

SAMOA

Arrangement of Provisions

- | | |
|---------------------------------|--------------|
| 1. Short title and commencement | 2. Amendment |
|---------------------------------|--------------|

2006, No. 18**AN ACT to amend the Companies Act 2001.***[21st December 2006]*

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

1. Short title and commencement-(1) This Act may be cited as the Companies Amendment Act 2006, and shall be read with and form part of the Companies Act 2001 (the Principal Act).

(2) This Act shall commence on the date of assent by the Head of State.

2. Amendment – The Principal Act is amended by deleting all words after the heading “Part I Preliminary” and substituting the following:

“**1. Short title** - This Act is the Companies Act 2001.

Part 1
Preliminary provisions

2. Commencement-(1) This Act (except section 351) comes into force on a date nominated by the Minister.

(2) Section 351 comes into force on the commencement of the Companies Amendment Act 2006.

(3) Notice of commencement of this Act is to be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

3. Overview - In this Act:

- (a) this Part deals with preliminary matters, such as how public notice is given for the purposes of this Act. Schedule 1 contains definitions and other interpretation provisions;
- (b) Part 2 deals with incorporating new companies. It also contains provisions concerning changes to company names, company rules, and changes to the registered office and postal address of companies. Schedules 2 to 4 contain model rules;
- (c) Part 3 deals with shares;
- (d) Part 4 deals with shareholders. Schedule 5 sets out the procedure for the minority buy-out procedure;
- (e) Part 5 deals with the powers, duties, and liabilities of directors;
- (f) Part 6 deals with enforcement;
- (g) Part 7 deals with company administration. Subpart 1 sets out dealings with third parties - how to bind the company. Subpart 2 relates to company records. Subpart 3 sets out the documents that must be sent to the Registrar (for example, the annual return) and the shareholders (for example, the annual report). Subpart 4 sets out requirements concerning accounting records, financial statements, and auditors;

See also the Securities Act 2006, which deals with companies that offer securities to the public:

- (h) Part 8 deals with amalgamations. Further provisions are set out in Schedule 6;
- (i) Part 9 contains various procedures for insolvent companies. Section 155 (which provides that unregistered charges are void as against an administrator, liquidator, or a creditor of a company) is a key provision, which is carried over from the Companies Act 1955. Schedule 7 sets out the procedure and other matters for registering company charges under this Act. Subpart 1 deals with administrations. Schedules 8 to 12 supplement that subpart. Subpart 2 deals with compromises with creditors and Schedule 12 supplements that subpart. Subpart 3 deals with liquidations and Schedules 12 to 18 supplement that subpart. See also the Receiverships Act 2006 for companies that are in receivership;
- (j) Part 10 relates to the removal of companies from the Samoa register;
- (k) Part 11 deals with overseas companies and Schedule 19 (which relates to the liquidation of the assets of overseas companies) supplements that Part;
- (l) Part 12 relates to the transfer of registration of overseas companies;
- (m) Part 13 deals with the Registrar of Companies, the registers under this Act, and registration requirements;
- (n) Part 14 sets out the requirements for reregistering existing companies under this Act before the end of the transition period. A company that is not reregistered before the end of the transition period must not carry on business until it is reregistered;

- (o) Part 15 sets out some miscellaneous provisions, including some more offence provisions, regulation-making powers, repeals, and transitional and savings provisions.

4. Act binds the State - This Act binds the Government.

5. Public notice - If, under this Act, public notice must be given, that notice must be given by publishing it in at least 1 issue of the Savali; and:

- (a) in the case of a matter affecting a company, at least 2 issues of any newspaper circulating in the area in which is situated -
 - (i) the company's place of business; or
 - (ii) if the company has more than 1 place of business, the company's principal place of business; or
 - (iii) if the company has no place of business, the company's registered office; or
- (b) in the case of a matter affecting an overseas company, at least 2 issues of any newspaper circulating in the area in which is situated -
 - (i) the place of business in Samoa of the overseas company; or
 - (ii) if the overseas company has more than 1 place of business in Samoa, the principal place of business in Samoa of the overseas company.

Part 2

Incorporating new companies

Subpart 1 - Incorporation

6. Application for incorporation-(1) An application for incorporation of a company must be made to the Registrar in the prescribed form.

(2) An application for incorporation of a company must specify:

- (a) the name of the company, which must comply with section 10; and
 - (b) whether the company is a private company or a public company; and
 - (c) whether the rules of the company differ from the model rules set out in Schedule 2 (in the case of a private company) or Schedule 4 (in the case of a public company); and
 - (d) the full name and residential address and postal address of every director of the proposed company; and
 - (e) the full name of every shareholder of the proposed company, and the number of shares to be issued to every shareholder; and
 - (f) the registered office of the proposed company; and
 - (g) the postal address of the company, which may be the postal address of the registered office or any other postal address.
- (3) An application for incorporation must be accompanied by:
- (a) a consent by each person named as a director to act as a director of the company, in the prescribed form; and
 - (b) a copy of the rules of the company, if they differ from the model rules; and
 - (c) the prescribed fee.

7. Certificate of incorporation - As soon as the Registrar receives an application for incorporation that complies with section 6, the Registrar must:

- (a) enter the company on the Samoa register; and
- (b) issue a certificate of incorporation in respect of the company.

8. Effect of incorporation-(1) A certificate of incorporation of a company is conclusive evidence that:

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

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

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

9. Registration as private company or public company-(1) A company may be registered as a private company if:

- (a) its rules prohibit it from offering its securities to the public; and
- (b) its rules restrict the number of shareholders in the company to not more than 100; and
- (c) it has not more than 100 shareholders.

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

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

- (a) the company meets the requirements in subsection (1); and
- (b) the application has been approved by shareholders by special resolution.

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

- (a) amend the registration of the company accordingly; and
- (b) issue a new certificate of incorporation for the company in the prescribed form.

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

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

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

- (a) an application is made to the Registrar in accordance with subsections (5) or (6); or
- (b) it comes to the Registrar's attention that a private company has ceased to satisfy the requirements of subsection (1).

Subpart 2 - Names

10. Name of company-(1) The name of a company must end with the word "Limited".

- (2) The Registrar must not register a company with a name:
 - (a) that is identical or almost identical to the name of another company; or
 - (b) the use of which would contravene any enactment in relation to the use of names; or
 - (c) that contravenes regulations made under this Act in relation to company names; or
 - (d) that the Registrar considers to be offensive.

(3) If an application for incorporation of a company specifies a name that does not meet the requirements of this section, the Registrar must incorporate the company with a name in the form "Company number x Limited", where "x" is a unique number assigned to the company by the Registrar for this purpose.

11. Change of name-(1) An application to change the name of a company must be:

- (a) in the prescribed form; and
- (b) signed by a director of the company; and
- (c) accompanied by the prescribed fee.

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

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

- (a) enter the new name of the company on the Samoa register; and
 - (b) issue a certificate of incorporation for the company recording the change of name of the company.
- (4) A change of name of a company:
- (a) takes effect from the date specified in the certificate issued under subsection (3); and
 - (b) does not affect rights or obligations of the company, or legal proceedings by or against the company.
- (5) Legal proceedings that might have been continued or commenced against the company under its former name may be continued or commenced against it under its new name.

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

(2) If the company does not change its name within the period specified in the notice, the Registrar may enter on the Samoa register a new name for the company in the form “Company number x Limited”, where “x” is a unique number assigned to the company by the Registrar for this purpose.

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

- (a) the Registrar must issue a certificate of incorporation for the company recording the new name of the company; and
- (b) section 11(4) applies in relation to the registration of the new name as if the name of the company had been changed under section 11.

13. Use of company name-(1) A company must ensure that its name is clearly stated in:

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

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

(2) If:

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

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

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

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

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

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

(4) For the purposes of subsections (1) to (3) and section 107 (which relates to the manner in which a company may enter into contracts and other obligations), a company may use a generally recognised abbreviation of a word or words in its name if it is not misleading to do so.

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

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

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

(6) If a company fails to comply with subsections (1) or (5):

(a) the company commits an offence and is liable on conviction to a fine not exceeding 10 penalty units; and

- (b) every director of the company commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.

Subpart 3 - Rules of incorporation

14. Adoption and alteration of rules-(1) A company may adopt rules of incorporation at the time of its incorporation by:

- (a) filing those rules with its application for incorporation; or
- (b) in the case of model rules set out in Schedules 2, 3, or 4, indicating in its application for incorporation that it wishes to adopt those model rules as its rules.

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

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

(4) If a company fails to comply with subsection (3), every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

15. Model rules-(1) The model rules set out in Schedule 2 have effect as the rules of a private company except to the extent that the company has:

- (a) adopted the model rules set out in another schedule as its rules; or
- (b) adopted rules that exclude, or modify, or are inconsistent with, the model rules.

(2) The model rules set out in Schedule 4 have effect as the rules of a public company except to the extent that the company has:

- (a) adopted the model rules set out in another schedule as its rules; or
- (b) adopted rules that exclude, or modify, or are inconsistent with, the model rules.

(3) A company may resolve to adopt the model rules in Schedules 2, 3, or 4 as its rules in accordance with section 14(2).

(4) The Head of State acting on the advice of Cabinet may, by regulations, do all or any of the following things:

- (a) amend the model rules in Schedules 2, 3, and 4;
- (b) replace all or any of the model rules in Schedules 2, 3, and 4;
- (c) specify the class or classes of companies to which the amended model rules or replaced model rules will apply;
- (d) specify the date or occasion on which the amended model rules or replaced model rules take effect or will apply;
- (e) without limiting paragraphs (c) and (d), specify whether the amended model rules or replaced model rules apply to all companies to which the relevant model rules apply, or only to companies incorporated after the date on which the amended model rules or replaced model rules take effect.

16. Contents and effect of rules-(1) The rules of a company may contain:

- (a) matters contemplated by this Act for inclusion in the rules of a company;
 - (b) any other matters that the company wishes to include in its rules.
- (2) Subject to subsection (3):
- (a) the rules of a company have effect and may be enforced as if they constituted a contract -
 - (i) between the company and its shareholders; and
 - (ii) between the company and each director; and
 - (b) the shareholders and directors of a company have the rights, powers, duties, and obligations set out in the rules of the company.

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

Subpart 4 - Registered office and postal address

17. Registered office and postal address-(1) A company must always have a registered office and postal address in Samoa.

(2) Subject to section 18:

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

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

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

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

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

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

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

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

19. Requirement to change registered office or postal address-(1) Subject to this section, a company must change its registered office or postal address if it is required to do so by the Registrar.

(2) The Registrar may require a company to change its registered office or postal address, as the case may be, by notice in writing sent to the company at its postal address.

(3) The notice must:

- (a) state that the company is required to change its registered office or postal address by a date stated in the notice that is not earlier than 20 working days after the date of the notice; and
- (b) state the reasons for requiring the change; and
- (c) state that the company has the right to appeal to the Court under this Act; and
- (d) be dated and signed by the Registrar.

(4) A copy of the notice must also be sent to each director of the company.

(5) The company must change its registered office or postal address, as the case may be:

- (a) by the date stated in the notice; or
- (b) if it appeals to the Court and the appeal is dismissed, within 5 working days after the decision of the Court.

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

- (a) the company commits an offence and is liable on conviction to a fine not exceeding 10 penalty units; and
- (b) every director of the company commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.

Part 3 Shares

General

20. Legal nature of shares - A share in a company is personal property.

21. No nominal value-(1) A share must not have a nominal or par value.

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

22. Minimum number of shares - Every company must have at least 1 issued share.

23. Rights and powers attached to shares-(1) Subject to the rules of the company and to the terms on which it is issued, a share in a company confers on the holder:

- (a) the right to 1 vote on a poll at a meeting of the company on any resolution, including any resolution to -
 - (i) appoint or remove a director or auditor;
 - (ii) adopt new rules;
 - (iii) alter the company's rules;
 - (iv) approve a major transaction;
 - (v) approve an amalgamation of the company;
 - (vi) approve re-registration of a public company as a private company, or of a private company as a public company;
 - (vii) put the company into liquidation;
 - (viii) approve the transfer of registration of the company to another country;
- (b) the right to an equal share in dividends paid by the company;
- (c) the right to an equal share in the distribution of the surplus assets of the company in a liquidation.

(2) Subject to the rules of the company, different classes of shares may be issued in a company.

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

- (a) be redeemable; or
- (b) confer preferential rights to distributions of capital or income; or
- (c) confer special, limited, or conditional voting rights; or
- (d) not confer voting rights.

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

(2) Nothing in subsection (1):

- (a) prevents a company from attaching conditions, limits or restrictions to the rights and powers attached to the share; or
- (b) prevents a company from issuing a share on credit terms that provide for a liability to make future payments to the company on the part of the person to whom it is first issued.

Issue of shares

25. Issue of initial shares - A company must:

- (a) immediately after the registration of the company, issue to any person named in the application for registration as a shareholder the number of shares specified in the application as being the number of shares to be issued to that person or those persons:
- (b) in the case of an amalgamated company, immediately after the amalgamation is effective, issue to any person entitled to a share or shares under the amalgamation proposal, the share or shares to which that person is entitled.

26. Issue of other shares-(1) A company may issue shares:

- (a) in accordance with its rules; or
- (b) with the approval of all shareholders under section 51.

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

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

(4) If a company fails to comply with subsection (2), every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

27. Time of issue of shares - A share is issued when the name of the holder is entered on the share register.

Distributions - general

28. Distributions prohibited unless solvency test satisfied - A company must not make a distribution to shareholders unless there are reasonable grounds for believing that, after that distribution is made, the company will satisfy the solvency test.

29. Recovery of improper distributions-(1) A distribution made to a shareholder in breach of sections 28, 30, or 31 may be recovered by the company from the shareholder unless:

- (a) the shareholder received the distribution in good faith and without knowledge of the company's breach of sections 28, 30, or 31, as the case may be; and
- (b) the shareholder has altered the shareholder's position in reliance on the validity of the distribution; and
- (c) it would be unfair to require repayment in full or at all.

(2) If a distribution has been made in breach of section 28, any person who authorised the making of the distribution at a time when that person knew, or ought to have known, that the distribution did not comply with section 28 is liable to repay to the company so much of that distribution as is not reasonably recoverable from the recipients under subsection (1).

(3) If, in an action brought under this section, the Court is satisfied that the company could, by making a distribution of a lesser amount, have satisfied the requirements of section 28, the Court may permit a shareholder to retain, or excuse a person

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

Dividends

30. Dividends-(1) Subject to section 28 and to subsection (2), a company may pay a dividend to share-holders if, and only if, that dividend is authorised:

- (a) by all shareholders under section 51; or
- (b) if the company's rules so provide, by the directors.

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

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

- (a) in respect of some, but not all, shares; or
- (b) that is of a greater value per share in respect of some shares than of others.

(4) Subsection (3) does not apply if the payment of that dividend in that manner is approved by all shareholders under section 51.

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

- (a) a distribution by way of repurchase or redemption of shares; or
- (b) a distribution of the surplus assets of the company in a liquidation.

Acquisition of own shares

31. Company may acquire its own shares-(1) A company may acquire its own shares only:

- (a) in accordance with subsection (2) or section 55; and
- (b) subject to section 28.

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

- (a) in accordance with its rules; or
- (b) with the approval of all shareholders under section 51.

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

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

- (a) would, if accepted, leave unaffected relative voting and distribution rights; and
- (b) affords a reasonable time for acceptance of the offer.

(5) If a company fails to comply with subsections (3) or (4), every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

32. Cancellation of shares acquired by company-(1)

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

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

- (a) exercise those rights; or
- (b) give directions to the holder of that share as to the manner in which any of those rights should be exercised.

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

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

33. Enforcement of contract to repurchase shares-(1) A contract with a company providing for the acquisition by the company of its shares is specifically enforceable against the company except to the extent that performance would breach section 28.

(2) The company has the burden of proving that performance of the contract would breach section 28.

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

Redeemable shares

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

- (a) at the option of the company; or
- (b) at the option of the holder of the share; or
- (c) on a date specified in the rules or the terms of issue of the share,

for a consideration that is:

- (d) specified; or
- (e) to be calculated by reference to a formula; or
- (f) required to be fixed by a suitably qualified person who is not associated with or interested in the company.

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

35. Redemption of redeemable shares-(1) A company must redeem a redeemable share in accordance with its rules and the terms of issue of the share, except to the extent that the company would, by doing so, breach section 28.

(2) The company has the burden of proving that redemption of a share would breach section 28.

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

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

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

(6) If a company fails to comply with subsection (5), every director of the company commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.

Assistance by company in purchase of its own shares

36. Financial assistance - A company may give financial assistance to a person for the purpose of, or in connection with, the purchase of a share issued or to be issued by the company, whether directly or indirectly, only if:

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

(b) the giving of the assistance is authorised by the directors or by all shareholders under section 51, and -

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

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

Cross holdings

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

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

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

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

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

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

(5) Nothing in this section prevents a subsidiary holding shares in its holding company in its capacity as a personal representative or a trustee unless the holding company or another subsidiary has a beneficial interest under the trust other than an interest that arises by way of security for the purposes of a transaction made in the ordinary course of the business of lending money.

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

Transfer of shares

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

(2) A share is transferred by entry in the share register in accordance with section 40.

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

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

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

Share register

40. Company to maintain share register-(1) A company must maintain a share register that records the shares issued by the company and states:

- (a) the names, alphabetically arranged, and the last known address of each person who is, or has within the last 7 years been, a shareholder; and
 - (b) the number of shares of each class held by each shareholder within the last 7 years; and
 - (c) the date of any issue of shares to, repurchase or redemption of shares from, or transfer of shares by or to, each shareholder within the last 7 years, and in relation to the transfer, the name of the person to or from whom the shares were transferred.
- (2) The share register must be kept:
- (a) in a form permitted under section 118; and
 - (b) at the registered office of the company, or any other place or places permitted under section 119.
- (3) The share register of the company may be maintained by an agent on behalf of the company.
- (4) If a company fails to comply with the requirements of this section:
- (a) the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units; and
 - (b) every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

41. Share register as evidence of legal title-(1) Subject to section 42, the entry of the name of a person in the share register as holder of a share is evidence that legal title to the share vests in that person.

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

- (a) exercise the right to vote attaching to the share; and
- (b) receive notices; and
- (c) receive a distribution in respect of the share; and
- (d) exercise the other rights and powers attaching to the share.

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

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

- (a) rectification of the register;
- (b) payment of compensation by the company or a director of the company for any loss sustained;
- (c) rectification and payment of compensation.

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

- (a) a question relating to the entitlement of a person who is a party to the application to have his or her name entered in, or omitted from, the register; and
- (b) a question necessary or expedient to be decided for rectification of the register.

43. Trusts not to be entered on register - No notice of a trust, whether express, implied, or constructive, may be entered on the share register.

44. Registration of personal representative or assignee of bankrupt-(1) Despite section 43, but subject to section 39, a personal representative of a deceased person whose name is

registered in a share register of a company as the holder of a share in that company is entitled to be registered as the holder of that share as personal representative.

(2) Despite section 43, but subject to section 39(2), the assignee of the property of a bankrupt registered in a share register of a company as the holder of a share in that company is entitled to be registered as the holder of that share as the assignee of the property of the bankrupt.

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

(4) For the purposes of this section, “assignee” means the assignee in whom the property of a bankrupt is vested pursuant to the Bankruptcy Act 1908.

Share certificates

45. Share certificates-(1) A shareholder may apply to the company for a share certificate relating to some or all of the shareholder’s shares in the company.

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

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

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

(i) the name of the company; and

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

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

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

unless the form of transfer required by that section is accompanied by:

- (a) the share certificate relating to the share; or
 - (b) evidence as to its loss or destruction and, if required, an indemnity in a form required by the board.
- (4) If shares to which a share certificate relates are to be transferred, and the share certificate is sent to the company to enable the registration of the transfer, the share certificate must be cancelled and no further share certificate issued except at the request of the transferee.
- (5) If a company fails to comply with subsection (1):
- (a) the company commits an offence and is liable on conviction to a fine not exceeding 10 penalty units; and
 - (b) every director of the company commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.

Part 4 Shareholders

Subpart 1 - General

46. Every company must have at least 1 shareholder - A company must at all times have at least 1 shareholder.

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

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

- (a) any liability to repay a distribution that is recoverable under section 29;
 - (b) any liability under section 73.
- (3) Nothing in this section affects the liability of a shareholder to a company under a contract, including a contract for the issue of shares, or liability incurred in any other capacity, including as a director of the company, or liability for

any tort, or breach of a fiduciary duty, or other actionable wrong committed by the shareholder.

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

- (a) the power to approve registration of a public company as a private company under section 9(3), or of a private company as a public company under section 9(5);
- (b) the power to adopt new rules, or to amend the company's rules, under section 14(2);
- (c) the power to approve an amalgamation of the company under section 143 and Schedule 6;
- (d) the power to approve a major transaction under section 50(1)(b)(i);
- (e) the power to put the company into liquidation;
- (f) the power to approve an extension of time for the completion of a private company's financial statements under section 130(3);
- (g) the power to approve the transfer of registration of the company to another country under section 301.

49. Decisions that may be made by shareholders-(1)

Unless the rules provide otherwise, the following powers are exercised by shareholders:

- (a) the power to appoint or remove a director;
 - (b) the power to appoint an auditor.
- (2) The rules may provide for other matters to be decided by shareholders, or approved by shareholders.
- (3) Unless the rules provide otherwise, the powers referred to in subsection (1), and any other powers conferred on shareholders under subsection (2), may be exercised:
- (a) by ordinary resolution; or
 - (b) in accordance with section 51.

50. Shareholder approval of major transactions-(1) A company must not enter into a major transaction unless:

- (a) the rules expressly authorise it to enter into that transaction, or transactions of that class; or
 - (b) entry into the transaction is approved by shareholders -
 - (i) by special resolution; or
 - (ii) in accordance with section 51; or
 - (c) the transaction is conditional on approval by shareholders in accordance with paragraph (b).
- (2) In this section:
“assets” includes property of any kind, whether tangible or intangible;
“major transaction”, in relation to a company, means:
 - (a) the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than half the value of the company’s assets before the acquisition; or
 - (b) the disposition of, or an agreement to dispose of, whether contingent or not, assets of the company the value of which is more than half the value of the company’s assets before the disposition; or
 - (c) a transaction that has, or is likely to have, the effect of the company acquiring rights or interests or incurring obligations or liabilities the value of which is more than half the value of the company’s assets before the transaction.
- (3) Nothing in paragraph (c) of the definition of “major transaction” in subsection (2) applies by reason only of the company giving, or entering into an agreement to give, a charge secured over assets of the company the value of which is more than half the value of the company’s assets for the purpose of securing the repayment of money or the performance of an obligation.
- (4) Nothing in this section applies to a major transaction entered into by a receiver appointed under a document creating a charge over property of a company.

51. Unanimous shareholder approval-(1) If all the shareholders of a company consent to or concur in any action taken by the company or a director, the taking of that action is deemed to be validly authorised by the company despite:

- (a) anything to the contrary in its rules; or
- (b) the absence of express authority to take that action in its rules.

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

- (a) the issue of shares;
- (b) the making of a distribution;
- (c) the repurchase of shares;
- (d) giving financial assistance for the purpose of, or in connection with, the purchase of shares in the company;
- (e) the payment of remuneration to a director, or the making of a loan to a director, or the conferral of any other benefit on a director;
- (f) the making of a contract between the company and a director, or of any other contract in which a director has an interest;
- (g) entry into a major transaction;
- (h) the ratification after the event of any action that could have been authorised under this section.

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

(4) Section 29 applies to a distribution made in breach of subsection (3) as if:

- (a) the distribution had been made in breach of section 28; and
- (b) the distribution was authorised by all shareholders.

52. Shareholder written resolutions-(1) Subject to subsection (3), a resolution in writing signed by shareholders who together hold not less than 75% of the votes entitled to be cast on that resolution at a meeting of shareholders is as valid as

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

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

- (a) relates to a matter that is required by this Act or by the rules to be decided at a meeting of the shareholders of a company; and
 - (b) is signed by the shareholders referred to in subsection (1).
- (3) If, in respect of any matter, the rules of a company:
- (a) require approval by a higher majority than 75% of those shareholders entitled to vote and voting, the reference in subsection (1) to 75% is taken to be a reference to that higher majority;
 - (b) specify additional requirements for approval of such matters, those requirements must also be satisfied in order for the resolution to be valid.
- (4) Within 5 working days of a resolution being passed under this section, the company must send a copy of the resolution to every shareholder who did not sign the resolution.
- (5) A resolution may be signed under subsections (1) or (2) without any prior notice being given to shareholders.
- (6) If a company fails to comply with subsection (4):
- (a) the company commits an offence and is liable on conviction to a fine not exceeding 10 penalty units; and
 - (b) every director of the company commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.

53. Shareholder meetings-(1) The rules of a company must include provisions:

- (a) for holding meetings of shareholders of the company; and
 - (b) that govern proceedings at meetings of shareholders of the company.
- (2) Meetings of the shareholders of a company must be held in accordance with the rules of the company.

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

- (a) may be called at any time by a director; and
- (b) must be called by the directors on the written request of shareholders holding shares carrying together not less than 5% of the votes that may be cast on the issue.

Subpart 2 - Alteration of shareholder rights

54. Alteration of shareholder rights-(1) A company must not take action that affects the rights attached to shares unless that action has been approved by:

- (a) a special resolution of each interest group; or
- (b) all shareholders under section 51.

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

- (a) the rights, privileges, limitations, and conditions attached to the share by this Act or the rules, including voting rights and rights to distributions;
- (b) the right to have any provisions of the rules in relation to the issue of further shares observed by the company;
- (c) the right to have the procedure set out in this section, and any further procedure required by the rules for the amendment or alteration of rights, observed by the company;
- (d) the right that a procedure required by the rules for the amendment or alteration of rights not be amended or altered.

(3) In this section:

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

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

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

- (c) subject to subsection (4)(b), who comprise the holders of 1 or more classes of shares in the company.
- (4) For the purposes of this section and the definition of “interest group”:
 - (a) 1 or more interest groups may exist in relation to any action or proposal; and
 - (b) holders of shares in the same class may fall into 2 or more interest groups if -
 - (i) action is taken in relation to some holders of shares in a class and not others; or
 - (ii) a proposal expressly distinguishes between some holders of shares in a class and other holders of shares of that class.

55. Repurchase of dissenter’s shares-(1) A shareholder is entitled to require the company to purchase shares in accordance with the procedure set out in Schedule 5 if:

- (a) the shareholder is entitled to vote on the exercise of 1 or more of the powers set out in -
 - (i) section 48(b) and the proposed alteration imposes or removes a restriction on the activities of the company; or
 - (ii) section 48(c) or (d); and
 - (b) the shareholders resolve to exercise the power; and
 - (c) the shareholder cast all the votes attached to shares registered in the shareholder’s name and having the same beneficial owner against the exercise of the power.
- (2) A shareholder is entitled to require the company to purchase shares in accordance with the procedure set out in Schedule 5 if:
- (a) an interest group of which the shareholder was a member has, under section 54, approved, by special resolution, the taking of action that affects the rights attached to those shares; and
 - (b) the company becomes entitled to take the action; and

- (c) the shareholder cast all the votes attached to the shares registered in that shareholder's name and having the same beneficial owner against approving the action.
- (3) If a resolution of shareholders or of an interest group is made in writing in accordance with section 52, subsections (1) and (2) apply as if references to a shareholder who cast all the votes attached to shares registered in the shareholder's name and having the same beneficial owner against the matter in question were references to a shareholder who did not sign the written resolution in respect of those shares.

Subpart 3 - Disclosure to shareholders

56. Annual report to shareholders-(1) Subject to subsection (2), the directors of every company must, within 20 working days after the date on which the company is required to complete its financial statements under section 130:

- (a) prepare an annual report on the affairs of the company during the accounting period ending on that date; and
 - (b) send a copy of that report to each shareholder.
- (2) The rules of a private company may provide that the directors are only required to prepare an annual report in respect of an accounting period if a shareholder has given written notice to the company before the end of that accounting period requiring the annual report to be prepared.
- (3) Every annual report for a company must:
- (a) be in writing and be dated; and
 - (b) include financial statements for the accounting period that comply with section 130; and
 - (c) if an auditor's report is required for the financial statements included in the report, include that auditor's report; and
 - (d) state the names of the persons holding office as directors of the company as at the end of the accounting period and the names of any persons who ceased to hold office as directors of the company during the accounting period; and

- (e) contain any other information that may be required by -
 - (i) regulations made under this Act; and
 - (ii) the rules; and
 - (f) be signed on behalf of the directors by 2 directors of the company or, if the company has only 1 director, by that director.
- (4) If the directors of a company fail to comply with subsection (1), every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

57. Inspection of company records by shareholders - A shareholder is entitled to inspect company records in accordance with section 121.

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

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

59. Company must provide requested information - Within 10 working days of receiving a request under section 58, the company must:

- (a) provide the information; or
- (b) agree to provide the information within a specified period; or
- (c) agree to provide the information within a specified period if the shareholder pays a reasonable charge to the company (which must be specified and explained) to meet the cost of providing the information; or
- (d) refuse to provide the information, specifying the reasons for the refusal.

60. Reasons for refusing information - Without limiting the reasons for which a company may refuse to provide

information under section 59, a company may refuse to provide information if the:

- (a) disclosure of the information would be likely to prejudice the commercial position of the company; or
- (b) disclosure of the information would be likely to prejudice the commercial position of any other person, whether or not that person supplied the information to the company; or
- (c) request for the information is frivolous or vexatious.

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

- (a) will pay the charge; or
- (b) considers the charge to be unreasonable.

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

- (a) the company does not have sufficient reason to refuse to provide the information; or
- (b) the period specified for providing the information is unreasonable; or
- (c) the charge set by the company is unreasonable.

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

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

63. Investigation at request of shareholder-(1) On the application of a shareholder of a company, the Court may make:

- (a) an order authorising a person named in the order at a time specified in the order, to inspect and to make copies of, or take extracts from, the records or other documents of the company, or any of the records or documents of the company specified in the order; and
 - (b) any ancillary order that it thinks fit, including an order that the accounts of the company be audited by that person.
- (2) The Court may make an order under subsection (1) only if it is satisfied that:
- (a) in making the application, the shareholder is acting in good faith and that the inspection is proposed to be made for a proper purpose; and
 - (b) the person to be appointed is a proper person for the task.
- (3) A person appointed by the Court under subsection (1) must diligently carry out the inspection and, having done so, must make a full report to the Court.
- (4) On receiving the report of an inspector, the Court may make any order in relation to the disclosure and use that may be made of the records and information obtained that it thinks fit.
- (5) An order made under subsection (4) may be varied from time to time.
- (6) The reasonable costs of the inspection must be met by the company unless the Court orders otherwise.
- (7) A person may only disclose or make use of information or records obtained under this section in accordance with an order made under subsections (4) or (5).
- (8) A person who discloses or makes use of information or records obtained under this section other than in accordance with an order made under subsections (4) or (5) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

Part 5
Directors

Subpart 1 - Powers and duties

Powers

64. Management of company - Except to the extent that this Act or the company's rules provide otherwise:

- (a) the business and affairs of a company must be managed by, or under the direction or supervision of, the directors of the company; and
- (b) the directors of a company have all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.

Duties

65. Fundamental duties of directors - Every director of a company must, when exercising powers or performing duties as a director, act:

- (a) in good faith; and
- (b) in a manner that the director believes to be in the interests of the company.

66. Duty of directors to comply with Act - A director of a company must not act, or agree to the company acting, in a manner that contravenes this Act.

67. Duty of directors to comply with rules - A director of a company must not act, or agree to the company acting, in a manner that contravenes the company's rules.

68. Interest of director in company transactions-(1) A director must not exercise any power as a director if the director is directly or indirectly materially interested in the exercise of that power unless:

- (a) this Act expressly authorises the director to exercise the relevant power despite that interest; or
 - (b) the director has reasonable grounds for believing that the company will satisfy the solvency test after that power is exercised, and either -
 - (i) the rules expressly authorise the director to exercise the relevant power despite that interest, following disclosure of the interest in accordance with subsection (2); or
 - (ii) the exercise of the power by the director has been approved by all shareholders under section 51, following disclosure of the nature and extent of the director's interest to all shareholders who are not otherwise aware of those matters.
- (2) A director who is directly or indirectly materially interested in the exercise of any power may only be authorised by the rules to exercise that power if the rules require that, before the exercise of the power, the director discloses the nature and extent of that interest in writing:
- (a) if there is at least 1 other director who is not directly or indirectly materially interested in the transaction or proposed transaction, to the directors of the company;
 - (b) if paragraph (a) does not apply, to all shareholders other than the director.

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

- (a) in the interests of the company; or
- (b) as required by law; or
- (c) if there are reasonable grounds for believing that the company will satisfy the solvency test after the director takes that action and that action -

- (i) is authorised by the rules; or
- (ii) is approved by shareholders under section 51.

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

- (a) the nature of the company; and
- (b) the nature of the decision; and
- (c) the position of the director and the nature of the responsibilities undertaken by him or her.

71. Obligations of directors in connection with insolvency-(1) A director of a company must call a meeting of directors within 10 working days to consider whether the directors should appoint an administrator or liquidator if the director:

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

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

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

- (a) at the time of that failure, the company was unable to pay its debts as they fell due in the normal course of business; and
- (b) the company is later placed in liquidation.

(4) Each director who did not participate in the meeting and did not vote in favour of appointing an administrator or a

liquidator is liable to any creditor to whom the company incurred an obligation after the date of the meeting in accordance with subsection (5) if:

- (a) at a meeting called under this section the directors do not resolve to appoint an administrator or liquidator; and
 - (b) at the time of that meeting there were no reasonable grounds for believing that the company was able to pay its debts as they fell due; and
 - (c) the company is later placed in liquidation.
- (5) A director who is liable to a creditor under subsections (3) or (4) in respect of an obligation of the company is liable to that creditor for the amount of any loss suffered by that creditor as a consequence of the company's failure to perform that obligation, unless the director establishes that the creditor:
- (a) knew or ought to have known of the circumstances that called into question the solvency of the company; or
 - (b) otherwise assumed the risk of dealing with the company in those circumstances.
- (6) If more than one director is liable to a creditor under this section, the liability of those directors is joint and several.

72. Effect of unanimous shareholder approval on certain duties of directors - If a director exercises any power or takes any other action in his or her capacity as a director with the consent or concurrence of shareholders under section 51:

- (a) the director is deemed to be acting in accordance with the requirements of section 67; and
- (b) if, at the time the director so acts, there are reasonable grounds for believing that the company is able to meet its debts as they fall due, the director is deemed to be acting in accordance with the requirements of sections 65 and 70.

Subpart 2 - Liabilities

73. Persons deemed to be directors for liability purposes-(1) A person (principal) in accordance with whose directions or instructions a director is required or is accustomed to act is liable under sections 65 to 71 to the same extent as that director, unless the principal shows that the director was not in fact acting in accordance with the principal's directions or instructions in acting or failing to act in the manner giving rise to liability on the part of the director.

(2) A person who exercises, or who is entitled to exercise, or who controls or who is entitled to control the exercise, of powers that, apart from the rules of the company, would fall to be exercised by the directors, is liable under sections 65 to 70 in connection with the exercise of those powers as if that person were a director.

(3) Without limiting subsection (2), if the rules of a company confer a power on shareholders that would otherwise fall to be exercised by directors under this Act, any shareholder who exercises that power or who takes part in deciding whether to exercise that power is liable under sections 65 to 70 in connection with the exercise of that power as if that person were a director.

(4) A person to whom a power or duty of the directors has been directly delegated by the directors with that person's consent or acquiescence, or who exercises the power or duty with the consent or acquiescence of the directors, is liable under sections 65 to 70 in connection with the exercise of those powers as if that person were a director.

(5) To avoid doubt, if any action is approved by all shareholders under section 51:

- (a) no shareholder is liable under section 67 in respect of that action;
- (b) if there are reasonable grounds for believing that the company is able to meet its debts as they fall due, no shareholder is liable under sections 65 or 68 or 69 or 70 in respect of that action.

Indemnities and insurance for directors

74. Certain indemnities prohibited-(1) A company may not indemnify a director of the company or of any related company in respect of:

- (a) any criminal liability; or
 - (b) any liability to the company or a related company for any act or omission in his or her capacity as a director of the company or of the related company, as the case may be; or
 - (c) any liability to any person arising out of a breach by that person of a duty to the company or related company, as the case may be, under any of sections 65 to 71.
- (2) An indemnity given in breach of this section is void.
- (3) In this section, -
- “director” includes:
- (a) a person who is liable under any of sections 65 to 71 by virtue of section 73;
 - (b) a former director.
- “indemnify” includes relieve or excuse from liability, whether before or after the liability arises; and
- “indemnity” has a corresponding meaning.

75. Company may indemnify or insure directors - Subject to section 74, a company may provide an indemnity or purchase insurance for a director of the company or of a related company:

- (a) in accordance with its rules; or
- (b) with the approval of shareholders under section 51.

Defences

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

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

- (b) the director took all reasonable and proper steps to ensure that the directors complied with the requirements; or
 - (c) in the circumstances the director could not reasonably have been expected to take steps to ensure that the directors complied with the requirements.
- (2) It is a defence to a director charged with an offence in relation to a duty imposed on the company if the director proves that:
- (a) the company took all reasonable and proper steps to ensure that the requirements would be complied with; or
 - (b) the director took all reasonable steps to ensure that the company complied with the requirements; or
 - (c) in the circumstances the director could not reasonably have been expected to take steps to ensure that the company complied with the requirements.

Subpart 3 - Prohibition and disqualification of directors

77. Persons prohibited from managing companies-(1) A person must not, during the period of 5 years after the conviction or the judgment, be a director or promoter of, or in any way, whether directly or indirectly, be concerned or take part in the management of, a company if the person has been convicted of an offence:

- (a) in connection with the promotion, formation, or management of a company punishable by imprisonment for a term exceeding 2 years, whether or not a sentence of imprisonment was imposed; or
 - (b) under any of sections 340 to 343 of this Act or under Part VIII (except sections 112 or 113) of the Crimes Ordinance 1961.
- (2) Subsection (1) does not apply if the person first obtains the leave of the Court, which may be given on any conditions that the Court thinks fit.

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

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

(5) Every person who fails to comply with this section or any order made under this section, commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding 1000 penalty units, or both.

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

78. Court may disqualify directors-(1) The Court may make an order that a person must not, without the leave of the Court, be a director or promoter of, or in any way, whether directly or indirectly, be concerned or take part in the management of, a company for any period, not exceeding 10 years, that may be specified in the order if the person has:

- (a) been convicted of any offence in connection with the promotion, formation, or management of a company punishable by imprisonment for a term exceeding 2 years, whether or not a sentence of imprisonment was imposed; or
- (b) been convicted of an offence under any of sections 340 to 343 of this Act or under Part VIII (except sections 112 or 113) of the Crimes Ordinance 1961; or
- (c) committed an offence for which the person is liable (whether convicted or not) under this Part; or
- (d) while a director of a company and whether convicted or not -
 - (i) persistently failed to comply with this Act or the Companies Act 1955, or, if the company has failed to so comply, persistently failed to take all reasonable steps to obtain compliance; or

- (ii) been guilty of fraud in relation to the company or of a breach of duty to the company or a shareholder; or
- (iii) acted in a reckless or incompetent manner in the performance of his or her duties as director; or
- (e) been convicted, in any other country, of an offence that corresponds to any of the offences referred to in paragraphs (a) to (c); or
- (f) been prohibited under the law of any other country from acting as a director of a company, or being concerned or taking part in the management of a company; or
- (g) become of unsound mind.

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

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

(4) Every person who fails to comply with an order under this section commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding 1000 penalty units, or both.

(5) In this section and sections 79 and 80, “company” includes an overseas company.

79. Persons entitled to apply for order under section 78-(1) An application for an order under section 78 may be made by the Registrar, the Official Assignee, or by the liquidator of the company, or by a person who is, or has been, a shareholder or creditor of the company.

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

- (a) an order under section 78 by the Registrar or the Official Assignee or the liquidator; or
- (b) leave under section 78 by a person against whom an order has been made on the application of the Registrar, the Official Assignee, or the liquidator.

80. Notice of application for order under section 78 - (1) A person who intends to apply for an order under section 78 must give not less than 10 working days' notice of that intention to the person against whom the order is sought.

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

81. Application of sections 82 to 84 - Sections 82 to 84 apply to a company :

- (a) that has been put into liquidation because of its inability to pay its debts as and when they became due;
- (b) the liquidation of which has been completed whether or not the company has been removed from the Samoa register;
- (c) that has ceased to carry on business because of its inability to pay its debts as and when they became due;
- (d) in respect of which execution is returned unsatisfied in whole or in part;
- (e) in respect of the property of which a receiver, or a receiver and manager, has been appointed by a court or pursuant to the powers contained in a document, whether or not the appointment has been terminated;
- (f) in respect of which, or the property of which, a person has been appointed as a receiver and manager, or a judicial manager, or as a manager, or to exercise control, under an enactment, whether or not the appointment has been terminated;

- (g) that has entered into a compromise or arrangement with its creditors.

82. Court may prohibit persons from managing companies-

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

- (a) the person was, within a period of 5 years before a notice was given to that person under section 83 (whether that period commenced before or after the commencement of this Act), a director of, or concerned in, or a person who took part in, the management of, a company in relation to which this section applies; and
- (b) the manner in which the affairs of the company were managed was wholly or partly responsible for the company being a company in relation to which this section applies; and
- (c) the person bears a significant degree of responsibility for the manner in which the affairs of the company were managed.

(2) If a person was, within a period of 5 years before a notice was given to that person under section 83 (whether that period commenced before or after the commencement of this Act), a director of, or concerned in, or a person who took part in, the management of, 2 or more companies to which this section applies, subsection (1)(b) and (c) are presumed to be satisfied in relation to each of those companies unless that person satisfies the Court to the contrary.

(3) The Registrar must give public notice of the making of any order under subsection (1).

