any other company held or owned by the Company in such manner in all respects as they think fit, including the exercise thereof in favour of any resolutions appointing them, or any of their number, directors or officers of such other company, or voting or providing for the payment of remuneration to the directors or officers of such other company. A director may vote in favour of the exercise of such voting rights in manner aforesaid, notwithstanding that he may be, or be about to become, a director or officer of such other company, and as such in any other manner is, or may be, interested in the exercise of such voting rights in manner aforesaid.
- (3) No director shall be disqualified by his office from contracting with the Company, either as vendor, purchaser or otherwise, nor shall any such contract or arrangement entered into by or on behalf of the Company in which any director shall be in any way interested be voided, 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 relationship thereby established.
- (4) The nature of a director's interest must be declared by him at the meeting of the directors at which the question of entering into the contracting or arrangement is first taken into consideration, and if the director was not at the date of that meeting interested in the proposed contract or arrangement, or shall become interested in a contract or arrangement after it is made, he shall forthwith after becoming so interested advise the Company in writing of the fact and nature of his interest.
- (5) A general notice to the Directors by a director that he is a member of a specified firm or company, and is to be regarded as interested in any contract or transaction which may, after the date of notice, be made with such firm or company shall (if such director shall give the same at a meeting of the directors, or shall take reasonable steps to secure that the same is brought up and read at the next meeting of directors after it is given) be a sufficient declaration of interest in relation to such contract or transaction with such firm or company.
- (6) A director may be counted as one of a quorum for the purposes of a motion in respect of any contract or arrangement which he shall make with the Company, or in which he is so interested as aforesaid, and may vote upon such motion.

Officers and Agents

44. (1) The directors may, by resolution, appoint any person, including a person who is a director, to be an officer or agent of the Company. The secretary of the Company, if appointed, shall be an officer of the Company for the purposes of this paragraph.
- (2) Any person may hold more than one office and no officer need be a director or member of the Company. The officers shall remain in office until removed by the directors whether or not a successor is appointed.
- (3) Any officer which is a body corporate may appoint any person as its duly authorised representative for the purpose of representing it and of transacting any of the business of the officer.
- (4) Any officer or agent shall be granted such powers and authority of the directors, including the power and authority to affix the seal of the Company, as are set forth in the resolution appointing him, except that no officer or agent may be given any power or authority with respect to matters requiring a resolution of directors under the Act or this Constitution.
- (5) The directors may at any time, by resolution, remove an officer or agent appointed under this paragraph and may revoke or vary any power conferred on him.

Indemnification

45. (1) Subject to subparagraph (2), the Company shall indemnify against all liabilities and expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings any person who acted honestly and in good faith in the best interests of the Company.
- (2) In the case of criminal proceedings, the indemnities set out in subparagraph (1) shall only take effect where the person had no reasonable cause to believe that his conduct was unlawful, and where the person -
- (a) is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was a director or an officer of the Company; or
- (b) is or was, at the request of the Company, serving as a director or an officer of, or in any other capacity is or was acting for, another company or body corporate or a partnership, joint venture, trust or other enterprise.

LIABILITY OF MEMBERS

Personal Liability

46. (1) The liability of a member of the Company is limited to the amount owed from time to time by the member to the Company, including any amount unpaid on any share held by him.
- (2) A member is not liable for any obligation of the Company by virtue only of his status as a member.

- (3) Nothing in this clause shall affect a member's liability to the Company on any contract (including a contract for the issue of shares) or for any tort or breach of fiduciary duty or other actionable wrong committed by him.
- (4) Save as may be specified by the Act or by contract, the members of the Company do not owe any duty, liability or obligation to the Company, any creditor of the Company or any other company related to the Company.

COMPANY ADMINISTRATION

Meetings of Members

47. (1) The directors may convene meetings of the members at such times and in such manner and places within or outside Vanuatu as the directors consider necessary or desirable.
- (2) Upon the written request of members holding not less than 25 per cent of the votes of the outstanding voting shares in the Company, the directors shall convene a meeting of members for a date not later than 4 weeks after receipt of the written request.

Notice of Meetings of Members

48. (1) The directors shall give not less than 7 days notice of meetings of members to those persons whose names on the date the notice is given appear as members in the Register of Members and are entitled to vote at the meeting.
- (2) Notwithstanding subparagraph (1), a meeting of members called at shorter notice shall be valid if members, holding not less than an absolute majority of -
 - (a) the total number of the shares of the members entitled to vote on all the matters to be considered at the meeting; or
 - (b) the votes of each class or series of shares where members are entitled to vote thereon as a class or serieshave waived notice of the meeting and for this purpose the presence of a member in person or by proxy at the meeting shall be deemed to constitute waiver on his part.
- (3) The directors shall give sufficient notice of meetings of members to members holding shares issued to bearer to allow a reasonable opportunity for them to take action in order to secure or exercise the right or privilege, other than the right or privilege to vote, that is the subject of the notice.
- (4) The notice shall specify the time, date and place of the meeting and the general nature of the business to be transacted at the meeting.
- (5) The failure of a member to receive notice of a meeting or the inadvertent failure of the directors to give notice of a meeting to a member, shall not invalidate a meeting or any actions taken at such meeting.
- (6) The directors may in the notice of a meeting fix any date being on or before the meeting as the

record date for determining those shares that are entitled to vote at the meeting and unless so fixed it shall be 7 days prior thereto.

Proceedings at Meetings of Members

49. (1) No business shall be transacted at any meeting unless a quorum is present.
- (2) A meeting of members shall be quorate and properly constituted for all purposes if, at the commencement of the meeting, two members entitled to vote upon the business to be transacted are present in person or by proxy, provided that if the Company only has one member that member shall constitute a quorum.
- (3) If within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall be dissolved.
- (4) At every meeting the chairman of the board of directors, if any, or in his absence some other director nominated by the directors shall preside as chairman of the meeting. If neither the chairman nor such other director (if any) is present within 15 minutes after the time appointed for holding the meeting and willing to act, the members present and entitled to vote shall choose one of their number to be the chairman. If the members are for any reason unable to choose a chairman the person representing the greatest number of voting shares present at the meeting shall preside as chairman.
- (5) A director shall, notwithstanding that he is not a member, be entitled to attend and speak at any meeting of the members and at any separate meeting of the holders of any class of shares in the company.
- (6) The chairman may, with the consent of the meeting, adjourn any 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.
- (7) When a meeting is adjourned for 14 days or more, but not otherwise, at least 7 days notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted thereat.
- (8) A resolution put to the vote of a meeting shall be decided on a show of hands by simple majority unless a poll is demanded either before or on the declaration of the result of the show of hands -
- (a) by the chairman; or
- (b) 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.
- (9) Unless a poll be demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried or lost, and an entry made to that effect in the book containing the minutes of the proceedings of the Company shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- (10) 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. The demand for a poll may be withdrawn.

- (11) In the case of an equality of votes at any meeting of members, whether on a show of hands or on a poll, the chairman, shall be entitled to a casting vote in addition to any other vote he may have.
- (12) A member shall be deemed to be present at a meeting of members if he participates by telephone or other real time electronic means of audio interactive communication and all members participating in the meeting are able to hear each other and recognise each other's voice.

Resolution of Members

50. (1) A resolution, notice of which has been given to all members entitled to receive notice of meetings of members, which has been consented to in writing by an absolute majority of all members entitled to vote shall be as valid and effectual as if it had been passed at a meeting of the members duly convened and held.
- (2) The resolution may consist of several documents in like form each signed by one or more members.