(4) Every person who fails to comply with an order under this section commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding 1000 penalty units, or both.

(5) In this section and sections 83 and 84, “company” includes an overseas company that carries on business in Samoa.

83. Notice of application-(1) The Registrar must not make an application under section 82(1) unless:

- (a) not less than 10 working days’ notice of the fact that the Registrar intends to consider making the application is given to the person and the Registrar considers any representations made by the person; and
- (b) the Registrar appoints a public accountant to advise the Registrar in relation to the making of the application and to inquire into the affairs of the company under section 314; and
- (c) the public accountant appointed under paragraph (b), after considering the information in the Registrar’s possession, any representations made by the person concerned to the Registrar, and if the public accountant thinks fit, any representations made by that person to the public accountant, advises the Registrar that in his or her professional opinion -
 - (i) the manner in which the affairs of the company were managed was wholly or partly responsible for the company being a company to which this section applies; and
 - (ii) the person bears a significant degree of responsibility for the manner in which the affairs of the company were managed.

(2) If the Registrar has made an application under section 82(1) in respect of a person, the Registrar may give a notice to that person prohibiting that person from being a director or promoter of a company, or being concerned in, or taking part, whether directly or indirectly, in the management of, a company pending the determination by the Court of that application. The Registrar must give public notice of every such notice.

(3) No person to whom a notice under subsection (2) applies may be a director or promoter of a company, or be concerned or take part (whether directly or indirectly) in the management of a company.

(4) If a person to whom the Registrar has issued a notice under subsection (2) appeals against the issue of the notice under this Act or otherwise seeks judicial review of the notice, the notice remains in full force and effect pending the determination of the appeal or review, as the case may be.

(5) The Registrar may, by notice in writing to a person to whom a notice under subsection (2) has been given:

- (a) revoke that notice; or
- (b) exempt that person from the notice in relation to a specified company or companies, on such conditions as the Registrar thinks fit. The Registrar must give public notice of every such notice.

(6) Every person to whom a notice under subsection (2) is given who fails to comply with the notice commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding 1000 penalty units, or both.

84. Liability for contravening sections 77, 78, or

82-(1) A person who acts as a director of a company in contravention of section 77 or an order made under section 78 is, while that person was so acting, personally liable to:

- (a) a liquidator of the company for every unpaid debt incurred by the company; and
- (b) a creditor of the company for a debt to that creditor incurred by the company.

(2) A person who acts in contravention of an order or a notice under section 82 is, while that person was so acting, personally liable to:

- (a) a liquidator of the company for every unpaid debt incurred by the company; and
- (b) a creditor of the company for a debt to that creditor incurred by the company.

Subpart 4 - Office of director*Appointment and retirement of directors*

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

- (a) is a natural person; and
 - (b) is not disqualified from being a director under subsection (2).
- (2) The following persons are disqualified from being a director of a company:
- (a) a person who is under 21 years of age;
 - (b) a person who is an undischarged bankrupt;
 - (c) a person in respect of whom the Court has made an order under section 189 of the Companies Act 1955 prohibiting that person from being a director of or being concerned or taking part in the management of a company, or who would be so prohibited by virtue of such an order but for the repeal of that Act;
 - (d) a person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under sections 77, 78, or 82;
 - (f) a person who has been adjudged to be mentally defective under the Mental Health Ordinance 1961;
 - (g) in relation to any particular company, a person who does not comply with any qualifications for directors contained in the rules of that company.
- (3) A person who is disqualified from being a director but who acts as a director is treated as a director for the purposes of any provision of this Act that imposes a duty or an obligation on a director of a company.

86. Appointment of directors-(1) A person named as a director in an application for registration or in an amalgamation proposal holds office as a director from the date of registration

or the date the amalgamation proposal is effective, as the case may be, until that person ceases to hold office as a director in accordance with this Act.

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

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

87. Director ceasing to hold office-(1) The office of director of a company is vacated if the person holding that office:

- (a) resigns in accordance with subsection (2); or
- (b) is removed from office in accordance with subsection (4) or the rules of the company; or
- (c) becomes disqualified from being a director under section 85(2); or
- (d) dies; or
- (e) otherwise vacates office in accordance with the rules of the company.

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

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

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

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

- (a) until that director has called a meeting of shareholders to receive notice of the resignation; or
- (b) if the company has only 1 shareholder, until that director has given not less than 10 working days' notice of the resignation to that shareholder.

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

- (a) the time and date for which a meeting of shareholders is called under subsection (5)(a); or
- (b) if the company has only 1 shareholder, 10 working days after notice of the resignation has been given to that shareholder.

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

88. Notice of change of directors-(1) A company must ensure that the following notices in the prescribed form are delivered to the Registrar for registration:

- (a) notice of a change in the directors of a company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both;
 - (b) notice of a change in the name or the residential address or the postal address of a director of a company.
- (2) A notice under subsection (1) must:
- (a) specify the date of the change; and
 - (b) include the full name and residential address and postal address of every person who is a director of the company from the date of the notice; and
 - (c) in the case of the appointment of a new director, have attached a consent by that person to act as a director, in the prescribed form; and
 - (d) be delivered to the Registrar within 20 working days of -
 - (i) the change occurring, in the case of the appointment or resignation of a director; or
 - (ii) the company first becoming aware of the change, in the case of the death of a director or a change in the name or

residential address or postal address of a director.

- (3) If a company fails to comply with this section:
- (a) the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units; and
 - (b) every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

Miscellaneous

89. Remuneration of directors - Directors may receive remuneration and other benefits from the company:

- (a) in accordance with its rules; or
- (b) with the approval of shareholders under section 51.

90. Proceedings of directors-(1) The rules of a company must include provisions:

- (a) for holding meetings of directors of the company; and
 - (b) that govern proceedings at meetings of directors of the company.
- (2) Meetings of the directors of a company must be held in accordance with the rules of the company.

Part 6 Enforcement

Injunctions

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

- (2) An application may be made by:
- (a) the company; or

- (b) a director or shareholder of the company.
- (3) If the Court makes an order under subsection (1), it may also grant any consequential relief that it thinks fit.
- (4) An order may not be made under this section in relation to conduct or a course of conduct that has been completed.
- (5) The Court may, at any time before the final determination of an application under subsection (1), make, as an interim order, any order that it is empowered to make under that subsection.

Derivative actions

92. Leave to bring proceedings - Subject to section 95, the Court may, on the application of a person referred to in section 93, grant leave to that person to:

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

93. Who may apply for leave to bring proceedings - An application for leave to bring proceedings or to intervene in proceedings under section 92 may be made by:

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

94. Matters that Court must consider - Without limiting section 92, in determining whether to grant leave under that section, the Court must consider:

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

- (c) any action already taken by the company or subsidiary to obtain relief; and
- (d) the interests of the company or subsidiary in the proceedings being commenced, continued, defended, or discontinued, as the case may be.

95. When leave may be granted - Leave to bring proceedings or intervene in proceedings may be granted only if the Court is satisfied that either:

- (a) the company or subsidiary does not intend to bring, diligently continue or defend, or discontinue the proceedings, as the case may be; or
- (b) it is in the interests of the company or subsidiary that the conduct of the proceedings should not be left to the directors or to the determination of the shareholders as a whole.

96. Procedural matters-(1) Notice of the application must be served on the company or subsidiary.

(2) The company or subsidiary:

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

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

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

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

- (a) make an order authorising the person to whom leave was granted or any other person to control the conduct of the proceedings;
- (b) give directions for the conduct of the proceedings;

- (c) make an order requiring the company or the directors to provide information or assistance in relation to the proceedings;
- (d) make an order directing that any amount ordered to be paid by a defendant in the proceedings must be paid, in whole or part, to former and present shareholders of the company or subsidiary instead of to the company or the subsidiary.

98. Costs of derivative action to be met by company

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

Personal actions by shareholders

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

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

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

100. Personal actions by shareholders against directors-(1) A shareholder or former shareholder may bring an action against a director for breach of a duty owed to him or her as a shareholder.

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

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

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

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

- (a) the shareholder brings proceedings against the company or a director; and
- (b) other shareholders have the same, or substantially the same, interest in relation to the subject-matter of the proceedings.

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

- (a) as to the control and conduct of the proceedings;
- (b) as to the costs of the proceedings;
- (c) directing the distribution of any amount ordered to be paid by a defendant in the proceedings among the shareholders represented.

Prejudiced shareholders

102. Prejudiced shareholders-(1) A shareholder or former shareholder of a company may apply to the Court for an order under subsection (2) if the shareholder considers that the affairs of a company have been, or are being, or are likely to be, conducted in a manner that is, or any act or acts of the company

have been, or are, or are likely to be, oppressive, unfairly discriminatory, or unfairly prejudicial to him or her in that capacity or in any other capacity.

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

- (a) requiring the company or any other person to acquire the shareholder's shares; or
- (b) requiring the company or any other person to pay compensation to a person; or
- (c) regulating the future conduct of the company's affairs; or
- (d) altering or adding to the company's rules; or
- (e) appointing a receiver of the company; or
- (f) directing the rectification of the records of the company; or
- (g) putting the company into liquidation; or
- (h) setting aside action taken by the company or the board in breach of this Act or the rules of the company.

(3) No order may be made against the company or any other person under subsection (2) unless the company or that person is a party to the proceedings in which the application is made.

103. Certain conduct deemed prejudicial – Failure to comply with any of the following sections of this Act is conduct that is deemed to be unfairly prejudicial for the purposes of section 102:

- (a) section 26(1) (which relates to issue of shares);
- (b) section 30 (which relates to dividends);
- (c) section 31 (which relates to acquisitions of shares by a company);
- (d) section 34 (which relates to redeemable shares);
- (e) section 36 (which relates to the provision of financial assistance by a company to acquire its own shares);
- (f) section 50 (which relates to major transactions);
- (g) section 54 (which relates to the alteration of shareholder rights).

104. Alteration to rules by Court-(1) Despite anything in this Act, but subject to the order, if the Court makes an order under section 102 altering or adding to the rules of a company, the rules must not, to the extent that they have been altered or added to by the Court, again be altered or added to without the leave of the Court.

(2) Any alteration or addition to the rules of a company made by an order under section 102 has the same effect as if it had been made by the shareholders of the company under section 14, and this Act applies to the rules as altered or added to.

(3) Within 10 working days of the making of an order under section 102 altering or adding to the rules of a company, the company must ensure that a copy of the order and a copy of the rules as altered or added to are delivered to the Registrar for registration.

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

- (a) the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units; and
- (b) every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

Certain applications

105. Effect of arbitration clause in rules -A shareholder is entitled to apply to the Court for relief under sections 91 to 100 and 102 despite any provision in the rules of a company requiring disputes relating to the affairs of the company to be referred to arbitration, or otherwise seeking to prohibit the shareholder from making the application.

106. Application for relief by Attorney-General-(1) The Attorney-General may apply to the Court for an order in respect of a public company under sections 91 to 100 and 102 as if the Attorney-General were a shareholder of that company if:

- (a) the Attorney-General is requested to do so in writing by a shareholder or shareholders who would be entitled to make the application in question; and
- (b) the Attorney-General considers that it is in the public interest that the application be made; and
- (c) the Attorney-General considers that it is unreasonable to expect the person or persons making the request to pursue the application themselves.

(2) If the Attorney-General considers that the persons making a request under subsection (1) should bear some of the costs of any application to be made by the Attorney-General under this section, the Attorney-General may require them to pay an amount towards those costs, or to enter into an agreement to contribute to those costs. If they fail to do so, the Attorney-General may decline to make the application, or to take any further steps in relation to the application.

(3) If an application made by the Attorney-General under this section results in an award of costs or any other monetary award in favour of the Attorney-General or the company or the shareholders of the company, the Attorney-General has a first claim on that award for payment of the costs incurred by the Attorney-General in making the application.

Part 7

Administration of companies

Subpart 1 - Dealings with third parties

Binding company

107. Authority to bind company-(1) A contract or other enforceable obligation may be entered into by a company as follows:

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

(i) 2 or more directors of the company; or
(ii) if there is only 1 director, by that director, whose signature must be witnessed;
or

(iii) if the rules of the company so provide, a director, or other person or class of persons. If the rules provide for signature by 1 person, that person's signature must be witnessed; or

(iv) 1 or more attorneys appointed by the company in accordance with section 108:

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

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

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

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

(2) Nothing in subsection (1) prevents a company from affixing its common seal to a contract or document, if it has one. But despite anything in the rules of the company, the absence of a seal does not affect the enforceability of an obligation entered into in accordance with subsection (1).

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

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

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

108. Attorneys-(1) Subject to its rules, a company may, by an instrument in writing executed in accordance with section

107(1)(a), appoint a person as its attorney either generally or in relation to a specified matter.

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

(3) Part XII of the Property Law Act 1952 applies, with the necessary modifications, in relation to a power of attorney executed by a company to the same extent as if the company was a natural person and as if the commencement of the liquidation or, if there is no liquidation, the removal from the register, of the company was the death of a person within the meaning of that Part.

109. Validity of dealings with third parties-(1) Subject to sections 111 and 112, the validity of a transaction entered into by a company is not affected by:

- (a) a failure to comply with this Act (except section 107);
 - (b) a failure to comply with the company's rules;
 - (c) the absence of express authority to enter into the transaction in the company's rules;
 - (d) a failure by the company or its directors to take any steps required by the company's rules to authorise entry into the transaction;
 - (e) the fact that the transaction is not in the interests of the company;
 - (f) a breach of duty by a director in connection with entry into the transaction.
- (2) Subsection (1) does not limit:
- (a) section 91 (which relates to injunctions to restrain conduct by a company that would contravene its rules); or
 - (b) section 92 to 98 (which relates to derivative actions); or
 - (c) section 99 (which relates to actions by shareholders against a company); or
 - (d) section 100 (which relates to actions by shareholders against directors); or

- (e) the obligations and the liabilities of directors of a company in respect of any contract or other obligation, or transfer of property to or by the company.
- (3) In this section and sections 111 to 113, transaction:
 - (a) includes any contract or other obligation entered into by a company, or any transfer of property to or by a company; but
 - (b) does not include -
 - (i) a distribution to shareholders; or
 - (ii) an indemnity provided to a director under section 75; or
 - (iii) remuneration or other benefits given to a director in accordance with section 89.

110. Assumptions that may be made by third parties-(1) Without limiting section 109, neither a company nor any person claiming under or through a company, nor a guarantor of an obligation of a company, may assert against a person dealing with the company or against a person who has acquired property, rights, or interests from the company that:

- (a) a person named as a director of the company in the most recent notice received by the Registrar under section 88 or in the most recent annual return delivered to the Registrar -
 - (i) is not a director of a company; or
 - (ii) has not been duly appointed; or
 - (iii) does not have authority to exercise a power that a director of a company carrying on business of the kind carried on by the company customarily has authority to exercise:
- (b) a person held out by the company as a director, employee, or agent of the company -
 - (i) has not been duly appointed; or

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

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

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

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

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

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

- (a) registered on the Samoa register; or
- (b) available for inspection by that person under subpart 2.

111. Transactions in which directors are interested-(1)

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

- (a) this Act or the company's rules expressly authorise entry into the transaction despite such an interest; or
 - (b) the transaction has been entered into with the approval of shareholders under section 51 following disclosure of the nature and extent of the director's interest to all shareholders who were not otherwise aware of those matters; or
 - (c) the other party to the transaction is a person other than the director or a person associated with the director and either -
 - (i) that person did not know of the interest of the director; or
 - (ii) the company received fair value under the transaction.
- (2) For the purposes of this section and section 112, a person is associated with a director if the director:
- (a) is the parent, child or spouse of that person; or
 - (b) is a director, employee or trustee of that person; or
 - (c) has a material financial interest in that other person.

112. Transactions entered into by directors in breach of certain duties - A transaction entered into by a company as the result of action taken by a director in breach of sections 65, 66, or 67 is voidable at the option of the company if:

- (a) the other party to the transaction is the director or a person associated with the director; or
- (b) the other party to the transaction is a person with knowledge of the circumstances giving rise to the breach of sections 65, 66, or 67, and the company did not receive fair value under the transaction.

113. Effect on third parties -The setting aside of a transaction under sections 111 or 112 does not affect the title or interest of a person in or to property that the person has acquired if the property was acquired:

- (a) from a person other than the company; and
- (b) for valuable consideration; and
- (c) without knowledge of the circumstances that entitle the company to set aside the transaction under which the property was acquired from the company.

Pre-incorporation contracts

114. Pre-incorporation contracts may be ratified-(1) In this section and in sections 115 and 116, pre-incorporation contract means:

- (a) a contract purporting to be made by a company before its incorporation; or
- (b) a contract made by a person on behalf of a company before and in contemplation of its incorporation.

(2) Despite any enactment or rule of law, a pre-incorporation contract may be ratified by the company within any period that may be specified in the contract, or if no period is specified, then within a reasonable time after the incorporation of the company in the name of which, or on behalf of which, it has been made.

(3) A pre-incorporation contract that is ratified is as valid and enforceable as if the company had been a party to the contract when it was made.

(4) A pre-incorporation contract may be ratified by a company in the same manner as a contract may be entered into on behalf of a company under section 107.

(5) Despite any other Act, if a pre-incorporation contract has not been ratified by a company, or validated by the Court under section 116, the company may not enforce it or take the benefit of it.

115. Warranties implied in pre-incorporation contracts-

(1) Despite any enactment or rule of law, in a pre-incorporation contract, unless a contrary intention is expressed in the contract, there is an implied warranty by the person who purports to make the contract in the name of, or on behalf of, the company:

- (a) that the company will be incorporated within the period specified in the contract, or if no period is specified, then within a reasonable time after the making of the contract; and
 - (b) that the company will ratify the contract within the period specified in the contract, or if no period is specified, then within a reasonable time after the incorporation of the company.
- (2) The amount of damages recoverable in an action for breach of a warranty implied by subsection (1) is the same as the amount of damages that would be recoverable in an action against the company for damages for breach by the company of any unperformed obligations under the contract if the contract had been ratified.
- (3) If, after its incorporation, a company enters into a contract in the same terms as, or in substitution for, a pre-incorporation contract (not being a contract ratified by the company under section 114), the liability of a person under subsection (1) (including any liability under an order made by the Court for the payment of damages) is discharged unless a contrary intention is expressed in the pre-incorporation contract.

116. Failure to ratify-(1) A party to a pre-incorporation contract that has not been ratified by the company after its incorporation may apply to the Court for an order:

- (a) directing the company to return to that party property of any kind acquired by the company from that party by virtue of the contract; or
 - (b) for any other relief in favour of that party relating to the property.
- (2) The Court may, if it considers it just and equitable to do so, make any order or grant any relief that it thinks fit and may do so whether or not an order has been made under section 115(2).

Subpart 2 - Company records

117. Company records-(1) Subject to section 119, a company must keep the following documents at its registered office:

- (a) the rules of the company;
 - (b) minutes of all meetings and resolutions of shareholders within the last 7 years;
 - (c) minutes of all meetings and resolutions of directors and directors' committees within the last 7 years;
 - (d) the full names and addresses of the current directors;
 - (e) copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports;
 - (f) the accounting records required by section 129 for the current accounting period and for the last 7 completed accounting periods of the company;
 - (g) copies of all financial statements required to be completed under section 130 for the last 7 completed accounting periods of the company;
 - (h) the share register.
- (2) The references in subsection (1)(b), (c), and (e) to 7 years and the references in subsection (1)(f) and (g) to 7 completed accounting periods include any lesser periods that the Registrar may approve by notice in writing to the company.
- (3) If a company fails to comply with subsection (1):
- (a) the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units; and
 - (b) every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

118. Form of records-(1) The records of a company must be kept:

- (a) in written form; or

- (b) in a form or in a manner that allows the records to be readily accessible so as to be usable for subsequent reference, and convertible into written form.
- (2) The directors must ensure that adequate measures exist to:
 - (a) prevent the records being falsified; and
 - (b) detect any falsification of them.
- (3) If the directors fail to comply with subsection (2), every director commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

119. Alternative locations of records-(1) The records referred to in section 117(1)(a) to (g) may be kept at a place in Samoa other than the company's registered office, provided that notice of that place is given to the Registrar in accordance with subsection (7).

(2) The share register may, if expressly permitted by the rules, be divided into 2 or more registers kept in different places.

(3) The principal register must be kept in Samoa. Any other share register may be kept at a place outside Samoa.

(4) If a share register is divided into 2 or more registers kept in different places:

- (a) notice of the place where each register is kept must be delivered to the Registrar in accordance with subsection (7) within 10 working days after the share register is divided or any place where a register is kept is altered; and
- (b) a copy of every register must be kept at the same place as the principal register; and
- (c) if an entry is made in a register other than the principal register, a corresponding entry must be made within 10 working days in the copy of that register kept with the principal register.

(5) In this section, "principal register", in relation to a company, means:

- (a) if the share register is not divided into 2 or more registers, the share register; or
 - (b) if the share register is divided into 2 or more registers, the register described as the principal register in the last notice sent to the Registrar under this section.
- (6) A company need not keep its accounting records in Samoa, but if the records are not kept in Samoa:
- (a) the company must ensure that accounts and returns for the operations of the company that -
 - (i) disclose with reasonable accuracy the financial position of the company at intervals not exceeding 6 months; and
 - (ii) will enable the preparation in accordance with this Act of the company's financial statements and any other document required by this Act; -are sent to, and kept at, a place in Samoa; and
 - (b) notice of the place where -
 - (i) the accounting records; and
 - (ii) the accounts and returns required under paragraph (a),are kept must be given to the Registrar in accordance with subsection (7).
- (7) If any records are not kept at the registered office of the company, or the place at which they are kept is changed, the company must ensure that within 10 working days of their first being kept elsewhere or moved, as the case may be, notice is given to the Registrar of the places where the records are kept.
- (8) If a company fails to comply with subsections (3), (4), (6), or (7):
- (a) the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units; and
 - (b) every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

120. Inspection of records by directors-(1) Subject to subsection (2), every director of a company is entitled, on giving reasonable notice, to inspect the records of the company:

- (a) in written form; and
- (b) without charge; and
- (c) at a reasonable time specified by the director.

(2) The Court may, on application by the company, direct that the records need not be made available for inspection or limit the inspection of them in any manner it thinks fit if it is satisfied that:

- (a) it would not be in the company's interests for a director to inspect the records; or
- (b) the proposed inspection is for a purpose that is not properly connected with the director's duties.

121. Inspection of records by shareholders-(1) A company must keep the following records available for inspection in the manner prescribed in section 123 by a shareholder of the company, or by a person authorised in writing by a shareholder for the purpose, who serves written notice of intention to inspect on the company:

- (a) minutes of all meetings and resolutions of shareholders;
- (b) copies of written communications to all shareholders or to all holders of a class of shares during the preceding 7 years, including annual reports and financial statements;
- (c) the records that must be available for public inspection under section 122.

(2) If a company fails to comply with subsection (1):

- (a) the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units; and
- (b) every director of a company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

122. Inspection of records by public-(1) A company must keep the following records available for inspection in the manner prescribed in section 123 by any person who serves written notice of intention to inspect on the company:

- (a) the certificate of incorporation or registration of the company;
 - (b) the rules of the company, if they differ from the model rules;
 - (c) the share register;
 - (d) the full names and residential addresses of the directors;
 - (e) details of the registered office of the company and of its postal address, if different from the registered office;
 - (f) details of any place other than the registered office at which records are kept in accordance with section 119.
- (2) If a company fails to comply with subsection (1):
- (a) the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units; and
 - (b) every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

123. Manner of inspection-(1) Documents that may be inspected under sections 121 or 122 must be available for inspection at the place at which the company's records are kept between the hours of 9.00 am and 4.00 pm on each working day during the inspection period.

(2) In this section, "inspection period" means the period commencing on the third working day after the day on which notice of intention to inspect is served on the company by the person or shareholder concerned and ending with the eighth working day after the day of service.

(3) A person may require a copy of, or extract from, a document that is available for inspection by him or her under sections 121 or 122 to be sent to him or her:

- (a) within 5 working days after he or she has made a request in writing for the copy or extract; and
 - (b) if he or she has paid a reasonable copying and administration fee prescribed by the company.
- (4) If a company fails to provide a copy of, or extract from, a document in accordance with a request under subsection (3):
- (a) the company commits an offence and is liable on conviction to a fine not exceeding 10 penalty units; and
 - (b) every director of the company commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.

Subpart 3 - Documents to be sent to Registrar and shareholders

124. Annual returns-(1) The directors of a company must ensure that there is delivered to the Registrar each year, for registration, during the month allocated to the company for the purpose, an annual return:

- (a) in the prescribed form or in a form approved by the Registrar by public notice or in a form approved by the Registrar for use by the company under subsection (8), or as near to it as circumstances allow; and
 - (b) containing the prescribed information or the information approved by the Registrar by public notice; and
 - (c) accompanied by the prescribed annual return fee.
- (2) The annual return must be dated as at a day within the month during which the return is required to be delivered to the Registrar, and the information required to be contained in it must be compiled as at that date.
- (3) The annual return must be signed by a director of the company or by a solicitor or public accountant authorised for that purpose.
- (4) On registration of a company under Part 2 or re-registration under Part 14, the Registrar must allocate a month to the company for the purposes of this section.

(5) The Registrar may, by written notice to a company, alter the month allocated to the company under subsection (4).

(6) Despite subsection (1):

- (a) a company need not make an annual return in the calendar year of its incorporation;
- (b) a subsidiary may, with the written approval of the Registrar, make an annual return during the month allocated to its holding company instead of during the month allocated to it.

(7) Different forms of annual return may be prescribed or approved by the Registrar by public notice in respect of different classes of companies.

(8) The Registrar may, on the application of any person, approve the use, by such company or companies as the Registrar may specify, of a form of annual return different from that prescribed or approved by the Registrar by public notice, and may at any time revoke, in whole or in part, any such approval.

(9) If the directors of a company fail to comply with subsections (1) or (2), every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

125. Registrar may send annual return form to company-(1) The Registrar may send to a company an annual return form that sets out the prescribed information as it appears on the Samoa register:

- (a) for approval in accordance with section 124(3) if the information set out in the form is current as at a date in the month in which the return is required to be made; or
 - (b) for such correction as may be required, and approval of the corrected information in accordance with section 124(3).
- (2) If the annual return contains:
- (a) an address of the registered office of the company; or

(b) a postal address of the company, that is different from the address of the registered office or the postal address of the company entered on the Samoa register, the Registrar may alter the Samoa register accordingly.

126. Other documents to be sent to Registrar - In addition to the annual return required under section 124, a company must send the following documents to the Registrar under this Act:

- (a) notice of the adoption of new rules by a company, or the alteration of the rules of a company, under section 14;
- (b) notice of a change in the registered office or postal address of the company under section 18;
- (c) notice of the issue of shares by the company, under section 26;
- (d) notice of the acquisition by the company of its own shares under section 31;
- (e) notice of the redemption of a share under section 35;
- (f) notice of a change in the directors of the company, or of a change in the name or residential address of a director, under section 88;
- (g) notice of the making of an order under section 102 altering or adding to the rules of a company;
- (h) notice of any place other than the registered office of the company where records are kept, or of any change in the place where records are kept, under section 119;
- (i) documents requested by the Registrar under section 312.

127. Annual report to shareholders - An annual report must be sent to shareholders in accordance with section 56.

128. Other documents to be sent to shareholders - In addition to any annual report required under section 56, a company must send the following documents to shareholders:

- (a) notice of any repurchase of shares to which section 31(4) applies;
- (b) notice of a written resolution approved under section 52;
- (c) financial statements required to be sent under section 130;
- (d) a written statement by an auditor under section 136;
- (e) a report by an auditor under section 138.

Subpart 4 - Accounting and audit

129. Accounting records to be kept-(1) The directors of a company must ensure accounting records are kept that:

- (a) correctly record and explain the transactions of the company; and
 - (b) will at any time enable the financial position of the company to be determined with reasonable accuracy; and
 - (c) will enable the directors to ensure that the financial statements of the company comply with section 130 and any regulations made under this Act; and
 - (d) will enable the financial statements of the company to be readily and properly audited.
- (2) Without limiting subsection (1), the accounting records must contain:
- (a) entries of money received and spent each day and the matters to which it relates; and
 - (b) a record of the assets and liabilities of the company; and
 - (c) if the company's business involves dealing in goods
 - (i) a record of goods bought and sold, and relevant invoices; and
 - (ii) a record of stock held at the end of the financial year together with records of any stock takings during the year; and
 - (d) if the company's business involves providing services, a record of services provided and relevant invoices.

- (3) If a company sells goods or provides services for cash in the ordinary course of carrying on a retail business:
- (a) invoices need not be kept in respect of each retail transaction for the purposes of subsection (2); and
 - (b) a record of the total money received each day in respect of the sale of goods or provision of services, as the case may be, is sufficient to comply with subsection (2) in respect of those transactions.
- (4) The accounting records must be kept:
- (a) in a form permitted under section 118; and
 - (b) at the registered office of the company, or any other place permitted under section 119.
- (5) If the directors of a company fail to comply with the requirements of this section, every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

130. Financial statements to be prepared-(1) The directors of every company must ensure that:

- (a) within 4 months after the balance date of the company, or within any extended period applicable under subsection (3), financial statements that comply with subsection (2) are completed in relation to the company and that balance date; and
 - (b) within 20 working days of the date on which the financial statements must be completed under paragraph (a), those financial statements are sent to all shareholders. This requirement may be satisfied by sending the financial statements to shareholders in an annual report in accordance with section 56.
- (2) The financial statements of a company must:
- (a) give a true and fair view of the matters to which they relate; and
 - (b) comply with any applicable regulations made under this Act; and

- (c) be dated and signed on behalf of the directors by 2 directors of the company, or, if the company has only 1 director, by that director.
- (3) The period within which a private company must comply with the requirements of subsection (1)(a) may be extended by special resolution to a period not greater than 7 months.
- (4) The following periods must not exceed 15 months:
 - (a) the period between the date of incorporation of a company and its first balance date;
 - (b) the period between any 2 balance dates of a company.
- (5) If the directors of a company fail to comply with subsection (1), every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

131. Application-(1) This section and sections 132 to 134 apply to a company in respect of an accounting period if:

- (a) it is registered as a public company at any time during that accounting period; or
 - (b) the company's rules require it to appoint an auditor in respect of that accounting period; or
 - (c) a shareholder or shareholders holding shares that together carry the right to receive more than 20% of distributions made by the company give written notice to the company before the end of the accounting period requiring the financial statements of the company for that period to be audited.
- (2) If this section and sections 132 to 134 apply to a company in respect of an accounting period, but do not apply in respect of a subsequent accounting period:
- (a) the financial statements of the company for the accounting period in respect of which this section applies must be audited; and
 - (b) the directors may give notice to all shareholders within 4 months of the commencement of a subsequent accounting period that this section

and sections 132 to 134 no longer apply to the company, and that the auditor will cease to hold office unless a notice is given by shareholders under subsection (1)(c) by a date specified in the notice, which must be not less than 30 working days from the date on which the notice is given; and

- (c) if a notice has been given under paragraph (b), and no notice under subsection (1)(c) is received by the company by the date specified in that notice, the auditor ceases to hold office on the later of -
 - (i) the date specified in the notice; or
 - (ii) the date on which the audit of the financial statements of the company for the previous accounting period is completed.

132. Appointment of auditor-(1) A company to which this section applies must appoint an auditor:

- (a) to hold office as auditor until the auditor ceases to hold office under section 133; and
 - (b) to audit the financial statements of the company.
- (2) A company must appoint an auditor:
- (a) within 30 working days of the date on which this section first applies to the company;
 - (b) within 30 working days of any vacancy arising in the office of auditor.

133. When auditor ceases to hold office - An auditor ceases to hold office if he or she:

- (a) ceases to hold office under section 131(2); or
- (b) resigns by delivering a written notice of resignation to the registered office of the company not less than 20 working days before the date on which the notice is expressed to be effective; or
- (c) becomes disqualified from being the auditor of the company under section 135; or

- (d) is replaced as auditor by an ordinary resolution appointing another person as auditor in his or her place, following notice to the auditor in accordance with section 136(2); or
- (e) dies; or
- (f) is adjudged to be mentally defective under the Mental Health Ordinance 1961.

134. Registrar may appoint auditor on request of shareholder-(1) The Registrar may, at the request of any shareholder, appoint an auditor if:

- (a) this section applies to a company; and
- (b) the company has neglected or failed to appoint an auditor.

(2) If the Registrar appoints an auditor, the Registrar may determine the fees to be paid by the company to the auditor.

(3) Any fees determined by the Registrar may be recovered as if they were provided for in a contract between the company and the auditor.

135. Qualifications of auditor-(1) A person must not be appointed or act as an auditor of a company unless:

- (a) the person is entitled to practise as a public accountant; or
- (b) if the audit is to be carried out outside Samoa, the person is eligible to act as an auditor in the country, state, or territory in which the audit is to be carried out, and -
 - (i) the person is a member, fellow, or associate of an association of accountants constituted outside Samoa that has been approved for the time being for the purposes of this section by the Registrar by public notice; or
 - (ii) the person has been approved for the time being for the purposes of this section by the Registrar by public notice.

(2) The following persons must not be appointed or act as auditor of a company:

- (a) a director or secretary or employee of the company, or any other person responsible for keeping the accounting records of the company;
- (b) a person who is a partner, or in the employment, of a person referred to in paragraph (a);
- (c) a liquidator or administrator or a person who is a receiver in respect of the property of the company;
- (d) a corporation;
- (e) a person who, by virtue of any of paragraphs (a) to (c), may not be appointed or act as auditor of a related company.

136. Statement by auditor in relation to resignation or

removal-(1) If an auditor resigns from office, the directors must, if requested to do so by that auditor:

- (a) distribute to all shareholders, at the expense of the company, a written statement of the auditor's reasons for resigning; or
- (b) permit the auditor or his or her representative to explain at a shareholders' meeting the reasons for the resignation.

(2) A company must not appoint a new auditor in the place of an auditor who is qualified to hold that office, unless:

- (a) at least 20 working days' written notice of a proposal to do so has been given to the auditor; and
- (b) the auditor has been given a reasonable opportunity to make representations to the shareholders on the appointment of another person either in writing or by the auditor or his or her representative speaking at a shareholders' meeting (whichever the auditor may choose).

(3) An auditor is entitled to be paid reasonable fees and expenses by the company for making the representations to shareholders referred to in subsections (1) or (2).

137. Auditor to avoid conflict of interest - An auditor of a company must ensure, in carrying out the duties of an auditor under this Part, that his or her judgement is not impaired by reason of any relationship with or interest in the company or any related company.

138. Auditor's report - The auditor of a company to which sections 131 to 134 apply must make a report to the shareholders on the financial statements audited by him or her that states:

- (a) the work done by the auditor; and
- (b) the scope and limitations of the audit; and
- (c) the existence of any relationship (other than that of auditor) that the auditor has with, or any interests that the auditor has in, the company or any related company; and
- (d) whether the auditor has obtained all information and explanations that he or she has required; and
- (e) whether, in the auditor's opinion, as far as appears from an examination of them, proper accounting records have been kept by the company; and
- (f) whether, in the auditor's opinion and having regard to any information or explanations that may have been added by the company, the financial statements -
 - (i) give a true and fair view of the matters to which they relate; and
 - (ii) comply with any applicable regulations made under this Act,

and, if they do not, the respects in which they fail to give such a view or comply with such requirements, as the case may be; and

- (g) any other matter prescribed for the purposes of this section by regulations made under this Act.

139. Access to information-(1) The directors of a company must ensure that an auditor of the company has access at all times to the accounting records and other documents of the company.

(2) An auditor of a company is entitled to require from a director or employee of the company such information and explanations that he or she thinks necessary for the performance of his or her duties as auditor.

(3) If the directors of a company fail to comply with subsection (1), every director commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

(4) A director or employee who fails to comply with subsection (2) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

(5) It is a defence to an employee charged with an offence against subsection (4) if the employee proves that:

- (a) he or she did not have the information required in his or her possession or under his or her control; or
- (b) by reason of the position occupied by him or her or the duties assigned to him or her, he or she was unable to give the explanations required.

140. Auditor's attendance at shareholders' meeting-

(1) The directors of a company must ensure that an auditor of the company:

- (a) is permitted to attend a meeting of shareholders of the company; and
- (b) receives the notices and communications that a shareholder is entitled to receive relating to meetings and resolutions of shareholders; and
- (c) may be heard at a meeting of shareholders that he or she attends on any part of the business of the meeting that concerns him or her as auditor.

(2) If the directors of a company fail to comply with subsection (1), every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

Part 8
Amalgamations, etc

Subpart 1 – Amalgamations

141. Amalgamations - Two or more companies may amalgamate, and continue as 1 company, in accordance with this subpart.

142. Notice of proposed amalgamation - The directors of each amalgamating company must, not less than 20 working days before the amalgamation is proposed to take effect:

- (a) send a copy of the amalgamation proposal to every secured creditor of the company; and
- (b) give public notice of the proposed amalgamation, including a statement that -
 - (i) copies of the amalgamation proposal are available for inspection by any shareholder or creditor of an amalgamating company or any person to whom an amalgamating company is under an obligation at the registered offices of the amalgamating companies and at any other places specified during normal business hours; and
 - (ii) a shareholder or creditor of an amalgamating company or any person to whom an amalgamating company is under an obligation is entitled to be supplied free of charge with a copy of the amalgamation proposal on request to an amalgamating company.

143. Registration of amalgamation proposal - For the purpose of effecting an amalgamation the following documents must be delivered to the Registrar for registration:

- (a) an amalgamation proposal approved in accordance with Schedule 6;

- (b) a certificate signed by the directors of each amalgamating company stating that the amalgamation has been approved in accordance with this Act and the company's rules:
- (c) a document in the prescribed form signed by each of the persons named in the amalgamation proposal as a director of the amalgamated company containing his or her consent to be a director.

144. Certificate of amalgamation-(1) Immediately after receipt of the documents required under section 143, the Registrar must issue a certificate of amalgamation in the prescribed form.

(2) If an amalgamation proposal specifies a date on which the amalgamation is intended to become effective, and that date is the same as, or later than, the date on which the Registrar receives the documents, the certificate of amalgamation must be expressed to have effect on the date specified in the amalgamation proposal.

145. Effect of certificate of amalgamation - On the date shown in a certificate of amalgamation:

- (a) the amalgamation is effective; and
- (b) subject to section 10, the amalgamated company has the name specified in the amalgamation proposal; and
- (c) the amalgamated company is entitled to all the property, rights, powers, and privileges of each of the amalgamating companies; and
- (d) the amalgamated company is subject to all the liabilities and obligations of each of the amalgamating companies; and
- (e) proceedings pending by, or against, an amalgamating company may be continued by, or against, the amalgamated company; and
- (f) a conviction, ruling, order, or judgment in favour of, or against, an amalgamating company may be enforced by, or against, the amalgamated company; and

- (g) any provisions of the amalgamation proposal that provide for the conversion of shares or rights of shareholders in the amalgamating companies have effect according to their tenor.

146. Registers-(1) If an amalgamation becomes effective, neither the Registrar of Land nor any other person charged with the keeping of any books or registers is obliged, solely by reason of the amalgamation becoming effective, to change the name of an amalgamating company to that of an amalgamated company in those books or registers or in any documents.

(2) The presentation to the Registrar of Land or any other person of any instrument (whether or not comprising an instrument of transfer) by the amalgamated company:

- (a) executed or appearing to be executed by the amalgamated company; and
- (b) relating to any property held immediately before the amalgamation by an amalgamating company; and
- (c) stating that that property has become the property of the amalgamated company by virtue of this subpart,

is, in the absence of evidence to the contrary, sufficient evidence that the property has become the property of the amalgamated company.

(3) Without limiting subsections (1) or (2), if any security issued by any person or any rights or interests in property of any person become, by virtue of this subpart, the property of an amalgamated company, that person, on presentation of a certificate signed on behalf of the amalgamated company, stating that that security or any such rights or interests have, by virtue of this subpart, become the property of the amalgamated company, must, despite any other enactment or rule of law or the provisions of any instrument, register the amalgamated company as the holder of that security or as the person entitled to such rights or interests, as the case may be.

(4) Except as expressly provided in this section, nothing in this subpart derogates from the provisions of the Land Registration Act 1992/1993.

147. Powers of Court in relation to amalgamations-

(1) If the Court is satisfied that giving effect to an amalgamation proposal would unfairly prejudice a shareholder or creditor of an amalgamating company or a person to whom an amalgamating company is under an obligation, it may, on the application, made at any time before the date on which the amalgamation becomes effective, of that person, make any order it thinks fit in relation to the proposal, and may, without limiting the generality of this section, make an order:

- (a) directing that effect must not be given to the proposal;
 - (b) modifying the proposal in such manner as may be specified in the order;
 - (c) directing the company or its directors to reconsider the proposal or any part of it.
- (2) An order may be made under subsection (1) on any conditions that the Court thinks fit.

Subpart 2 - Approval of amalgamations, etc, by Court

148. Interpretation - In this subpart, unless the context otherwise requires, -

“arrangement” includes a reorganisation of the share capital of a company by the consolidation of shares of different classes, or by the division of shares into shares of different classes, or by both those methods;

“company”-

- (a) means a company; and
- (b) includes an overseas company that is registered on the overseas register.

149. Approval of amalgamations, etc-(1) Subject to section 150, but despite any other provision or the rules of a company, the Court may, on the application of a company or any shareholder or creditor of a company, order that an amalgamation, arrangement, or compromise is binding on the company and on any other persons or classes of persons specified by the Court.

(2) The order may be made on any conditions that the Court thinks fit.

(3) An order made under this section has effect on and from the date specified in the order.

150. When Court may approve amalgamation, etc-(1) An amalgamation, arrangement, or compromise may be approved under this subpart only if it is not practicable for the amalgamation, arrangement, or compromise to be effected under subpart 1 or subpart 2 of Part 9, or under both.

(2) To avoid doubt, it is not impracticable for an amalgamation, arrangement, or compromise to be effected under subpart 1 or under subpart 2 of Part 9 by reason only that the compromise has not been, or would not be likely to be, approved in accordance with the procedure set out in those subparts.