Voting by Members

51. (1) Subject to any rights or restrictions attached to any shares, all shares vote as one class and each whole share has one vote.
- (2) Votes may be given personally or by proxy.
- (3) The following provisions shall apply in respect of the joint ownership of shares -
 - (a) if 2 or more persons hold shares jointly each of them may be present in person or by proxy at a meeting of members and may each speak as a member;
 - (b) if only one of the joint holders is present in person or by proxy, he may vote on behalf of the other joint holders; and
 - (c) if 2 or more joint holders are present, 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 seniority shall be determined by the order in which the names of the holders stand in the register of members in respect of the share.

Proxy

52. (1) A member may be represented at a meeting of members by a proxy who may speak and vote on behalf of the member.
- (2) An instrument appointing a proxy shall be in writing, executed by or on behalf of the appointor and shall be in such form as the chairman of the meeting shall accept as properly evidencing the wishes of the member appointing the proxy. The proxy may be general or may contain the specific instructions of the appointor as to how the proxy should act or vote.
- (3) The instrument appointing a proxy and any authority under which it was executed or a copy of such authority certified notarially or in some other way approved by the chairman, shall -
 - (a) be produced at the place appointed for the meeting before the time for holding the meeting at which the person named in such instrument proposes to vote;

- (b) in the case of a poll taken more than 48 hours after it is demanded, be produced as aforesaid before the time appointed for the taking of the poll;

and an instrument of proxy which is not produced in a manner so permitted shall be invalid.

- (4) The instrument appointing a proxy shall be in writing under the hand of the appointor unless the appointor is a corporation or other form of legal entity other than one or more individuals holding as joint owners in which case the instrument appointing a proxy shall be in writing under or the vote or votes cast by such proxy shall be disregarded.

Register of Members

53. As required by the Act -

- (1) The Company shall maintain one or more registers to be known as the register of members containing -
 - (a) the names and addresses of the persons who hold registered shares in the Company;
 - (b) the number of each class and series of registered shares held by each person;
 - (c) the date on which the name of each person was entered in the register of members;
 - (d) the date on which any person ceased to be a member;
 - (e) in the case of shares issued to bearer, the total number of each class and series of shares issued to bearer;
 - (f) with respect to each certificate for shares issued -
 - (i) the identifying number of the certificate,
 - (ii) the number of each class or series of shares issued specified therein, and
 - (iii) the date of issue of the certificate;

provided that the Company may delete from the register of members information relating to shares issued that have been canceled.

- (2) The register of members may be in such form as the directors may approve including magnetic, electronic or other data storage form, provided the Company is able to produce legible evidence of its contents within a reasonable time.
- (3) A copy of the register of members, commencing from the date of the incorporation of the Company, shall be kept at the registered office of the Company.

Particulars in Register in Relation to Bearer Shares

- 54. (1) Upon the issue of a bearer share or the conversion of a registered share to a bearer share, the Company shall -

- (a) in the case of a conversion, strike out of its register of members and any branch register wherein the share is registered the name of the member entered therein as holding the share in respect of which the bearer share is issued; and
 - (b) enter in the register of members the fact of the issue of the bearer share or the conversion of a registered share and the date of the issue of the bearer share or the conversion of a registered share.
- (2) Upon the surrender of a certificate of a bearer share, the date of such surrender shall be entered as if it were the date on which the person ceased to be a member.

Particulars in Register in Relation to Share Warrants

55. (1) Upon the issue of a share warrant in respect of any share, the Company shall -
 - (a) in the case of the surrender of a certificate of a registered share, strike out of its register of members and any branch register wherein the share is registered the name of the member entered therein as holding the share in respect of which the share warrant is issued; and
 - (b) enter in the register of members the fact of the issue of the share warrant and the surrender of the share certificate and the date of the issue of the share warrant.
- (2) Upon the surrender of a share warrant, the date of the surrender shall be entered as if it were the date on which the person ceased to be a member.