151. Initial Court orders-(1) Before making an order under section 149(1), the Court may, on the application of the company or any shareholder or creditor or other person who appears to the Court to be interested, or of its own motion, make any 1 or more of the following orders:

- (a) an order that notice of the application, together with such information relating to it as the Court thinks fit, be given in the form and manner and to any persons or classes of persons specified by the Court;
- (b) an order directing the holding of a meeting or meetings of shareholders or any class of shareholders or creditors or any class of creditors of a company to consider and, if thought fit, to approve, in such manner as the Court may specify, the proposed arrangement or amalgamation or compromise and, for that purpose, the Court may determine the shareholders or creditors that constitute a class of shareholders or creditors of a company;
- (c) an order requiring that a report on the proposed arrangement or amalgamation or compromise be prepared for the Court by a person specified by the Court and, if the Court thinks fit, be supplied

to the shareholders or any class of shareholders or creditors or any class of creditors of a company or to any other person who appears to the Court to be interested;

(d) an order as to the payment of the costs incurred in the preparation of the report;

(e) an order specifying the persons who are entitled to appear and be heard on the application to approve the amalgamation, arrangement, or compromise.

(2) In making an order under subsection (1), the Court must have regard to the procedures for amalgamations under subpart 1 and for compromises under subpart 2 of Part 9.

(3) An order made under this section has effect on and from the date specified in the order.

152. Court may make additional orders-(1) Without limiting section 149, the Court may, for the purpose of giving effect to any amalgamation, arrangement, or compromise approved under that section, either by the order approving the amalgamation, arrangement, or compromise, or by any later order, provide for, and prescribe terms and conditions relating to:

(a) the transfer or vesting of real or personal property, assets, rights, powers, interests, liabilities, contracts, and engagements;

(b) the issue of shares, securities, or policies of any kind;

(c) the continuation of legal proceedings;

(d) the liquidation of any company;

(e) the provisions to be made for persons who voted against the amalgamation, arrangement, or compromise at any meeting called in accordance with any order made under section 151(1)(b) or who appeared before the Court in opposition to the application to approve the amalgamation, arrangement, or compromise;

- (f) any other matters that are necessary or desirable to give effect to the amalgamation, arrangement, or compromise.
- (2) An order made under this section has effect on and from the date specified in the order.

153. Copy of orders to be delivered to Registrar-(1) Within 10 working days of an order being made by the Court under this subpart, the company must ensure that a copy of the order is delivered to the Registrar for registration.

(2) If a company fails to comply with subsection (1), every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

154. Application of section 209 - Section 209 applies, with the necessary modifications, to any compromise approved under section 149.

Part 9 **Insolvent companies**

155. Unregistered company charges void-(1) A company charge that is not registered in accordance with Schedule 7 is void as against the administrator, the liquidator, and any creditor of the company.

(2) The money secured by a void company charge immediately becomes payable.

(3) Nothing in this section affects any contract or obligation for repayment of the money secured by a void company charge.

Subpart 1 - Administrations

Purpose

156. Purpose-(1) The purpose of this subpart and Schedules 8 to 12 is to provide for the business, property, and affairs of an insolvent company to be administered in a way that:

- (a) maximises the chances of the company, or the whole or any part of its business, continuing in existence as a viable business; or
 - (b) results in a better return for the company's creditors and shareholders than would result from an immediate liquidation of the company.
- (2) The provisions relating to administrations are set out in:
- (a) this subpart; and
 - (b) Schedules 8 and 9, which apply to administrators; and
 - (c) Schedule 10, which sets out the effect of administration; and
 - (d) Schedule 11, which applies to creditors' committees; and
 - (e) Schedule 12, which, with the necessary modifications, applies to meetings of creditors.

Beginning of administration

157. When administration begins-(1) The administration of a company begins when an administrator of the company is appointed.

How administrator may be appointed

- 158. Appointment of administrator-**(1) An administrator of a company may be appointed by:
- (a) the board of directors of a company; or
 - (b) if the company is in liquidation, the liquidator; or
 - (c) if an interim liquidator has been appointed, the interim liquidator; or
 - (d) a charge holder holding a charge over the whole, or substantially the whole, of the company's property; or
 - (e) the Court.
- (2) If the company is already in administration, an administrator may be appointed only by:

- (a) the Court; or
 - (b) the creditors, as a replacement administrator for an administrator that the creditors have removed; or
 - (c) the appointer of the first administrator, if that administrator has died, resigned, or become disqualified.
- (3) The following persons must not be appointed as an administrator:
- (a) a person who must not be appointed as an administrator under clause 1 of Schedule 9, unless the Court orders otherwise;
 - (b) a person who has not consented in writing to his or her appointment as an administrator.
- (4) Every person who acts as an administrator in contravention of subsection (3)(a) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

159. Directors may appoint administrator-(1) The board of directors of a company may appoint an administrator of the company if the board of directors has resolved at a meeting called under section 71 that:

- (a) in the opinion of the directors voting for the resolution, the company is unable, or is likely to become unable, to pay its debts in the normal course of business; and
 - (b) an administrator of the company should be appointed for the purposes of achieving 1 of the purposes set out in section 156.
- (2) Subsection (1) does not apply:
- (a) to a company that is already in liquidation;
 - (b) if a receiver has been appointed in respect of the whole of the property of the company, unless the person by whom the receiver was appointed has consented to the appointment of an administrator;
 - (c) if an administrator has been appointed on a previous occasion, unless leave of the Court is first obtained.

(3) The appointment must be in writing.

160. Liquidator or creditors may appoint administrator(1) A liquidator or interim liquidator of a company may appoint an administrator of the company if the liquidator or interim liquidator is of the opinion that:

(a) the company is unable, or is likely to become unable, to pay its debts in the normal course of business; and

(b) an administrator should be appointed for the purposes of achieving 1 of the purposes set out in section 156.

(2) A liquidator or interim liquidator of a company may, with the leave of the Court, appoint himself or herself as an administrator.

(3) The appointment must be in writing.

(4) The appointment of any administrator while the company is in liquidation does not terminate the appointment of the liquidator or interim liquidator unless the Court makes such an order under section 256 on the application of the liquidator or interim liquidator, or of the administrator.

161. Secured creditor may appoint administrator-(1) A person who is entitled to enforce a charge over all of a company's property may appoint an administrator of the company if:

(a) the charge has become, and is still, enforceable; and

(b) the secured creditor is of the opinion that an administrator should be appointed for the purposes of achieving 1 of the purposes under section 156.

(2) Subsection (1) does not apply to a company that is already in liquidation.

(3) The appointment must be in writing.

162. Appointment of administrator not to be revoked - The appointment of a person as administrator of a company may be revoked only:

(a) by order of the Court under section 163; or

- (b) by a decision of creditors under section 179 or under clause 6 of Schedule 9 to appoint someone else as administrator of the company.

163. Court may remove administrator - On the application of the Registrar or of a creditor of the company concerned, the Court may:

- (a) remove from office the administrator of a company under administration or under a compromise approved under this subpart; and
- (b) subject to section 158(1), appoint someone else as administrator of the company or under the compromise.

Notices

164. Notices given by administrator-(1) An administrator of a company must:

- (a) lodge a notice of the appointment with the Registrar before the end of the next working day after the appointment; and
- (b) give public notice of the appointment within 10 working days after the appointment; and
- (c) before the end of the next working day after the administrator is appointed, give a written notice of the appointment to -
 - (i) every person who holds a charge on all of the company's property; and
 - (ii) every person who holds 1 or more charges on property of the company if the property of the company subject to the charges constitutes all, or substantially all, of the company's property; and
 - (iii) every secured party who holds a registered charge.

(2) An administrator need not give a notice under subsection (1)(c) to the person who appointed the administrator.

165. Notice given by secured creditor - Before the end of the next working day after appointing an administrator of a company, the secured creditor must give to the company a written notice of the appointment.

166. Requirements for notices given under sections 164 or 165 - A notice given under sections 164 or 165 must be in the prescribed form and must contain:

- (a) the full name of the administrator; and
- (b) the date of appointment of the administrator; and
- (c) the administrator's business address, telephone and fax numbers, and email address (if any).

167. Notice of administration-(1) A company under administration must set out, in every agreement entered into or document issued, and in every negotiable instrument, by the company, after the company's name where it first appears, the expression "(administrator appointed)" or, if an administrator has been appointed under section 160, the expression "(administrator appointed and in liquidation)".

(2) Every person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding 25 penalty units.

Investigation of company's affairs

168. Administrator to investigate company's affairs - As soon as practicable after the administration of a company begins, the administrator must:

- (a) investigate the company's business, property, affairs, and financial circumstances; and
- (b) form an opinion about each of the following matters

-

- (i) whether it would be in the interests of the company's creditors to approve a compromise binding on the company and its creditors or a class of creditors;

(ii) whether it would be in the creditors' interests for the administration to end:

(iii) whether it would be in the creditors' interests for a liquidator of the company to be appointed.

169. Directors to deliver documents to administrator -

As soon as practicable after the administration of a company begins, each director of the company must:

- (a) deliver to the administrator all records and documents in the director's possession that relate to the company and that the director is not entitled, as against the company and the administrator, to retain; and
- (b) if the director knows where other records and documents relating to the company are, tell the administrator where they are.

170. Directors to give administrator statement of company's affairs-(1) Within 5 working days after the administration of a company begins, the directors must give to the administrator a statement about the company's business, property, affairs, and financial circumstances.

(2) The administrator may extend the time for compliance with subsection (1).

(3) The administrator must table the directors' statement:

- (a) at the first creditors' meeting; or
- (b) if the administrator has extended the time for compliance by the directors, at the watershed meeting.

171. Directors must give administrator other information - A director of a company under administration must-

- (a) attend on the administrator at any times that the administrator reasonably requires; and
- (b) give the administrator all information about the company's business, property, affairs, and

financial circumstances that the administrator reasonably requires.

172. Offence not to comply with sections 169 to 171 - A person who, without reasonable excuse, fails to comply with any of sections 169 to 171 commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

Administrator's rights to company's documents

173. Restriction on enforcement of lien over company's documents-(1) A person is not entitled, as against the administrator of a company, to:

- (a) retain possession of records and documents of the company; or
 - (b) claim or enforce a lien on them.
- (2) A lien is not, apart from subsection (1), otherwise prejudiced.

174. Delivery of company's documents held by secured creditor-(1) Section 173 does not apply to a secured creditor who, otherwise than because of a lien, is entitled to possession of records and documents of a company.

(2) Despite subsection (1), an administrator is, at any reasonable time, entitled to inspect, and make copies of, those records and documents.

175. Notice to deliver company's documents to administrator-(1) An administrator may give to a person a written notice requiring the person to deliver to the administrator the records and documents that are specified in the notice and that are in the person's possession.

(2) A notice under subsection (1) must specify a period of at least 3 working days as the period within which the notice must be complied with.

176. Offence not to comply with sections 173 to 175 - Every person who fails to comply with any of sections 173 to

175 commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

First creditors' meeting

177. Preparation for first creditors' meeting - An administrator of a company must:

- (a) compile and maintain, for each class of creditors of the company, a list of creditors known to the administrator, setting out -
 - (i) the amount owing or estimated to be owing to each of them; and
 - (ii) the number of votes that each of them is entitled to cast at a meeting of creditors held under this subpart; and
- (b) within 10 working days after the administration begins, hold a first creditors' meeting.

178. Notice of first creditors' meeting - At least 5 working days before the first creditors' meeting, the administrator must give:

- (a) written notice of the meeting to all secured parties who hold a registered charge over any property of the company; and
- (b) written notice of the meeting to as many of the company's other creditors as reasonably practicable; and
- (c) public notice of the meeting.

179. Proceedings at first creditors' meeting-(1) At the first creditors' meeting, the company's creditors may, by resolution:

- (a) determine whether to appoint a creditors' committee, and, if so, appoint the committee's members; and
 - (b) appoint someone else as administrator of the company; or
 - (c) end the administration.
- (2) Schedule 11 applies to creditors' committees.

(3) Schedule 12 applies, with the necessary modifications, to meetings of creditors held under this subpart (including meetings of creditors' committees).

180. Offence not to comply with sections 177 or 178 –

Every person who does not comply with sections 177 or 178 commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

Reports by administrators

181. Reports by administrator-(1) In the circumstances set out in subsection (2), an administrator of a company must:

- (a) lodge a report with the Registrar about the matter as soon as practicable; and
 - (b) give the Registrar any information, and access to any facilities for inspecting and taking copies of documents, that the Registrar requires.
- (2) The circumstances are that it appears to the administrator that:
- (a) a past or present officer, or a shareholder, of the company may have been guilty of an offence in relation to the company; or
 - (b) a person who has taken part in the formation, promotion, administration, management, or liquidation of the company may have –
 - (i) misapplied or retained, or may have become liable or accountable for, money or property (in Samoa or elsewhere) of the company; or
 - (ii) been guilty of negligence, default, breach of duty, or breach of trust in relation to the company.
- (3) The administrator may also lodge further reports specifying any other matter that, in his or her opinion, should be brought to the Registrar's notice.

182. Court may direct administrator to lodge report –

(1) In the circumstances set out in subsection (2), the Court may, on the application of an interested person or of its own motion, direct the administrator to lodge a report.

(2) The circumstances are that:

(a) it appears to the Court that -

(i) a past or present officer, or a shareholder, of a company under administration has been guilty of an offence in relation to the company; or

(ii) a person who has taken part in the formation, promotion, administration, management or liquidation of a company under administration has engaged in conduct of a kind referred to in section 181(2)(b)(i) or (ii) in relation to the company; and

(b) the administrator has not lodged a report about the matter.

Watershed meeting

183. What is watershed meeting - The watershed meeting is the meeting of creditors called by the administrator to decide the future of the company and, in particular, whether the company and creditors should enter into a compromise under subpart 2.

184. Administrator must convene watershed meeting-(1)

The administrator must convene the watershed meeting within the convening period.

(2) The convening period is the period of 20 working days after the date on which the administrator is appointed, and includes any period for which it is extended under subsection (3).

(3) The Court may, on the administrator's application, extend the convening period, but must not do so if the application is made after the convening period has expired, unless the Court is satisfied that a substantial injustice will result if the convening period is not extended.

185. Notice of watershed meeting-(1) The administrator must convene the watershed meeting by:

- (a) giving written notice of the meeting to as many of the company's creditors as reasonably practicable; and
 - (b) publishing a notice of the meeting in a national newspaper.
- (2) The administrator must take the steps in subsection (1) not less than 5 working days before the meeting.
- (3) The notice given to creditors under subsection (1)(a) must be accompanied by:
- (a) a report by the administrator about the company's business, property, affairs, and financial circumstances and setting out the basis of remuneration or proposed remuneration of the administrator; and
 - (b) a statement setting out the administrator's opinion (including his or her reasons for the opinion) about each of the following matters -
 - (i) whether it would be in the creditors' interests for the company to enter into a compromise that is binding on the company and its creditors or a class of creditors;
 - (ii) whether it would be in the creditors' interests for the administration to end;
 - (iii) whether it would be in the creditors' interests for a liquidator of the company to be appointed; and
 - (c) if a compromise is proposed, a statement setting out details of the proposed compromise in accordance with section 205(2)(b), but it is not necessary for the administrator to give a separate notice under that section; and
 - (d) a copy of the list or lists of creditors referred to in section 177.

186. When watershed meeting must be held-(1) The watershed meeting must be held within 5 working days after the

end of the convening period or extended convening period, as the case may be.

(2) The watershed meeting may be adjourned, but only to a day that is not more than 30 working days after the first day on which the meeting was held.

(3) However, the Court may, on the administrator's application, order that the meeting be adjourned for more than 30 working days

187. What creditors may decide at watershed meeting-(1) At a watershed meeting, the creditors may resolve:

- (a) to approve a compromise that is binding on its creditors or a class of creditors as specified in the resolution (even if it differs from the proposed compromise (if any), details of which accompanied the notice of meeting, as a result of any amendment adopted at the meeting); or
 - (b) that the administration should end; or
 - (c) if the administrator has so recommended that a liquidator of the company be appointed.
- (2) Despite anything in Schedule 12:
- (a) a resolution for the purposes of subsection (1)(a) is adopted if a majority in number and value of the creditors or class of creditors voting in person or by proxy vote in favour of the resolution; and
 - (b) section 206(3) applies to such a resolution.

End of administration

188. When administration ends -The administration of a company ends on the happening of whichever event of a kind referred to in sections 189 or 190 happens first after the administration begins.

189. Normal way for administration to end - The normal outcome of the administration of a company is that:

- (a) a compromise is approved by creditors that is binding on the company and its creditors or a class of creditors; or

- (b) the company's creditors resolve that the administration should end; or
- (c) the company's creditors resolve that a liquidator of the company be appointed.

190. Other ways in which administration may end - The administration of a company may also end because:

- (a) the Court orders that the administration is to end, for example, because the Court is satisfied that the company is solvent; or
- (b) the convening period for a watershed meeting ends -
 - (i) without the meeting being convened in accordance with section 185; and
 - (ii) without an application being made for the Court to extend the convening period for the watershed meeting; or
- (c) an application for the Court to extend the convening period is finally determined or otherwise disposed of other than by the Court extending the convening period; or
- (d) the convening period, as extended, ends without the meeting being convened in accordance with section 185; or
- (e) a watershed meeting called under section 183 ends (whether or not it was earlier adjourned) without a resolution under section 187(1) being passed at the meeting; or
- (f) the Court appoints an interim liquidator of the company or appoints a liquidator of the company.

191. Notice of end of administration - If a meeting of the company's creditors resolves that the administration should end, or resolves that a liquidator be appointed, the administrator must, immediately after the declaration of the result of the resolution of creditors:

- (a) lodge a notice with the Registrar that the administration is at an end or that a liquidator has been appointed, as the case may be; and

- (b) cause a public notice to be published that the administration is at an end or than a liquidator has been appointed, as the case may be.

Creditors' resolution approving compromise

192. Effect of creditors' resolution approving compromise - If, at a creditors' meeting, a company's creditors approve a compromise:

- (a) the administrator of the company is the administrator under the compromise unless the creditors, by resolution passed at the meeting, appoint someone else to be administrator under the compromise; and
- (b) the administrator must prepare a document setting out the terms of the compromise (compromise document).

193. Contents of compromise document - The compromise document must specify all the following:

- (a) the administrator of the compromise and the basis for determining his or her remuneration;
- (b) the property of the company (whether or not already owned by the company when it executes the deed) that is to be available to pay creditors' claims;
- (c) the nature and duration of any moratorium period for which the compromise provides;
- (d) to what extent (if any) the company is to be released from its debts;
- (e) the conditions (if any) for the compromise to come into operation;
- (f) the conditions (if any) for the compromise to continue in operation;
- (g) the circumstances in which the compromise terminates;
- (h) the order in which proceeds of realising the property referred to in paragraph (b) will be distributed among creditors bound by the compromise;

- (i) the day (not later than the day when the administration began) on or before which creditors' claims must have arisen if they are to be admissible under the compromise;
- (j) any other matters prescribed by regulations.

194. Application of subpart 2 to compromise proposed by administrator - Except as otherwise expressly provided by this subpart, subpart 2 applies to a compromise proposed by an administrator.

195. Notice of approval of compromise-(1) Within 10 working days after a compromise is approved at a creditors' meeting, the administrator must:

- (a) send a written notice of the result of the voting of the creditors to -
 - (i) each creditor of the company; and
 - (ii) the company; and
 - (iii) any receiver of the company; and
 - (iv) any liquidator of the company; and
- (b) give public notice of the result of the voting of the creditors; and
- (c) give written notice of the voting of the creditors to, and lodge a copy of the compromise document with, the Registrar.

(2) Every person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

Creditors' resolution approving appointment of liquidator

196. Creditors' resolution approving appointment of liquidator-(1) If a company's creditors approve the appointment of a liquidator:

- (a) subject to section 197, the administrator is the liquidator with effect from the date and at the time at which the resolution is passed; and
- (b) the liquidator need not -
 - (i) call a meeting of creditors; or

(ii) give a notice under section 238(1); or
(iii) give public notice if the liquidator has lodged a notice with the Registrar under section 238(2); but

(c) except as expressly provided otherwise, subpart 3 applies, with the necessary modifications, to the liquidation.

(2) The administrator must record the time and date at which the resolution was passed or the contravention occurred and the time and date at which the administration begins.

197. Appointment of person other than administrator to be liquidator-(1) The creditors may, by resolution, appoint a named person other than the administrator to be the liquidator of the company.

(2) If that person has consented in writing to the appointment before it is made, that person is the liquidator with effect from the date and time at which the resolution is passed.

(3) If subsection (2) does not apply, that person becomes liquidator with effect from the date and time at which he or she consents in writing to the appointment, and until such time the administrator is the liquidator in accordance with section 196(1).

198. Notice of appointment of liquidator - Within 10 working days after the day on which the liquidator is appointed at a creditors' meeting, the liquidator must lodge with the Registrar a written notice:

- (a) stating that a liquidator of the company has been appointed; and
- (b) specifying the date on, and time at, which the liquidation begins.

Protection of persons during administration

199. Protection of persons dealing with administrator, etc -(1) A person is entitled, in relation to the person's dealings with an administrator of a company or another person who has,

or appears to have, directly or indirectly acquired title to property of the company from the administrator, to assume that:

- (a) the company's rules and this Act have been complied with;
- (b) any person who appears, from information provided by the administrator or company that is available to the public, to be an administrator of the company -
 - (i) has been appointed; and
 - (ii) has authority to exercise the powers and perform the functions customarily exercised or performed by an administrator of a similar company:
- (c) anyone who is held out by an administrator or the company to be an agent of the administrator or an officer or agent of the company -
 - (i) has been appointed; and
 - (ii) has authority to exercise the powers and perform the functions customarily exercised or performed by that kind of officer or agent of a similar company or by that kind of agent of the administrator:
- (d) the administrator, officers and agents of the company, and agents of the administrator, properly perform their duties to the company;
- (e) a document has been duly executed by the company if the document appears to have been signed by the administrator;
- (f) a document has been executed by a company that has a common seal if -
 - (i) the company's common seal appears to have been fixed to the document; and
 - (ii) the fixing of the common seal appears to have been witnessed by the administrator:
- (g) an administrator of the company who has authority to issue a document or a certified copy of a document on its behalf also has authority to

warrant that the document is genuine or is a copy.

(2) Subsection (1):

- (a) applies even if the administrator or an officer or agent of the company acts fraudulently, or forges a document, in connection with the dealings; but
- (b) does not apply if the person who is entitled to make the assumptions in that subsection knew or suspected that the assumption was incorrect.

200. Validity of things done during administration - A payment made, transaction entered into, or any other act or thing done, in good faith, by, or with the consent of, the administrator of a company under administration:

- (a) is valid and effectual for the purposes of this Act; and
- (b) is not liable to be set aside in a liquidation of the company.

201. General power to make orders-(1) The Court may, on any conditions that it thinks fit, make any order that it thinks appropriate about how this subpart is to operate in relation to the administration of a particular company (for example, that the administration of the company is to end).

(2) An order may be made on the application of:

- (a) the company; or
- (b) a creditor of the company; or
- (c) in the case of a company under administration, the administrator of the company; or
- (d) in the case of a company that has entered into a compromise, the administrator (if any) under the compromise; or
- (e) the Registrar; or
- (f) any other interested person.

202. Court orders protecting creditors or shareholders - The Court may, on the application of the Registrar or of a creditor or shareholder of a company, make any order that the

Court thinks just if the Court is satisfied that the administrator of a company under administration, or under a compromise:

- (a) has managed, or is managing, the company's business, property, or affairs in a way that is prejudicial to the interests of some or all of the company's creditors or shareholders; or
- (b) has acted or has not acted, or proposes to act or not to act, in a way that is or would be prejudicial to those interests.

203. Court orders to protect creditors during administration-(1) The Court may, on the application of the Registrar or of a creditor of a company, make any order that it thinks necessary to protect the interests of the company's creditors while the company is under administration.

- (2) An order may be made subject to conditions.

Subpart 2 - Compromises with creditors

204. Compromise proposal - Any of the following persons may propose a compromise under this subpart if that person has reason to believe that a company is or will be unable to pay its debts as they become due in the normal course of business:

- (a) the directors of the company;
- (b) a receiver appointed in relation to the whole or substantially the whole of the assets and undertaking of the company;
- (c) a liquidator or an administrator of the company.

205. Notice of proposed compromise-(1) The proponent must compile, in relation to each class of creditors of the company, a list of creditors known to the proponent who would be affected by the proposed compromise, setting out:

- (a) the amount owing or estimated to be owing to each of them; and
- (b) the number of votes that each of them is entitled to cast on a resolution to approve the compromise.

(2) The proponent must give to each known creditor, the company, any receiver or liquidator, and deliver to the Registrar for registration:

- (a) notice in accordance with Schedule 12 of the intention to hold a meeting of creditors, or any 2 or more classes of creditors, for the purpose of voting on the resolution; and
- (b) a statement -
 - (i) containing the name and address of the proponent and the capacity in which the proponent is acting; and
 - (ii) containing the address and telephone number to which inquiries may be directed during normal business hours; and
 - (iii) setting out the terms of the proposed compromise and the reasons for it; and
 - (iv) setting out the reasonably foreseeable consequences for creditors of the company of the compromise being approved; and
 - (v) setting out the extent of any interest of a director in the proposed compromise; and
 - (vi) explaining that the proposed compromise and any amendment to it proposed at a meeting of creditors or any classes of creditors will be binding on all creditors, or on all creditors of that class, if approved in accordance with section 206; and
 - (vii) containing details of any procedure proposed as part of the proposed compromise for varying the compromise following its approval; and
- (c) a copy of the list or lists of creditors referred to in subsection (1).

206. Effect of compromise-(1) A compromise, including any amendment proposed at the meeting, is approved by creditors, or a class of creditors, if, at a meeting class of

creditors conducted in accordance with Schedule 12, the compromise, including any amendment, is adopted in accordance with that schedule.

(2) A compromise, including any amendment, approved by creditors or a class of creditors of a company in accordance with this subpart is binding on the company and on all creditors, or, if there is more than 1 class of creditors, on all creditors of that class, to whom notice of the proposal was given.

(3) If a resolution proposing a compromise, including any amendment, is put to the vote of more than 1 class of creditors, it is to be presumed, unless the contrary is expressly stated in the resolution, that the approval of the compromise, including any amendment, by each class is conditional on the approval of the compromise, including any amendment, by every other class voting on the resolution.

(4) The proponent must give written notice of the result of the voting to each known creditor, the company, any receiver or liquidator, and the Registrar.

207. Variation of compromise-(1) An approved compromise may be varied or terminated either:

- (a) in accordance with any procedure for variation or termination incorporated in the compromise as approved; or
- (b) by the approval of a proposal to vary or terminate the compromise in accordance with this subpart that, for that purpose, applies, with all necessary modifications, as if any the proposal were a proposed compromise.

(2) This subpart applies to any compromise that is varied in accordance with this section.

208. Powers of Court-(1) On the application of the proponent or the company, the Court may:

- (a) give directions in relation to a procedural requirement imposed by this subpart, or waive or vary any such requirement, if it is satisfied that it would be just to do so; or

- (b) order that, during a period specified in the order, beginning not earlier than the date on which notice was given of the proposed compromise and ending not later than 10 working days after the date on which notice was given of the result of the voting on it -
 - (i) proceedings in relation to a debt owing by the company be stayed; or
 - (ii) a creditor refrain from taking any other measure to enforce payment of a debt owing by the company.
- (2) Nothing in subsection (1)(b) affects the right of a secured creditor during that period to take possession of, realise, or otherwise deal with, property of the company over which that creditor has a charge.
- (3) The Court may order that the creditor is not bound by the compromise or make any other order that it thinks fit if the Court is satisfied, on the application of a creditor of a company who was entitled to vote on a compromise, that:
 - (a) not enough notice of the meeting or of the matter required to be notified under section 205 was given to that creditor; or
 - (b) there was some other material irregularity in obtaining approval of the compromise; or
 - (c) in the case of a creditor who voted against the compromise, the compromise is unfairly prejudicial to that creditor, or to the class of creditors to which that creditor belongs.
- (4) An application under subsection (3) must be made not later than 10 working days after the date on which notice of the result of the voting was given to the creditor.

209. Effect of compromise in liquidation of company

- (1) If a compromise is approved, the Court may, on the application of:
 - (a) the company; or
 - (b) a receiver appointed in relation to property of the company; or

(c) with the leave of the Court, any creditor or shareholder of the company, make such order as the Court thinks fit with respect to the extent, if any, to which the compromise will, if the company is put into liquidation, continue in effect and be binding on the liquidator of the company.

(2) If a compromise is approved and the company is later put into liquidation, the Court may, on the application of any person described in subsection (3), make any order that the Court thinks fit with respect to the extent, if any, to which the compromise will continue in effect and be binding on the liquidator of the company.

(3) The persons referred to in subsection (2) are:

- (a) the liquidator; or
- (b) a receiver appointed in relation to property of the company; or
- (c) with the leave of the Court, any creditor or shareholder of the company.

210. Costs of compromise - Unless the Court orders otherwise, the costs incurred in organising and conducting a meeting of creditors for the purpose of voting on a proposed compromise:

- (a) must be met by the company; or
- (b) if incurred by a receiver or an administrator or a liquidator, are a cost of the receivership or administration or liquidation; or
- (c) if incurred by any other person, are a debt due to that person by the company.

Subpart 3 - Liquidations

Purpose

211. Purpose-(1) The purpose of this subpart and Schedules 12 to 18 is to provide for a liquidator of a company:

- (a) to take possession of, protect, realise, and distribute the assets, or the proceeds of the realisation of the assets, of the company to its creditors in accordance with this Act; and

- (b) if there are surplus assets remaining, to distribute them, or the proceeds of the realisation of the surplus assets, in accordance with section 251.
- (2) The provisions relating to liquidations are set out in:
 - (a) this subpart; and
 - (b) Schedule 12, which, with the necessary modifications, applies to meetings of creditors; and
 - (c) Schedules 13 and 14, which apply to liquidators; and
 - (d) Schedule 15, which sets out the effect of liquidation; and
 - (e) Schedule 16, which applies to liquidation committees; and
 - (f) Schedule 17, which applies to voidable transactions and charges and recoveries in other cases in a liquidation; and
 - (g) Schedule 18, which applies to creditors' claims.

Beginning of liquidation

212. When liquidation begins-(1) The liquidation of a company begins on the date on which, and at the time at which, the liquidator is appointed.

(2) The liquidator may be a named person or an Official Assignee.

(3) If any question arises as to whether on the date on which a liquidator was appointed an act was done or a transaction was entered into or effected before or after the time at which the liquidator was appointed, that act or transaction is, in the absence of proof to the contrary, deemed to have been done or entered into or effected, as the case may be, after that time.

Restrictions on appointment of liquidator

213. Restrictions on appointment of liquidator-(1) Unless the Court orders otherwise, none of the persons referred

to in clause 1 of Schedule 14 may be appointed or act as a liquidator of a company.

(2) The appointment of a person as a liquidator is of no effect unless that person has consented in writing to the appointment.

(3) Every person who acts as a liquidator in contravention of subsection (1) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

214. Restrictions on appointment of Official Assignee -An Official Assignee may be appointed liquidator of a company only:

- (a) if a special resolution of shareholders is passed by reason of the Official Assignee exercising voting rights attaching to shares in the company of -
 - (i) a person who has been adjudged bankrupt; or
 - (ii) another company of which the Official Assignee is liquidator; or
- (b) by the Court.

How liquidator may be appointed

215. Board may appoint liquidator-(1) A liquidator may be appointed by the resolution of the board of directors of the company on the occurrence of an event specified in the company's rules.

(2) The board of directors of the company must record in the document appointing the liquidator the date on which, and the time at which, the liquidator was appointed.

216. Shareholders may appoint liquidator-(1) A liquidator may be appointed by special resolution of those shareholders entitled to vote and voting on the question.

(2) The shareholders must record in the special resolution appointing the liquidator the date on which, and the time at which, the special resolution was passed.

217. Creditors may appoint liquidator - A liquidator may be appointed by resolution of the creditors of the company under administration in accordance with section 187(1)(c).

218. Court may appoint liquidator-(1) A liquidator may be appointed by the Court on the application of:

- (a) the company; or
 - (b) a director of the company; or
 - (c) a shareholder of the company; or
 - (d) a creditor of the company (including any contingent or prospective creditor); or
 - (e) an administrator under a compromise approved at a creditors' meeting; or
 - (f) the Registrar.
- (2) The Court may appoint a liquidator if it is satisfied that:
- (a) the company is unable to pay its debts; or
 - (b) the company or the directors have persistently or seriously failed to comply with this Act; or
 - (d) it is just and equitable that the company be put into liquidation.

(3) The Court must record in the order appointing the liquidator the date on which, and the time at which, the order was made.

219. Interim liquidator-(1) If an application has been made to the Court for an order that a company be put into liquidation, the Court may, if it is satisfied that it is necessary or expedient for the purpose of maintaining the value of assets owned or managed by the company, appoint a named person, or an Official Assignee, as interim liquidator.

(2) Subject to subsection (3), an interim liquidator has the rights and powers of a liquidator to the extent necessary or desirable to maintain the value of assets owned or managed by the company, including power to appoint an administrator.

(3) The Court may limit the rights and powers of an interim liquidator in such manner as it thinks fit.

(4) The appointment of an interim liquidator takes effect on the date on which, and at the time at which, the order appointing that interim liquidator is made.

(5) The Court must record in the order appointing the interim liquidator the date on which, and the time at which, the order was made.

(6) If any question arises as to whether on the date on which an interim liquidator was appointed an act was done or a transaction was entered into or effected before or after the time at which the interim liquidator was appointed, that act or transaction is, in the absence of proof to the contrary, deemed to have been done or entered into or effected, as the case may be, after that time.

220. Meaning of unable to pay its debts - Unless the contrary is proved, and subject to section 221, a company is presumed to be unable to pay its debts if:

- (a) the company has failed to comply with a statutory demand; or
- (b) execution issued against the company in respect of a judgment debt has been returned unsatisfied in whole or in part; or
- (c) a person entitled to a charge over all or substantially all of the property of the company has appointed a receiver under the document creating the charge; or
- (d) a compromise between a company and its creditors has been put to a vote in accordance with subpart 2.

221. Evidence and other matters-(1) On an application to the Court for an order that a company be put into liquidation, evidence of failure to comply with a statutory demand is not admissible as evidence that a company is unable to pay its debts unless the application is made within 30 working days after the last date for compliance with the demand.

(2) Section 220 does not prevent proof by other means that a company is unable to pay its debts.

(3) Information or records acquired under section 57 or, if the Court so orders, under section 62, may be received as evidence that a company is unable to pay its debts.

(4) In determining whether a company is unable to pay its debts, contingent or prospective liabilities may be taken into account.

(5) An application to the Court for an order that a company be put into liquidation on the ground that it is unable to pay its debts may be made by a contingent or prospective creditor only with the leave of the Court; and the Court may give such leave, with or without conditions, only if it is satisfied that a prima facie case has been made out that the company is unable to pay its debts.

222. Statutory demand-(1) A statutory demand is a demand by a creditor in respect of a debt owing by a company made in accordance with this section.

(2) A statutory demand must:

- (a) be in respect of a debt that is due and is not less than the prescribed amount; and
- (b) be in writing; and
- (c) be served on the company; and
- (d) require the company to do any of the following things to the reasonable satisfaction of the creditor, within 15 working days of the date of service, or any longer period that the Court may order -
 - (i) pay the debt;
 - (ii) enter into a compromise under subpart 2;
 - (iii) otherwise compound with the creditor;
 - (iv) give a charge over its property to secure payment of the debt.

223. Court may set aside statutory demand-(1) The Court may, on the application of the company, set aside a statutory demand.

(2) The application must be:

- (a) made within 10 working days of the date of service of the demand; and

- (b) served on the creditor within 10 working days of the date of service of the demand.
- (3) No extension of time may be given for making or serving an application to have a statutory demand set aside, but, at the hearing of the application, the Court may extend the time for compliance with the statutory demand.
- (4) The Court may grant an application to set aside a statutory demand if it is satisfied that:
 - (a) there is a substantial dispute whether or not the debt is owing or is due; or
 - (b) the company appears to have a counterclaim, set-off, or cross-demand and the amount specified in the demand less the amount of the counterclaim, set-off, or cross-demand is less than the prescribed amount; or
 - (c) the demand ought to be set aside on other grounds.
- (5) A demand must not be set aside by reason only of a defect or irregularity unless the Court considers that substantial injustice would be caused if it were not set aside.
- (6) In subsection (5), “defect” includes a material misstatement of the amount due to the creditor and a material misdescription of the debt referred to in the demand.
- (7) An order under this section may be made subject to conditions.

224. Additional powers of Court on application to set aside statutory demand-(1) If, on the hearing of an application under section 223, the Court is satisfied that there is a debt due by the company to the creditor that is not the subject of a substantial dispute, or is not subject to a counterclaim, set-off, or cross-demand, the Court may, on the ground that the company is unable to pay its debts:

- (a) order the company to pay the debt within a specified period and that, in default of payment, the creditor may make an application to put the company into liquidation; or
- (b) dismiss the application and immediately make an order putting the company into liquidation.

(2) For the purposes of the hearing of an application to put the company into liquidation under an order made under subsection (1)(a), the company is presumed to be unable to pay its debts if it failed to pay the debt within the specified period under the order.

Notices

225. Notices given by liquidator-(1) A liquidator must, immediately after being appointed or being notified of his or her appointment, give public notice of:

- (a) the liquidator's appointment; and
- (b) the date and time of the commencement of the liquidation; and
- (c) the address, telephone, fax numbers and email address to which, during normal business hours, inquiries may be directed by a creditor or shareholder.

(2) A liquidator must, within 10 working days of being appointed or being notified of his or her appointment, deliver to the Registrar for registration a notice of the liquidator's appointment.

226. Documents to state company in liquidation - Every document entered into, made, or issued by a liquidator of a company on behalf of the company must state in a prominent position that the company is in liquidation.

Obligations to liquidators

227. Directors, etc, to identify and deliver company property-(1) A present or former director or employee of a company in liquidation must:

- (a) immediately after the company is put into liquidation, give the liquidator details of property of the company in his or her possession or under his or her control; and

- (b) on being required to do so by the liquidator, immediately or within any time that may be specified by the liquidator, deliver the property to the liquidator or any other person that the liquidator may direct, or dispose of the property in any manner that the liquidator may direct.
- (2) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding 250 penalty units, or both.

228. Obligations of suppliers of essential services-(1)

Despite any other Act or any contract, a supplier of an essential service must not:

- (a) refuse to supply the service to a liquidator, or to a company in liquidation, by reason of the company's default in paying charges due for the service in relation to a period before the commencement of the liquidation; or
 - (b) make it a condition of the supply of the service to a liquidator, or to a company in liquidation, that payment be made of outstanding charges due for the service in relation to a period before the commencement of the liquidation; or
 - (c) make it a condition of the supply of the service to a company in liquidation that the liquidator personally guarantees payment of the charges that would be incurred for the supply of the service.
- (2) The charges incurred by a liquidator for the supply of an essential service are an expense incurred by the liquidator for the purposes of clause 16(a) of Schedule 18.

Liquidators' rights to company's documents

229. Liquidator may require director, etc, to deliver documents - A liquidator may, by notice in writing, require a director or shareholder of the company or any other person to deliver to the liquidator any records or documents of the

company in that person's possession or under that person's control as the liquidator requires.

230. Liquidator may require director, etc, to provide information-(1) A liquidator may, from time to time, by notice in writing, require the following persons to do any of the things specified in subsection (2):

- (a) a director or former director of the company;
 - (b) a shareholder of the company;
 - (c) a person who was involved in the promotion or formation of the company;
 - (d) a person who is, or has been, an employee of the company;
 - (e) a receiver, administrator, accountant, auditor, bank officer, or other person having knowledge of the affairs of the company;
 - (f) a person who is acting or who has at any time acted as a solicitor for the company.
- (2) A person referred to in subsection (1) may be required to:
- (a) attend on the liquidator at such reasonable time or times and at such place as may be specified in the notice;
 - (b) provide the liquidator with such information about the business, accounts, or affairs of the company as the liquidator requests;
 - (c) be examined on oath or affirmation by the liquidator or by a barrister or solicitor acting on behalf of the liquidator on any matter relating to the business, accounts, or affairs of the company;
 - (d) assist in the liquidation to the best of the person's ability.
- (3) Without limiting subsection (2)(a), a person may be required to attend on the liquidator under that subsection at a meeting of creditors of the company.

231. Reasonable expenses may be paid-(1) Without limiting subsection (2), the liquidator may pay to a person referred to in section 230(1)(d), (e), or (f) who is not an

employee of the company reasonable travelling and other expenses in complying with a requirement of the liquidator under that section.

(2) The Court may, on the application of the liquidator or a person referred to in section 230(1)(d), (e), or (f) who is not an employee of the company, order that that person is entitled to receive reasonable remuneration and travelling and other expenses in complying with a requirement of the liquidator under that section.

(3) A person referred to in section 230(1)(d), (e), or (f) is not entitled to refuse to comply with a requirement of the liquidator under that section by reason only that:

- (a) an application to the Court to be paid remuneration or travelling and other expenses has not been made or determined; or
- (b) remuneration or travelling and other expenses to which that person is entitled have not been paid in advance; or
- (c) the liquidator has not paid that person travelling or other expenses.

232. Examination by liquidator-(1) A liquidator or a barrister or solicitor acting on behalf of the liquidator may administer an oath to, or take the affirmation of, a person required to be examined under section 230.

(2) A person required to be examined under section 230 is entitled to be represented by a barrister or solicitor.

(3) A liquidator, or a barrister or solicitor acting on behalf of the liquidator, who conducts an examination under section 230 must ensure that the examination is recorded in writing or by means of a sound recording, video camera and sound recording or other similar means.

233. Court may order person to comply with section 229-(1) The Court may, on the application of the liquidator, order a person who has failed to comply with a requirement of the liquidator under section 230 to comply with that requirement.

- (2) The Court may, on the application of the liquidator, order a person to whom section 230 applies to:
- (a) attend before the Court and be examined on oath or affirmation by the Court or the liquidator, or a barrister or solicitor acting on behalf of the liquidator, on any matter relating to the business, accounts, or affairs of the company;
 - (b) produce any documents relating to the business, accounts, or affairs of the company in that person's possession or under that person's control.
- (3) If a person is examined under subsection (2)(a):
- (a) the examination must be recorded in writing; and
 - (b) the person examined must sign the record.
- (4) Subject to any directions by the Court, a record of an examination under this section is admissible in evidence in any proceedings under section 78 or this subpart.

234. Self-incrimination no excuse-(1) A person is not excused from answering a question in the course of being examined under sections 230 or 233 on the ground that the answer may incriminate or tend to incriminate that person.

(2) The testimony of the person examined is not admissible as evidence in criminal proceedings against that person except on a charge of perjury in relation to that testimony.

235. Restriction on enforcement of lien over company's documents-(1) A person is not entitled, as against the liquidator of a company, to claim or enforce a lien over documents of the company.

(2) If the lien arises in relation to a debt for the provision of services to the company before the commencement of the liquidation, the debt is a preferential claim against the company under section 250 to the extent of \$500 or such greater amount as may be prescribed at the commencement of the liquidation.

(3) Nothing in this section applies to a company that was put into liquidation under sections 215 or 216 if:

- (a) the directors of the company passed a resolution of the kind referred to in section 242; and
- (b) section 243 does not apply in relation to the company.

236. Delivery of document held by secured creditor-(1) A person is required to deliver a document to a liquidator under section 229 even though possession of the document creates a charge over property of a company.

(2) Production of the document to the liquidator does not prejudice the existence or priority of the charge, and the liquidator must make the document available to the person entitled to it for the purpose of dealing with or realising the charge over the secured property.

237. Documents held by receiver-(1) A receiver is not required to deliver to a liquidator any documents that the receiver requires for the purpose of exercising any powers or functions as receiver in relation to property of a company in liquidation.

(2) The liquidator may, from time to time, by notice in writing, require the receiver:

- (a) to make any records and documents available for inspection by the liquidator at any reasonable time or times; and
- (b) to provide the liquidator with copies of any records and documents or extracts from them.

(3) The liquidator may take copies of any records and documents made available for inspection or extracts from them.

(4) The liquidator must pay the reasonable expenses of the receiver in complying with a requirement of the liquidator under subsection (2).

Meetings

238. Notice of first creditors' meeting-(1) A liquidator must give to every known creditor a notice in writing of a meeting of creditors, and:

- (a) if section 247(1) applies, the notice must be given together with the report and notice referred to in that paragraph; and
 - (b) if the liquidator receives a notice under section 244(1)(c) requiring a meeting of creditors to be called, the notice must be given within 10 working days after receiving the notice.
- (2) Not less than 5 working days before the creditors' meeting, a liquidator must also give public notice of the meeting.

239. Timing of first creditors' meeting-(1) Except if section 238(1)(b) applies, a meeting of creditors must be held:

- (a) in the case of a liquidator appointed under sections 215 or 216, within 10 working days of the liquidator's appointment; or
 - (b) in the case of a liquidator appointed under section 218, within 30 working days of the liquidator's appointment; or
 - (c) in either case, within such longer period as the Court may allow.
- (2) If section 238(1)(b) applies, a meeting of creditors must be held within 15 working days after the liquidator receives a notice under section 244(1)(c) requiring a meeting of creditors to be called.

240. Purpose of first creditors' meeting-(1) Subject to sections 242 and 244, the liquidator of a company must call a meeting of the creditors of the company for the purpose:

- (a) in the case of a liquidator appointed under sections 215 or 216, of resolving whether to confirm the appointment of that liquidator or to appoint another liquidator in place of the liquidator so appointed;
- (b) in the case of a liquidator appointed under section 218, of resolving whether to confirm the appoint-

ment of that liquidator or to make an application to the Court for the appointment of a liquidator in place of the liquidator so appointed:

(c) in either case, of determining whether to pass a resolution for the purposes of section 246(1)(c).

(2) If the appointment of a liquidator under sections 215 or 216 is not confirmed at a meeting of creditors and another liquidator is not appointed in place of that liquidator, the appointment of the liquidator under either of those sections continues until another liquidator is appointed.

241. Replacement liquidator-(1) If at a meeting of creditors it is resolved to appoint a person as liquidator of the company in place of the liquidator appointed under sections 215 or 216, the person who it is resolved to appoint as liquidator is, subject to section 213, appointed as the liquidator of the company.

(2) If at a meeting of creditors it is resolved to apply to the Court for the appointment of a person as liquidator in place of the liquidator appointed under section 218:

(a) the liquidator of the company must immediately apply to the Court for the appointment of that person as liquidator; and

(b) the Court may, if it thinks fit, appoint that person as the liquidator of the company.

242. Effect of directors' resolving company able to pay its debts - Nothing in sections 238 to 241 applies to the liquidator of a company appointed under sections 215 or 216 if, within 20 working days before the appointment of the liquidator, the directors of the company resolved that the company would, on the appointment of a liquidator under either of those sections, be able to pay its debts and a copy of the resolution is delivered to the Registrar for registration.

243. Other creditors' meetings-(1) Subject to section 244, the liquidator of a company who was not, by reason of section 242(1), required to call a meeting of creditors of the company must, immediately call a meeting of the creditors of

the company for the purpose specified in section 240(1)(a) or (b) if the liquidator is satisfied that -

- (a) the directors who voted in favour of a resolution referred to in that subsection did not have reasonable grounds to believe that the company would, on the appointment of a liquidator under section 215 or 216, be able to pay its debts; or
 - (b) the company is not able to pay its debts.
- (2) Section 240 applies with the necessary modifications.

244. Liquidator may dispense with meetings of creditors-(1) A liquidator is not required to call a meeting of creditors under sections 238 or 243, as the case may be, if:

- (a) the liquidator considers that no such meeting should be held, having regard to -
 - (i) the assets and liabilities of the company; and
 - (ii) the likely result of the liquidation of the company; and
 - (iii) any other relevant matters; and
- (b) the liquidator gives notice in writing to the creditors stating -
 - (i) that the liquidator does not consider that a meeting should be held; and
 - (ii) the reasons for the liquidator's view; and
 - (iii) that no such meeting will be called unless a creditor gives notice in writing to the liquidator, within 10 working days after receiving the notice, requesting a meeting to be called and giving reasons why a meeting should be called; and
- (c) no notice requesting a meeting to be called is received by the liquidator within that period or, if a notice requesting a meeting to be called is received within that period, the Court directs the liquidator that, having regard to the reasons given in the notice and the circumstances of the company considered by the liquidator under para

-graph (a), it is not necessary for the liquidator to call a meeting.

(2) Notice under subsection (1)(b) must be given to every known creditor:

- (a) if section 245(1) applies, together with the report and notice referred to in that section; or
- (b) if section 245(1) is not applicable, at the time the liquidator would have been required to send the report and notice referred to in that section if it were applicable.

245. Meetings of creditors or shareholders-(1) At any time in the course of the liquidation, the liquidator may, at the request in writing of any creditor or shareholder or on the liquidator's own motion, call a meeting of creditors or shareholders:

- (a) to vote on a proposal that a liquidation committee be appointed to act with the liquidator in accordance with Schedule 16; and
- (b) if it is so decided, to choose the members of the committee.

(2) A liquidator may decline a request by a creditor or shareholder to call a meeting on the ground that:

- (a) the request is frivolous or vexatious; or
- (b) the request was not made in good faith; or
- (c) except if a creditor or shareholder agrees to meet the costs, the costs of calling a meeting would be out of all proportion to the value of the company's assets.

(3) The decision of a liquidator to decline the request may be reviewed by the Court on the application of any creditor or shareholder, as the case may be.

(4) Subject to subsections (2) and (3), a liquidator who receives a request to call:

- (a) a meeting of creditors must immediately call a meeting in accordance with Schedule 12; or
- (b) a meeting of shareholders, must immediately call a meeting in accordance with the company's rules, except the liquidator has power to give notice of

a meeting of shareholders and to act as, or appoint, the chairperson of the meeting.

(5) The sole shareholder of a company may present to the liquidator a view on any matter that could have been decided at a meeting of shareholders under this section, and that view must, for all purposes, be treated as though it were a decision taken at a meeting of shareholders.

246. Views of creditors and shareholders at meetings to be considered-(1) The liquidator must consider the views of:

- (a) creditors set out in a resolution passed at a meeting convened under subpart 1 at which a resolution under section 187(1)(c) to appoint a liquidator is passed;
 - (b) the shareholders by whom any special resolution was passed at a meeting held for the purposes of section 216 set out in a resolution passed at that meeting;
 - (c) creditors set out in any resolution passed at a meeting held for the purposes of section 240;
 - (d) creditors or shareholders set out in a resolution passed at a meeting called in accordance with subsection (2);
 - (e) any liquidation committee given in writing to the liquidator.
- (2) For the purposes of subsection (1), a liquidator:
- (a) must summon meetings of shareholders at such times as may be specified by any resolution of shareholders passed at a meeting held for the purposes of section 216;
 - (b) must summon meetings of creditors at any times that may be specified by any resolution of creditors passed at a meeting held for the purposes of subpart 1 or section 240;
 - (c) must summon a meeting of shareholders immediately when required to do so by notice in writing given by shareholders holding not less than 10% of all shares issued by the company;

- (d) must summon a meeting of creditors immediately when required to do so by notice in writing given by creditors to whom is owed not less than 10% of the total amount owed to all creditors of the company;
 - (e) may, at his or her discretion, summon a meeting of shareholders or creditors of the company.
- (3) A liquidator who calls a meeting of creditors or shareholders must call a meeting:
- (a) in accordance with the rules of the company, in the case of a meeting of shareholders; or
 - (b) in accordance with Schedule 12, in the case of a meeting of creditors.
- (4) For the purposes of holding a meeting of shareholders under subsection (3)(a) the liquidator is deemed to have power under the company's rules to call a meeting of shareholders despite anything in the company's rules, and references in the company's rules to chairman or chairperson must be read as references to the liquidator.
- (5) Nothing in this section limits or prevents a liquidator from exercising his or her discretion in carrying out his or her functions and duties under this Act.

Reports

- 247. First report-**(1) A liquidator must, within the applicable period:
- (a) prepare a list of every known creditor of the company; and
 - (b) prepare and send to every known creditor, every shareholder, and the Registrar for registration -
 - (i) a report containing a statement of the company's affairs, proposals for conducting the liquidation, and, if practicable, the estimated date of its completion; and

(ii) a notice explaining the right of a creditor or shareholder to require the liquidator to call a meeting of creditors or shareholders (as the case may be) under section 245.

(2) For the purposes of subsection (1), “applicable period” means:

- (a) in the case of a liquidator appointed under sections 215, 216, or 217, 5 working days after the liquidator’s appointment; or
- (b) in the case of a liquidator appointed under section 218, 25 working days after the liquidator’s appointment; or
- (c) in either case, any longer period that the Court may allow.

248. Six-monthly report - A liquidator must, within 2 months of the end of each period of 6 months following the date of commencement of the liquidation, prepare and send to every known creditor and every shareholder, and send or deliver to the Registrar, a report:

- (a) on the conduct of the liquidation during the preceding 6 months; and
- (b) of any further proposals that the liquidator has for completing the liquidation.

249. Exemption from reporting requirements-(1) The Court may, on the application of a liquidator and on any conditions that the Court thinks fit:

- (a) exempt the liquidator from compliance with sections 247 or 248; or
- (b) modify the application of those sections in relation to the liquidator.

(2) The liquidator need not comply with sections 247 or 248 if the liquidator is satisfied that the value of the assets of the company available for distribution to unsecured creditors who are not preferential creditors is not likely to exceed \$0.20, or any other prescribed sum, in every dollar owed to those creditors.

(3) If subsection (2) applies, and the liquidator does not intend to comply with sections 247 or 248, the liquidator must give notice to the Registrar that he or she does not intend to comply with those sections.

Creditors' claims

250. Preferential claims-(1) The liquidator must pay out of the assets of the company the expenses, fees, and claims set out in Part 3 of Schedule 18 to the extent and in the order of priority specified in that schedule.

(2) Without limiting clause 19 of Schedule 18, assets in subsection (1) does not include assets subject to a charge unless the charge is surrendered or taken to be surrendered or redeemed under Part 2 of that schedule.

251 Claims of other creditors and distribution of surplus assets-(1) After paying preferential claims in accordance with section 250 and obtaining any certificate required under section 40(2) of the National Provident Fund Act 1972, the liquidator must apply the assets of the company in satisfaction of all other claims.

(2) The claims referred to in subsection (1) rank equally among themselves and must be paid in full, unless the assets are insufficient to meet them, in which case payment abates rateably among all claims.

(3) If, before the commencement of a liquidation, a creditor agrees to accept a lower priority in respect of a debt than that which it would otherwise have under this section, nothing in this section prevents the agreement from having effect according to its terms.

(4) A person whose shares have been repurchased by the company, or a person whose shares have been redeemed by the company, but who has not received payment in full of the repurchase price or redemption price (as the case may be) is taken to have agreed to subordinate his or her claim for any unpaid balance of the repurchase price or redemption price (as the case may be) to the rights of other creditors of the company.

(5) Subject to clause 41 of Schedule 18, after paying the claims referred to in subsections (1) and (3), the liquidator must distribute the company's surplus assets:

- (a) in accordance with the company's rules; or
- (b) if the company's rules do not provide for the distribution of surplus assets, in accordance with section 23(1)(c) and any preferential rights as to distributions of capital attached to shares issued by the company in accordance with section 23(3)(d).

End of liquidation

252. Completion of liquidation - The liquidation of a company is completed when the liquidator:

- (a) complies with section 253(2); or
- (b) delivers to the Registrar for registration -
 - (i) a copy of any order made by the Court under section 253(3)(a); or
 - (ii) a copy of any order made by the Court under section 253(3)(b) together with any documents required to comply with the order.

253. Final report and accounts-(1) As soon as practicable after completing his or her duties in relation to the liquidation, the liquidator of a company must prepare and send to every creditor whose claim has been admitted and every shareholder:

- (a) the final report and statement of realisation and distribution in respect of the liquidation; and
- (b) a statement that -
 - (i) all known assets have been disclaimed, or realised, or distributed without realisation; and
 - (ii) all proceeds of realisation have been distributed; and
 - (iii) the company is ready to be removed from the Samoa register; and

(c) a summary of the applicable grounds on which the creditor or shareholder may object to the removal of the company from the register of companies under section 263.

(2) As soon as practicable after completing his or her duties in relation to the liquidation, the liquidator of a company must send or deliver copies of the documents referred to in subsection (1) to the Registrar for registration.

(3) The Court may, on the application of a liquidator and on any conditions that the Court thinks fit:

- (a) exempt the liquidator from compliance with subsections (1) or (2); or
- (b) modify the application of those provisions in relation to the liquidator.

254. Liquidation surplus account-(1) Money representing unclaimed assets of a company standing to the credit of a liquidator must, after completion of the liquidation, be paid to the Public Trustee.

(2) At the expiration of a period of 12 months after the date on which the money is paid, the Public Trustee must, after deduction of any amount required to meet the claim of any person that is established within that period, pay the balance into an account entitled the "Liquidation Surplus Account" for distribution in accordance with this section.

(3) Money held in the Liquidation Surplus Account may be invested in accordance with the Trustee Act 1975 as to the investment of trust funds. Interest on any investment must be distributed in accordance with this section.

(4) Money held in the Liquidation Surplus Account may be:

- (a) paid or distributed to any person entitled to payment or distribution in the liquidation of a company any money representing the surplus assets of which has been credited to the Liquidation Surplus Account; or
- (b) paid, subject to such conditions as the Official Assignee for Samoa may impose, in meeting the claims of the creditors of a company in the liqui-

dition of which the Official Assignee or any other person is the liquidator, for payment of the costs of proceedings in the liquidation after the commencement of the liquidation, legal or other expert advice, or the costs of any expert witness, if the Official Assignee for Samoa is satisfied that it is fair and reasonable for those costs to be met out of the Liquidation Surplus Account.

(5) Payments from the Liquidation Surplus Account must be made by the Public Trustee at the direction of the Official Assignee for Samoa.

(6) In making a payment under this section, the Public Trustee is not required to ascertain that money or sufficient money was received on account of any company to which the claim for payment relates.

(7) Nothing in Part X (Unclaimed Money) of the Public Finance Management Act 2001 applies in relation to money to which this section applies.

255. Termination of liquidation by Court-(1) The Court may, at any time after the appointment of a liquidator of a company, if it is satisfied that it is just and equitable to do so, make an order terminating the liquidation of the company.

(2) An application may be made by:

- (a) the liquidator of the company; or
- (b) a director of the company; or
- (c) a shareholder of the company; or
- (d) a creditor of the company ;or
- (e) an administrator of the company under administration or acting under a compromise approved by a resolution of creditors in accordance with section 187(1)(a); or
- (f) the Registrar.

(3) The Court may require the liquidator of the company to give a report to the Court with respect to any facts or matters relevant to the application.

(4) The Court may, on, or at any time after, making an order, make any other order that it thinks fit in connection with the termination of the liquidation.

256. Effect of Court order under section 255-(1) If the Court makes an order under section 255(1), the company ceases to be in liquidation and the liquidator ceases to hold office with effect on and from the making of the order or any other date specified in the order.

257. Notice of termination of liquidation-(1) The person who applied for a Court order terminating the liquidation or the liquidator, in the case of the creditors terminating the liquidation, must, within 10 working days after the order was made, or the resolution was passed, (as the case may be), deliver a notice of the order, or the passing of the resolution, to the Registrar for registration.

(2) Every person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

258. Effect of compromise on termination of liquidation - Unless the Court orders otherwise under section 255(1), a company does not cease to be in liquidation and the liquidator continues to hold office subject to the terms of a compromise if:

- (a) the liquidator has appointed an administrator of the company; and
- (b) a compromise that binds the company and its creditors, or a class of creditors, has been approved by a resolution of creditors in accordance with section 187(1)(a).

Part 10

Removal of companies from register

259. Removal from register - A company is removed from the Samoa register when a notice signed by the Registrar stating that the company is removed from the Samoa register is registered under this Act.

260. Grounds for removal from register - Subject to section 262, the Registrar must remove a company from the Samoa register if:

- (a) the Registrar is satisfied that -
 - (i) the company has ceased to carry on business; and
 - (ii) there is no other reason for the company to continue in existence; or
- (b) the company has been put into liquidation, and -
 - (i) no liquidator is acting; or
 - (ii) the prescribed documents confirming that the liquidation of the company has been completed have not been sent or delivered to the Registrar within 6 months after the completion of the liquidation; or
- (c) there is sent or delivered to the Registrar a request that the company be removed from the Samoa register on either of the grounds specified in section 261(1) made by -
 - (i) a shareholder or any other person authorised to make the request by a special resolution of shareholders entitled to vote and voting on the question; or
 - (ii) a director or any other person, if the rules of the company so require or permit; or
- (d) a liquidator sends or delivers to the Registrar the prescribed documents confirming that the liquidation of the company has been completed.

261. Request for company to be removed from register-(1) A request that a company be removed from the Samoa register under section 260(c) may be made on the grounds that the company:

- (a) has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with its rules and this Act; or

- (b) has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court for an order putting the company into liquidation.

(2) A request that a company be removed from the Samoa register under section 260(c) must be accompanied by a written notice from the Commissioner of Inland Revenue stating that the Commissioner has no objection to the company being removed from the Samoa register.

262. Requirements to be met before company must be removed from register-(1) The Registrar must remove a company from the Samoa register under section 260(a) only if:

- (a) the Registrar has complied with sections 263 and 264; and
- (b) the company has not satisfied the Registrar that it is carrying on business or that reason exists for the company to continue in existence; and
- (c) the Registrar -
 - (i) is satisfied that no person has objected to the removal under section 266; or
 - (ii) if an objection to the removal has been received, has complied with section 267.

(2) The Registrar must remove a company from the Samoa register under section 260(b), (c), or (d) only if:

- (a) the Registrar is satisfied that notice has been given in accordance with section 265; and
- (b) the Registrar -
 - (i) is satisfied that no person has objected to the removal under section 266; or
 - (ii) if an objection to the removal has been received, has complied with section 267.

Notices

263 Notice of intention to remove company that has ceased to carry on business – Before a company can be

removed from the Samoa register under section 260(a), the Registrar must:

- (a) give notice to the company in accordance with section 264(1); and
- (b) give notice of the matters set out in section 264(2) to any person who is entitled to a registered charge in respect of property of the company; and
- (c) give public notice of the matters set out in section 264(2).

264. Contents of notice-(1) The notice to be given under section 263(a) must:

- (a) state the section under, and the grounds on which, it is intended to remove the company from the Samoa register; and
- (b) state that the company will be removed from the Samoa register, unless -
 - (i) by the date specified in the notice, which must not be less than 20 working days after the date of the notice, the company satisfies the Registrar by notice in writing that it is still carrying on business or there is other reason for it to continue in existence; or
 - (ii) the Registrar does not, in accordance with section 267, proceed to remove the company from the register.

(2) The notice to be given under section 263(b) and (c) must specify:

- (a) the name of the company; and
- (b) the section under which, and the grounds on which, it is intended to remove the company from the Samoa register; and
- (c) the date by which an objection to the removal must be delivered to the Registrar, which must not be less than 20 working days after the date of the notice.

265. Notice of intention to remove in other cases-(1) If a company is to be removed from the register under section

260(b), the Registrar must give public notice of the matters set out in subsection (4).

(2) If a company is to be removed from the register under section 260(c) or (d), the applicant, or the liquidator, as the case may be, must give public notice of the matters set out in subsection (4).

(3) If a company is to be removed from the register under section 260(b), the Registrar, or, if it is to be removed from the register under section 260(c), the applicant, as the case may be, must also give notice of the matters set out in subsection (4) to:

- (a) the company; and
 - (b) a person who is entitled to a registered charge in respect of property of the company.
- (4) The notice to be given under this section must specify:
- (a) the name of the company; and
 - (b) the section under which, and the grounds on which, it is intended to remove the company from the Samoa register; and
 - (c) the date by which an objection to the removal under section 266 must be delivered to the Registrar, which must be not less than 20 working days after the date of the notice.

Objection

266. Objection to removal from Samoa register-(1) If a notice is given of an intention to remove a company from the Samoa register, any person may deliver to the Registrar, not later than the date specified in the notice, an objection to the removal on any 1 or more of the following grounds:

- (a) that the company is still carrying on business or there is other reason for it to continue in existence;
- (b) that the company is a party to legal proceedings;
- (c) that the company is in receivership, or liquidation, or both;
- (d) that the person is a creditor, or a shareholder, or a person who has an undischarged claim against the company;

- (e) that the person believes that there exists, and intends to pursue, a right of action on behalf of the company under Part 6;
 - (f) that, for any other reason, it would not be just and equitable to remove the company from the Samoa register.
- (2) For the purposes of subsection (1)(d):
- (a) a claim by a creditor against a company is not an undischarged claim if -
 - (i) the claim has been paid in full; or
 - (ii) the claim has been paid in part under a compromise entered into under subpart 2 of Part 9 or by being otherwise compounded to the reasonable satisfaction of the creditor; or
 - (iii) the claim has been paid in full or in part by a receiver or a liquidator in the course of a completed receivership or liquidation; or
 - (iv) a receiver or a liquidator has notified the creditor that the assets of the company are not sufficient to enable any payment to be made to the creditor; and
 - (b) a claim by a shareholder or any other person against a company is not an undischarged claim if -
 - (i) payment has been made to the shareholder or that person in accordance with a right under the company's rules to receive or share in the company's surplus assets; or
 - (ii) a receiver or liquidator has notified the shareholder or that person that the company has no surplus assets.

267. Duties of Registrar if objection received-(1) If an objection to the removal of a company from the Samoa register is made on a ground specified in section 266(1)(a), (b), or (c), the Registrar must not proceed with the removal unless the Registrar is satisfied that:

- (a) the objection has been withdrawn; or
- (b) any facts on which the objection is based are not, or are no longer, correct; or

(c) the objection is frivolous or vexatious.

(2) If an objection to the removal of a company from the Samoa register is made on a ground specified in section 266(1)(d), (e), or (f), the Registrar must give notice to the person objecting that the Registrar intends to proceed with the removal, unless notice of an application to the Court by that person for an order:

(a) that the company be put into liquidation; or

(b) under section 268, that, on any ground specified in section 266, the company not be removed from the Samoa register,

is served on the Registrar not later than 20 working days after the date of the notice.

(3) The Registrar must proceed with the removal if:

(a) notice of such an application to the Court is not served on the Registrar; or

(b) the application is withdrawn; or

(c) on the hearing of such an application, the Court refuses to grant either an order putting the company into liquidation or an order that the company not be removed from the Samoa register.

(4) Every person who makes such an application must give the Registrar notice in writing of the decision of the Court within 5 working days of the decision being given.

(5) The Registrar must send to a person who sent or delivered to the Registrar a request that the company be removed from the Samoa register under section 260(c) or, while acting as liquidator, sent or delivered to the Registrar the documents referred to in section 260(d):

(a) a copy of an objection under section 266; and

(b) a copy of a notice given by or served on the Registrar under this section; and

(c) if the company is removed from the Samoa register, notice of the removal.

268. Powers of Court-(1) A person who gives a notice objecting to the removal of a company from the Samoa register on a ground specified in section 266(1)(d), (e), or (f) may apply

to the Court for an order that the company not be removed from the register on any ground set out in that subsection.

(2) On an application for an order under subsection (1), the Court may make an order that the company is not to be removed from the register if the Court is satisfied that the company should not be removed from the register on any of those grounds.

Effect of removal from register

269. Property of company removed from register - (1) Property that, immediately before the removal of a company from the Samoa register, had not been distributed or disclaimed, vests in the State with effect from the removal of the company from the register.

(2) For the purposes of this section, property of the former company:

- (a) includes leasehold property and all other rights vested in or held on trust for the former company; but
- (b) does not include property held by the former company on trust for any other person.

(3) The Financial Secretary must, immediately on becoming aware of the vesting of the property, give public notice of the vesting, setting out the name of the former company and details of the property.

(4) If property is vested in the State under this section, a person who would have been entitled to receive all or part of the property, or payment from the proceeds of its realisation, if it had been in the hands of the company immediately before the removal of the company from the Samoa register, or any other person claiming through that person, may apply to the Court for an order:

- (a) vesting all or part of the property in that person; or
- (b) for payment to that person by the State of compensation of an amount not greater than the value of the property.

(5) On an application made under subsection (4), the Court may:

- (a) decide any question concerning the value of the property, the entitlement of any applicant to the property or to compensation, and the apportionment of the property or compensation among 2 or more applicants; or
 - (b) order that the hearing of 2 or more applications be consolidated; or
 - (c) order that an application be treated as an application on behalf of all persons, or all members of a class of persons, with an interest in the property; or
 - (d) make an ancillary order.
- (6) Compensation ordered to be paid under subsection (4) must be paid out of the Treasury Fund without further appropriation than this section.

270. Disclaimer of property by the State-(1) The Financial Secretary may, by notice in writing, disclaim the State's title to property vesting in the State if the property is onerous property.

(2) The Financial Secretary must immediately give public notice of the disclaimer.

(3) Property that is disclaimed under this section is deemed not to have vested in the State.

(4) Subject to any order of the Court, the Financial Secretary is not entitled to disclaim property unless whichever of the following occurs first:

- (a) the property is disclaimed within 12 months after the vesting of the property in the State first comes to the notice of the Secretary:
- (b) if any person gives notice in writing to the Secretary requiring the Secretary to elect, before the close of such date as is stated in the notice, not being a date that is less than 60 working days after the date on which the notice is received by the Secretary, whether to disclaim the property, the property is disclaimed before the close of that date.

(5) A statement in a notice disclaiming property under this section that the vesting of the property in the State first came to the notice of the Financial Secretary on a specified date is, in the absence of proof to the contrary, evidence of the fact stated.

(6) For the purposes of this section, “onerous property” means:

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

271. Effect of disclaimer-(1) A disclaimer under section 270:

- (a) brings to an end on and from the date of the disclaimer the rights, interests, and liabilities of the State in relation to the property disclaimed;
- (b) does not, except so far as necessary to release the State from a liability, affect the rights or liabilities of any other person.

(2) A person suffering loss or damage as a result of a disclaimer under section 270 may:

- (a) claim as a creditor of the company for the amount of the loss or damage, taking account of the effect of any order made by the Court under paragraph (b);
- (b) apply to the Court for an order that the disclaimed property be delivered to or vested in that person.

(3) The Court may make an order under subsection (2)(b) if it is satisfied that it is just that the property should be vested in the applicant.

272. Liability of directors, shareholders, and others to continue - The removal of a company from the Samoa register does not affect the liability of any former director or shareholder of the company or any other person in respect of any act or omission that took place before the company was removed from the register and that liability continues and may be enforced as if the company had not been removed from the register.

273. Liquidation of company removed from Samoa register-(1) Despite the fact that a company has been removed from the Samoa register, the Court may appoint a liquidator of the company as if the company continued in existence.

(2) If a liquidator is appointed in accordance with subsection (1):

- (a) subpart 3 of Part 9 applies, with the necessary modifications, to the liquidation;
- (b) section 280 applies, with the necessary modifications, to property of the company that is vested in the State as if the company had been restored to the Samoa register.

Restoration of removed company to Samoa register

274. Registrar may restore company to Samoa register-(1) Subject to sections 275 and 276, the Registrar must, on the application of a person referred to in subsection (2), and may, on his or her own motion, restore a company that has been removed from the Samoa register to the register if he or she is satisfied that, at the time the company was removed from the register:

- (a) the company was still carrying on business or other reason existed for the company to continue in existence; or
- (b) the company was a party to legal proceedings; or
- (c) the company was in receivership, or liquidation, or administration.

(2) Any person may apply under subsection (1) if the person was, at the time the company was removed from the Samoa register:

- (a) a shareholder or director of the company; or
- (b) a creditor of the company; or
- (c) an administrator, a liquidator, or a receiver of the property, of the company.

(3) Nothing in this section or sections 275 to 277 limits or affects section 278.

275. Requirements to be met before restoring company to Samoa register-(1) Before the Registrar restores a company to the Samoa register:

- (a) in the case of a company that was removed from the Samoa register under section 260(a) or (b), the Registrar must give public notice setting out -
 - (i) the name of the company; and
 - (ii) the name and address of the applicant; and
 - (iii) the section under, and the grounds on which, the application is made or the Registrar proposes to act, as the case may be; and
 - (iv) the date by which an objection to restoring the company to the register must be delivered to the Registrar, not being less than 20 working days after the date of the notice;
- (b) in the case of a company that was removed from the Samoa register under section 260(c) or (d), the person who made the application under section 274(1) must give public notice setting out -
 - (i) the name of the company; and
 - (ii) the person's name and address; and
 - (iii) the section under which, and the grounds on which, the application is made; and
 - (iv) the date by which an objection to restoring the company to the register must be delivered to the Registrar, not being less than 20 working days after the date of the notice.

(2) Before the Registrar restores a company to the Samoa register, the Registrar may require any of the provisions of this Act or any other Act or any regulations made under this Act or any other Act, being provisions with which the company had failed to comply before it was removed from the register, to be complied with.

276. Registrar not to restore company to Samoa register if objection received - The Registrar must not restore a company to the Samoa register if the Registrar receives an objection to the restoration within the period stated in the notice.

277. Court directions - The Court may, on the application of the Registrar or the applicant, give any directions or make any orders that may be necessary or desirable for the purpose of placing a company that is restored to the Samoa register under section 274 and any other persons as nearly as possible in the same position as if the company had not been removed from the register.

278. Court may restore company to Samoa register-(1)
The Court may, on the application of a person referred to in subsection (2), order that a company that has been removed from the Samoa register be restored to the register if it is satisfied that:

- (a) at the time the company was removed from the register, -
 - (i) the company was still carrying on business or other reason existed for the company to continue in existence; or
 - (ii) the company was a party to legal proceedings; or
 - (iii) the company was in receivership, or liquidation, or administration; or
 - (iv) the applicant was a creditor, or a shareholder, or a person who had an undischarged claim against the company; or
 - (v) the applicant believed that a right of action existed, or intended to pursue a right of action, on behalf of the company under Part 6; or
 - (b) for any other reason it is just and equitable to restore the company to the Samoa register.
- (2) The following persons may make an application under subsection (1):

- (a) any person who, at the time the company was removed from the Samoa register -
 - (i) was a shareholder or director of the company; or
 - (ii) was a creditor of the company; or
 - (iii) was a party to any legal proceedings against the company; or
 - (iv) had an undischarged claim against the company; or
 - (v) was the administrator, or liquidator, or a receiver of the property of, the company:
 - (b) the Registrar;
 - (c) with the leave of the Court, any other person.
- (3) Before the Court makes an order restoring a company to the Samoa register under this section, it may require any provisions of this Act or any other Act or any regulations made under this Act or any other Act, being provisions with which the company had failed to comply before it was removed from the register, to be complied with.
- (4) The Court may give any directions or make any orders that may be necessary or desirable for the purpose of placing the company and any other persons as nearly as possible in the same position as if the company had not been removed from the Samoa register.

279. Restoration to register-(1) A company is restored to the Samoa register when a notice signed by the Registrar stating that the company is restored to the Samoa register is registered under this Act.

(2) A company that is restored to the Samoa register is deemed to have continued in existence as if it had not been removed from the register.

280 Vesting of property in company on restoration to register-(1) Subject to this section, property of a company that is, at the time the company is restored to the Samoa register, vested in the State pursuant to section 269, vests in the company on its restoration to the Samoa register as if the company had not been removed from the register.

(2) Nothing in subsection (1) applies to any property vested in the State under section 269 if the Court has made an order for the payment of compensation to any person under section 269(4)(b) in respect of that property.

(3) Nothing in subsection (1) applies to land or any estate or interest in land that has vested in the State if transmission to the State of the land or that estate or interest in land has been registered under the Land Registration Act 1992/1993.

(4) If transmission to the State of land or any estate or interest in land that has vested in the State under section 269 has been registered under the Land Registration Act 1992/1993, the Court may, on the application of the company, make an order:

(a) for the transfer of the land or the estate or interest to the company; or

(b) for the payment by the State to the company of compensation -

(i) of an amount not greater than the value of the land or the estate or interest as at the date of registration of the transmission; or

(ii) if the land or the estate or interest has been sold or contracted to be sold, of an amount equal to the net amount received or receivable from the sale.

(5) On an application under subsection (4), the Court may decide any question concerning the value of the land or the estate or interest.

(6) Compensation ordered to be paid under subsection (4) must be paid out of the Treasury Fund without further appropriation than this section.

Part 11

Overseas companies

281. Meaning of carrying on business - For the purposes of this Part:

(a) a reference to an overseas company carrying on business in Samoa includes a reference to the overseas company -

- (i) establishing or using a share transfer office or a share registration office in Samoa; or
 - (ii) administering, managing, or dealing with property in Samoa as an agent, or personal representative, or trustee, and whether through its employees or an agent or in any other manner;
- (b) an overseas company does not carry on business in Samoa merely because in Samoa it -
- (i) is or becomes a party to a legal proceeding or settles a legal proceeding or a claim or dispute; or
 - (ii) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs; or
 - (iii) maintains a bank account; or
 - (iv) effects a sale of property through an independent contractor; or
 - (v) solicits or procures an order that becomes a binding contract only if the order is accepted outside Samoa; or
 - (vi) creates evidence of a debt or creates a charge on property; or
 - (vii) secures or collects any of its debts or enforces its rights in relation to securities relating to those debts; or
 - (viii) conducts an isolated transaction that is completed within a period of 30 working days, not being one of a number of similar transactions repeated from time to time; or
 - (ix) invests its funds or holds property.

282. Name must comply with section 10-(1) An overseas company must not carry on business in Samoa on or after the commencement of this Act under a name that could not be registered under section 10.

(2) Subsection (1) does not apply to an overseas company that, immediately before the commencement of this Act, is registered under Part XII of the Companies Act 1955.

(3) If an overseas company contravenes this section:

(a) the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units; and

(b) every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

283. Overseas companies to register under this Act-

(1) An overseas company that, on or after the commencement of this Act, commences to carry on business in Samoa must apply for registration under this Part in accordance with section 285 within 10 working days of commencing to carry on business.

(2) Subject to subsection (3) an overseas company that, immediately before the commencement of this Act, was carrying on business in Samoa and, on the commencement of this Act, continues to carry on business in Samoa, must apply for registration under this Part in accordance with section 285 within 10 working days of the commencement of this Act.

(3) An overseas company registered under Part XII of the Companies Act 1955 immediately before the date of commencement of this Act is, on and from that date, deemed to be registered under this Part instead of under Part XII of the Companies Act 1955.

(4) An overseas company that is deemed to be registered under this Part by virtue of subsection (3) must, within 20 working days of the commencement of this Act, deliver to the Registrar for registration, a notice in the prescribed form stating:

(a) the full address of the principal place of business in Samoa of the overseas company; and

(b) the postal address in Samoa of the overseas company; and

- (c) the full name of 1 or more persons resident or incorporated in Samoa who are authorised to accept service in Samoa of documents on behalf of the overseas company, and the postal address and residential or business address of each of those persons.
- (5) An overseas company that changes its name must send or deliver to the Registrar a notice in the prescribed form of the change of name within 10 working days of the change of name.
- (6) If an overseas company fails to comply with this section:
- (a) the overseas company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units; and
 - (b) every director of the overseas company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

284. Validity of transactions not affected - A failure by an overseas company to comply with sections 282 or 283 does not affect the validity or enforceability of any transaction entered into by the overseas company.

285. Application for registration-(1) An application for registration of an overseas company under this Part must be delivered to the Registrar and must be:

- (a) in the prescribed form; and
- (b) signed by or on behalf of the overseas company.

(2) Without limiting subsection (1), the application must:

- (a) state the name of the overseas company; and
- (b) state the full names and residential addresses and postal addresses of the directors of the overseas company at the date of the application; and
- (c) state the full address of the place of business in Samoa of the overseas company or, if the overseas company has more than 1 place of business in Samoa, the full address of the principal place of business in Samoa of the overseas company; and

- (d) state the postal address in Samoa of the overseas company; and
- (e) have attached evidence of incorporation of the overseas company, and, if not in English, a certified translation of that document; and
- (f) state the full name of 1 or more persons resident or incorporated in Samoa who are authorised to accept service in Samoa of documents on behalf of the overseas company, and the postal address and residential or business address of each those persons.

286. Registration of overseas company-(1) If the Registrar receives a properly completed application for registration under this Part of an overseas company, the Registrar must immediately register the overseas company on the overseas register.

(2) If an overseas company is deemed to be registered under this Part, the Registrar must, immediately after the commencement of this Act, transfer the registration of the overseas company to the overseas register.

(3) If the Registrar receives a notice of a change of name of an overseas company in accordance with section 283(5), the Registrar must register the change of name on the overseas register.

287. Use of name by overseas company-(1) Every overseas company that carries on business in Samoa must ensure that its full name, and the name of the country where it was incorporated, are clearly stated in:

- (a) written communications sent by, or on behalf of, the company; and
- (b) documents issued or signed by, or on behalf of, the company that evidence or create a legal obligation of the company.

(2) For the purposes of subsection (1), a generally recognised abbreviation of a word or words may be used in the name of an overseas company if it is not misleading to do so.

288. Further information to be provided by overseas

company-(1) An overseas company that carries on business in Samoa must ensure that, within 20 working days of the change, notice in the prescribed form is given to the Registrar of:

- (a) a change in the directors or in the names or residential addresses or postal addresses of the directors of the overseas company; or
 - (b) a change in the address of the place of business or principal place of business of the overseas company; or
 - (c) a change in the postal address in Samoa of the overseas company; or
 - (d) a change in any person or in the postal address or residential or business address of any person authorised to accept service in Samoa of documents on behalf of the overseas company.
- (2) An overseas company must, within 20 working days of being required to do so by the Registrar, deliver to the Registrar:
- (a) a certified copy of the document constituting or defining its constitution; or
 - (b) a certified copy of any alterations to that document since a copy of the document was last provided to the Registrar; and
 - (c) if the relevant documents are not in English, a certified translation of those documents. The Registrar must require delivery of the relevant documents by the overseas company under this subsection if requested to do so by any creditor of that overseas company in Samoa, unless the Registrar considers that the request is frivolous or vexatious.
- (3) If an overseas company fails to comply with subsections (1) or (2):
- (a) the overseas company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units; and

- (b) every director of the overseas company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

289. Annual return of overseas company-(1) Every overseas company that carries on business in Samoa must ensure that the Registrar receives each year, during the month allocated to the overseas company for the purposes of this section, an annual return in the prescribed form confirming that the information on the overseas register in respect of the overseas company referred to in the return is correct at the date of the return.

(2) The annual return must be dated as at a day within the month during which the return is required to be received by the Registrar.

(3) On registration of an overseas company under this Part, the Registrar must allocate a month to the company for the purposes of this section.

(4) The Registrar may, by written notice to an overseas company, alter the month allocated to the company under subsection (3).

(5) Despite subsection (1), an overseas company that is deemed to be registered under this Part need not make an annual return in the calendar year of its registration under this Part.

(6) If an overseas company fails to comply with subsections (1) or (2):

- (a) the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units; and
- (b) every director of the overseas company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

290. Overseas company ceasing to carry on business in Samoa-(1) An overseas company registered under this Part that intends to cease to carry on business in Samoa must:

- (a) give public notice of that intention; and

- (b) give notice to the Registrar in the prescribed form stating the date on which it will cease to carry on business in Samoa.
- (2) The Registrar must remove an overseas company from the overseas register as soon as practicable after:
- (a) the date specified in the notice given in accordance with subsection (1)(b); or
 - (b) receipt of a written notice given by a liquidator that the liquidation of the assets in Samoa of the overseas company has been completed.