Books and Records

56. (1) The Company shall keep such accounts and records as are necessary in order to reflect its financial position.
- (2) The Company shall keep minutes of all meetings of and copies of all resolutions consented to by directors, committees of directors, members (including holders of any class of shares in the company) and committees of members;
- (3) The minutes of meetings of directors or of committees of directors shall record the names of the directors present at each meeting.
- (4) The Company shall maintain a register of all its directors which shall contain in the case of an individual, his present full names, any former names, his usual residential address and citizenship and in the case of a company, its full name and registered office in its country of legal existence.
- (5) The accounts, records, minutes, copies of resolutions and register required by this paragraph shall be kept at the registered office of the Company or at such other place as the directors may determine and shall be open to the inspection of any director during normal business hours.

Inspection of Books and Records

57. (1) Any member of the Company may, in person or by some other person, inspect during normal business hours the register of members, minutes of all meetings of members and resolutions of members of the Company (including meetings of the holders of any class of shares) and to make copies or extracts therefrom.

- (2) A person other than a member may only carry out an inspection under subparagraph (1) if he is authorised to do so by power of attorney granted to him by the member or by some other form of written authority acceptable to the directors.
- (3) Subject to subparagraph (4), 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 financial books and records 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 rights of inspecting any financial book or record, or financial document of the Company except as conferred by law or authorised by resolution of the directors.
- (4) The members of the company may, by resolution passed by an absolute majority, require that a member or members shall be entitled to inspect the books, records, documents and minutes of the company.

Audit

58. (1) The directors may, by resolution, call for the accounts of the Company to be examined by an auditor or auditors to be appointed by them at such remuneration as may from time to time be agreed.
- (2) No member of the company may act as auditor of the company and a person shall not be eligible to act as auditor if -
 - (a) he is a director or officer of the company;
 - (b) he was at any time during the period covered by the audit a director or officer of the company.
- (3) Every auditor of the Company shall have the right of access at all times to the books of account and vouchers of the Company, and shall be entitled to obtain from the officers of the Company such information and explanations as he thinks necessary for the performance of his duties.
- (4) The report of the auditor shall be annexed to the accounts upon which he reports and the auditor shall be entitled to receive notice of, and to attend, any meeting at which the Company's audited balance sheet and profit and loss statement are to be presented.

Authentication or Attestation

59. (1) A document requiring authentication or attestation by the Company may be signed by a director, a secretary or by an authorised officer or agent of the Company, and need not be under the seal of the Company.
- (2) The registered agent of the Company may verify the signature of any director, officer or agent of the Company.

Appointment of Agents

60. (1) The Company may, by an instrument in writing, whether or not under seal, authorise any person, either generally or in respect of any specified matters, as its agent to act on its behalf and to

execute contracts, agreements, deeds and other instruments on its behalf.

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

Seal

61. (1) The Company shall have a seal which shall have on its face the full name of the Company and the words "Common Seal" or "Corporate Seal" and an imprint thereof shall be kept at the registered office of the Company.
- (2) The directors may prescribe a method for the attestation of the affixing of the seal which may, with the authority of the directors, be affixed anywhere in the world.

Corporate Representative at Meetings

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

Pension and Superannuation Funds

63. (1) The directors may establish and maintain or procure the establishment and maintenance of any non-contributory or contributory pension or superannuation funds for the benefit of, (and give or procure the giving of donations, gratuities, pensions, allowances or emoluments to), any persons who are or were at any time in the employment or service of the Company or any company which is a subsidiary of the Company or is allied to or associated with the Company or with any such subsidiary, or who are or were at any time directors or officers of the Company or of any such other company as aforesaid or who hold or held any salaried employment or office in the Company or such other company, or any persons in whose welfare the Company or any such other company as aforesaid is or has been at any time interested, and to the wives, widows, families and dependents of any such person, and may make payments for or towards the insurance of any such persons as aforesaid, and may do any of the matters aforesaid either alone or in conjunction with any such other company as aforesaid.
- (2) A director shall be entitled to participate in and retain for his own benefit any such donation, gratuity, pension, allowance or emoluments.