291. Attorneys of overseas companies-(1) Part XII of the Property Law Act 1952 applies, with the necessary modifications, to a power of attorney executed by an overseas company registered under this Part to the same extent as if the company were a person and as if the commencement of the liquidation of the company was the death of a person within the meaning of Part XII of that Act.

(2) A declaration endorsed on or annexed to a document appointing, or appearing to appoint, an attorney of an overseas company, made or appearing to be made by one of the directors before a person authorised by section 22 of the Oaths, Affidavits and Declarations Act 1963 to take a declaration for use in Samoa, in the country concerned, to the effect that:

- (a) the company is incorporated under the name stated in the document in accordance with the law of the country in which it is so incorporated, the name of which is stated in the declaration; and
 - (b) the document has been executed, and the powers appearing to be conferred on the attorney are authorised to be conferred under the constitution of the company, or under the Act or document under which the company is incorporated, or by any other document constituting or defining the constitution of the company; and
 - (c) the person making the declaration is a director of the company,
- is conclusive evidence of those facts.

292. Liquidation of assets in Samoa-(1) An application may be made to the Court for the liquidation of the assets in Samoa of an overseas company in accordance with subpart 3 of Part 9, subject to the modifications and exclusions set out in Schedule 19.

(2) An application may be made under subsection (1) whether or not the overseas company:

- (a) is registered under this Part; or
- (b) has given public notice of an intention to cease to carry on business in Samoa; or
- (c) has given notice to the Registrar of the date on which it will cease to carry on business in Samoa; or
- (d) has been dissolved, or otherwise ceased to exist as a company, under or by virtue of the laws of any other country.

Part 12

Transfer of registration

293. Overseas companies may be registered as companies under this Act - Subject to this Part, an overseas company may be registered as a company under this Act.

294. Application for registration-(1) An application by an overseas company to register as a company under this Act must be in the prescribed form and must be accompanied by:

- (a) a certified copy of its certificate of incorporation or other similar document that evidences its incorporation; and
- (b) a certified copy of its rules or other similar document; and
- (c) evidence acceptable to the Registrar that the company is not prevented from being registered as a company under this Act by either sections 295 or 296; and
- (d) the documents and information that are required to register a company under this Act; and

- (e) any other documents and information the Registrar may require.
- (2) The Registrar may direct that a document that has been delivered to the Registrar or registered under Part 11 need not accompany the application.

295. Overseas companies must be authorised to register - An overseas company must not be registered as a company under this Act unless:

- (a) the company is authorised to transfer its incorporation under the law of the country in which it is incorporated; and
- (b) the company has complied with the requirements of that law in relation to the transfer of its incorporation; and
- (c) if that law does not require its shareholders, or a specified proportion of them, to consent to the transfer of its incorporation, the transfer has been consented to by not less than 75% of its shareholders entitled to vote and voting in person or by proxy at a meeting of which not less than 15 working days notice is given specifying the intention to transfer the company's incorporation.

296. Overseas companies that cannot be registered - An overseas company must not be registered as a company under this Act if:

- (a) the company is in liquidation; or
- (b) a receiver or manager has been appointed, whether by a court or not, in relation to the property of the company; or
- (c) the company has entered into a compromise or arrangement with a creditor that is in force; or
- (d) an application has been made to a court and has not been dealt with, whether in Samoa or in another country -

- (i) to put the company into liquidation or wind it up; or
- (ii) for the approval of a compromise or arrangement between the company and a creditor.

297. Registration-(1) As soon as the Registrar receives a properly completed application for registration of an overseas company as a company under this Act, the Registrar must:

- (a) enter the company on the Samoa register; and
- (b) issue a certificate of registration in the prescribed form.

(2) A certificate of registration of a company issued under this section is conclusive evidence that:

- (a) all the requirements as to registration have been complied with; and
- (b) on and from the date of registration stated in the certificate, the company is registered under this Act.

(3) If an application for registration of an overseas company as a company under this Act specifies a date on which the registration is intended to become effective, and that date is the same as, or later than, the date on which the Registrar receives the documents, the certificate of registration must be expressed to have effect on the date specified in the application.

298. Effect of registration-(1) The registration of an overseas company under this Act does not:

- (a) create a new legal entity; or
- (b) prejudice or affect the identity of the body corporate constituted by the company or its continuity as a legal entity; or
- (c) affect the property, rights or obligations of the company; or
- (d) affect proceedings by or against the company.

(2) Proceedings that could have been commenced or continued by or against the overseas company before registration under this Act may be commenced or continued by or against the company after registration.

299. Companies may transfer incorporation - Subject to this Part, a company may be removed from the Samoa register in connection with becoming incorporated under the law in force in, or in any part of, another country.

300. Application to transfer incorporation - An application by a company for removal from the Samoa register in connection with becoming incorporated under the law in force in, or in any part of, another country must be in the prescribed form and must be accompanied by:

- (a) evidence acceptable to the Registrar that sections 301 and 302 have been complied with; and
- (b) evidence acceptable to the Registrar that the removal of the company from the Samoa register is not prevented by section 303; and
- (c) written notice from the Commissioner of Inland Revenue that the Commissioner has no objection to the company being removed from the Samoa register; and
- (d) evidence acceptable to the Registrar that the company is incorporated under that law, or will be incorporated under that law no later than the date on which it is to be removed from the Samoa register; and
- (e) any other documents or information that the Registrar may require.

301. Approval of shareholders - A company must not apply to be removed from the Samoa register under section 300 unless the making of the application has been approved by special resolution.

302. Company to give public notice-(1) A company must not apply to be removed from the Samoa register under section 300 unless:

- (a) the company gives public notice -
 - (i) stating that it intends, after the date specified in the notice, which must not be less than 20 working days after the date of the notice, to apply under section 300 for the company to be removed from the Samoa register in connection with the company becoming incorporated under the law in force in, or in any part of, another country; and
 - (ii) specifying the country or part of the country under the law of that it is proposed that the company will become incorporated; and
- (b) the application is made after that date.

(2) If the Court is satisfied that the proposed removal of a company from the Samoa register under this Part would unfairly prejudice a shareholder or creditor of the company or a person to whom the company is under an obligation, it may, on the application of that person made at any time before the date on which the removal becomes effective, make any of the following orders:

- (a) an order restraining the removal of the company from the Samoa register under this Part;
- (b) an order specifying conditions that must be met by the company before being removed from the Samoa register under this Part;
- (c) if an order is made under paragraphs (a) or (b), orders granting any consequential or ancillary relief that the court thinks fit.

303. Companies that cannot transfer incorporation - A company must not be removed from the Samoa register under section 304 if:

- (a) the company is in administration or liquidation, or an application has been made to the Court to put the company into liquidation; or

- (b) a receiver or manager has been appointed, whether by the Court or not, in relation to any property of the company; or
- (c) a compromise has been approved by the Court under subpart 2 of Part 8 in relation to the company or an application has been made to the Court to approve a compromise under that subpart; or
- (d) the company has entered into a compromise with creditors or a class of creditors under subpart 2 of Part 9 or a compromise has been proposed under that subpart in relation to the company; or
- (e) an order restraining its removal from the register has been made under section 302, or any conditions specified in an order made under section 302 have not been satisfied by the company.

304. Removal from register-(1) As soon as the Registrar receives a properly completed application to remove a company from the Samoa register, the Registrar must enter on the register a notice signed by the Registrar that the company has been removed from the register in accordance with this Part.

(2) If an application for removal of a company from the Samoa register under this Part specifies a date on which the removal is intended to become effective, and that date is the same as, or later than, the date on which the Registrar receives the application, the notice of removal must be expressed to have effect on the date specified in the application.

305. Effect of removal from register-(1) The removal of a company from the Samoa register under section 304 does not:

- (a) prejudice or affect the identity of the body corporate that was constituted under this Act or its continuity as a legal person; or
- (b) affect the property, rights, or obligations of that body corporate; or
- (c) affect proceedings by or against that body corporate.

(2) Proceedings that could have been commenced or continued by or against a company before the company was removed from the Samoa register under section 304 may be commenced or continued by or against the body corporate that continues in existence after the removal of the company from the register.

Part 13 **Registrar of Companies**

Subpart 1 - Registrar

Office

306. Registrar - The Minister must appoint a person to hold office as Registrar of Companies.

307 Deputy Registrars-(1) The Registrar may appoint as many Deputy Registrars of Companies as may be necessary for the purposes of this Act.

(2) Subject to the control of the Registrar, a Deputy Registrar has and may exercise the powers, duties, and functions of the Registrar under this Act.

(3) The fact that a Deputy Registrar exercises those powers, duties, or functions is conclusive evidence of his or her authority to do so.

308. Transitional - The person holding office as Registrar of Companies under the Companies Act 1955 and every person holding office as a Deputy Registrar of Companies under that Act, immediately before the commencement of this Act, is deemed to have been appointed as Registrar of Companies or as a Deputy Registrar of Companies, as the case may be.

Notices by Registrar

309. Notices: general - Section 350 applies, with the necessary modifications, to the giving of notices by the Registrar.

310. Notices to individuals-(1) A notice that the Registrar is required by this Act to give to an individual, must be given in writing and in a manner that the Registrar considers appropriate in the circumstances.

(2) Without limiting subsection (1), the Registrar may give notice to an individual by:

- (a) having it delivered to that person; or
- (b) posting it to that person at his or her last known postal address; or
- (c) faxing it to a fax number used by that person; or
- (d) having it published in a newspaper or other publication in circulation in the area where that person lives or is believed to live.

311. Admissibility of notices given by Registrar - A document is admissible in legal proceedings if the document:

- (a) appears to be a copy of a notice given by the Registrar; and
- (b) is certified by the Registrar, or by a person authorised by the Registrar, as having been derived from a device or facility that records or stores information electronically or by other means.

Powers

312. Registrar may require information and copies of documents-(1) The Registrar may give notice to a company requiring that company to provide, by the date specified in the notice:

- (a) corrected or updated details of any matter entered on any of the registers for that company; or
- (b) a certified copy of any document that has been or ought to have been delivered to the Registrar for registration under this Act or any other Act for that company.

(2) The date specified in the notice must not be less than 10 working days from the date on which the notice is sent to the company.

(3) If a company fails to comply with a notice given under subsection (1):

- (a) the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units; and
- (b) every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

(4) In this section and section 313, “company” includes an overseas company.

313. Registrar may amend registers - If information provided to the Registrar by a company under section 312 differs from the information shown on any of the registers for that company, the Registrar may amend the register accordingly.

314. Registrar’s powers of inspection-(1) The Registrar, or any person authorised by the Registrar, may, for the purposes set out in subsection (2) and if the Registrar considers that it is in the public interest to do so, do any of the following:

- (a) require a person, including a person carrying on the business of banking, to produce for inspection relevant documents within that person’s possession or control;
 - (b) inspect and take copies of relevant documents;
 - (c) take possession of relevant documents and remove them from the place where they are kept, and retain them for a reasonable time, for the purpose of taking copies;
 - (d) retain relevant documents for a period that is, in all the circumstances reasonable, if there are reasonable grounds for believing that they are evidence of the commission of an offence.
- (2) The purposes referred to in subsection (1) are to:
- (a) ascertain whether a company or a director of a company is complying, or has complied, with this Act; or

- (b) ascertain whether the Registrar should exercise any of his or her rights or powers under this Act; or
 - (c) detect offences against this Act.
- (3) Every person who fails to comply with subsection (1)(a) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.
- (4) In this section, -
- “company” includes an overseas company
 - “relevant document”, in relation to a company, means a document that contains information relating to:
 - (a) the company; or
 - (b) money or other property that is, or has been, managed, supervised, controlled or held in trust by or for the company.

315. Registrar not to be obstructed-(1) A person must not obstruct or hinder the Registrar, or a person authorised by the Registrar, while exercising a power conferred by section 314.

(2) Every person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

316. Requirement to consult in relation to financial institutions - The Registrar or a person authorised by the Registrar must consult with the Central Bank of Samoa before exercising any of the powers conferred by section 314 if the purpose of exercising the power relates to a company that is a financial institution (within the meaning of section 2 of the Central Bank of Samoa Act 1984).

317 Certain Acts not affected by Registrar’s power of inspection - Nothing in sections 313 to 316 limits or affects the Income Tax Administration Act 1974 or the Statistics Act 1971.

318. Disclosure of information and reports-(1) A person authorised by the Registrar for the purpose of section 314 must, if directed to do so by the Registrar, give the following

documents, information, or reports to the persons described in subsection (2):

- (a) any document or information obtained in the course of making an inspection under that section; or
 - (b) any report prepared in relation to an inspection under that section.
- (2) The persons referred to in subsection (1) are:
- (a) the Minister; or
 - (b) the Secretary; or
 - (c) any person authorised by the Registrar to receive the document, information, or report for the purposes or in connection with the exercise of powers conferred by this Act; or
 - (d) a liquidator for the purposes of the liquidation of a company; or
 - (e) any person authorised by the Registrar to receive the document, information, or report for the purposes of detecting or investigating offences against any Act.

(3) Every person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

319. Information and report to be given to Registrar-(1)

A person authorised by the Registrar for the purposes of section 314 must give the following documents, information, or reports to the Registrar or a Deputy Registrar when directed to do so by any person who holds any of those offices:

- (a) any document or information obtained in the course of making an inspection under that section; or
- (b) any report prepared in relation to an inspection under that section.

(2) Every person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

320. Restrictions on disclosing information-(1) A person authorised by the Registrar for the purposes of section 314 must not disclose any of the documents, information, or reports referred to in that section except:

- (a) in accordance with that section; or
- (b) subject to the approval of the Registrar, with the consent of the person to whom it relates; or
- (c) subject to the approval of the Registrar, for the purposes or in connection with the exercise of powers conferred by this Act; or
- (d) to the extent that the information, or information contained in the document or report, is available under any Act or in a public document; or
- (e) subject to the approval of the Registrar, to a liquidator for the purposes of the liquidation of a company or the assets of an overseas company; or
- (f) in the course of criminal proceedings; or
- (g) subject to the approval of the Registrar, for the purpose of detecting offences against any Act.

(2) Every person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

321. Inspector's report admissible in liquidation proceedings - Despite any other Act or rule of law, a report prepared by a person in relation to an inspection carried out by him or her under section 314 is admissible in evidence at the hearing of an application to the Court to appoint a liquidator.

Appeals

322. Appeals-(1) A person who is aggrieved by an act or decision of the Registrar under this Act may appeal to the Court within 15 working days after the date of notification of the act or decision, or within any further time that the Court may allow.

- (2) On hearing the appeal, the Court may:
- (a) approve the Registrar's act or decision;
 - (b) give any directions that the Court thinks fit;

- (c) make any determination in the matter that the Court thinks fit.

323. Exercise of inspection power not affected by appeal - Subject to section 324, but despite any other provision of any Act or any rule of law, if a person appeals or applies to the Court in relation to an act or decision of the Registrar or a person authorised by the Registrar under section 314, until a decision on the appeal or application is given:

- (a) the Registrar, or that person, may continue to exercise the powers under that section as if no such appeal or application had been made; and
- (b) no person is excused from fulfilling an obligation under that section by reason of that appeal or application.

324. Destruction and admissibility of Registrar's documents - If an appeal or application to which section 323 applies is allowed or granted, as the case may be:

- (a) the Registrar must ensure that, immediately after the decision of the Court is given, any copy of a document taken or retained by the Registrar, or by a person authorised by the Registrar in respect of that act or decision, is destroyed; and
- (b) no information acquired under that section in relation to that act or decision is admissible in evidence in any proceedings unless the Court hearing the proceedings in which it is sought to adduce the evidence is satisfied it was not obtained unfairly.

Subpart 2 - Registers kept by Registrar

Registers

325. Registers-(1) The Registrar must ensure that the following registers (registers) are kept in any place in Samoa that the Registrar determines from time to time:

- (a) a register of companies (Samoa register); and
 - (b) a register of overseas companies (overseas register);
and
 - (c) a register of charges in the prescribed form (if any)
for each company (register of charges).
- (2) The existing register of charges continues and forms part of the register of charges.
- (3) The registers may be kept in any manner that the Registrar thinks fit including, either wholly or partly, by means of a device or facility:
- (a) that records or stores information electronically or by other means; and
 - (b) that permits the information so recorded or stored to be readily inspected or reproduced in usable form.

Inspection of registers

326. Inspection of registers-(1) A person may, on payment of any prescribed fees, inspect:

- (a) a registered document that is part of any of the registers referred to in section 325(1) (registered document);
 - (b) details of any registered document that have been entered on any device or facility referred to in section 325(3);
 - (c) any registered document of which details have been entered in any such device or facility.
- (2) The inspection must take place during the hours when the office of the Registrar is open to the public for the transaction of business on a working day.

327. Certified copies - A person may, on payment of any fees that are prescribed, require the Registrar to give or certify:

- (a) a certificate of incorporation of a company; or
- (b) a copy of, or extract from, a registered document
- (c) details of any registered document that have been entered in any device or facility referred to in section 325(3); or

- (d) a copy of, or extract from, a registered document details of which have been entered in any such device or facility.

328. Evidence-(1) A process must not issue from the Court without the leave of the Court to compel the production of -

- (a) a registered document kept by the Registrar; or
- (b) evidence of the entry of details of a registered document in any device or facility referred to in section 325(3).

(2) A process that issues from the Court with the leave of the Court under subsection (1) must have on its face, or attached to it, a statement that it is issued with the leave of the Court.

(3) A copy of, or extract from, a registered document certified to be a true copy or extract by the Registrar is admissible in evidence in legal proceedings to the same extent as the original document.

(4) An extract certified by the Registrar as containing details of a registered document that have been entered in any device or facility referred to in section 325(3) is, in the absence of proof to the contrary, conclusive evidence of the entry of those details.

Registration

329. Registration of documents - As soon as a document is received for registration under this Act, the Registrar must:

- (a) subject to section 330, register the document in the appropriate register; and
- (b) in the case of a document that is not an annual return, give written advice of the registration to the person from whom the document was received.

330. Rejection of documents-(1) The Registrar may refuse to register a document that:

- (a) is not in the prescribed form, if any; or
- (b) does not comply with this Act or regulations made under this Act; or
- (c) is not printed or typewritten; or

- (d) if the relevant register is kept wholly or partly by means of a device or facility referred to in section 325(3), is not in a form that enables details to be entered directly by electronic or other means in the device or facility; or
 - (e) has not been properly completed; or
 - (f) contains material that is not clearly legible; or
 - (g) is not accompanied by the prescribed fee.
- (2) If subsection (1) applies, the Registrar may require either that:
- (a) the document be submitted for registration again, appropriately amended or completed, or accompanied by the prescribed fee; or
 - (b) a fresh document be submitted in its place.

331. When document registered - For the purposes of this Act, a document is registered when:

- (a) the document itself becomes part of the register to which it relates; or
- (b) details of the document are entered in any device or facility referred to in section 325(3).

332 No presumption of validity or invalidity - Neither registration, nor refusal of registration, of a document by the Registrar affects, or creates a presumption as to, the validity or invalidity of the document or the correctness or otherwise of the information contained in it.

Part 14

Re-registration of 1955 Act companies

- 333. Period for re-registration-**(1) An existing company:
- (a) may, of its own volition and with the consent of the Registrar, reregister under this Act before a notice has been sent to it under subsection (2); but
 - (b) must reregister under this Act in accordance with section 335 no later than the date specified in a

notice (specified date) given under subsection (2), or any later date fixed by the Registrar under subsection (4) (extended specified date).

(2) The Registrar must give notice to every existing company that has not already applied to reregister under this Act in the prescribed form requiring the existing company to reregister under this Act no later than the specified date, which must be:

- (a) at least 60 working days after the date on which the notice is sent to the company; and
- (b) no later than the last day of the transition period.

(3) The Registrar may, but is not required to, give public notice of every such notice.

(4) The Registrar may, on the application of a company to which a notice has been given under subsection (2), or of any director or shareholder of that company, extend the specified date if the Registrar considers that the application is reasonable in the circumstances, but the extended specified date must be no later than the last day of the transition period.

(5) An application under subsection (4) may be made before or after the specified date.

(6) An existing company that fails to reregister no later than the specified date or extended specified date, as the case may be, may reregister at any later time on or before the last day of the transition period, but:

- (a) the amount payable by that company at the time of re-registration under section 335(3)(b) includes all penalties owed by that company under the Companies Act 1955; and
- (b) section 337(1) will not apply to that company.

(7) In this Part, “transition period” means the period beginning on the date of the commencement of this Act and ending with the close of:

- (a) the date that is 2 years after that commencement; or
- (b) a later date (if any) that may be prescribed by regulations made under this Act.

334. Rules of reregistered company-(1) Subject to subsections (3) and (4), on re-registration:

- (a) the memorandum of association of an existing company is deemed to form part of the articles of association of the company; and to the extent of any inconsistency between the memorandum of association and the articles of association of an existing company, the memorandum of association prevails; and
 - (b) the articles of association of an existing company (which incorporate its memorandum of association in accordance with paragraph (a)) continue as the rules of the company for the purposes of this Act; and to the extent that the articles of association of an existing company adopt all or any of the articles set out in Table A of the First Schedule to the Companies Act 1955, those articles are deemed to be incorporated in the rules of the company as if set out in full in those rules; and
 - (c) all shares issued by the existing company before re-registration are deemed to be converted into shares of no par value; but that conversion does not affect the rights and obligations attached to the shares, and, in particular, does not affect –
 - (i) the entitlements of the holder of the shares in respect of distributions, voting, the redemption of any redeemable shares, or the distribution of surplus assets of the company in a liquidation:
 - (ii) any unpaid liability of a shareholder in respect of a share.
- (2) Despite anything in the articles of the existing company, the holder of a share at the time of re-registration is personally liable for any liability (including a liability for calls) attached to the share; and, in the event of a transfer of the share after re-registration, that liability remains with the shareholder at the time of re-registration, and does not pass to the transferee of the share.

(3) An existing company may resolve to adopt the model rules in Schedules 2, 3, or 4 as its rules on re-registration under this Act.

(4) An existing company may resolve to adopt new rules that differ from the model rules on re-registration under this Act.

(5) A resolution under subsections (3) or (4) must be approved before re-registration in the same manner as would be required under the Companies Act 1955 and the company's memorandum of association and articles of association for approval of a resolution altering the company's articles of association.

335. Documents to be filed-(1) An application for re-registration of an existing company under this Act must be made to the Registrar in the prescribed form.

(2) An application for re-registration of a company must specify:

- (a) the name of the company; and
- (b) whether the company is to be registered under this Act as a private company or a public company; and
- (c) the full name and residential address and postal address of every director of the company; and
- (d) in the case of a private company, the full name of every shareholder of the company, and the number and class of shares held by each shareholder; and
- (e) the registered office of the company; and
- (f) the postal address of the company, which may be the postal address of the registered office or any other postal address; and
- (g) details of the location of any records of the company referred to in section 117 that are not kept at the registered office of the company.

(3) An application for re-registration must be accompanied by:

- (a) a copy of -

- (i) any resolution of the company under section 334(3) or (4); and
 - (ii) any rules adopted by a company under section 334(4); or
 - (iii) certified copies of the existing memorandum of association and articles of association of the company, if it is re-registering with its existing constitutional documents under section 334(1); and
- (b) all amounts due to the Registrar but unpaid by that company under the Companies Act 1955, excluding any penalties in respect of which liability is waived under section 337; and
 - (c) the prescribed fee for re-registration.

336. Effect of re-registration-(1) As soon as the Registrar receives an application for re-registration that complies with section 335, the Registrar must:

- (a) enter the company on the Samoa register; and
 - (b) issue a certificate of re-registration in respect of the company in the prescribed form.
- (2) A certificate of re-registration of a company issued under subsection (1) is conclusive evidence that:
- (a) all the requirements as to re-registration have been complied with; and
 - (b) on and from the date of re-registration stated in the certificate, the company is registered under this Act.
- (3) The re-registration of an existing company under this Act does not:
- (a) prejudice or affect the identity of the body corporate that was constituted under the Companies Act 1955 or its continuity as a legal person; or
 - (b) affect the property, rights, or obligations of that body corporate; or
 - (c) affect proceedings by or against that body corporate.

337. Liability of reregistered company for outstanding amounts under Companies Act 1955-(1) A company that reregisters in accordance with section 335 no later than the specified date or extended specified date, as the case may be, referred to in section 333, and all present and former directors of that company, are released from liability for any amounts payable by way of penalty or default fine in respect of matters that were required to be done by that company before the date on which this Act comes into force under any of the following provisions:

- (a) section 450 of the Companies Act 1955 (which relates to carrying on business without an annual licence);
 - (b) section 463 of the Companies Act 1955 (which relates to default fines).
- (2) The Registrar must, if requested to do so by an existing company, advise that company in writing of the amount payable by it on re-registration under section 335(3)(b).
- (3) If the company considers that the amount advised by the Registrar is incorrect:
- (a) the company may appeal to the Court under section 322, and the Court will determine the amount payable; and
 - (b) pending determination of that appeal, the company must pay the amount specified by the Registrar on re-registration; and
 - (c) the company's obligation to reregister no later than the specified date or extended specified date, as the case may be, referred to in section 333 is not affected by any appeal under this section; and
 - (c) if the appeal is successful, the Registrar must refund any overpaid amount to the company, together with interest at a rate fixed by the Court.

338. Failure to reregister - If an existing company fails to reregister before the expiry of the transition period, the following provisions apply:

- (a) the existing company continues to exist as a company to which the Companies Act 1955 applies, despite the repeal of that Act by section 352 of this Act, until the existing company is dissolved or struck off under the Companies Act 1955 or is reregistered under this Act;
- (b) the existing company may, despite the expiry of the transition period, reregister in accordance with the procedures set out in this Part, which applies with the necessary modifications, but -
 - (i) the amount payable by that company at the time of re-registration under section 335(3)(b) includes all penalties owed by the existing company under the Companies Act 1955, as if that Act had not been repealed; and
 - (ii) section 337(1) will not apply to the existing company;
- (c) the existing company must not carry on business until it is reregistered;
- (d) if, after the expiry of the transition period, the existing company is dissolved or struck off the register under the Companies Act 1955, then section 353(2) of this Act applies.

Part 15 Miscellaneous

Subpart 1 - Offences

339. Proceedings for offences-(1) Despite anything to the contrary in the Criminal Procedure Act 1972, any information for an offence under this Act may be laid at any time within 3 years after the date of the offence.

(2) Nothing in this Act affects the liability of any person under any other Act, but no person may be convicted of an offence against this Act and any other Act in respect of the same conduct.

340. False statements on documents-(1) Every person commits an offence who, with respect to a document required by or for the purposes of this Act:

- (a) makes, or authorises the making of, a statement in it that is false or misleading in a material particular knowing it to be false or misleading; or
- (b) omits, or authorises the omission from it of, any matter knowing that the omission makes the document false or misleading in a material particular.

(2) Every director or employee of a company commits an offence who makes or provides, or authorises or permits the making or providing of, a statement or report that relates to the affairs of the company and that is false or misleading in a material particular, to:

- (a) a director, employee, auditor, shareholder, debenture holder, or trustee for debenture holders of the company; or
- (b) an administrator, a liquidator, liquidation committee, or receiver or manager of property of the company; or
- (c) if the company is a subsidiary, a director, employee, or auditor of its holding company,

knowing it to be false or misleading.

(3) Every person who commits an offence against subsections (1) or (2) is liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding 1000 penalty units, or both.

(4) For the purposes of this Act, a person who voted in favour of the making of a statement at a meeting is deemed to have authorised the making of the statement.

341. Fraudulent use or destruction of company property-(1) Every director, employee, or shareholder of a company commits an offence who:

- (a) fraudulently takes or applies property of the company for his or her own use or benefit, or for a use or purpose other than the use or purpose of the company; or

(b) fraudulently conceals or destroys property of the company.

(2) Every person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding 1000 penalty units, or both.

342. Falsification of records-(1) Every director, employee, or shareholder of a company commits an offence who, with intent to defraud or deceive a person:

(a) destroys, parts with, mutilates, alters, or falsifies, or is a party to the destruction, mutilation, alteration, or falsification of any register, accounting records, book, paper, or other document belonging or relating to the company; or

(b) makes, or is a party to the making of, a false entry in any register, accounting records, book, paper, or other document belonging or relating to the company.

(2) Every person commits an offence who, in relation to a mechanical, electronic, or other device used in connection with the keeping or preparation of any register, accounting or other records, index, book, paper, or other document for the purposes of a company or this Act:

(a) records or stores in the device, or makes available to a person from the device, matter that he or she knows to be false or misleading in a material particular; or

(b) with intent to falsify or render misleading any such register, accounting or other records, index, book, paper, or other document, destroys, removes, or falsifies any matter recorded or stored in the device, or fails or omits to record or store any matter in the device.

(3) Every person who commits an offence against subsections (1) or (2) is liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding 1000 penalty units, or both.

343. Carrying on business fraudulently-(1) Every person commits an offence who is knowingly a party to a company carrying on business with intent to defraud creditors of the company or any other person or for a fraudulent purpose.

- (2) Every director of a company commits an offence who:
- (a) by false pretences or other fraud induces a person to give credit to the company; or
 - (b) with intent to defraud creditors of the company -
 - (i) gives, transfers, or causes a charge to be given on, property of the company to any person; or
 - (ii) causes property to be given or transferred to any person; or
 - (iii) caused or was a party to execution being levied against property of the company.

(3) Every person who commits an offence against subsections (1) or (2) is liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding 1000 penalty units, or both.

Subpart 2 - Privileged communications and service of documents

344. Privileged communications-(1) Nothing in this Act requires a legal practitioner to disclose a privileged communication.

(2) For the purposes of this Act, a communication is a privileged communication only if:

- (a) it is a confidential communication, whether oral or written, passing between -
 - (i) a legal practitioner in his or her professional capacity and another legal practitioner in that capacity; or
 - (ii) a legal practitioner in his or her professional capacity and his or her client,whether made directly or indirectly through an agent; and
- (b) it is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and

(c) it is not made or brought into existence for the purpose of committing or furthering the commission of an illegal or wrongful act.

(3) If the information or document consists wholly of payments, income, expenditure, or financial transactions of a specified person (whether a legal practitioner, his or her client, or any other person), it is not a privileged communication if it is contained in, or comprises the whole or part of, a book, account, statement or other record prepared or kept by the legal practitioner in connection with a trust account of the legal practitioner.

(4) The Court may, on the application of any person, determine whether or not a claim of privilege is valid and may, for that purpose, require the information or document to be produced.

(5) For the purposes of this Act, “legal practitioner” means a barrister or solicitor of the Supreme Court, and references to a legal practitioner include a firm in which he or she is a partner or is held out to be a partner.

345. Service of documents on companies in legal proceedings - A document, including a writ, summons, notice, or order, in any legal proceedings may be served on a company as follows:

- (a) by delivery to a person named as a director of the company on the Samoa register; or
- (b) by delivery to an employee of the company at the company’s head office or principal place of business; or
- (c) by leaving it at the company’s registered office; or
- (d) by serving it in accordance with any directions as to service given by the court having jurisdiction in the proceedings; or
- (e) in accordance with an agreement made with the company; or
- (f) by serving it at an address for service given in accordance with the rules of the court having jurisdiction in the proceedings or by such means

as a solicitor has, in accordance with those rules, stated that the solicitor will accept service.

346. Service of other documents on companies - A document, other than a document in any legal proceedings, may be served on a company as follows:

- (a) by any of the methods set out in section 345(a), (b), (c), or (e);
- (b) by posting it to the company's postal address;
- (c) by faxing it to a fax number at the company's registered office or its head office or principal place of business.

347. Service of documents on overseas companies in legal proceedings - A document, including a writ, summons, notice, or order, in any legal proceedings may be served on an overseas company in Samoa as follows:

- (a) by delivery to a person named in the overseas register as a director of the overseas company and who is resident in Samoa;
- (b) by delivery to a person named in the overseas register as being authorised to accept service in Samoa of documents on behalf of the overseas company;
- (c) by delivery to an employee of the overseas company at the overseas company's place of business in Samoa or, if the overseas company has more than 1 place of business in Samoa, at the overseas company's principal place of business in Samoa;
- (d) by serving it in accordance with any directions as to service given by the court having jurisdiction in the proceedings;
- (e) in accordance with an agreement made with the overseas company.

348. Service of other documents on overseas companies - A document, other than a document in any legal proceedings, may be served on an overseas company as follows:

- (a) by any of the methods set out in section 347(a), (b), (c), or (e);
- (b) by posting it to the postal address in Samoa of the overseas company; or
- (c) by posting it to the postal address of a person named in the overseas register as being authorised to accept service in Samoa of documents on behalf of the overseas company;
- (d) by faxing it to a fax number at the principal place of business in Samoa of the overseas company.

349. Service of documents on shareholders and creditors-(1) A notice, statement, report, accounts, or other document to be sent to a shareholder or creditor who is a natural person may be:

- (a) delivered to that person; or
- (b) posted to that person's postal address; or
- (c) faxed to a fax number used by that person.

(2) A notice, statement, report, accounts, or other document to be sent to a shareholder or creditor that is a company or an overseas company may be sent by any of the methods of serving documents referred to in section 345 or section 347, as the case may be.

(3) A notice, statement, report, accounts, or other document to be sent or given to a creditor that is a body corporate, not being a company or an overseas company, may be:

- (a) delivered to a person who is a principal officer of the body corporate; or
- (b) delivered to an employee of the body corporate at the principal office or principal place of business of the body corporate; or
- (c) delivered in such manner as the Court directs; or
- (d) delivered in accordance with an agreement made with the body corporate; or
- (e) posted to the postal address of the body corporate; or
- (f) faxed to a fax number at the principal office or principal place of business of the body corporate.

350. Additional provisions relating to service-(1) Subject to subsection (2), for the purposes of sections 345 to 349:

- (a) if a document is to be served by delivery to a natural person, service must be made:
 - (i) by handing the document to the person; or
 - (ii) if the person refuses to accept the document, by bringing it to the attention of, and leaving it in a place accessible to, the person;
 - (b) a document that is posted is deemed to be received 5 working days after it is posted;
 - (c) a document that is faxed is deemed to have been received on the working day following the day on which it was faxed;
 - (d) in proving service of a document by post, it is sufficient to prove that -
 - (i) the document was properly addressed; and
 - (ii) all postal or delivery charges were paid; and
 - (iii) the document was posted;
 - (e) in proving service of a faxed document, it is sufficient to prove that the document was properly faxed to the person concerned.
- (2) A document is not to be deemed to have been served or sent or delivered to a person if the person proves that, through no fault on the person's part, the document was not received within the time specified.

Subpart 3 -Regulation-making powers

351. Regulations-(1) The Head of State, acting on the advice of Cabinet, may make regulations for all or any of the following purposes:

Fees

- (a) prescribing fees or other amounts payable to the Registrar in respect of the performance of functions and the exercise of powers under this Act;
- (b) prescribing amounts payable to the Registrar by way of penalty for failure to deliver a document to the Registrar within the time prescribed by this Act;
- (c) prescribing fees or other amounts payable to the Registrar in respect of any other matter under this Act;
- (d) prescribing fees or other amounts payable to the Registrar of the Supreme Court in respect of any Court proceedings under this Act;

Forms

- (e) prescribing forms (including Court forms) for the purposes of this Act; and those regulations may require -
 - (i) the inclusion in, or attachment to, forms of specified information or documents;
 - (ii) forms to be signed by specified persons;

Registration requirements

- (f) prescribing requirements, not inconsistent with this Act, with which documents delivered for registration must comply;

Financial reporting requirements

- (g) regulating the financial reporting of a company, overseas company, or class of companies or overseas companies, including (without limitation) -

- (i) prescribing requirements in respect of the adoption by directors of a balance date for a company;
 - (ii) regulating changes to the balance date of a company;
- (h) prescribing requirements, not inconsistent with this Act, in relation to the form or content of financial statements, or any other matters in respect of financial statements, including (without limitation) -
 - (i) prescribing different requirements in respect of different classes of company;
 - (ii) requiring compliance with standards issued or published by a specified body or bodies, with or without modifications;

Liquidations

- (i) regulating, in a manner not inconsistent with this Act, the conduct of liquidations;
- (j) fixing an amount or prescribing a rate or rates in respect of the remuneration of liquidators, and without limiting what may be prescribed by such regulations, such regulations may -
 - (i) prescribe an hourly or other rate or rates of remuneration and different rates may be prescribed in respect of work undertaken in the liquidation by different classes of persons;
 - (ii) prescribe a rate or rates by reference to the net value of the assets realised by the liquidator, together with such other amounts as may be specified;
 - (iii) prescribe a rate or rates in respect of the exercise of a particular function or power;
 - (iv) prescribe a rate or rates by reference to any other criteria that may be specified;

Court proceedings under this Act

- (k) providing for and regulating any Court proceedings under this Act;

Exemption from requirements of Part 11

- (l) providing for any class or classes of overseas company to be exempted from the application of any or all of the requirements of Part 11, or modifying the application of Part 11 to such overseas companies, on any terms and conditions;

Transitional and savings provisions

- (m) prescribing transitional and savings provisions relating to the coming into force of this Act;

General

- (n) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) The Registrar or the Registrar of the Supreme Court, as the case may require, may refuse to perform a function or exercise a power until the prescribed fee or amount is paid.
 - (3) Any regulations made under subsection (1) may authorise the Registrar or the Registrar of the Supreme Court, as the case may require, to waive, in whole or in part and on any conditions that may be prescribed, payment of any amount referred to in paragraph (b) or (d) of that subsection.
 - (4) If the Registrar requires a company to change its name, no fee is payable in respect of an application to change the name of the company.
 - (5) Any fee or amount payable to the Registrar or to the Registrar of the Supreme Court, as the case may require, is recoverable by the Registrar or the Registrar of the Supreme Court, as the case may require, in any court of competent jurisdiction as a debt due to the State.

Subpart 4 -Repeals and transitional provisions

352 Repeals and revocations-(1) The Companies Act 1955 is repealed on the expiry of the transition period.

(2) The Samoa Companies Order 1935 and any other regulations and rules that are made under or in respect of the Companies Act 1955 are revoked on the expiry of the transition period.

353 General transitional provisions and savings-(1) Without limiting anything in the Acts Interpretation Act 1974, nothing in this Act applies to or affects:

- (a) any company on which a demand under section 218(a) of the Companies Act 1955 has been served before the commencement of this Act;
- (b) any application to the Court for the winding up of a company made before that commencement;
- (c) any resolution of a company to be wound up by the Court passed before that commencement;
- (d) any resolution of a company for voluntary winding up passed before that commencement;
- (e) any order made by the Court under Part VI of the Companies Act 1955 before that commencement;
- (f) any company that has been dissolved under the Companies Act 1955 before that commencement;
- (g) any notice given by the Registrar to a company before that commencement in relation to striking off the register the company under section 336 of the Companies Act 1955;
- (g) any company struck off the register under section 336 of the Companies Act 1955.

(2) The relevant provisions of the Companies Act 1955, and any rules and regulations made under or in respect of that Act, as in force immediately before the commencement of this Act, continue to apply, with all necessary modifications, to the matters set out in subsection (1) as if the Companies Act 1955 had not been repealed and as if those rules and regulations had not been revoked.

Schedule 1

s 3(a)

Interpretation

Contents

| | | | |
|---|----------------------------|---|----------------------------|
| 1 | Definitions | 4 | Meaning of related company |
| 2 | Meaning of subsidiary | 5 | Meaning of solvency test |
| 3 | Meaning of holding company | | |

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

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

“administrator” means an administrator appointed under subpart 1 of Part 9;

“alteration document” means a document that provides for the alteration of a registered charge;

“arrangement” includes a reorganisation of the share capital of a company by the consolidation of shares of different classes, or by the division of shares into shares of different classes, or by both those methods;

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

“assignment document” means a document that provides for the assignment of a registered charge;

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

“board and board of directors”, in relation to a company, means;

- (a) directors of the company who number not less than the required quorum acting together as a board of directors; or
 - (b) if the company has only 1 director, that director.
- “broadcasting” means any transmission of programmes, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus; but does not include any such transmission of programmes:
- (a) made on the demand of a particular person for reception only by that person; or
 - (b) made solely for performance or display in a public place
- “charge document” -
- (a) means a document that creates, or provides for, a company charge; and
 - (b) in the case of an issue by a company of a series of debentures, includes a deed that contains, or refers to, a charge created by the company that entitles the debenture holders of the series to rank equally.
- “committee of creditors”, in relation to a company under administration, means a committee of creditors of the company appointed under subpart 1 of Part 9;
- “company” means a company registered or reregistered under this Act;
- “compromise” means a compromise between a company and its creditors, including a compromise:
- (a) cancelling all or part of a debt of the company; or

- (b) varying the rights of its creditors or the terms of a debt; or
 - (c) relating to an alteration of a company's rules that affects the likelihood of the company being able to pay a debt;
- “convening period”, in relation to an administration of a company,-
- (a) means a period of 20 working days commencing on the day when the administration begins; and
 - (b) includes any extension to that period granted by the Court.
- “court officer” means a constable or the Registrar or other officer of the Court
- “Court” means the Supreme Court.
- “creditor”, -
- (a) in subpart 2 of Part 8 (Approval of amalgamations, etc), subpart 1 of Part 9 (Administrations), and subpart 2 of Part 9 (Compromises) includes -
 - (i) a person who, in a liquidation, would be entitled to claim that a debt is owing to that person by the company; and
 - (ii) a secured creditor;
 - (b) in subpart 3 of Part 9 (liquidations) -
 - (i) means a person who, in a liquidation, would be entitled to claim in accordance with clause 2 of Schedule 18 that a debt is owing to that person by the company; and
 - (ii) includes a secured creditor only -
 - (A) for the purposes of sections 218, 222, and 255 and clause 5 of Schedule 15; or
 - (B) to the extent of the amount of any debt owing to the secured creditor in respect of which the secured creditor claims under Part 2 of Schedule 18 as an unsecured creditor.
- “decision period”, in relation to a charge on property of a company under administration, means the period:

- (a) beginning on the day when, -
 - (i) if notice of the appointment of the administrator must be given to the secured creditor, the notice is given; or
 - (ii) otherwise, the administration begins; and
 - (b) ending at the end of 15 working days after that day
- “director”, in relation to a company, -
- (a) includes a person occupying the position of director of the company by whatever name called; but
 - (b) does not include a receiver.
- “directors” has the same meaning as the definitions of board and board of directors
- “distribution”, in relation to a distribution by a company to a shareholder, means -
- (a) the direct or indirect transfer of money or property, other than the company’s own shares, to or for the benefit of the shareholder; or
 - (b) the incurring of a debt to or for the benefit of the shareholder,
- in relation to shares held by that shareholder, whether by means of a dividend, a purchase, redemption or other acquisition of shares, a distribution of indebtedness, or some other means -
- “document” -
- (a) means information in written or electronic form, or both; and
 - (b) includes anything from which information can be reproduced (with or without the aid of anything else);
- “electronic” includes electrical, digital, magnetic, optical, electromagnetic, biometric, and photonic;
- “enforce”, in relation to a charge on property of a company under administration, includes:
- (a) appointing a receiver of property of the company under a power contained in a charge document; or
 - (b) obtaining an order for the appointment of a receiver of the property for the purpose of enforcing the charge; or

- (c) entering into possession, or assume control, of the property for that purpose; or
 - (d) appointing a person to enter into possession or assume control (whether as agent for the secured creditor or for the company); or
 - (e) exercising, as secured creditor or as a receiver or person so appointed, a right, power, or remedy existing because of the charge, whether arising under the charge document, under a written or unwritten law, or otherwise enforcement process, in relation to property, means:
 - (a) execution against that property; or
 - (b) any other enforcement process in relation to that property that involves a Court
- “essential service” means:
- (a) the retail supply of electricity;
 - (b) the retail supply of fuel and other similar consumable items necessary for the generation of electricity;
 - (c) the retail supply of gas;
 - (d) the supply of water;
 - (e) telecommunications services;
- “existing charge” means a charge that, immediately before the commencement of this Act, was created by an existing company or overseas company, as the case may be existing company means a body corporate registered or deemed to be registered under Part II or Part X of the Companies Act 1955, or under the Companies Act 1933, the Companies Act 1908, the Companies Act 1903, the Companies Act 1882, or the Joint Stock Companies Act 1860;
- “existing register of charges means the register of charges that, immediately before the commencement of this Act, was maintained by the Registrar under Part 1V of the Companies Act 1955 for each existing company and overseas company;
- “financial statements”, in relation to a company and a balance date, means:

- (a) a statement of financial position for the company as at the balance date; and
 - (b) in the case of -
 - (i) a company trading for profit, a statement of financial performance for the company in relation to the accounting period ending at the balance date; and
 - (ii) a company not trading for profit, an income and expenditure statement for the company in relation to the accounting period ending at the balance date; and
 - (c) if required by regulations made under this Act, a statement of cash flows for the company in relation to the accounting period ending on the balance date; and
 - (d) any other financial statements in relation to the company or any group of companies of which it is the holding company as may be required by regulations made under this Act; and
 - (e) any notes or documents giving information relating to the statement of financial position and other statements.
- “information” includes information (whether in its original form or otherwise) that is in the form of a document, a signature, a seal, data, text, images, sound, or speech;
- “Government” means the Independent State of Samoa;
- “liquidator” means a liquidator appointed under Part VI of the Companies Act 1955 or under subpart 3 of Part 9 of this Act, as the case may be major transaction has the meaning set out in section 50(2);
- “model rules” means the model rules of incorporation set out in Schedules 2, 3, or 4;
- “Minister” means the Minister responsible for the administration of this Act;
- “Official Assignee” means an Official Assignee or Deputy Assignee appointed under the Bankruptcy Act 1908 onerous property;

- (a) means -
 - (i) an unprofitable contract; or
 - (ii) property of the company that is unsaleable, or not readily saleable, or which may give rise to a liability to pay money or perform an onerous act; but
 - (b) does not include -
 - (i) a netting agreement to which Part 5 of Schedule 18 applies; or
 - (ii) any contract of the company that constitutes a transaction under a netting agreement.
- “overseas company” means a corporation that is incorporated outside Samoa, whether or not it is registered under Part 11;
- “overseas register” means the register kept by the Registrar under section 325(1)(b);
- “penalty unit” has the same meaning as in section 4 of the Fines (Review and Amendment) Act 1998;
- “preferential claim” means a claim referred to in Part 3 of Schedule 18 (except clause 16 of that schedule);
- “prescribed form” means a form prescribed by regulations or, if no form is prescribed by regulations, a form approved by the Registrar;
- “priority document” means a document that has the effect of postponing the priority of a registered charge;
- “private company” means a company that is registered as a private company on the Samoa register;
- “property” includes -
- (a) real and personal property; and
 - (b) an estate or interest in real or personal property; and
 - (c) a debt; and
 - (d) any thing in action; and
 - (e) any other rights, interests, and claims of any kind in relation to property;
- “proponent” means a person who proposed a compromise in accordance with subpart 2 of Part 9;

- “public accountant” means a public accountant within the meaning of the Public Accountants Act 1984;
- “public company” means a company that is registered as a public company on the Samoa register;
- “receiver” has the same meaning as in section 4(1) of the Receiverships Act 2006;
- “registered charge” means a charge registered in accordance with Schedule 7;
- “registered document” means a document:
- (a) that forms part of any of the registers referred to in section 325(1);
 - (b) details of which have been entered in any device or facility referred to in section 325(3);
- registered office, in relation to a company, has the meaning set out in section 17;
- “Registrar” means the Registrar of Companies appointed under section 306;
- “rules” means the rules of incorporation of a company;
- “Samoa register” means the register kept by the Registrar under section 325(1)(a);
- “Secretary” means the chief executive of the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of this Act;
- “shareholder” means a person whose name is entered on the share register of a company as the holder of 1 or more shares in the company;
- “solvency test” means the solvency test referred to in clause 5;
- “special resolution” means a resolution:
- (a) approved in accordance with section 52; or
 - (b) approved at a meeting of shareholders called to consider that resolution on not less than 10 working days’ notice -
 - (i) by a majority of 75% (or such higher majority as may be specified in the rules) of the votes of shareholders entitled to vote and voting on the question; and

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

“telecommunications services”:

- (a) means the conveyance by electromagnetic means from 1 device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not; but
- (b) does not include any conveyance that constitutes broadcasting.

“working day” means a day of the week other than:

- (a) Saturday and Sunday;
- (b) a day that is defined as, or declared to be, a public holiday under the Shops Ordinance 1961 or any other Act;

“writing” includes representing or reproducing words, figures, or symbols:

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

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

- (a) that other company -
 - (i) controls the composition of the board of the company; or
 - (ii) is in a position to exercise, or control the exercise of, more than one-half the maximum number of votes that can be exercised at a meeting of the company; or
 - (iii) holds more than one-half of the issued shares of the company, other than shares that carry no right to participate

beyond a specified amount in a distribution of either profits or capital; or

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

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

(2) In subclause (1), "company" includes a corporation.

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

(2) In subclause (1), "company" includes a corporation.

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

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

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

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

- (d) the businesses of the companies have been so carried on that the separate business of each company, or a substantial part of it, is not readily identifiable; or
 - (e) there is another company to which both companies are related; and “related company” has a corresponding meaning.
- (2) In subclause (1), “company” includes a corporation.

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

- (a) the company is able to pay its debts as they become due in the normal course of business; and
 - (b) the value of the company’s assets is not less than the value of its liabilities.
- (2) A person required to consider whether a company satisfies the solvency test in subclause (1) may have regard to:
- (a) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; and
 - (b) valuations of assets or liabilities; and
 - (c) such other information in relation to the financial position of the company as is reasonable in all the circumstances.
- (3) If the rules of a company provide for a solvency margin that must be maintained by the company, subclause (1)(b) applies in relation to that company as if that solvency margin were a liability of the company, except where the surplus assets of the company are being distributed:
- (a) in a liquidation; or
 - (b) before the removal of the company from the Samoa register in accordance with Part 10.

Schedule 2

ss 2(2)(a), 3(b), 6(2)(c), 14(1)(b), 15(1) and (3), 334(2)

Model rules for private company

Contents

| | | | |
|----|--|----|--|
| | Part 1 | | |
| | General provisions | | |
| 1 | Name of company | 17 | Notice agreeing to purchase shares not given within specified time |
| 2 | Private company | 18 | No shareholder wishes to purchase selling shareholder's shares |
| 3 | Rules | 19 | Selling shareholder not obliged to sell some shares |
| | Part 2 | 20 | Directors may require evidence of terms |
| | Shares and shareholders | | |
| | <i>General provisions</i> | | <i>Transfer of shares</i> |
| 4 | Number of shares | 21 | Transfer of shares |
| 5 | Rights attaching to shares | 22 | Share certificates |
| 6 | Issue of shares | | |
| 7 | Process for issuing shares | | <i>Meetings of shareholders</i> |
| 8 | Transferability of shares | 23 | Meetings of shareholders |
| | <i>Share register</i> | 24 | Notice of meetings |
| 9 | Company to keep share register | 25 | Methods of holding meetings |
| 10 | Form and location of share register | 26 | Quorum |
| 11 | Status of registered shareholder | 27 | Chairperson directors |
| | <i>Pre-emptive rights</i> | 28 | Voting |
| 12 | Restriction on selling shares | 29 | Votes of joint shareholders |
| 13 | Selling shareholder to give written notice to company | 30 | Proxies |
| 14 | Company to give written notice to shareholders | 31 | Corporations may act by representatives |
| 15 | Written notice is offer by selling | 32 | Minutes |
| 16 | Notice agreeing to purchase shares given within specified time | | <i>Miscellaneous</i> |
| | | 33 | Annual meetings and special meetings of shareholders |
| | | 34 | Written resolutions of shareholders |
| | | 35 | Voting in interest groups |
| | | 36 | Shareholders entitled to receive distributions |

- 37 Shareholders entitled to exercise pre-emptive rights
- 38 Shareholders entitled to attend and vote at meeting
- 39 Distributions to shareholders
- 40 Company may acquire its own shares and provide financial assistance
- 41 Annual report to shareholders
- 42 Deemed approval by all shareholders for certain purposes

**Part 3
Directors**

- 43 Appointment and removal of directors
- 44 Resignation of director
- 45 Notice of change in directors
- 46 Powers and duties of directors
- 47 Standard of care of directors
- 48 Obligations of directors in connection with insolvency
- 49 Interested directors
- 50 Use and disclosure of company information
- 51 Indemnities and insurance for directors or employees
- 52 Remuneration of directors
- 53 Procedure at meeting of directors
- 54 Chairperson
- 55 Notice of meeting
- 56 Methods of holding meetings
- 57 Quorum
- 58 Voting
- 59 Minutes
- 60 Unanimous resolution
- 61 Managing director and other executive

- 62 Delegation to managing director
- 63 Remuneration of managing director and directors

**Part 4
Company records**

- 64 Company records
- 65 Form of records
- 66 Access to records
- 67 Documents to be sent to Registrar
- 68 Documents to be sent to shareholders

**Part 5
Accounts and audit**

- 69 Accounting records to be kept
- 70 Financial statements to be prepared
- 71 Appointment of auditor
- 72 Auditor's attendance at shareholders'

**Part 6
Liquidation and removal from register**

- 73 Resolution to appoint liquidator
- 74 Distribution of surplus assets

**Part 7
Miscellaneous**

- 75 Service of documents on shareholders
- 76 Interpretation

Part 1
General provisions

1. Name of company-(1) The name of the company at the time of registration under the Act appears on the application for registration or for re-registration, as the case may be.

(2) The name of the company may be changed in accordance with section 11 of the Act only with the prior approval of all shareholders.

2. Private company-(1) The company is a private company.

(2) The company must not offer any of its shares or other securities to the public.

(3) The company must not have more than 100 shareholders.

(4) If a share transfer is presented to the company for entry on the share register which would result in a breach of this restriction, the directors must decline to register the transfer.

3. Rules-(1) The company may adopt new rules in place of these rules by special resolution, in accordance with section 14(2) of the Act.

(2) Subject to the Act:

(a) these rules have effect and may be enforced as if they constituted a contract -

(i) between the company and its shareholders; and

(ii) between the company and each director; and

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

Part 2
Shares and shareholders

General provisions

4. Number of shares-(1) At the time of registration under the Act the company has the number of shares specified in the application for registration or re-registration, as the case may be.

(2) If the company was first registered under Part 2 of the Act, the company must immediately after its registration issue to any person named in the application for registration as a shareholder the number of shares specified in the application as being the number of shares to be issued to that person or those persons.

5. Rights attaching to shares-Subject to clause 7(2), each share carries the following rights:

- (a) the right to 1 vote on a poll at a meeting of the company on any resolution, including any resolution to –
 - (i) appoint or remove a director or auditor -
 - (ii) adopt new rules;
 - (iii) alter the company's rules;
 - (iv) approve a major transaction;
 - (v) approve an amalgamation of the company;
 - (vi) approve re-registration of the company as a public company;
 - (vii) put the company into liquidation;
 - (viii) approve the transfer of registration of the company to another country;
- (b) the right to an equal share in dividends paid by the company;
- (c) the right to an equal share in the distribution of the surplus assets of the company in a liquidation.

6. Issue of shares-The directors may issue shares:

- (a) in accordance with clause 7; or
- (b) to shareholders or any other persons on any other basis, with the prior approval of all shareholders.

7. Process for issuing shares-(1) The directors may issue shares in accordance with the following process:

- (a) the shares must first be offered to all shareholders proportionally, pursuant to an offer that if accepted by all shareholders would not affect relative voting or distribution rights, on such terms as the directors think fit. The shareholders must have a reasonable opportunity to consider and respond to the offer;
 - (b) any shares not accepted by the shareholders to whom they were offered under paragraph (a) must then be offered to those shareholders who did accept the shares offered to them under paragraph (a), on a fair and equitable basis determined by the directors and on the same terms and conditions as the offer made under paragraph (a);
 - (c) any shares offered under paragraph (b) but not taken up by shareholders may then be offered by the directors to shareholders or any other persons in such manner as the directors think fit, on the same terms and conditions as the offer made under paragraph (a).
- (2) With the prior approval of all shareholders, the company may issue more than 1 class of shares. In particular, shares may be issued that:
- (a) are redeemable; or
 - (b) confer preferential rights to distributions of capital or income; or
 - (c) confer special, limited, or conditional voting rights; or
 - (d) do not confer voting rights.

(3) If the company issues shares, it must give the prescribed notice to the Registrar under section 26(2) of the Act within 10 working days of the issue of any shares.

(4) If the rights attached to the shares differ from those set out in clause 5, the notice must be accompanied by a document setting out the terms of issue of the shares.

8. Transferability of shares-The shares of the company are, subject to clauses 12(1) and 21(4) and their terms of issue, transferable by entry in the share register in accordance with clauses 21(1) to (3).

Share register

9. Company to keep share register-(1) The company must maintain a share register that records the shares issued by the company and states:

- (a) the names, alphabetically arranged, and the last known address of each person who is, or has within the last 7 years been, a shareholder; and
- (b) the number of shares of each class held by each shareholder within the last 7 years; and
- (c) the date of any -
 - (i) issue of shares to; or
 - (ii) repurchase or redemption of shares from; or
 - (iii) transfer of shares by or to,

each shareholder within the last 7 years, and in relation to the transfer, the name of the person to or from whom the shares were transferred.

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

(3) The company may appoint an agent to maintain the share register.

10. Form and location of share register -The share register must be kept:

- (a) in a form that complies with clause 65; and
- (b) at the company's registered office, or at any other place in Samoa notice of which has been given to the Registrar under section 119 of the Act.

11. Status of registered shareholder-(1) The company must treat the registered holder of a share as the only person entitled to:

- (a) exercise the right to vote attaching to the share; and
- (b) receive notices; and
- (c) receive a distribution in respect of the share; and
- (d) exercise the other rights and powers attaching to the share.

(2) If a joint holder of a share dies, the remaining holders must be treated by the company as the holders of that share.

(3) If the sole holder of a share dies, that shareholder's legal representative is the only person recognised by the company as having any title to or interest in the share.

(4) Any person who becomes entitled to a share as a consequence of the death, bankruptcy or insolvency or incapacity of a shareholder may be registered as the holder of that shareholder's shares on making a request in writing to the company to be so registered, accompanied by proof satisfactory to the directors of that entitlement.

Pre-emptive rights

12. Restriction on selling shares-(1) A shareholder is not entitled to sell or otherwise dispose of his or her shares in the company without first offering to sell them to the other holders of shares of the same class in accordance with the procedure set out in clauses 13 to 20, unless all the other shareholders agree otherwise.

(2) Any share transfer delivered to the company by a shareholder who has not complied with subclause (1) is of no effect, and the transfer must not be entered on the share register.

13 Selling shareholder to give written notice to company-A shareholder who wishes to dispose of some or all of his or her shares (selling shareholder) must give written notice to the company of:

- (a) the number of shares to be sold; and
- (b) the price at which the selling shareholder is willing to sell the shares.

14. Company to give written notice to shareholders-The company must within 10 working days give a copy of the written notice referred to in clause 13 to each shareholder, together with a notice advising each holder of shares of the same class:

- (a) that that shareholder is entitled to purchase a proportional number of the shares that the selling shareholder wishes to sell (rounded in an appropriate manner determined by the directors); and
- (b) that if that shareholder wishes to purchase those shares, he or she must give written notice to that effect to the company within 10 working days of the date of the notice.

15. Written notice is offer by selling shareholder - The notice referred to in clause 14 is deemed to be an offer by the selling shareholder to the recipient to sell the number of shares referred to in the notice at the price specified by the selling shareholder in the notice given under clause 13, on the terms set out in these rules.

16. Notice agreeing to purchase shares given within specified time - Subject to clause 19, if a notice is given by a shareholder within the specified time agreeing to purchase the shares offered to that shareholder in a notice given under clause 14:

- (a) there is deemed to be a contract between that shareholder and the selling shareholder for the sale and purchase of the relevant number of shares; and

- (b) the company must immediately advise the selling shareholder of the acceptance, and send him or her a copy of –
- (i) the notice given under clause 14 by the company; and
 - (ii) the notice of acceptance given by the shareholder in question.

17. Notice agreeing to purchase shares not given within specified time-(1) If any shareholder does not give notice agreeing to purchase the shares offered to that shareholder within the specified time, the shares that were offered to that shareholder must be offered to those shareholders who did accept the shares offered to them, on a fair and equitable basis determined by the directors.

(2) Clauses 15 and 16 apply to any notice given to a shareholder, and to any notice of acceptance given by a shareholder, under this clause.

18. No shareholder wishes to purchase selling shareholder's shares - If no shareholder wishes to purchase the selling shareholder's shares at the specified price, the selling shareholder may, at any time in the 12 months following the giving of notice by the selling shareholder, sell some or all of those shares to any other person at a price not less than the specified price.

19. Selling shareholder not obliged to sell some shares-
(1) The selling shareholder is not obliged to sell some only of the shares that he or she wishes to dispose of.

(2) In the event that the selling shareholder has not been notified under clause 16 of acceptances by other shareholders in respect of all the shares referred to in the notice given under clause 13 within 40 working days of the date on which that notice was given to the company, the selling shareholder may at his or her option give written notice to the company terminating the offer to sell the shares to the other shareholders.

(3) If such a notice is given, clause 18 applies as if no shareholder had wished to purchase the selling shareholder's shares.

20. Directors may require evidence of terms -The directors may require reasonable evidence of the terms (including price) on which the shares were sold to accompany any share transfer in respect of those shares.

Transfer of shares

21. Transfer of shares-(1) If shares are to be transferred, a form of transfer signed by the holder or by his or her agent or attorney must be delivered to the company.

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

(3) Subject to clause 12 and subclause (4), the company must immediately on receipt of a properly executed share transfer enter the name of the transferee in the share register as holder of the shares transferred.

(4) The directors may resolve to refuse to register a transfer of a share within 30 working days of receipt of the transfer, if any amount payable to the company by the shareholder is due but unpaid.

(5) If the directors resolve to refuse to register a transfer for this reason, they must give notice of the refusal to the shareholder within 5 working days of the date of the resolution.

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

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

(a) if the application relates to some but not all of the shares, separate the shares shown in the register as owned by the applicant into separate parcels;

1 parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares; and

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

(i) the name of the company; and

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

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

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

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

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

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

Meetings of shareholders

23. Meetings of shareholders-(1) Clauses 24 to 32 set out the procedure to be followed at and in relation to meetings of shareholders.

(2) A meeting of shareholders may determine its own procedure to the extent that it is not governed by these rules.

24. Notice of meetings-(1) Written notice of the time and place of a meeting of shareholders must be given to every shareholder entitled to receive notice of the meeting and to every director and any auditor of the company not less than 10 working days before the meeting.

- (2) The notice must set out:
- (a) the nature of the business to be transacted at the meeting in enough detail to enable a shareholder to form a reasoned judgment in relation to it; and
 - (b) the text of any special resolution to be submitted to the meeting.

(3) An irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver.

(4) An accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a shareholder does not invalidate the proceedings at that meeting.

(5) If a meeting of shareholders is adjourned for less than 30 working days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that is adjourned.

25. Methods of holding meetings -A meeting of shareholders may be held either:

- (a) by a number of shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

26. Quorum-(1) Subject to subclause (3), no business may be transacted at a meeting of shareholders if a quorum is not present.

(2) A quorum for a meeting of shareholders is present if shareholders or their proxies are present who are between them able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.

(3) If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the

same day in the following week at the same time and place, or to such other date, time and place as the directors may appoint.

(4) If, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders present or their proxies are a quorum.

27. Chairperson-(1) If the directors have elected a chairperson of the directors, and the chairperson of the directors is present at a meeting of shareholders, he or she must chair the meeting.

(2) If no chairperson of the directors has been elected or if, at any meeting of shareholders, the chairperson of the directors is not present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may choose 1 of their number to be chairperson of the meeting.

28. Voting-(1) In the case of a meeting of shareholders held under clause 25(a), unless a poll is demanded, voting at the meeting will take place by whichever of the following methods is determined by the chairperson of the meeting:

- (a) voting by voice; or
- (b) voting by show of hands.

(2) In the case of a meeting of shareholders held under clause 25(b), unless a poll is demanded, voting at the meeting will take place by shareholders signifying individually their assent or dissent by voice.

(3) A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with subclause (4).

(4) At a meeting of shareholders a poll may be demanded by:

- (a) not fewer than 5 shareholders having the right to vote on the question at the meeting; or
- (b) a shareholder or shareholders representing not less than 10% of the total voting rights of all shareholders having the right to vote on the question at the meeting.

(5) A poll may be demanded either before or after a vote is taken on a resolution.

(6) If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present and voting.

(7) The chairperson of a shareholders' meeting is not entitled to a casting vote.

29. Votes of joint shareholders – If 2 or more persons are registered as the holder of a share, the vote of the person named first in the share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

30. Proxies-(1) A shareholder may exercise the right to vote either by being present in person or by proxy.

(2) A proxy for a shareholder is entitled to attend and participate in a meeting of shareholders as if the proxy were the shareholder.

(3) A proxy must be appointed by notice in writing signed by the shareholder.

(4) The notice must state whether the appointment is for a particular meeting, or for a specified term.

(5) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is given to the company at least 24 hours before the start of the meeting.

31. Corporations may act by representatives-(1) A corporation that is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf by notice in writing signed by a director or secretary of the corporation.

(2) The notice must state whether the appointment is for a particular meeting, or for a specified term.

32. Minutes-(1) The directors must ensure that minutes are kept of all proceedings at meetings of shareholders.

(2) Minutes that have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings at the meeting.

Miscellaneous

33. Annual meetings and special meetings of shareholders-(1) Subject to subclause (3) and clause 34(3), the directors must call an annual meeting of the company to be held:

- (a) once in each calendar year; and
 - (b) not later than 5 months after the balance date of the company (or, if the time for completing the financial statements of the company has been extended under clause 70(1)(a), not later than 20 working days after the financial statements are required to be completed); and
 - (c) not later than 15 months after the previous annual meeting.
- (2) The meeting must be held on the date on which it is called to be held.
- (3) The company need not hold its first annual meeting in the calendar year of its incorporation, but must hold that meeting within 18 months of its incorporation.
- (4) A special meeting of shareholders entitled to vote on an issue:
- (a) may be called at any time by a director; and
 - (b) must be called by the directors on the written request of shareholders holding shares carrying together not less than 5% of the votes that may be cast on that issue.

34. Written resolutions of shareholders-(1) A resolution in writing signed by shareholders, who together hold not less than 75% of the votes entitled to be cast on that resolution at a meeting of shareholders, is as valid as if it had been passed at a meeting of those shareholders.

(2) Any such resolution may consist of several documents (including fax or other similar means of communication) in like form each signed or assented to by 1 or more shareholders.

(3) The company need not hold an annual meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with subclause (1).

(4) Within 5 working days of a resolution being passed under subclause (1), the company must send a copy of the resolution to every shareholder who did not sign it.

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

35. Voting in interest groups -If the company proposes to take action that affects the rights attached to shares within the meaning of section 54 of the Act, the action may not be taken unless it is approved by a special resolution of each interest group, as defined in section 54(3) of the Act.

36. Shareholders entitled to receive distributions-(1) The shareholders who are entitled to receive distributions are:

(a) if the directors fix a date for this purpose, those shareholders whose names are registered in the share register on that date:

(b) if the directors do not fix a date for this purpose, those shareholders whose names are registered in the share register on the day on which the distribution is approved.

(2) A date fixed under subclause (1) must not precede by more than 20 working days the date on which the proposed action will be taken.

37. Shareholders entitled to exercise pre-emptive rights - The shareholders who are entitled to pre-emptive rights to acquire shares in accordance with clause 12 are those shareholders whose names are registered in the share register on the day on which notice is given to the company by the selling shareholder under clause 13.

38. Shareholders entitled to attend and vote at meetings-
(1) The shareholders who are entitled to receive notice of a meeting of shareholders are:

- (a) if the directors fix a date for this purpose, those shareholders whose names are registered in the share register on that date;
 - (b) if the directors do not fix a date for this purpose, those shareholders whose names are registered in the share register at the close of business on the day immediately preceding the day on which the notice is given.
- (2) A date fixed under subclause (1)(a) must not precede by more than 30 working days the date on which the meeting is to be held.
- (3) Before a meeting of shareholders, the company may prepare a list of shareholders entitled to receive notice of the meeting, arranged in alphabetical order, and showing the number of shares held by each shareholder:
- (a) if a date has been fixed under subclause (1)(a), as at that date; or
 - (b) if no such date has been fixed, as at the close of business on the day immediately preceding the day on which the notice is given.
- (4) A person named in a list prepared under subclause (3) is entitled to attend the meeting and vote in respect of the shares shown opposite his or her name in person or by proxy, except to the extent that:
- (a) that person has, since the date on which the shareholders entitled to receive notice of the meeting were determined, transferred any of his or her shares to some other person; and
 - (b) the transferee of those shares has been registered as the holder of those shares, and has requested before the commencement of the meeting that his or her name be entered on the list prepared under subclause (3).
- (5) A shareholder may on 2 working days' notice examine any list prepared under subclause (3) during normal business hours at the registered office of the company.

39. Distributions to shareholders-(1) The company must not pay a dividend or make any other distribution to share

holders unless there are reasonable grounds for believing that, after that distribution is made:

- (a) the company will be able to pay its debts as they become due in the normal course of business; and
 - (b) the value of the company's assets will not be less than the value of its liabilities.
- (2) Subject to subclause (1) and to the terms of issue of any shares, the company may pay a dividend to shareholders:
- (a) of the same amount in respect of each share of the same class, if the payment of the dividend is authorised by the directors; or
 - (b) on any other basis, with the prior approval of all shareholders.
- (3) A distribution made in breach of subclauses (1) or (2) may be recovered by the company from the recipients or from the persons approving the distribution, in accordance with section 29 of the Act.

40 Company may acquire its own shares and provide financial assistance-(1) The company may agree to acquire its own shares from a shareholder:

- (a) with the prior approval of all shareholders; and
 - (b) subject to the solvency test in clause 39(1).
- (2) If the company acquires its own shares, those shares are deemed to be cancelled immediately on acquisition.
- (3) The company may give financial assistance to a person for the purpose of, or in connection with, the purchase of a share issued or to be issued by the company, whether directly or indirectly, only if:
- (a) after providing the assistance, the company will satisfy the solvency test in clause 39(1); and
 - (b) all shareholders have approved the giving of the assistance.

41. Annual report to shareholders-(1) Subject to subclause (2), the directors of the company must, within 20 working days after the date on which the company is required to complete its financial statements under section 130:

- (a) prepare an annual report on the affairs of the company during the accounting period ending on that date; and
 - (b) send a copy of that report to each shareholder.
- (2) The directors are only required to prepare an annual report in respect of an accounting period if a shareholder has given written notice to the company before the end of that accounting period requiring such a report to be prepared.
- (3) If the directors are not required to prepare an annual report in respect of an accounting period, they must send a notice to each shareholder to that effect within the period referred to in subclause (1).
- (4) Every annual report for the company must:
- (a) be in writing and be dated; and
 - (b) include financial statements for the accounting period that comply with section 130; and
 - (c) if an auditor's report is required in relation to the financial statements included in the report, include that auditor's report; and
 - (d) state the names of the persons holding office as directors of the company as at the end of the accounting period and the names of any persons who ceased to hold office as directors of the company during the accounting period; and
 - (e) contain any other information that may be required by regulations made under the Act; and
 - (f) be signed on behalf of the directors by 2 directors of the company or, if the company has only 1 director, by that director.

42. Deemed approval by all shareholders for certain purposes -For the purposes of clauses 6,7(2), and 40(1) and (3), a decision is deemed to have been approved by all shareholders if:

- (a) notice of the proposed decision has been given to all shareholders in accordance with clause 75; and
- (b) no shareholder has responded within 10 working days objecting to that decision; and

- (c) shareholders entitled to cast not less than 75% of the votes in relation to a resolution to alter these rules have responded within 10 working days approving that decision.

Part 3 Directors

43. Appointment and removal of directors-(1) The shareholders may by ordinary resolution fix the number of directors of the company.

(2) A director may be appointed or removed by ordinary resolution passed at a meeting called for the purpose, or by a written resolution in accordance with clause 34(1).

(3) A director vacates office if he or she:

- (a) is removed from office in accordance with subclause (2); or
- (b) resigns in accordance with clause 44; or
- (c) becomes disqualified from being a director under section 85 of the Act; or
- (d) dies.

44. Resignation of director-(1) A director may resign by delivering a signed written notice of resignation to the registered office of the company.

(2) Subject to subclauses (3) and (4), a notice of resignation is effective when it is received at the registered office, or at any later time specified in the notice.

(3) If the company has only 1 director, that director may not resign:

- (a) until that director has called a meeting of shareholders to receive notice of the resignation; or
- (b) if the company has only 1 shareholder, until that director has given not less than 10 working days' notice of the resignation to that shareholder.

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

- (a) the time and date for which the meeting of shareholders is called under subclause (3)(a); or
- (b) if the company has only 1 shareholder, 10 working days after notice of the resignation has been given to that shareholder.

45. Notice of change in directors-(1) The company must ensure that notice in the prescribed form of the following is delivered to the Registrar:

- (a) a change in the directors of the company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both;
- (b) a change in the name or the residential address of a director of the company.

(2) In the case of the appointment of a new director, a consent by that person to act as a director, in the prescribed form, must also be delivered to the Registrar.

46. Powers and duties of directors-(1) Subject to section 50 of the Act (which relates to major transactions) the business and affairs of the company must be managed by, or under the direction or supervision of, the directors.

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

(3) The directors may delegate any of their powers to a committee of directors, or to a director or employee.

(4) The directors must monitor, by means of reasonable methods properly used, the exercise of powers by any delegate.

(5) The provisions of these rules relating to proceedings of the directors also apply to proceedings of any committee of directors, except to the extent the directors determine otherwise.

(6) The directors have the duties set out in the Act, and, in particular:

- (a) each director must act in good faith and in a manner that the director believes to be in the interests of the company; and

- (b) a director must not act, or agree to the company acting, in a manner that contravenes the Act or these rules.

47. Standard of care of directors - A director of the company, when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances taking into account, but without limitation:

- (a) the nature of the company; and
- (b) the nature of the decision; and
- (c) the position of the director and the nature of the responsibilities undertaken by him or her.

48. Obligations of directors in connection with insolvency-(1) A director of the company must call a meeting of directors within 10 working days to consider whether the directors should appoint an administrator or liquidator, in accordance with section 71 of the Act, if the director:

- (a) believes that the company is unable to pay its debts as they fall due; or
- (b) is aware of matters that would put any reasonable person on inquiry as to whether the company is unable to pay its debts as they fall due.

(2) At a meeting called under section 71 of the Act the directors must consider whether to:

- (a) appoint an administrator or liquidator; or
- (b) continue to carry on the business of the company.

49. Interested directors-(1) A director must not exercise any power as a director in circumstances where that director is directly or indirectly materially interested in the exercise of that power unless:

- (a) the Act expressly authorises the director to exercise the relevant power despite such an interest; or
- (b) the director has reasonable grounds for believing that the company will satisfy the solvency test after that power is exercised, and either -

(i) these rules expressly authorise the director to exercise the relevant power despite such an interest; or

(ii) the matter in question has been approved by shareholders under section 51 of the Act, following disclosure of the nature and extent of the director's interest to all shareholders who are not otherwise aware of those matters.

(2) A director who is directly or indirectly materially interested in any transaction or proposed transaction must, within 10 working days of becoming aware of that interest, disclose the nature and extent of that interest in writing:

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

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

(3) A director may give a general disclosure in writing to all other shareholders that the director is a director or employee or shareholder of another company, or is otherwise associated with another company or another person. That general disclosure is a sufficient disclosure of the director's interest in any transaction entered into with that other company or person for the purposes of subclause (2).

(4) A transaction entered into by the company in which a director is directly or indirectly materially interested is voidable at the election of the company in accordance with section 111 of the Act.

(5) A transaction entered into by the company as the result of action taken by a director in breach of sections 65, 66, or 67 of the Act is voidable at the option of the company in accordance with section 112 of the Act.

50. Use and disclosure of company information-(1) A director of the company who has information in his or her capacity as a director or employee of the company, being information that would not otherwise be available to him or her,

must not disclose that information to any person, or make use of or act on the information, except:

- (a) in the interests of the company; or
 - (b) as required by law; or
 - (c) if there are reasonable grounds for believing that the company will satisfy the solvency test after the director takes that action, and that action -
 - (i) is approved by all shareholders under section 51 of the Act; or
 - (ii) is authorised by any contract of employment entered into between that director and the company, the relevant terms of which have been approved by shareholders by ordinary resolution.
- (2) No director may vote on a resolution to approve such terms in relation to himself or herself.

51. Indemnities and insurance for directors or employees-(1) Subject to section 74 of the Act, the company may provide an indemnity or purchase insurance for a director of the company or of a related company with the approval of:

- (a) shareholders by ordinary resolution.; or
 - (b) all shareholders under section 51 of the Act.
- (2) No director may vote on a resolution concerning an indemnity or insurance to be provided for the director.
- (3) In this clause, -
- “director” includes:
- (a) a person who is liable under any of sections 65 to 67 of the Act by virtue of section 73 of the Act; and
 - (b) a former director,
- “indemnify” includes relieve or excuse from liability, whether before or after the liability arises; and
- “indemnity” has a corresponding meaning.

52. Remuneration of directors-(1) Directors may receive remuneration and other benefits from the company with the approval of:

- (a) shareholders by ordinary resolution.; or
- (b) all shareholders under section 51 of the Act.

(2) No director may vote on a resolution concerning remuneration or benefits to be received by the director.

53. Procedure at meetings of directors-(1) Clauses 54 to 60 set out the procedure to be followed at meetings of directors.

(2) A meeting of directors may determine its own procedure to the extent that it is not governed by these rules.

54. Chairperson-(1) The directors may elect 1 of their number as chairperson of directors and may determine the period for which the chairperson is to hold office.

(2) If no chairperson is elected, or if at a meeting of the directors the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the directors present may choose 1 of their number to be chairperson of the meeting.

55. Notice of meeting-(1) A director or, if requested by a director to do so, an employee of the company, may convene a meeting of directors by giving notice in accordance with this clause.

(2) Not less than 24 hours notice of a meeting of directors must be given to every director who is in Samoa, or who can readily be contacted outside Samoa.

(3) An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity, or if all directors entitled to receive notice of the meeting agree to the waiver.

56. Methods of holding meetings - A meeting of directors may be held either:

- (a) by a number of the directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all directors participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

57. Quorum-(1) A quorum for a meeting of directors is a majority of the directors.

(2) No business may be transacted at a meeting of directors if a quorum is not present.

58. Voting-(1) Every director has 1 vote.

(2) The chairperson has a casting vote.

(3) A resolution of the directors is passed if it is agreed to by all directors present without dissent, or if a majority of the votes cast on it are in favour of it.

(4) A director present at a meeting of directors is presumed to have agreed to, and to have voted in favour of, a resolution of the directors unless he or she expressly dissents from or votes against the resolution at the meeting.

59. Minutes-The directors must ensure that minutes are kept of all proceedings at meetings of the directors.

60. Unanimous resolution-(1) A resolution in writing signed or assented to by all directors is as valid and effective as if it had been passed at a meeting of the directors duly convened and held.

(2) Any such resolution may consist of several documents (including fax or other similar means of communication) in like form each signed or assented to by 1 or more directors.

(3) A copy of any such resolution must be entered in the minute book of the directors' proceedings.

61. Managing director and other executive directors-(1) The directors may, from time to time, appoint a director as managing director for such period and on such terms as they think fit.

(2) Subject to the terms of a managing director's appointment, the directors may at any time cancel the appointment of a director as managing director.

(3) A director who holds office as managing director ceases to hold office as managing director if he or she ceases to be a director of the company.

62. Delegation to managing director-(1) The directors may delegate to the managing director, subject to any conditions or restrictions that they consider appropriate, any of their powers that can be lawfully delegated.

(2) Any such delegation may at any time be withdrawn or varied by the directors.

(3) The delegation of a power of the directors to the managing director does not prevent the exercise of the power by the directors, unless the terms of the delegation expressly provide otherwise.

63. Remuneration of managing director and director-(1) Subject to shareholder approval in accordance with clause 52, the managing director, or a director (other than the managing director) who is employed by the company, may be paid such remuneration as he or she may agree with the directors.

(2) The remuneration may be by way of salary, commission, participation in profits or any combination of these methods, or any other method of fixing remuneration.

Part 4 **Company records**

64. Company records-(1) The company must keep all the following documents at its registered office or at some other place notice of which has been given to the Registrar in accordance with section 119 of the Act:

- (a) the rules of the company;
- (b) minutes of all meetings and resolutions of shareholders within the last 7 years;
- (c) minutes of all meetings and resolutions of directors and directors' committees within the last 7 years;
- (d) the full names and residential and postal addresses of the current directors;
- (e) copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports made under section 56 of the Act;

- (f) copies of all financial statements required to be completed under section 130 of the Act for the last 7 completed accounting periods of the company;
 - (g) the accounting records required by section 129 of the Act for the current accounting period and for the last 7 completed accounting periods of the company;
 - (h) the share register.
- (2) The references in subclause (1)(b), (c), and (e) to 7 years and the references in subclause (1)(f) and (g) to 7 completed accounting periods include such lesser periods as the Registrar may approve by notice in writing to the company, in accordance with section 117(2) of the Act.

65. Form of records-(1) The records of the company must be kept:

- (a) in written form; or
 - (b) in a form or in a manner that allows the documents and information that comprise the records to be readily accessible so as to be usable for subsequent reference, and convertible into written form.
- (2) The directors must ensure that adequate measures exist to:
- (a) prevent the records being falsified; and
 - (b) detect any falsification of them.

66. Access to records-(1) The directors of the company are entitled to access to the company's records in accordance with section 120 of the Act.

- (2) A shareholder of the company is entitled:
- (a) to inspect the documents referred to in section 121 of the Act, in the manner specified in section 123 of the Act; and
 - (b) to require copies of or extracts from any document that he or she may inspect within 5 working days of making a request in writing for the copy or

extract, on payment of any reasonable copying and administration fee prescribed by the company.

(3) The fee may be determined by any director, subject to any directions from the directors.

67. Documents to be sent to Registrar-In addition to any annual return required under section 124 of the Act, the company must send all the following documents to the Registrar under the Act:

- (a) notice of the adoption of new rules by the company, or the alteration of the rules of the company, under section 14 of the Act;
- (b) notice of a change in the registered office or postal address of the company under section 18 of the Act;
- (c) notice of the issue of shares by the company, under section 26 of the Act;
- (d) notice of the acquisition by the company of its own shares, under section 31 of the Act;
- (e) notice of the redemption of a share, under section 35 of the Act;
- (f) notice of a change in the directors of the company, or of a change in the name or residential address or postal address of a director, under section 88 of the Act;
- (g) notice of the making of an order under section 102 of the Act altering or adding to the rules of a company;
- (h) notice of any place other than the registered office of the company where records are kept, or of any change in the place where records are kept, under section 119 of the Act;
- (i) documents requested by the Registrar under section 312 of the Act.

68. Documents to be sent to shareholders-In addition to any annual report required under section 56 of the Act, the company must send all the following documents to shareholders under the Act:

- (a) notice of any repurchase of shares to which section 31(4) of the Act applies;
- (b) notice of a written resolution approved under section 52 of the Act;
- (c) financial statements required to be sent under section 130 of the Act;
- (d) any written statement by an auditor under section 136 of the Act;
- (e) any report by an auditor under section 138 of the Act.