DEBENTURES

Power to Issue Debentures

64. (1) The Company may, in accordance with Part 9 of the Act, issue debentures on such terms and conditions as it thinks fit and in particular but without limiting the generality of the foregoing may issue debentures:-
 - (a) Constituting a charge on any or all the assets of the Company;

- (b) As bearer debentures;
 - (c) Convertible from bearer debentures to registered debentures;
 - (d) As debentures issued in accordance with the First Schedule of the Act ("First Schedule Debentures").
- (2) Each First Schedule debenture issued by the Company shall, so far as it does not exclude or modify the terms contained in the First Schedule, be deemed to have been issued upon such terms and conditions.
- (3) Where a debenture is issued as a First Schedule debenture it shall, subject to the terms of the debenture, have the following effect -
- (a) The holders of such debentures shall have the right and power to vote and to demand a poll and thereby to determine all those matters in respect of which the members had the right and power to vote and to demand a poll before those rights and powers of the members became suspended in accordance with the terms of the debenture;
 - (b) Every holder of such debenture, or the trustee for any such holder, shall have one vote for each whole dollar, or its equivalent in any other currency, of the principal sum the subject of the debenture outstanding at the time when the votes are counted;
 - (c) The holders of such debentures may cast their votes by proxy in writing without attending a meeting;
 - (d) A resolution in writing signed by a majority in value of the holders of such debentures shall be as effectual as would a resolution passed by a similar majority at a meeting duly convened and held for the purpose;
 - (e) This Constitution may not be altered without the consent of the debenture holders;
 - (f) Any provision in this Constitution by which anything is required or permitted to be done by general meeting or by a resolution of the members shall be construed as requiring or permitting the same to be done by a resolution of those debenture holders in whom the right and power to vote are for the time being vested, passed by such majority of votes as would, if the votes were votes of members, be the majority necessary to pass the resolution;
 - (g) Subject to paragraph (d) notice of a meeting of those debenture holders, in whom the right and power to vote are for the time being vested shall be given to such debenture holders and their trustees, if any, in the same manner as notice of a meeting of members is required to be given to members;
 - (h) Unless it is otherwise provided by the terms of the debenture, the quorum for any meeting of the holders of such debentures shall be two;
 - (i) Upon the redemption of any such debenture the rights and powers referred to above of the holders of such debentures shall cease and determine; and
 - (j) The holder of a First Schedule debenture shall not be deemed to be or to have been a member of a company by reason only of the holding of such debenture or the exercise by him or on his behalf of any rights or powers or discretions pursuant to the terms of the

debenture or the dealing in any way with the debenture.

- (4) Every debenture of the Company shall bear a serial number, shall be sealed or signed on behalf of the Company and shall contain -
 - (a) The name of the Company;
 - (b) The date of issue of the debenture;
 - (c) A statement of the quorum for meeting of debenture holders;
 - (d) A statement of the name of the debenture holder where the debenture is not issued to bearer;
 - (e) A statement of the amount of principal (if any) for which such debenture is issued;
 - (f) The date upon which such principal is due and payable, if not payable on demand;
 - (g) The currency or currencies in which the principal and interest are payable; and
 - (h) The rate of interest, if any, per annum payable thereon.
- (5) Where the provisions of the Act and of this Constitution which give the members of the Company the right and power to vote and to demand a poll have been suspended or have otherwise been modified pursuant to the terms of a First Schedule debenture then (subject to there being no other unredeemed First Schedule debentures under the terms of which such provisions are to remain suspended) those provisions shall upon redemption of that First Schedule debenture resume full force and effect in respect of the Company in the same manner and to the same extent as before those provisions were suspended or were modified. Where such provisions resume full force and effect in any other circumstances then in the absence of any provisions to the contrary in this Constitution or in any relevant First Schedule debenture they shall likewise resume full force and effect in the same manner and to the same extent as before those provisions were suspended or modified.
- (6) Subject to the provisions of paragraph 65(9) any bearer debenture issued by a company may be converted by the holder into an ordinary debenture unless the terms of the debenture otherwise provide.