Part 5

Accounts and audit

69. Accounting records to be kept-(1) The directors of the company must cause accounting records to be kept that:

- (a) correctly record and explain the transactions of the company; and
- (b) will at any time enable the financial position of the company to be determined with reasonable accuracy; and
- (c) will enable the directors to ensure that the financial statements of the company comply with section 130 of the Act; and
- (d) will enable the financial statements of the company to be readily and properly audited.

(2) Without limiting clause 68, the accounting records must contain:

- (a) entries of money received and spent each day and the matters to which it relates; and
- (b) a record of the assets and liabilities of the company; and
- (c) if the company's business involves dealing in goods:
 - (i) a record of goods bought and sold, and relevant invoices;

- (ii) a record of stock held at the end of the financial year together with records of any stocktakings during the year; and
 - (d) if the company's business involves providing services, a record of services provided and relevant invoices.
- (3) If the company sells goods or provides services for cash in the ordinary course of carrying on a retail business, -
 - (a) invoices need not be kept in respect of each retail transaction for the purposes of subclause (2); and
 - (b) a record of the total money received each day in respect of the sale of goods or provision of services, as the case may be, is sufficient to comply with subclause (2) in respect of those transactions.
- (4) The accounting records must be kept:
 - (a) in a form permitted under clause 65; and
 - (b) at the registered office of the company, or any other place permitted under section 119 of the Act.

70. Financial statements to be prepared-(1) The directors must ensure that:

- (a) within 4 months after the balance date of the company, or with the approval of shareholders by special resolution, within an extended period not exceeding 7 months after the balance date of the company, financial statements that comply with subclause (2) are completed in relation to the company and that balance date; and
 - (b) within 20 working days of the date on which the financial statements must be completed under paragraph (a), those financial statements are sent to all shareholders. This requirement may be satisfied by sending the financial statements to shareholders in an annual report, in accordance with section 56 of the Act.
- (2) The financial statements of the company must:
- (a) give a true and fair view of the matters to which they relate; and

- (b) comply with any applicable regulations made under the Act; and
 - (c) be dated and signed on behalf of the directors by 2 directors of the company, or, if the company has only 1 director, by that director.
- (3) The following periods must not exceed 15 months:
- (a) the period between the date of incorporation of the company and its first balance date:
 - (b) the period between any 2 balance dates of the company.
- (4) In this clause, financial statements, in relation to the company and a balance date, means:
- (a) a statement of financial position for the entity as at the balance date; and
 - (b) in the case of -
 - (i) a company trading for profit, a statement of financial performance for the company in relation to the accounting period ending at the balance date; and
 - (ii) a company not trading for profit, an income and expenditure statement for the company in relation to the accounting period ending at the balance date; and
 - (c) if required by regulations made under the Act, a statement of cash flows for the company in relation to the accounting period ending on the balance date; and
 - (d) such other financial statements in relation to the company or any group of companies of which it is the holding company as may be required by regulations made under the Act; and
 - (e) any notes or documents giving information relating to the statement of financial position and other statements.

71. Appointment of auditor-(1) If required to do so under subclause (2), the company must appoint an auditor who is qualified to hold that office under section 135 of the Act to:

- (a) audit the financial statements of the company in respect of an accounting period; and
 - (b) hold office until those financial statements have been audited in accordance with the Act or until he or she ceases to hold office under subclause (3).
- (2) The company must appoint an auditor within 30 working days if:
- (a) a shareholder or shareholders holding shares that together carry the right to receive more than 20% of distributions made by the company give written notice to the company before the end of an accounting period requiring the financial statements of the company for that period to be audited; or
 - (b) a vacancy in the office of auditor arises before the financial statements in respect of a period for which an audit is required have been audited.
- (3) An auditor ceases to hold office if he or she:
- (a) resigns by delivering a written notice of resignation to the registered office of the company not less than 20 working days before the date on which the notice is expressed to be effective; or
 - (b) is replaced as auditor by an ordinary resolution appointing another person as auditor in his or her place, following notice to the auditor in accordance with section 133 of the Act; or
 - (c) becomes disqualified from being the auditor of the company under section 135; or
 - (d) dies; or
 - (e) is adjudged to be mentally defective under the Mental Health Ordinance 1961; or
 - (f) ceases to hold office under subclause (5); or
 - (g) is removed by all shareholders in accordance with subclause (6).
- (4) An auditor may be appointed:
- (a) by ordinary resolution; or

- (b) if the office of auditor is vacant, by the directors. If an auditor is appointed by the directors, the directors must within 10 working days give notice of the appointment to all shareholders.
- (5) If the company is required to appoint an auditor in respect of an accounting period but is not required to do so in respect of a subsequent accounting period:
 - (a) the audit of the financial statements of the company for the accounting period in respect of which an audit is required must be completed in accordance with this section; and
 - (b) the directors may give notice to all shareholders within 4 months of the commencement of a subsequent accounting period that the company is no longer required to appoint an auditor, and that the auditor will cease to hold office unless a notice is given by shareholders under subclause (2)(a) by a date specified in the notice, which must be not less than 30 working days from the date on which the notice is given; and
 - (c) if a notice has been given under paragraph (b), and no notice under subclause (2)(a) is received by the company by the date specified in that notice, the auditor ceases to hold office on the later of -
 - (i) the date specified in the notice; or
 - (ii) the date on which the audit of the financial statements of the company for the previous accounting period is completed.
- (6) Despite the other provisions of this clause, all shareholders may agree in writing:
 - (a) to dispense with an audit for any accounting period; and
 - (b) to remove the auditor of the company.
- (7) The fees payable to the auditor must be agreed between the auditor and the directors.

72. Auditor's attendance at shareholders' meeting-The directors must ensure that an auditor of the company:

- (a) is permitted to attend a meeting of shareholders of the company; and
- (b) receives the notices and communications that a shareholder is entitled to receive relating to meetings and resolutions of shareholders; and
- (c) may be heard at a meeting of shareholders that he or she attends on any part of the business of the meeting that concerns him or her as auditor.

Part 6

Liquidation and removal from register

73. Resolution to appoint liquidator-(1) The shareholders may resolve to liquidate the company by special resolution.

(2) The directors may resolve to liquidate the company at a meeting called under section 71 of the Act, if they consider that the company is unable to meet its debts as they become due in the normal course of business.

74. Distribution of surplus assets-(1) The surplus assets of the company available for distribution to shareholders after all creditors of the company have been paid must be distributed in proportion to the number of shares held by each shareholder, subject to the terms of issue of any shares.

(2) The liquidator may, with the approval of a special resolution, distribute the surplus assets of the company among the shareholders in kind. For this purpose the liquidator may set such value as he or she considers fair on any property to be divided, and may determine how the division will be carried out as between the shareholders or different classes of shareholders.

Part 7

Miscellaneous

75. Service of documents on shareholders-(1) A notice, statement, report, accounts, or other document to be sent to a shareholder who is a natural person may be:

- (a) delivered to that person; or
- (b) posted to that person's postal address; or

(c) faxed to a fax number used by that person.

(2) A notice, statement, report, accounts, or other document to be sent to a shareholder that is a company or an overseas company may be sent by any of the methods of serving documents referred to in sections 345 or 347 of the Act, as the case may be.

76. Interpretation-(1) In these rules, Act means the Companies Act 2001.

(2) Unless the context otherwise requires, any term or expression that is defined in the Act or any regulations made under the Act and used, but not defined, in these rules has the same meaning as in the Act or the regulations.

Schedule 3

ss 2(2)(a), 3(b), 14(1)(b), 15(3), 334(3),
cl. 1 of Schedule 1

Model rules for single shareholder company

Contents

| | |
|---------------------------------------|--|
| Part 1 | |
| General provisions | |
| 1 Name of company | 10 Shareholder decisions and exercise of shareholder powers |
| 2 Private company with 1 shareholder | 11 Distributions to shareholders |
| 3 Rules | 12 Company may acquire its own shares and provide financial assistance |
| | 13 Annual report to shareholders |
| Part 2 | |
| Shares and shareholder | |
| 4 Shares | Part 3 |
| 5 Company to keep share register | Directors |
| 6 Form and location of share register | 14 Appointment and removal of directors |
| 7 Status of registered shareholder | 15 Powers and duties of directors |
| 8 Transfer of shares | 16 Standard of care of directors |
| 9 Share certificates | 17 Obligations of directors in connection with insolvency |

| | |
|---|---|
| 18 Interested directors | 35 Documents to be sent to shareholder |
| 19 Use and disclosure of company Information | |
| 20 Indemnities and insurance for directors or employees | Part 5 Accounts and audit |
| 21 Remuneration of directors | 36 Accounting records to be kept |
| 22 Procedure at meetings of directors | 37 Financial statements to be prepared |
| 23 Chairperson | 38 Appointment of auditor |
| 24 Notice of meeting | 39 Auditor's attendance at shareholder's meeting |
| 25 Methods of holding meetings | |
| 26 Quorum | |
| 27 Voting | |
| 28 Minutes | Part 6 Liquidation and removal from register |
| 29 Unanimous resolution | |
| 30 Managing director and other executive Directors | 40 Resolution to appoint liquidator |
| | 41 Distribution of surplus assets |
| Part 4 Company records | Part 7 Miscellaneous |
| 31 Company records | |
| 32 Form of records | |
| 33 Access to records | 42 Service of documents on shareholder |
| 34 Documents to be sent to Registrar | 43 Interpretation |

Part 1 General provisions

1. Name of company-(1) The name of the company at the time of registration under the Act appears on the application for registration or for re-registration, as the case may be.

(2) The name of the company may be changed in accordance with section 11 of the Act only with the prior approval of the shareholder.

2. Private company with 1 shareholder-(1) The company is a private company.

(2) The company must not offer any of its shares or other securities to the public.

(3) The company has 1 shareholder.

(4) These rules are designed for a company with 1 shareholder: if the company proposes to increase the number of shareholders, it must first adopt new rules.

(5) The company must not have more than 1 shareholder.

(6) If a share transfer is presented to the company for entry on the share register that would result in a breach of this restriction, the directors must decline to register the transfer.

3. Rules-(1) The company may adopt new rules in place of these rules by special resolution, in accordance with section 14(2) of the Act.

(2) Subject to the Act:

(a) these rules have effect and may be enforced as if they constituted a contract -

(i) between the company and the shareholder;
and

(ii) between the company and each director; and

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

Part 2

Shares and shareholder

4. Shares-(1) At the time of registration under the Act the company has the number of shares specified in the application for registration or re-registration, as the case may be.

(2) If the company was first registered under Part 2 of the Act, the company must immediately after its registration issue to the person named in the application for registration as the shareholder the number of shares specified in the application as being the number of shares to be issued to that person.

(3) With the prior approval of the shareholder, the company may:

(a) issue shares to the shareholder; and

(b) issue more than 1 class of shares.

(4) If the company issues shares, it must give the prescribed notice to the Registrar under section 26(2) of the Act within 10 working days of the issue of any shares.

(5) If the rights attached to the shares differ from those set out in section 23 of the Act, the notice must be accompanied by a document setting out the terms of issue of the shares.

(6) The shares of the company are, subject to clause 8(4) and their terms of issue, transferable by entry in the share register in accordance with clause 8(1) to (3).

5. Company to keep share register-(1) The company must maintain a share register that records the shares issued by the company and states:

- (a) the names, alphabetically arranged, and the latest known address of each person who is, or has within the last 7 years been, a shareholder; and
- (b) the number of shares of each class held by each shareholder within the last 7 years; and
- (c) the date of any -
 - (i) issue of shares to; or
 - (ii) repurchase or redemption of shares from; or
 - (iii) transfer of shares by or to,

each shareholder within the last 7 years, and in relation to the transfer, the name of the person to or from whom the shares were transferred.

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

(3) The company may appoint an agent to maintain the share register.

6. Form and location of share register -The share register must be kept:

- (a) in a form that complies with clause 32; and
- (b) at the company's registered office, or at any other place in Samoa notice of which has been given to the Registrar under section 119 of the Act.

7. Status of registered shareholder-(1) The company must treat the registered holder of a share as the only person entitled to:

- (a) exercise the right to vote attaching to the share; and
- (b) receive notices; and
- (c) receive a distribution in respect of the share; and
- (d) exercise the other rights and powers attaching to the share.

(2) If a shareholder dies, that shareholder's legal representative is the only person recognised by the company as having any title to or interest in the share.

(3) Any person who becomes entitled to a share as a consequence of the death, bankruptcy or insolvency or incapacity of a shareholder may be registered as the holder of that shareholder's shares on making a request in writing to the company to be so registered, accompanied by proof satisfactory to the directors of that entitlement.

8. Transfer of shares-(1) If shares are to be transferred, a form of transfer signed by the holder or by his or her agent or attorney must be delivered to the company.

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

(3) Subject to subclause (4), the company must, immediately on receipt of a properly executed share transfer, enter the name of the transferee in the share register as holder of the shares transferred.

(4) The directors may resolve to refuse to register a transfer of a share within 30 working days of receipt of the transfer, if any amount payable to the company by the shareholder is due but unpaid.

(5) If the directors resolve to refuse to register a transfer under subclause (4), they must give notice of the refusal to the shareholder within 5 working days of the date of the resolution.

9. Share certificates-(1) The shareholder may apply to the company for a share certificate relating to some or all of the shareholder's shares in the company.

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

- (a) if the application relates to some but not all of the shares, separate the shares shown in the register as owned by the shareholder into separate parcels; 1 parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares; and
- (b) in all cases send to the shareholder a certificate stating -
 - (i) the name of the company; and
 - (ii) the class of shares held by the shareholder; and
 - (iii) the number of shares held by the shareholder to which the certificate relates.

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

- (a) the share certificate relating to the share; or
- (b) evidence as to its loss or destruction and, if required, an indemnity in a form determined by the directors.

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

10. Shareholder decisions and exercise of shareholder powers - A resolution in writing signed by the shareholder is as valid as if it had been passed at a meeting of shareholders.

11. Distributions to shareholders-(1) The payment of a dividend or the making of any other distribution must be approved by the shareholder.

(2) The company must not make a distribution to the shareholder unless there are reasonable grounds for believing that, after that distribution is made:

- (a) the company will be able to pay its debts as they become due in the normal course of business; and
- (b) the value of the company's assets will not be less than the value of its liabilities.

(3) A distribution made in breach of subclause (2) may be recovered by the company from the shareholder, in accordance with section 29 of the Act.

12. Company may acquire its own shares and provide financial assistance-(1) The company may agree to acquire its own shares from the shareholder, subject to the solvency test in clause 11(2).

(2) If the company acquires its own shares, those shares are deemed to be cancelled immediately on acquisition.

(3) The company may give financial assistance to the shareholder for the purpose of, or in connection with, the purchase of a share issued or to be issued by the company, whether directly or indirectly, only if after providing the assistance the company will satisfy the solvency test in clause 11(2).

13. Annual report to shareholders - The directors of the company are not required to prepare an annual report in respect of any accounting period, unless requested to do so by the shareholder by notice in writing.

Part 3 Directors

14. Appointment and removal of directors-(1) The shareholder may fix the number of directors of the company by notice in writing to the company.

(2) A director may be appointed or removed by the shareholder by notice in writing to the company.

(3) A director vacates office if he or she:

- (a) is removed from office in accordance with subclause (2); or
- (b) resigns in accordance with subclause (4); or
- (c) becomes disqualified from being a director under section 85 of the Act; or
- (d) dies.

(4) A director may resign by delivering a signed written notice of resignation to the registered office of the company and to the shareholder. Subject to subclause (5), the notice is effective when it is received at the registered office, or at any later time specified in the notice.

(5) If the company has only 1 director, that director may not resign until that director has given not less than 10 working days written notice of the resignation to the shareholder. A notice of resignation given by the sole director of the company does not take effect, despite its terms, until the earlier of:

- (a) the expiry of 10 working days after written notice of the resignation has been given to the shareholder;
- or
- (b) the appointment of another director of the company.

(6) The company must ensure that notice in the prescribed form of all the following is delivered to the Registrar:

- (a) a change in the directors of the company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both;
- (b) a change in the name or the residential address of a director of the company.

(7) In the case of the appointment of a new director, a consent by that person to act as a director, in the prescribed form, must also be delivered to the Registrar.

15. Powers and duties of directors-(1) The business and affairs of the company must be managed by, or under the direction or supervision of, the directors subject to:

- (a) section 50 of the Act, which relates to major transactions; and
- (b) any directions given to the board in writing by the shareholder.

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

(3) The directors may delegate to a committee of directors, or to a director or employee, any of their powers. The directors must monitor, by means of reasonable methods properly used, the exercise of powers by any delegate.

(4) The provisions of these rules relating to proceedings of the directors also apply to proceedings of any committee of directors, except to the extent the directors determine otherwise.

(5) The directors have the duties set out in the Act, and, in particular:

- (a) each director must act in good faith and in a manner that the director believes to be in the interests of the company; and
- (b) a director must not act, or agree to the company acting, in a manner that contravenes the Act or these rules.

16. Standard of care of directors - A director of the company, when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances taking into account, but without limitation:

- (a) the nature of the company; and
- (b) the nature of the decision; and
- (c) the position of the director and the nature of the responsibilities undertaken by him or her.

17. Obligations of directors in connection with insolvency-(1) A director of the company must call a meeting of directors within 10 working days to consider whether the directors should appoint an administrator or liquidator, in accordance with section 71 of the Act, if the director:

- (a) believes that the company is unable to pay its debts as they fall due; or
- (b) is aware of matters that would put any reasonable person on inquiry as to whether the company is unable to pay its debts as they fall due.

(2) At a meeting called under section 71 of the Act the directors must consider whether to:

- (a) appoint an administrator or liquidator; or
- (b) continue to carry on the business of the company.

18. Interested directors-(1) A director must not exercise any power as a director in circumstances if that director is directly or indirectly materially interested in the exercise of that power unless the matter in question has been approved by the shareholder.

(2) A transaction entered into by the company in which a director is directly or indirectly materially interested is voidable at the election of the company in accordance with section 111 of the Act.

(3) A transaction entered into by the company as the result of action taken by a director in breach of sections 65, 66, or 67 of the Act is voidable at the option of the company in accordance with section 112 of the Act.

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

- (a) in the interests of the company; or
- (b) as required by law; or
- (c) to the shareholder; or
- (d) if there are reasonable grounds for believing that the company will satisfy the solvency test after the director takes that action, and that action -
 - (i) is approved by the shareholder; or
 - (ii) is authorised by any contract of employment entered into between that director and the company, the relevant terms of which have been approved by the shareholder.

20. Indemnities and insurance for directors or employees-(1) Subject to section 74 of the Act, the company may provide an indemnity or purchase insurance for a director of the company or of a related company with the approval of the shareholder.

(2) In subclause (1), -

“director” includes:

(a) a person who is liable under any of sections 65 to 71 of the Act by virtue of section 73 of the Act; and

(b) a former director.

“indemnify” includes relieve or excuse from liability, whether before or after the liability arises; and

“indemnity” has a corresponding meaning.

21. Remuneration of directors - Directors may receive remuneration and other benefits from the company with the approval of the shareholder.

22. Procedure at meetings of directors-(1) Clauses 23 to 29 set out the procedure to be followed at meetings of directors.

(2) A meeting of directors may determine its own procedure to the extent that it is not governed by these rules.

23. Chairperson-(1) The shareholder may appoint a director as chairperson of directors and may determine the period for which the chairperson is to hold office.

(2) If no chairperson is appointed, or if at a meeting of the directors the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the directors present may choose 1 of their number to be chairperson of the meeting.

24. Notice of meeting-(1) A director or, if requested by a director to do so, an employee of the company, may convene a meeting of directors by giving notice in accordance with this clause.

(2) Not less than 24 hours notice of a meeting of directors must be given to every director who is in Samoa, or who can readily be contacted outside Samoa.

(3) An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity, or if all directors entitled to receive notice of the meeting agree to the waiver.

25. Methods of holding meetings - A meeting of directors may be held either:

- (a) by a number of the directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all directors participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

26. Quorum-(1) A quorum for a meeting of directors is a majority of the directors.

(2) No business may be transacted at a meeting of directors if a quorum is not present.

27. Voting-(1) Every director has 1 vote.

(2) The chairperson has a casting vote.

(3) A resolution of the board is passed if it is agreed to by all directors present without dissent, or if a majority of the votes cast on it are in favour of it.

(4) A director present at a meeting of directors is presumed to have agreed to, and to have voted in favour of, a resolution of the directors unless he or she expressly dissents from or votes against the resolution at the meeting.

28. Minutes - The directors must ensure that minutes are kept of all proceedings at meetings of the directors.

29. Unanimous resolution-(1) A resolution in writing signed or assented to by all directors is as valid and effective as if it had been passed at a meeting of the directors duly convened and held.

(2) Any such resolution may consist of several documents (including fax or other similar means of communication) in like form each signed or assented to by 1 or more directors.

(3) A copy of any such resolution must be entered in the minute book of the directors' proceedings.

30. Managing director and other executive directors-(1)

The shareholder may from time to time appoint a director as managing director for such period and on such terms as the shareholder thinks fit.

(2) The remuneration of the managing director must be approved by the shareholder.

(3) Subject to the terms of a managing director's appointment, the shareholder may at any time cancel the appointment of a director as managing director.

(4) A director who holds office as managing director ceases to hold office as managing director if he or she ceases to be a director of the company.

(5) The directors may, with the prior approval of the shareholder, delegate to the managing director, subject to any conditions or restrictions that they consider appropriate, any of their powers that can be lawfully delegated.

(6) Any such delegation may at any time be withdrawn or varied by the directors. The delegation of a power of the directors to the managing director does not prevent the exercise of the power by the directors, unless the terms of the delegation expressly provide otherwise.

(7) A director other than the managing director who is employed by the company may be paid such remuneration as may be approved by the shareholder.

Part 4

Company records

31 Company records-(1) The company must keep all the following documents at its registered office or at some other place notice of which has been given to the Registrar in accordance with section 119 of the Act:

- (a) the rules of the company;
 - (b) minutes of all meetings and resolutions of shareholders within the last 7 years;
 - (c) minutes of all meetings and resolutions of directors and directors' committees within the last 7 years;
 - (d) the full names and residential and postal addresses of the current directors;
 - (e) copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports made under section 56 of the Act;
 - (f) copies of all financial statements required to be completed under section 130 for the last 7 completed accounting periods of the company;
 - (g) the accounting records required by section 129 for the current accounting period and for the last 7 completed accounting periods of the company
 - (h) the share register.
- (2) The references in subclause (1)(b), (c), and (e) to 7 years and the references in subclause (1)(f) and (g) to 7 completed accounting periods include such lesser periods as the Registrar may approve by notice in writing to the company, in accordance with section 117(2) of the Act.

32. Form of records-(1) The records of the company must be kept:

- (a) in written form; or
 - (b) in a form or in a manner that allows the documents and information that comprise the records to be readily accessible so as to be usable for subsequent reference, and convertible into written form.
- (2) The directors must ensure that adequate measures exist to:
- (a) prevent the records being falsified; and
 - (b) detect any falsification of them.

33. Access to records-(1) The directors of the company are entitled to access to the company's records in accordance with section 120 of the Act.

(2) The shareholder of the company is entitled to access to the company's records as if that shareholder were a director.

34. Documents to be sent to Registrar - In addition to the annual return required under section 124 of the Act, the company must send all the following documents to the Registrar under the Act:

- (a) notice of the adoption of new rules by the company, or the alteration of the rules of the company, under section 14 of the Act;
- (b) notice of a change in the registered office of the company, under section 18 of the Act;
- (c) notice of the issue of shares by the company, under section 26 of the Act;
- (d) notice of the acquisition by the company of its own shares, under section 31 of the Act;
- (e) notice of the redemption of a share, under section 35 of the Act;
- (f) notice of a change in the directors of the company, or of a change in the name or residential address or postal address of a director, under section 88 of the Act;
- (g) notice of the making of an order under section 102 of the Act altering or adding to the rules of a company;
- (h) notice of any place other than the registered office of the company where records are kept, or of any change in the place where records are kept, under section 119 of the Act;
- (i) documents requested by the Registrar under the Act.

35. Documents to be sent to shareholder - In addition to any annual report required under section 56 of the Act, the company must send all the following documents to the shareholder under the Act:

- (a) financial statements required to be sent under section 130 of the Act;
- (b) any written statement by an auditor under section 136 of the Act;
- (c) any report by an auditor under section 138 of the Act.

Part 5
Accounts and audit

36. Accounting records to be kept-(1) The directors of the company must cause accounting records to be kept that:

- (a) correctly record and explain the transactions of the company; and
 - (b) will at any time enable the financial position of the company to be determined with reasonable accuracy; and
 - (c) will enable the directors to ensure that the financial statements of the company comply with section 130 of the Act; and
 - (d) will enable the financial statements of the company to be readily and properly audited.
- (2) Without limiting subclause (1), the accounting records must contain:
- (a) entries of money received and spent each day and the matters to which it relates; and
 - (b) a record of the assets and liabilities of the company; and
 - (c) if the company's business involves dealing in goods-
 - (i) a record of goods bought and sold, and relevant invoices; and
 - (ii) a record of stock held at the end of the financial year together with records of any stocktakings during the year; and
 - (d) if the company's business involves providing services, a record of services provided and relevant invoices.

(3) If the company sells goods or provides services for cash in the ordinary course of carrying on a retail business:

- (a) invoices need not be kept in respect of each retail transaction for the purposes of subclause (2); and
 - (b) a record of the total money received each day in respect of the sale of goods or provision of services, as the case may be, is sufficient to comply with subclause (2) in respect of those transactions.
- (4) The accounting records must be kept:
- (a) in a form permitted under clause 32; and
 - (b) at the registered office of the company, or any other place permitted under section 119 of the Act.

37. Financial statements to be prepared-(1) The directors of every company must ensure that within 4 months after the balance date of the company or, if the shareholder agrees in writing, within an extended period not exceeding 7 months after the balance date of the company, financial statements that comply with subclause (2) are:

- (a) completed in relation to the company and that balance date; and
 - (b) given to the shareholder.
- (2) The financial statements of the company must:
- (a) give a true and fair view of the matters to which they relate; and
 - (b) comply with any applicable regulations made under the Act; and
 - (c) be dated and signed on behalf of the directors by 2 directors of the company, or, if the company has only 1 director, by that director.
- (3) The period between:
- (a) the date of incorporation of the company and its first balance date; or
 - (b) any two balance dates of the company,
- must not exceed 15 months.
- (4) In this clause, financial statements, in relation to the company and a balance date, means:

- (a) a statement of financial position for the entity as at the balance date; and
- (b) in the case of -
 - (i) a company trading for profit, a statement of financial performance for the company in relation to the accounting period ending at the balance date; and
 - (ii) a company not trading for profit, an income and expenditure statement for the company in relation to the accounting period ending at the balance date; and
- (c) if required by regulations made under the Act, a statement of cash flows for the company in relation to the accounting period ending on the balance date; and
- (d) such other financial statements in relation to the company or any group of companies of which it is the holding company as may be required by regulations made under the Act; and
- (e) any notes or documents giving information relating to the statement of financial position and other statements.

38. Appointment of auditor-(1) The shareholder may, by notice in writing to the company, appoint an auditor who is qualified to hold that office under section 135 of the Act to:

- (a) hold office as auditor for the period specified in the notice; and
 - (b) audit the financial statements of the company.
- (2) The shareholder may remove an auditor by notice in writing to the company and to that auditor.

39. Auditor's attendance at shareholder's meeting - The directors of the company must ensure that an auditor of the company:

- (a) is permitted to attend a meeting of shareholders of the company; and

- (b) receives the notices and communications that a shareholder is entitled to receive relating to meetings and resolutions of shareholders; and
- (c) may be heard at a meeting of shareholders that he or she attends on any part of the business of the meeting that concerns him or her as auditor.

Part 6

Liquidation and removal from register

40. Resolution to appoint liquidator-(1) The shareholder may resolve to liquidate the company by special resolution.

(2) The directors may resolve to liquidate the company at a meeting called under section 71 of the Act, if they consider that the company is unable to meet its debts as they become due in the normal course of business.

(3) The directors must give not less than 5 working days notice to the shareholder of any meeting called under section 71 of the Act, and must permit the shareholder to attend and speak at that meeting.

41. Distribution of surplus assets-(1) The surplus assets of the company available for distribution to shareholders after all creditors of the company have been paid must be distributed to the shareholder.

(2) The liquidator may, with the approval of the shareholder, distribute the surplus assets of the company to the shareholder in kind.

Part 7

Miscellaneous

42. Service of documents on shareholder-(1) A notice, statement, report, accounts, or other document to be sent to a shareholder who is a natural person may be:

- (a) delivered to that person; or
- (b) sent by any other method approved in writing by that shareholder.

(2) A notice, statement, report, accounts, or other document to be sent to a shareholder that is a company or an overseas company may be sent by any of the methods of serving documents referred to in sections 345 or 347 of the Act, as the case may be.

43. Interpretation-(1) In these rules, Act means the Companies Act 2001.

(2) Unless the context otherwise requires, any term or expression that is defined in the Act or any regulations made under the Act and used, but not defined, in these rules has the same meaning as in the Act or the regulations.

Schedule 4

ss 2(2)(a), 3(b), 14(1)(b), 15(3), 334(3),

Model rules for public companies

Contents

| | | | |
|---|--------------------------------|----|--|
| | Part 1 | 10 | Form and location of share register |
| | General provisions | 11 | Status of registered shareholders |
| 1 | Name of company | | |
| 2 | Public company | | |
| 3 | Rules | | <i>Transfer of shares and share certificates</i> |
| | Part 2 | | |
| | Shares and shareholders | 12 | Transfer of shares |
| | | 13 | Share certificates |
| | <i>General provisions</i> | | <i>Meetings of shareholders</i> |
| 4 | Number of shares | 14 | Meetings of shareholders |
| 5 | Rights attaching to shares | 15 | Notice of meetings |
| 6 | Issue of shares | 16 | Methods of holding meetings |
| 7 | Process for issuing shares | 17 | Quorum |
| 8 | Transferability of shares | 18 | Chairperson |
| | <i>Share register</i> | 19 | Voting |
| 9 | Company to keep share register | 20 | Votes of joint shareholders |
| | | 21 | Proxies |
| | | 22 | Corporations may act by representatives |

| | | | |
|----|---|----|--|
| 23 | Postal votes | 44 | Consideration for remaining shares |
| 24 | Duty of person authorised to receive and count postal votes | 45 | Independent report |
| 25 | Duty of chairperson concerning postal Votes | 46 | Notice to holders of remaining shares |
| | <i>Miscellaneous</i> | 47 | Rights of holders of remaining shares |
| 27 | Annual meetings and special meetings of Shareholders | 48 | When voting rights not to be exercised |
| 28 | Written resolutions of shareholders | | Part 3 |
| 29 | Voting in interest groups | | Directors |
| 30 | Shareholders entitled to receive dividends | 49 | Number of directors |
| 31 | Notice of meetings and voting | 50 | Appointment and removal of directors |
| 32 | Distributions to shareholders | 51 | Term of office |
| 33 | Company may acquire | 52 | When director vacates office |
| 34 | Annual report to shareholders | 53 | Resignation of director |
| | <i>Compulsory acquisitions</i> | 54 | Casual vacancies |
| 35 | Compulsory acquisition of minority holdings below 10% | 55 | Notice of changes in directors |
| 36 | Price for voting share | 56 | Powers and duties of directors |
| 37 | Notice under clause 35: general requirements | 57 | Standard of care of directors |
| 38 | Requirements for price for voting share determined under clause 36(a) | 58 | Obligations of directors in connection with insolvency |
| 39 | Requirements for price for voting share determined under clause 36(b) | 59 | Interested directors |
| 40 | Notice of price determined by arbitrator | 60 | Use and disclosure of company information |
| 41 | Requirements on transfer date | 61 | Indemnities and insurance for directors or employees |
| | <i>Exit rights</i> | 62 | Remuneration of directors |
| 42 | Application of exit rights | 63 | Disclosure of interests by directors |
| 43 | Acquirer to give notice to company | 64 | Procedure at meetings of directors |
| | | 65 | Chairperson |
| | | 66 | Notice of meeting |
| | | 67 | Methods of holding meetings |
| | | 68 | Quorum |
| | | 69 | Voting |
| | | 70 | Minutes |
| | | 71 | Unanimous resolution |
| | | 72 | Managing director |
| | | 73 | Delegation to managing director |

74. Remuneration of managing director and executive directors

Part 4
Company records

- 75 Company records
76 Form of records
77 Access to records
78 Documents to be sent to Registrar
79 Documents to be sent to shareholders

Part 5
Accounts and audit

- 80 Accounting records to be kept
81 Financial statements to be prepared
82 Appointment of auditor
83 Auditor's attendance at shareholders' meeting

Part 6
Liquidation and removal from register

- 84 Resolution to appoint liquidator
85 Distribution of surplus assets

Part 7
Miscellaneous

- 86 Service of documents on shareholders
87 Interpretation

Part 1
General provisions

1. Name of company-(1) The name of the company at the time of registration under the Act appears on the application for registration or for re-registration, as the case may be.

(2) The name of the company may be changed in accordance with section 10 of the Act with the prior approval of the directors.

2. Public company - The company is a public company.

3. Rules-(1) The company may adopt new rules in place of these rules by special resolution, in accordance with section 14(2) of the Act.

(2) Subject to the Act:

(a) these rules have effect and may be enforced as if they constituted a contract -

- (i) between the company and its shareholders; and
 - (ii) between the company and each director; and
- (b) the shareholders and directors of the company have the rights, powers, duties, and obligations set out in these rules.

Part 2

Shares and shareholders

General provisions

4. Number of shares - At the time of registration under the Act the company has the number of shares specified in the application for registration or re-registration, as the case may be.

5 Rights attaching to shares - Subject to clause 7(4), each share carries all the following rights:

- (a) the right to 1 vote on a poll at a meeting of the company on any resolution, including any resolution to -
 - (i) appoint or remove a director or auditor;
 - (ii) adopt new rules;
 - (iii) alter the company's rules;
 - (iv) approve a major transaction;
 - (v) approve an amalgamation of the company;
 - (vi) approve re-registration of a public company as a private company, or of a private company as a public company;
 - (vii) put the company into liquidation;
 - (viii) approve the transfer of registration of the company to another country;
- (b) the right to an equal share in dividends paid by the company;
- (c) the right to an equal share in the distribution of the surplus assets of the company in a liquidation.

6. Initial issue of shares - If the company was first registered under Part 2 of the Act, the company must immediately after its registration issue to any person named in the application for registration as a shareholder the number of shares specified in the application as being the number of shares to be issued to that person or those persons.

7. Process for issuing shares-(1) The directors may issue shares:

- (a) pursuant to an offer made to all shareholders proportionally, that if accepted by all shareholders would not affect relative voting or distribution rights, on such terms as the directors think fit (including issuing shares without consideration, or instead of dividends). The shareholders must have a reasonable opportunity to consider and respond to the offer; or
 - (b) to shareholders or any other persons for a consideration determined by the directors. The directors must use reasonable endeavours to obtain the best price reasonably obtainable for those shares.
- (2) The directors may issue more than 1 class of shares. In particular, shares may be issued that:
- (a) are redeemable; or
 - (b) confer preferential rights to distributions of capital or income; or
 - (c) confer special, limited, or conditional voting rights; or
 - (d) do not confer voting rights.
- (3) If the company issues shares, it must give the prescribed notice to the Registrar under section 26(2) of the Act within 10 working days of the issue of any shares.
- (4) If the rights attached to the shares differ from those set out in clause 5, the notice must be accompanied by a document setting out the terms of issue of the shares.

8. Transferability of shares - The shares of the company are, subject to clause 7(4) and their terms of issue, transferable by entry in the share register in accordance with clauses 12(1) to (3).

Share register

9. Company to keep share register-(1) The company must maintain a share register that records the shares issued by the company and states:

- (a) the names, alphabetically arranged, and the last known address of each person who is, or has within the last 7 years been, a shareholder; and
- (b) the number of shares of each class held by each shareholder within the last 7 years; and
- (c) the date of any -
 - (i) issue of shares to; or
 - (ii) repurchase or redemption of shares from; or
 - (iii) transfer of shares by or to,

each shareholder within the last 7 years, and in relation to the transfer, the name of the person to or from whom the shares were transferred.

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

(3) The company may appoint an agent to maintain the share register.

10. Form and location of share register - The share register must be kept:

- (a) in a form that complies with clause 76; and
- (b) at the company's registered office, or at any other place in Samoa notice of which has been given to the Registrar under section 119 of the Act.

11. Status of registered shareholders-(1) The company must treat the registered holder of a share as the only person entitled to:

- (a) exercise the right to vote attaching to the share; and
- (b) receive notices; and
- (c) receive a distribution in respect of the share; and
- (d) exercise the other rights and powers attaching to the share.

(2) If a joint holder of a share dies, the remaining holders must be treated by the company as the holders of that share.

(3) If the sole holder of a share dies, that shareholder's legal representative is the only person recognised by the company as having any title to or interest in the share.

(4) Any person who becomes entitled to a share as a consequence of the death, bankruptcy or insolvency or incapacity of a shareholder may be registered as the holder of that shareholder's shares on making a request in writing to the company to be so registered, accompanied by proof satisfactory to the directors of that entitlement.

Transfer of shares and share certificates

12. Transfer of shares-(1) If shares are to be transferred, a form of transfer signed by the holder or by his or her agent or attorney must be delivered to the company.

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

(3) Subject to subclause (4), the company must, immediately on receipt of a properly executed share transfer, enter the name of the transferee in the share register as holder of the shares transferred.

(4) The directors may resolve to refuse to register a transfer of a share within 30 working days of receipt of the transfer, if any amount payable to the company by the shareholder is due but unpaid.

(5) If the directors resolve to refuse to register a transfer for this reason, they must give notice of the refusal to the shareholder within 5 working days of the date of the resolution.

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

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

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

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

(i) the name of the company; and

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

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

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

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

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

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

Meetings of shareholders

14. Meetings of shareholders-(1) Clauses 15 to 27 set out the procedure to be followed at and in relation to meetings of shareholders.

(2) A meeting of shareholders may determine its own procedure to the extent that it is not governed by these rules.

15. Notice of meetings-(1) Written notice of the time and place of a meeting of shareholders must be given to every shareholder entitled to receive notice of the meeting and to every director and any auditor of the company not less than 15 working days before the meeting.

(2) The notice must set out:

- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
- (b) the text of any special resolution to be submitted to the meeting.

(3) An irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver.

(4) An accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a shareholder does not invalidate the proceedings at that meeting.

(5) If a meeting of shareholders is adjourned for less than 30 working days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that is adjourned.

16. Methods of holding meetings - A meeting of shareholders may be held either:

- (a) by a number of shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

17. Quorum-(1) Subject to subclause (3), no business may be transacted at a meeting of shareholders if a quorum is not present.

(2) A quorum for a meeting of shareholders is present if 5 or more shareholders or their proxies are present who are between them able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.

(3) If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the directors may appoint.

(4) If, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders present or their proxies are a quorum.

18. Chairperson-(1) If the directors have elected a chairperson of the directors, and the chairperson of the directors is present at a meeting of shareholders, he or she must chair the meeting.

(2) If no chairperson of the directors has been elected or if, at any meeting of shareholders, the chairperson of the directors is not present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may choose 1 of their number to be chairperson of the meeting.

19. Voting-(1) In the case of a meeting of shareholders held under clause 16(a), unless a poll is demanded, voting at the meeting will take place by whichever of the following methods is determined by the chairperson of the meeting:

(a) voting by voice:

(b) voting by show of hands.

(2) In the case of a meeting of shareholders held under clause 16(b), unless a poll is demanded, voting at the meeting will take place by shareholders signifying individually their assent or dissent by voice.

(3) A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with subclause (4).

(4) At a meeting of shareholders a poll may be demanded by:

- (a) not fewer than 5 shareholders having the right to vote on the question at the meeting; or
- (b) a shareholder or shareholders representing not less than 10% of the total voting rights of all shareholders having the right to vote on the question at the meeting.

(5) A poll may be demanded either before or after a vote is taken on a resolution.

(6) If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present and voting.

(7) The chairperson of a shareholders' meeting is not entitled to a casting vote.

20. Votes of joint shareholders - If 2 or more persons are registered as the holder of a share, the vote of the person named first in the share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

21. Proxies-(1) A shareholder may exercise the right to vote either by being present in person or by proxy.

(2) A proxy for a shareholder is entitled to attend and participate in a meeting of shareholders as if the proxy were the shareholder.

(3) A proxy must be appointed by notice in writing signed by the shareholder. The notice must state whether the appointment is for a particular meeting, or for a specified term.

(4) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is given to the company at least 24 hours before the start of the meeting.

22. Corporations may act by representatives-(1) A corporation that is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf by notice in writing signed by a director or secretary of the corporation.

(2) The notice must state whether the appointment is for a particular meeting, or for a specified term.

23. Postal votes-(1) A shareholder may exercise the right to vote at a meeting by casting a postal vote in accordance with this clause.

(2) The notice of a meeting at which shareholders are entitled to cast a postal vote must state the name of the person authorised by the directors to receive and count postal votes at that meeting.

(3) A shareholder may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which his or her shares are to be voted to a person authorised to receive and count postal votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.

(4) A shareholder who has submitted a postal vote on any resolution:

- (a) may attend and speak at the meeting; and
- (b) must not vote on that resolution in person at the meeting.

24. Duty of person authorised to receive and count postal votes-(1) If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every director is deemed to be so authorised.

(2) It is the duty of a person authorised to receive and count postal votes at a meeting:

- (a) to collect together all postal votes received by him or her or by the company; and
- (b) in relation to each resolution to be voted on at the meeting, to count -
 - (i) the number of shareholders voting in favour of the resolution and the number of votes cast by each shareholder in favour of the resolution; and
 - (ii) the number of shareholders voting against the resolution, and the number of votes cast by each shareholder against the resolution; and

- (c) to sign a certificate that he or she has carried out the duties set out in paragraphs (a) and (b) and which sets out the results of the counts required by paragraph (b); and
- (d) to ensure that the certificate required by paragraph (c) is presented to the chairperson of the meeting.

25. Duty of chairperson concerning postal votes-(1) If a vote is taken at a meeting on a resolution on which postal votes have been cast, the chairperson of the meeting must:

- (a) on a vote by show of hands, count each shareholder who has submitted a postal vote for or against the resolution;
- (b) on a poll, count the votes cast by each shareholder who has submitted a postal vote for or against the resolution.

(2) The chairperson of a meeting must call for a poll on a resolution on which he or she holds sufficient postal votes that he or she believes that if a poll is taken the result may differ from that obtained on a show of hands.

(3) The chairperson of a meeting must ensure that a certificate of postal votes held by him or her is annexed to the minutes of the meeting.

26. Minutes-(1) The directors must ensure that minutes are kept of all proceedings at meetings of shareholders.

(2) Minutes that have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings at the meeting.

Miscellaneous

27. Annual meetings and special meetings of shareholders

(1) Subject to subclause (3) and clause 28(3), the directors must call an annual meeting of the company to be held:

- (a) once in each calendar year; and

- (b) not later than 5 months after the balance date of the company; and
 - (c) not later than 15 months after the previous annual meeting.
- (2) The meeting must be held on the date on which it is called to be held.
- (3) The company need not hold its first annual meeting in the calendar year of its incorporation, but must hold that meeting within 18 months of its incorporation.
- (4) A special meeting of shareholders entitled to vote on an issue:
- (a) may be called at any time by a director; and
 - (b) must be called by the directors on the written request of shareholders holding shares carrying together not less than 5% of the votes that may be cast on that issue.

28. Written resolutions of shareholders-(1) A resolution in writing signed by shareholders, who together hold not less than 75% of the votes entitled to be cast on that resolution at a meeting of shareholders, is as valid as if it had been passed at a meeting of those shareholders.

(2) Any such resolution may consist of several documents (including fax or other similar means of communication) in like form each signed or assented to by 1 or more shareholders.

(3) The company need not hold an annual meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with subclause (1).

(4) Within 5 working days of a resolution being passed under subclause (1), the company must send a copy of the resolution to every shareholder who did not sign it.

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

29. Voting in interest groups - If the company proposes to take action that affects the rights attached to shares within the meaning of section 54 of the Act, the action may not be taken

unless it is approved by a special resolution of each interest group, as defined in section 54(3) of the Act.

30. Shareholders entitled to receive dividends-(1) The shareholders who are entitled to receive dividends are -

- (a) if the directors fix a date for this purpose, those shareholders whose names are registered in the share register on that date:
- (b) if the directors do not fix a date for this purpose, those shareholders whose names are registered in the share register on the day on which the dividend is approved.

(2) A date fixed under subclause (1)(a) must not precede by more than 20 working days the date on which the proposed action will be taken.

31. Notice of meetings and voting-(1) The shareholders who are entitled to receive notice of a meeting of shareholders are:

- (a) if the directors fix a date for this purpose, those shareholders whose names are registered in the share register on that date:
- (b) if the directors do not fix a date for this purpose, those shareholders whose names are registered in the share register at the close of business on the day immediately preceding the day on which the notice is given.

(2) A date fixed under subclause (1)(a) must not precede by more than 30 working days the date on which the meeting is to be held.

(3) Before a meeting of shareholders, the company may prepare a list of shareholders entitled to receive notice of the meeting, arranged in alphabetical order, and showing the number of shares held by each shareholder:

- (a) if a date has been fixed under subclause (1)(a), as at that date; or
- (b) if no such date has been fixed, as at the close of business on the day immediately preceding the day on which the notice is given.

(4) A person named in a list prepared under subclause (3) is entitled to attend the meeting and vote in respect of the shares shown opposite his or her name in person or by proxy, except to the extent that:

- (a) that person has, since the date on which the shareholders entitled to receive notice of the meeting were determined, transferred any of his or her shares to some other person; and
- (b) the transferee of those shares has been registered as the holder of those shares, and has requested before the commencement of the meeting that his or her name be entered on the list prepared under subclause (3).

(5) A shareholder may on 2 working days' notice examine any list prepared under subclause (3) during normal business hours at the registered office of the company.

32. Distributions to shareholders-(1) The company must not pay a dividend or make any other distribution to shareholders unless there are reasonable grounds for believing that, after that distribution is made:

- (a) the company will be able to pay its debts as they become due in the normal course of business; and
- (b) the value of the company's assets will not be less than the value of its liabilities.

(2) Subject to subclause (1) and to the terms of issue of any shares, the company may pay a dividend to shareholders -

- (a) of the same amount in respect of each share of the same class, if the payment of the dividend is authorised by the directors; or
- (b) on any other basis, with the prior approval of all shareholders.

(3) A distribution made in breach of subclauses (1) or (2) may be recovered by the company from the recipients or from the persons approving the distribution, in accordance with section 29 of the Act.

(4) No dividend or other distribution bears interest against the company unless the applicable terms of issue of a share expressly provide otherwise.

(5) All dividends and other distributions unclaimed for 1 year after the due date for payment may be invested or otherwise made use of by the directors for the benefit of the company until claimed.

(6) The company is entitled to mingle the unclaimed distribution with other money of the company and is not required to hold it or to regard it as being impressed with any trust but, subject to compliance with the solvency test, must pay the distribution to the person producing evidence of entitlement to receive it.

33. Company may acquire its own shares and provide financial assistance-(1) Subject to the solvency test, the company may agree to acquire its own shares from a shareholder:

- (a) pursuant to an offer to acquire shares made to all holders of shares of the same class that would, if accepted by all persons to whom the offer is made, leave unaffected relative voting and distribution rights; or
 - (b) on any other basis, with the prior approval of shareholders by special resolution.
- (2) If the company acquires its own shares, those shares are deemed to be cancelled immediately on acquisition.
- (3) The company may give financial assistance to a person for the purpose of, or in connection with, the purchase of a share issued or to be issued by the company, whether directly or indirectly, only if:
- (a) the company gives the assistance in the normal course of its business and on usual terms and conditions; or
 - (b) the giving of the assistance is authorised by the directors or by all shareholders under section 51 of the Act, and there are reasonable grounds for

believing that, after providing the assistance, the company will satisfy the solvency test.

34. Annual report to shareholders-(1) The directors of the company must, within 5 months after the balance date of the company:

- (a) prepare an annual report on the affairs of the company during the accounting period ending on that date; and
 - (b) send a copy of that report to each shareholder.
- (2) Every annual report for the company must:
- (a) be in writing and be dated; and
 - (b) include financial statements for the accounting period that comply with section 130 of the Act; and
 - (c) include the auditor's report required under section 138; and
 - (d) state the names of the persons holding office as directors of the company as at the end of the accounting period and the names of any persons who ceased to hold office as directors of the company during the accounting period; and
 - (e) contain such other information as may be required by regulations made under the Act; and
 - (f) be signed on behalf of the directors by 2 directors of the company or, if the company has only 1 director, by that director.

Compulsory acquisitions

35. Compulsory acquisition of minority holdings below 10%-(1) A shareholder who holds 90% of the voting shares of the company (majority shareholder) may give a notice to the other holders of voting shares (minority shareholders) in accordance with this clause, requiring the minority shareholders to sell their voting shares to the majority shareholder.

(2) The majority shareholder must also give the notice to the company, and give public notice of the fact that such a notice has been given.

(3) A notice may be given under subclause (1) by a majority shareholder at any time within 6 months after that majority shareholder first becomes interested in not less than 90% of the voting shares of the company.

36. Price for voting share-(1) The majority shareholder must pay a price for each voting share that is:

- (a) equal to the highest price paid for a voting share by that majority shareholder in an arms length sale and purchase of such shares during the 6-month period ending on the date on which the majority shareholder first became interested in not less than 90% of the voting shares; or
- (b) if the majority shareholder so elects, a price to be fixed by an independent arbitrator.

(2) The majority shareholder must ask the directors of the company to nominate an independent arbitrator for this purpose.

(3) If the directors fail to do so within 10 working days of receiving such a request, the majority shareholder may nominate the arbitrator.

37. Notice under clause 35: general requirements-(1) A notice given under clause 35 must specify:

- (a) the name of the majority shareholder; and
- (b) the date on which the majority shareholder first became interested in not less than 90% of the voting shares of the company; and
- (c) if the price to be paid for each voting share has been determined under clause 36(1)(a), that price, which must be certified by the majority shareholder as meeting the requirements of clause 36(1)(a); and
- (d) if the price to be paid for each voting share is to be fixed by an arbitrator under clause 36(1)(b), the

name of the arbitrator and the date on which and place at which the arbitration is to be held; and

(e) the rights of minority shareholders under clause 39.

(2) The date referred to in subclause (1)(d) must not be less than 60 working days from the date on which the notice is given to minority shareholders.

38. Requirements for price for voting share determined under clause 36(1)(a) - If the price to be paid for each voting share has been determined under clause 36(1)(a), a notice given under clause 35 must also:

(a) specify a date not less than 20 working days from the date of the notice on which the price will be paid, and the shares will be acquired by the majority shareholder (transfer date); and

(b) advise the shareholder that no payment will be received by the shareholder until any share certificate that has been issued in respect of the voting shares has been delivered to the company; and

(c) require the shareholder to specify the manner in which payment for the voting shares is to be made to that shareholder; and

(d) advise shareholders that payment can be made by cheque to be collected from the company at a specified address, or posted to a postal address specified by the shareholder, and may provide for other payment options.

39. Requirements for price for voting share determined under clause 36(1)(b)-(1) If the price to be paid for each voting share is to be determined under clause 36(1)(b), and if any minority shareholder considers that the arbitrator is not suitably qualified to value the shares, or is not independent, the minority shareholder may give notice to the company within 10 working days requiring the company to apply to the Court for

appointment of another person as arbitrator.

(2) If a notice under subclause (1) is received, the company must immediately apply to the Court for the appointment of an arbitrator.

(3) If a notice is given under subclause (1), or if for any other reason the arbitration does not proceed on the date and at the place specified in the notice, not less than 40 working days notice of the altered date and place must be given to each minority shareholder.

(4) Each minority shareholder is entitled to attend the arbitration and to be heard, in person or by a representative (who may, but need not, be a lawyer or a public accountant).

(5) The arbitrator must expeditiously determine a fair and reasonable price per share for the shares to be acquired.

(6) The price must not include any discount or premium to reflect the size of the parcels of shares to be acquired, or the circumstances of the acquisition.

(7) The costs of the arbitration must be paid by the majority shareholder.

40. Notice of determination of price by arbitrator -

Within 10 working days of the determination by the arbitrator, the company must give a notice to each minority shareholder that:

- (a) advises the shareholder of the price that has been determined by the arbitrator; and
- (b) specifies a date not less than 10 working days and not more than 20 working days from the date of the notice on which the price will be paid, and the shares will be acquired by the majority shareholder (transfer date); and
- (c) advises the shareholder that no payment will be received by the shareholder until any share certificate that has been issued in respect of the voting shares has been delivered to the company; and

- (d) requires the shareholder to specify the manner in which payment for the voting shares is to be made to that shareholder; and
- (e) advises the shareholders that payment can be made by cheque to be collected from the company at a specified address, or posted to a postal address specified by the shareholder, and may provide for other payment options.

41. Requirements on transfer date-(1) On the transfer date:

- (a) the majority shareholder must pay the full amount of the price for all voting shares held by minority shareholders to the company, to be held on trust by the company for the benefit of those shareholders. The payment must be made in cleared funds; and
- (b) all voting shares held by minority shareholders are deemed to be transferred to the majority shareholder on payment to the company in accordance with paragraph (a), and the company must register the majority shareholder as the holder of those shares despite any outstanding share certificates in respect of those shares.

(2) Subject to subclause (5), within 3 working days of the transfer date the company must pay each minority shareholder the price for that shareholder's voting shares, in the manner specified by that shareholder.

(3) If the shareholder has specified that a cheque will be collected from the company by that shareholder, the cheque must be held ready for collection from that date.

(4) If the company fails to make a payment, or to make it available for collection, the company must pay interest to the shareholder from the due date to the date on which the payment is made, or is made available for collection, at the rate of 15% per annum accruing daily and compounding monthly.

(5) If a share certificate has been issued in respect of voting shares held by a minority shareholder, no payment may be made to that minority shareholder until the minority shareholder delivers to the company:

- (a) the share certificate; or
- (b) evidence as to its loss or destruction and, if required, an indemnity in a form determined by the directors.

Exit rights

42. Application of exit rights-(1) Subject to subclause (2), this clause and clauses 43 to 48 apply to a shareholder (acquirer) who:

- (a) acquires shares in the company or otherwise becomes interested in shares in the company (acquisition); and
- (b) before the acquisition, was interested in less than 40% of the voting shares of the company; and
- (c) following the acquisition, is interested in 40% or more of the voting shares of the company.

(2) A person may be exempted from the application of this clause and clauses 43 to 48, either with or without conditions, by a special resolution of holders of voting shares other than:

- (a) voting shares in which that person is interested; and
- (b) voting shares in which any other person is interested, where that other person is interested in not less than 40% of the company's voting shares.

43. Acquirer to give notice to company - An acquirer must, within 10 working days of first becoming a shareholder to whom this clause applies, give notice to the company:

- (a) advising the company that the acquirer is a shareholder to whom this clause applies; and
- (b) identifying the names of the holders of all voting shares in which the acquirer is interested, and the

number of shares held by each of them in which the acquirer is interested; and

- (c) offering to purchase all voting shares in which the acquirer is not interested (remaining shares) on the terms set out in clause 44.

44. Consideration for remaining shares - A notice given under clause 43 must be signed by the acquirer or, if the acquirer is a corporation, by a director of that corporation, and must:

- (a) specify the highest price paid for any voting share in the company by the acquirer, or by any person holding shares in which the acquirer is interested, from the date 6 months before the date on which the acquirer first became a person to whom this clause applies up to the date of the notice; and
- (b) if any shares in which the acquirer is interested were acquired during this period for a non-cash consideration, describe that consideration and state an assessment of the cash value to which that consideration corresponds; and
- (c) specify the consideration offered by the acquirer for each remaining share, which may, but need not, be a cash consideration (consideration); and
- (d) specify the date on which the acquirer will provide the consideration for any remaining shares in respect of which the offer is accepted, which must be not less than 20 working days nor more than 40 working days from the date on which the notice is given to the company (transfer date); and
- (e) specify the rights of the holders of remaining shares under clause 47.

45. Independent report - A notice given under clause 43 must be accompanied by a report from an independent appropriately qualified person previously approved by the company, confirming that the consideration offered is a fair and

reasonable consideration for a share, without any discount or premium to reflect the size of the parcels of shares to be acquired or the circumstances of the acquisition.

46. Notice to holders of remaining shares-(1) Within 10 working days of receiving a notice under clause 43, the company must forward the notice to all holders of remaining shares.

(2) The notice under subclause (1) may, but need not, be accompanied by:

(a) additional information provided by the directors in relation to the offer:

(b) a recommendation by the directors as to whether or not the offer should be accepted.

(3) The company must also immediately give public notice of the notice given to shareholders.

47. Rights of holders of remaining shares-(1) A shareholder to whom a notice is given under clause 46:

(a) is not required to accept the offer:

(b) may accept the offer by notice in writing to the company within 20 working days of the date on which the notice was given to the shareholder.

(2) If a shareholder gives notice accepting an offer in accordance with subclause (1)(b), there is deemed to be a contract between the acquirer and the shareholder for the purchase by the acquirer of the remaining shares held by that shareholder:

(a) on the transfer date; and

(b) for the consideration.

48. When voting rights not to be exercised-(1) If a shareholder to whom this clause applies fails to give the notice required under clause 43 within the time specified in that clause, no voting rights may be exercised in respect of any shares in which that acquirer is interested until that notice has been given.

(2) If a person who is not a shareholder becomes interested in 40% or more of the voting shares of the company, no voting rights may be exercised in respect of any voting shares in which that person is interested unless that person:

- (a) is exempted by a special resolution under clause 42(2); or
- (b) undertakes to the company to make an offer as if that person were an acquirer, and complies with that undertaking.

Part 3 Directors

49. Number of directors-(1) The minimum number of directors is 2.

(2) The maximum number of directors is 10.

(3) The shareholders may by ordinary resolution vary the minimum or maximum number of directors of the company.

50. Appointment and removal of directors - A director may be appointed or removed by ordinary resolution passed at a meeting called for the purpose, or by a written resolution in accordance with clause 28(1).

51. Term of office-(1) The resolution appointing a director may specify the period for which the director is to hold office.

(2) On the expiry of any period specified in this manner, the director ceases to hold office unless reappointed.

52. When director vacates office - A director vacates office if he or she:

- (a) is removed from office in accordance with clause 50;
or
- (b) ceases to hold office in accordance with clause 51; or
- (c) resigns in accordance with clause 53; or

- (d) becomes disqualified from being a director under section 85 of the Act; or
- (e) dies; or
- (f) is absent from 3 consecutive meetings of the directors without leave being granted by a resolution of the directors, and the directors resolve that that director has vacated office.

53. Resignation of director-(1) A director may resign by delivering a signed written notice of resignation to the registered office of the company.

(2) Subject to subclauses (3) and (4), the notice is effective when it is received at the registered office, or at any later time specified in the notice.

(3) If the company has only 1 director, that director may not resign:

- (a) until that director has called a meeting of shareholders to receive notice of the resignation; or
- (b) if the company has only 1 shareholder, until that director has given not less than 10 working days' notice of the resignation to that shareholder.

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

- (a) the time and date for which the meeting of shareholders is called under subclause (3)(a); or
- (b) if the company has only 1 shareholder, 10 working days after notice of the resignation has been given to that shareholder.

54. Casual vacancies - The directors may appoint any person to be a director to fill a casual vacancy until the next annual meeting of the company.

55. Notice of changes in directors-(1) The company must ensure that notice in the prescribed form of the following is delivered to the Registrar:

- (a) a change in the directors of the company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both;
 - (b) a change in the name or the residential address of a director of the company.
- (2) In the case of the appointment of a new director, a consent by that person to act as a director, in the prescribed form, must also be delivered to the Registrar.

56. Powers and duties of directors-(1) Subject to section 50 of the Act (which relates to major transactions) the business and affairs of the company must be managed by, or under the direction or supervision of, the directors.

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

(3) The directors may delegate any of their powers to a committee of directors, or to a director or employee.

(4) The directors must monitor, by means of reasonable methods properly used, the exercise of powers by any delegate.

(5) The provisions of these rules relating to proceedings of the directors also apply to proceedings of any committee of directors, except to the extent the directors determine otherwise.

(6) The directors have the duties set out in the Act, and, in particular:

- (a) each director must act in good faith and in a manner that the director believes to be in the interests of the company; and
- (b) a director must not act, or agree to the company acting, in a manner that contravenes the Act or these rules.

57. Standard of care of directors - A director of the company, when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances

taking into account, but without limitation:

- (a) the nature of the company; and
- (b) the nature of the decision; and
- (c) the position of the director and the nature of the responsibilities undertaken by him or her.

58. Obligations of directors in connection with insolvency-(1) A director of the company must call a meeting of directors within 10 working days to consider whether the directors should appoint an administrator or liquidator, in accordance with section 71 of the Act, if the director.

- (a) believes that the company is unable to pay its debts as they fall due; or
- (b) is aware of matters that would put any reasonable person on inquiry as to whether the company is unable to pay its debts as they fall due.

(2) At a meeting called under section 71 of the Act the directors must consider whether to appoint an administrator or liquidator, or to continue to carry on the business of the company.

59. Interested directors-(1) A director must not exercise any power as a director in circumstances where that director is directly or indirectly materially interested in the exercise of that power unless:

- (a) the Act expressly authorises the director to exercise the relevant power despite such an interest; or
- (b) the director has reasonable grounds for believing that the company will satisfy the solvency test after that power is exercised, and either -
 - (i) these rules expressly authorise the director to exercise the relevant power despite such an interest, and the interest has been disclosed in accordance with clause 63(4); or

(ii) the matter in question has been approved by shareholders under section 51 of the Act, following disclosure of the nature and extent of the director's interest to all shareholders who are not otherwise aware of those matters.

(2) A transaction entered into by the company in which a director is directly or indirectly materially interested is voidable at the election of the company in accordance with section 111 of the Act.

(3) A transaction entered into by the company as the result of action taken by a director in breach of sections 65, 66, or 67 of the Act is voidable at the option of the company in accordance with section 112 of the Act.

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

- (a) in the interests of the company; or
- (b) as required by law; or
- (c) if there are reasonable grounds for believing that the company will satisfy the solvency test after the director takes that action, and that action -
 - (i) is approved by all shareholders under section 51 of the Act; or
 - (ii) is authorised by any contract of employment entered into between that director and the company, the relevant terms of which have been disclosed in the interests register referred to in clause 63.

61. Indemnities and insurance for directors or employees-(1) Subject to section 74 of the Act, the company may provide an indemnity or purchase insurance for a director of the company or of a related company with the approval of:

- (a) the directors; but no director may vote on a resolution concerning an indemnity or insurance to be provided for him or her; or
 - (b) shareholders by ordinary resolution; but no director may vote on a resolution concerning an indemnity or insurance to be provided for him or her; or
 - (c) all shareholders under section 51 of the Act.
- (2) In subclause (1), -
“director” includes:
- (a) a person who is liable under any of sections 65 to 71 of the Act by virtue of section 73 of the Act; and
 - (b) a former director
- “indemnify” includes relieve or excuse from liability, whether before or after the liability arises; and
“indemnity” has a corresponding meaning.

62. Remuneration of directors - Directors may receive remuneration and other benefits from the company with the approval of:

- (a) the directors; but no director may vote on a resolution concerning remuneration or other benefits to be provided for him or her; or
- (b) shareholders by ordinary resolution; but no director may vote on a resolution concerning remuneration or benefits to be received by him or her; or
- (c) all shareholders under section 51 of the Act.

63. Disclosure of interests by directors-(1) The company must:

- (a) maintain an interests register; and
- (b) permit any director or shareholder to inspect the interests register as if sections 120 and 121 of the Act applied to the interests register.

(2) The annual report of the company under section 56 of the Act in respect of any accounting period must contain all entries made in the interests register in the course of that accounting period.

(3) The directors must enter in the interests register details of any:

- (a) contract of employment to which clause 60(c) applies; and
- (b) indemnity or insurance provided for a director under clause 61; and
- (c) details of any remuneration or other benefits provided to directors under clause 62; and
- (d) disclosure by a director under subclauses (4) or (5).

(4) A director who is in any way directly or indirectly materially interested in a transaction or proposed transaction with the company must within 10 working days of becoming aware of that interest -

(a) disclose that interest in writing to the directors; and

(b) ensure that details of that disclosure are entered in the interests register.

(5) A director may disclose to the other directors, and enter in the interests register, a general disclosure that the director is a director or employee or shareholder of another company, or is otherwise associated with another company or another person.

(6) Disclosure under subclause (5) is disclosure of the director's interest in any transaction entered into with that other company or person for the purposes of subclause (4).

64. Procedure at meetings of directors-(1) Clauses 65 to 64 set out the procedure to be followed at meetings of directors.

(2) A meeting of directors may determine its own procedure, to the extent that it is not governed by these rules.

65. Chairperson-(1) The directors may elect 1 of their number as chairperson of directors and may determine the period for which the chairperson is to hold office.

(2) If no chairperson is elected, or if at a meeting of the directors the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the directors present may choose 1 of their number to be chairperson of the meeting.

66. Notice of meeting-(1) A director or, if requested by a director to do so, an employee of the company, may convene a meeting of directors by giving notice in accordance with this clause.

(2) Not less than 24 hours notice of a meeting of directors must be given to every director who is in Samoa, or who can readily be contacted outside Samoa.

(3) An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity, or if all directors entitled to receive notice of the meeting agree to the waiver.

67. Methods of holding meetings - A meeting of directors may be held either:

- (a) by a number of the directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all directors participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

68. Quorum-(1) A quorum for a meeting of directors is a majority of the directors.

(2) No business may be transacted at a meeting of directors if a quorum is not present.

69. Voting-(1) Every director has 1 vote.

(2) The chairperson has a casting vote.

(3) A resolution of the directors is passed if it is agreed to by all directors present without dissent, or if a majority of the votes cast on it are in favour of it.

(4) A director present at a meeting of directors is presumed to have agreed to, and to have voted in favour of, a resolution of the directors unless he or she expressly dissents from or votes against the resolution at the meeting.

70. Minutes - The directors must ensure that minutes are kept of all proceedings at meetings of the directors.

71. Unanimous resolution-(1) A resolution in writing signed or assented to by all directors is as valid and effective as if it had been passed at a meeting of the directors duly convened and held.

(2) Any such resolution may consist of several documents (including fax or other similar means of communication) in like form each signed or assented to by 1 or more directors.

(3) A copy of any such resolution must be entered in the minute book of the directors' proceedings.

72. Managing director and other executive directors-(1) The directors may, from time to time, appoint a director as managing director for such period and on such terms as they think fit.

(2) Subject to the terms of a managing director's appointment, the directors may at any time cancel the appointment of a director as managing director.

(3) A director who holds office as managing director ceases to hold office as managing director if he or she ceases to be a director of the company.

73. Delegation to managing director-(1) The directors may delegate to the managing director, subject to any conditions or restrictions that they consider appropriate, any of their powers that can be lawfully delegated.

(2) Any such delegation may at any time be withdrawn or varied by the directors.

(3) The delegation of a power of the directors to the managing director does not prevent the exercise of the power by the directors, unless the terms of the delegation expressly provide otherwise.

74. Remuneration of managing director and executive directors-(1) The managing director may be paid such remuneration as he or she may agree with the directors.

(2) A director (other than the managing director) who is employed by the company may be paid such remuneration as may be agreed between that director and the other directors.

(3) The remuneration referred to in subclauses (1) and (2) may be by way of salary, commission, participation in profits or any combination of these methods, or any other method of fixing remuneration.

Part 4 **Company records**

75. Company records-(1) The company must keep all the following documents at its registered office or at some other place notice of which has been given to the Registrar in accordance with section 119 of the Act:

- (a) the rules of the company;
 - (b) minutes of all meetings and resolutions of shareholders within the last 7 years;
 - (c) minutes of all meetings and resolutions of directors and directors' committees within the last 7 years;
 - (d) the full names and residential and postal addresses of the current directors;
 - (e) copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports made under section 56 of the Act;
 - (f) copies of all financial statements required to be completed under section 130 of the Act for the last 7 completed accounting periods of the company;
 - (g) the accounting records required by section 129 of the Act for the current accounting period and for the last 7 completed accounting periods of the company;
 - (h) the share register.
- (2) The references in subclause (1)(b), (c), and (e) to 7 years and the references in subclause (1)(f) and (g) to 7 completed accounting periods include such lesser periods as the

Registrar may approve by notice in writing to the company, in accordance with section 117(2) of the Act.

(3) The interests register required to be kept under clause 63 must be:

- (a) kept at the same place as the written communications to shareholders referred to in clause 75(1)(e); and
- (b) kept in a form that complies with clause 76; and
- (c) made available to shareholders in the same manner as records to which clause 76(2) applies.

76. Form of records-(1) The records of the company must be kept:

- (a) in written form; or
 - (b) in a form or in a manner that allows the documents and information that comprise the records to be readily accessible so as to be usable for subsequent reference, and convertible into written form.
- (2) The directors must ensure that adequate measures exist to:
- (a) prevent the records being falsified; and
 - (b) detect any falsification of them.

77. Access to records-(1) The directors of the company are entitled to access to the company's records in accordance with section 120 of the Act.

- (2) A shareholder of the company is entitled:
- (a) to inspect the documents referred to in section 121 of the Act, in the manner specified in section 123 of the Act; and
 - (b) to require copies of or extracts from any document that he or she may inspect within 5 working days of making a request in writing for the copy or extract, on payment of any reasonable copying and administration fee prescribed by the company.
- (3) The fee may be determined by any director, subject to any directions from the directors.

78. Documents to be sent to Registrar - In addition to the annual return required under section 124 of the Act, the company must send all the following documents to the Registrar under the Act:

- (a) notice of the adoption of new rules by the company, or the alteration of the rules of the company, under section 14;
- (b) notice of a change in the registered office of the company, under section 18 of the Act;
- (c) notice of the issue of shares by the company, under section 26 of the Act;
- (d) notice of the acquisition by the company of its own shares, under section 31 of the Act;
- (e) notice of the redemption of a share, under section 35 of the Act;
- (f) notice of a change in the directors of the company, or of a change in the name or residential address or postal address of a director, under section 88 of the Act;
- (g) notice of the making of an order under section 102 of the Act altering or adding to the rules of a company;
- (h) notice of any place other than the registered office of the company where records are kept, or of any change in the place where records are kept, under section 119 of the Act;
- (i) documents requested by the Registrar under the Act.

79. Documents to be sent to shareholders -In addition to the annual report required under section 56 of the Act, the company must send all the following documents to shareholders under the Act:

- (a) notice of any repurchase of shares to which section 31(4) applies;
- (b) notice of a written resolution approved under section 52 of the Act;
- (c) financial statements required to be sent under section 130 of the Act;

- (d) any written statement by an auditor under section 136 of the Act;
- (e) the report by the auditor under section 138.

Part 5
Accounts and audit

80. Accounting records to be kept-(1) The directors of the company must cause accounting records to be kept that:

- (a) correctly record and explain the transactions of the company; and
- (b) will at any time enable the financial position of the company to be determined with reasonable accuracy; and
- (c) will enable the directors to ensure that the financial statements of the company comply with section 130 of the Act; and
- (d) will enable the financial statements of the company to be readily and properly audited.

(2) Without limiting subclause (1), the accounting records must contain:

- (a) entries of money received and spent each day and the matters to which it relates; and
- (b) a record of the assets and liabilities of the company; and
- (c) if the company's business involves dealing in goods
 - (i) a record of goods bought and sold, and relevant invoices; and
 - (ii) a record of stock held at the end of the financial year together with records of any stocktakings during the year; and
- (d) if the company's business involves providing services, a record of services provided and relevant invoices.

(3) If the company sells goods or provides services for cash in the ordinary course of carrying on a retail business:

- (a) invoices need not be kept in respect of each retail transaction for the purposes of subclause (2); and
 - (b) a record of the total money received each day in respect of the sale of goods or provision of services, as the case may be, is sufficient to comply with subclause (2) in respect of those transactions.
- (4) The accounting records must be kept:
- (a) a form permitted under clause 76; and
 - (b) at the registered office of the company, or any other place permitted under section 119 of the Act.

81. Financial statements to be prepared-(1) The directors must ensure that:

- (a) within 4 months after the balance date of the company, financial statements that comply with subclause (2) are completed in relation to the company and that balance date; and
 - (b) within 20 working days of the date on which the financial statements must be completed under paragraph (a), those financial statements are sent to all shareholders. This requirement may be satisfied by sending the financial statements to shareholders in an annual report, in accordance with section 56 of the Act.
- (2) The financial statements of the company must:
- (a) give a true and fair view of the matters to which they relate; and
 - (b) comply with any applicable regulations made under the Act; and
 - (c) be dated and signed on behalf of the directors by 2 directors of the company, or, if the company has only 1 director, by that director.
- (3) The period between:
- (a) the date of incorporation of the company and its first balance date; or
 - (b) any two balance dates of the company,
- must not exceed 15 months.

- (4) In this clause, financial statements, in relation to the company and a balance date, means:
- (a) a statement of financial position for the entity as at the balance date; and
 - (b) in the case of -
 - (i) a company trading for profit, a statement of financial performance for the company in relation to the accounting period ending at the balance date; and
 - (ii) a company not trading for profit, an income and expenditure statement for the company in relation to the accounting period ending at the balance date; and
 - (c) if required by regulations made under the Act, a statement of cash flows for the company in relation to the accounting period ending on the balance date; and
 - (d) such other financial statements in relation to the company or any group of companies of which it is the holding company as may be required by regulations made under the Act; and
 - (e) any notes or documents giving information relating to the statement of financial position and other statements.

82. Appointment of auditor-(1) The company must appoint an auditor who is qualified to hold that office under section 135 of the Act to:

- (a) audit the financial statements of the company in respect of an accounting period; and
 - (b) hold office until those financial statements have been audited in accordance with the Act or until he or she ceases to hold office.
- (2) The company must appoint an auditor within 30 working days in the event of a vacancy in the office of auditor.
- (3) An auditor ceases to hold office if he or she:

- (a) resigns by delivering a written notice of resignation to the registered office of the company not less than 20 working days before the date on which the notice is expressed to be effective; or
 - (b) is replaced as auditor by an ordinary resolution appointing another person as auditor in his or her place, following notice to the auditor in accordance with section 133 of the Act; or
 - (c) becomes disqualified from being the auditor of the company; or
 - (d) is adjudged to be mentally defective under the Mental Health Ordinance 1961; or
 - (e) dies.
- (4) An auditor may be appointed:
- (a) by ordinary resolution; or
 - (b) if the office of auditor is vacant, by the directors. If an auditor is appointed by the directors, the directors must within 10 working days give notice of the appointment to all shareholders.
- (5) The fees payable to the auditor must be agreed between the auditor and the directors.

83. Auditor's attendance at shareholders' meeting - The directors must ensure that an auditor of the company:

- (a) is permitted to attend a meeting of shareholders of the company; and
- (b) receives the notices and communications that a shareholder is entitled to receive relating to meetings or resolutions of shareholders; and
- (c) may be heard at a meeting of shareholders that he or she attends on any part of the business of the meeting that concerns him or her as auditor.

Part 6

Liquidation and removal from register

84. Resolution to appoint liquidator-(1) The shareholders may resolve to liquidate the company by special resolution.

(2) The directors may resolve to liquidate the company at a meeting called under section 71 of the Act, if they consider that the company is unable to meet its debts as they become due in the normal course of business.

85. Distribution of surplus assets-(1) The surplus assets of the company available for distribution to shareholders after all creditors of the company have been paid must be distributed in proportion to the number of shares held by each shareholder, subject to the terms of issue of any shares.

(2) The liquidator may, with the approval of a special resolution, distribute the surplus assets of the company among the shareholders in kind.

(3) For the purposes of subclause (2), the liquidator may:

- (a) set such value as he or she considers fair on any property to be divided; and
- (b) determine how the division will be carried out as between the shareholders or different classes of shareholders.

Part 7 Miscellaneous

86 Service of documents on shareholders-(1) A notice, statement, report, accounts, or other document to be sent to a shareholder who is a natural person may be:

- (a) delivered to that person; or
- (b) posted to that person's postal address; or
- (c) faxed to a fax number used by that person for the transmission of documents.

(2) A notice, statement, report, accounts, or other document to be sent to a shareholder that is a company or an overseas company may be sent by any of the methods of serving documents referred to in section 345 or section 347 of the Act, as the case may be.

87. Interpretation-(1) In these rules, Act means the Companies Act 2001.

(2) Unless the context otherwise requires, any term or expression that is defined in the Act or any regulations made under the Act and used, but not defined, in these rules has the same meaning as in the Act or the regulations.

(3) For the purposes of these rules:

- (a) voting share means a share that confers on its holder the right to vote on a resolution to amend the rules;
- (b) the percentage of voting shares held by any person is treated as equal to the percentage of votes that that person is entitled to cast on such a resolution.

(4) For the purposes of these rules, a person is interested in a voting share if that person:

- (a) is a beneficial owner of the share; or
- (b) has the power to exercise any right to vote attached to the share; or
- (c) has the power to control the exercise of any right to vote attached to the share; or
- (d) has the power to acquire or dispose of the share; or
- (e) has the power to control the acquisition or disposition of the share by another person; or
- (f) under, or by virtue of, any trust, agreement, arrangement or understanding relating to the share (whether or not that person is a party to it, and whether or not it is legally enforceable) may, at any time, have the power to -
 - (i) exercise any right to vote attached to the share; or
 - (ii) control the exercise of any right to vote attached to the share; or
 - (iii) acquire or dispose of, the share; or
 - (iv) control the acquisition or disposition of the share by another person.

(5) A person who has, or may have, a power referred to in subclause (4)(b) to (f) is interested in a share regardless of whether the power is:

- (a) express or implied;
- (b) direct or indirect

- (c) legally enforceable or not:
- (d) related to a particular share or not:
- (e) subject to restraint or restriction or is capable of being made subject to restraint or restriction:
- (f) exercisable presently or in the future:
- (g) exercisable only on the fulfilment of a condition:
- (h) exercisable alone or jointly with another person or persons.

Schedule 5

ss 3(d), 55

Minority buy-out procedure

Contents

| | | | |
|---|---|---|--|
| 1 | Shareholder may give notice requiring purchase of shares | 5 | Nominated price payable if no objection |
| 2 | Directors' duties on receipt of notice requiring purchase | 6 | Expert determination of price |
| 3 | Directors to nominate and give notice of price for shares | 7 | Purchase of shares by third party |
| 4 | Objection to share price | 8 | Inability of company to pay purchase price |

1. Shareholder may give notice requiring purchase of shares-A shareholder of a company who is entitled to require the company to purchase shares by virtue of section 55 may:

- (a) within 10 working days of the passing of the resolution at a meeting of shareholders; or
- (b) if the resolution was passed under section 52, within 10 working days of the date on which notice of the passing of the resolution is given to the shareholder,

give a written notice to the company requiring the company to purchase those shares

2. Directors' duties on receipt of notice requiring purchase - Within 20 working days of receiving a notice under clause 1, the directors must:

- (a) agree to the purchase of the shares by the company;
or
- (b) arrange for some other person to agree to purchase the shares; or
- (c) arrange, before taking the action concerned, for the resolution to be rescinded or decide in the appropriate manner not to take the action concerned, as the case may be; and
- (d) give written notice to the shareholder of the directors' decision.

3. Directors to nominate and give notice of price for shares-(1) If the directors agree under clause 2(a) to the purchase of the shares by the company, the directors must, on giving notice under that clause or within 5 working days after giving that notice:

- (a) nominate a date on which the shares will be acquired by the company (purchase date), which must not be less than 10 working days or more than 20 working days from the date of giving notice to the shareholder; and
 - (b) nominate a fair and reasonable price for the shares to be acquired; and
 - (c) give notice of the price to the holder of those shares.
- (2) On the purchase date:
- (a) the shares are deemed to be transferred to the company; and
 - (b) the company is liable to pay for the shares in accordance with this clause, subject to section 28.

(3) For the purposes of this schedule, a price for a share is a fair and reasonable price if it is a fair and reasonable price for a share in the company as at the purchase date, disregarding:

- (a) any premium or discount in respect of the size of parcels of shares to be acquired;
- (b) the fact that the shares are being acquired under section 55;
- (c) the effect or likely effect on the value of the company and its shares of the company approving the resolution the approval of which entitled the shareholder to require the company to purchase his or her shares.

4. Objection to share price-(1) A shareholder who considers that the price nominated by the directors is not fair or reasonable must, within 10 working days, give notice of objection to the company.

(2) If, within 10 working days of giving notice to a shareholder under clause 3(1), an objection to the price has been received by the company, the company must:

- (a) refer the question of what is a fair and reasonable price to determination by an expert in accordance with clause 6; and
- (b) on the purchase date, pay a provisional price in respect of each share equal to the price nominated by the directors.

5. Nominated price payable if no objection - If, within 10 working days of giving notice to a shareholder under clause 3(1), no objection to the price has been received by the company, the price to be paid for the shares is the nominated price.

6. Expert determination of price-(1) If the company is required to refer the price for shares to expert determination in accordance with clause 4(2)(a), the company must within 10 working days nominate an independent person with appropriate expertise as the expert to determine the price, and give notice of that appointment to the shareholder.

(2) The shareholder may, within 10 working days of receiving the notice referred to in subclause (1), give notice to the company that he or she objects to the expert nominated by the company, on the grounds that that person:

- (a) is not independent; or
- (b) does not have the appropriate expertise.

(3) If, within 10 working days of receipt of notice by a shareholder under subclause (1), no objection to the expert has been received by the company, the expert must expeditiously determine a fair and reasonable price for the shares to be purchased.

(4) If, within 10 working days of receipt of notice by a shareholder under subclause (1), an objection to the expert has been received by the company, the company must immediately apply to the Court for the appointment of an expert. The Court may appoint the person nominated by the company, or any person nominated by the shareholder, or such other independent person with appropriate expertise as the Court may think fit. The expert appointed by the Court must immediately on being appointed proceed to expeditiously determine a fair and reasonable price for the shares to be purchased.

(5) If the price determined by the expert:

- (a) exceeds the provisional price, the company must, subject to section 28, immediately pay the balance owing to the shareholder;
- (b) is less than the provisional price paid, the company may recover the excess paid from the shareholder.

(6) The expert may award interest on any balance payable or excess to be repaid under subclause (5) at such rate as he or she thinks fit.

(7) The determination by the expert is final and is made by the expert as an expert, and not as an arbitrator.

7. Purchase of shares by third party-(1) Clauses 3 to 6 apply to the purchase of shares by a person with whom the company has entered into an arrangement for purchase in accordance with clause 2(b) subject to such modifications as may be necessary, and, in particular, as if references in that

section to the directors and the company were references to that person.

(2) Every holder of shares that are to be purchased in accordance with the arrangement is indemnified by the company in respect of loss suffered by reason of the failure by the person who has agreed to purchase the shares to purchase them at the price nominated or fixed by arbitration, as the case may be.

8 . Inability of company to pay purchase price - Section 33 applies to the purchase of shares under this schedule as if there were a contract between the shareholder and the company for the purchase of shares in accordance with this schedule.

Schedule 6

ss 3(h), 143

Amalgamations

Contents

- | | |
|--------------------------------------|--|
| 1. Approval of amalgamation proposal | 3. Process for approving amalgamation proposal |
| 2. Contents of amalgamation proposal | 4. Short form amalgamation |

1. Approval of amalgamation proposal-(1) Subject to subclause (2), an amalgamation proposal must be approved in accordance with clause 3 and the rules of each amalgamating company.

(2) An amalgamation proposal that relates to the