Register of Debentures

65. (1) The Company shall keep and maintain a register of debentures at its registered office in Vanuatu containing the information required pursuant to paragraph 64(4) as well as a copy of all the terms of the debentures issued by the Company.
- (2) The Company may cause to be kept in any place outside Vanuatu a branch register of debentures.
- (3) Any branch register of debentures of the Company shall be kept in the same manner in which the principal register is kept.
- (4) The Company may discontinue a branch register and thereupon all entries in that register shall be transferred to some other branch register kept by the Company or to the principal register.

- (5) Where a debenture is registered on a branch register the debenture and all rights arising therefrom shall be situated in the place where it is registered and unless otherwise expressed in the debenture the principal and interest is payable in the money of the place of registration calculated at the exchange rate at noon on the date on which it becomes due and payable.
- (6) A debenture registered in a branch register shall be distinguished from a debenture registered in the principal register.
- (7) The costs of maintaining branch registers shall, unless the debenture otherwise provides, be borne ratably according to the amount of the principal represented by the debentures registered therein by the holders of those debentures.
- (8) Debentures may be transferred from one register to another either by the holder or the Company provided the written consent of the other party is first obtained, which consent shall not be unreasonably withheld; provided further that the Company shall not be obliged to obtain such consent from the holder for the time being of a bearer debenture unless the holder shall have advised it in writing of his address for service of notice.
- (9) Any debenture issued to bearer may be converted to a registered debenture and in the absence of any provision to the contrary contained in that debenture as at the date of issue of that debenture, then the conversion shall be effected in the following manner:-
 - (a) A certified copy of the bearer debenture or the negotiable documents in respect of the same shall be delivered to the registered office of the Company in Vanuatu together with a direction as to the name and address of the person who is to be recorded as the holder of the debenture;
 - (b) Thereupon the directors of the Company shall resolve to record on the register the person so named as the holder of the debenture;
 - (c) Recording pursuant to such a resolution shall be undertaken upon receipt by the Company of the original bearer debenture or the negotiable documents in respect of the same within the time specified in subparagraph (e), and shall have effect as from the date of the directors resolution;
 - (d) Upon the resolution of the directors referred to in subparagraph (b) the original bearer debenture shall cease to be a security of the Company but in the event of the original bearer debenture or the negotiable documents in respect of it not being received within the time specified in subparagraph (e) the original bearer debenture shall be deemed at all times to have been a security from its original date of issue;
 - (e) Upon the original bearer debenture or the negotiable documents in respect of the same being received by the Company for cancellation within 1 month of the passing of the resolution the Company shall issue a certificate to the person entitled thereto in respect of the registered debenture into which the bearer debenture has been converted; and
 - (f) Should the original bearer debenture or the negotiable documents in respect of the same not be received by the Company for cancellation within 1 month of the passing of the resolution the registered debenture and the resolution for recording and any recording in respect of the conversion shall be deemed to be canceled.
- (10) The Company shall be responsible for any loss incurred by any person by reason of the Company recording in its register of debentures the name of the holder of any bearer debenture without the original bearer debenture or the negotiable documents in respect of the same being surren-

dered to the Company and canceled prior to or contemporaneously with that entry.

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

Reissue of Redeemed Debentures

66. Where the Company has redeemed any debentures, (unless any provision to the contrary, whether express or implied, is contained in any contract entered into by it, or unless it has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be canceled), it shall have power to reissue one or more of the debentures, either by reissuing the same debentures or by issuing other debentures in their place, but the reissue of a debenture or the issue of one debenture in place of another under this paragraph shall not be regarded as the issue of a new debenture for the purpose of any provision limiting the amount or number of debentures that may be issued by the Company.

RECONSTRUCTIONS AND DISPOSITION OF ASSETS

Merger or Consolidation

67. The Company may in accordance with the Act -
 - (1) merge or consolidate with one or more other companies whether incorporated under the laws of Vanuatu or otherwise; and
 - (2) merge with one or more subsidiary companies.

Disposition of Assets

67. As required by the Act, any sale, transfer, exchange or other disposition of more than 75 per cent, by value, of the assets of the Company, other than a transfer pursuant to the power described under Section 9(2) of the Act, if not made in the usual manner or regular course of the business carried on by the Company, shall be as follows -
 - (1) the proposed sale, transfer, exchange or other disposition shall be approved by the directors;
 - (2) upon approval of the proposed sale, transfer, exchange or other disposition, the directors shall submit the proposal to the members for it to be authorised by a resolution of members;
 - (3) if a meeting of members is to be held, notice of the meeting, accompanied by an outline of the proposal, shall be given to each member, whether or not he is entitled to vote on the sale, transfer, exchange or other disposition; and
 - (4) if it is proposed to obtain the written consent of members, an outline of the proposal shall be given to each member, whether or not he is entitled to consent to the sale, transfer, exchange or other disposition.

Redemption of Minority Shares

68. (1) Members holding 90 per cent of the votes of the outstanding shares entitled to vote, and members holding 90 per cent of the votes of the outstanding shares of each class and series of shares entitled to vote as a class or series, on a merger or consolidation under paragraph 67, may give written instruction to the Company directing it to redeem the shares held by the remaining members.
- (2) Upon receipt of the written instruction referred to in subparagraph (1), the Company shall redeem the shares specified in the written instruction irrespective of whether or not the shares are by their terms redeemable.
- (3) The Company shall give written notice to each member whose shares are to be redeemed stating the redemption price and the manner in which the redemption is to be effected.

Arrangements

69. (1) The directors of the Company may, by resolution, approve a plan of arrangement that contains the details of the proposed arrangement.
- (2) Upon approval of the plan of arrangement by the directors, the Company shall make application to the court for approval of the proposed arrangement as provided for in the Act.

CONTINUATION AND WINDING UP

Continuation Under Foreign Law

70. The Company may, by a resolution of directors or members, be continued as a company incorporated under the laws of a jurisdiction outside the current jurisdiction of the Company.

Winding Up

71. (1) If the Company shall be wound up, the Liquidator may, in accordance with a resolution of members and subject to any provision of the Act, divide amongst the members in specie or in 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.
- (2) The Liquidator may vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories as the Liquidator shall think fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

MISCELLANEOUS PROVISIONS

Notices

72. (1) Any notice to be given to or by any person pursuant to this Constitution, other than a notice

calling a meeting of directors, shall be in writing.

- (2) The Company may give notice to a member holding a registered share either personally or by sending it by post in a prepaid envelope (airmail if available) addressed to the member at his registered address or by leaving it at that address.
- (3) Notice shall be given to members holding shares issued to bearer, by notice posted at the principal office of the Company in Vanuatu.
- (4) In the case of joint holders of a share, all notices shall be given to the joint holder whose name stands first in the register of members in respect of the joint holding and notice so given shall be sufficient notice to all the joint holders.
- (5) A member present, either in person or by proxy, at any meeting of members or of holders of a class of shares in the company shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.
- (6) Proof that an envelope containing a notice was properly addressed, prepaid and posted (by airmail if posted to an address in a different jurisdiction) shall be conclusive evidence that notice was given. Notice shall be deemed to have been given at the expiration of 10 days after the envelope containing it was posted.

Interpretation

73. In this constitution-

- (1) "the Act" means the International Companies Act No. 32 of 1992.
- (2) Unless the context otherwise requires:
 - (a) words or expressions contained in this constitution 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,
 - (b) the singular shall include the plural and vice-versa, the masculine shall include the feminine and neuter and references to persons shall include corporations and all legal entities capable of having a legal existence.

Signature of Incorporator:

Incorporator's Name:

Address: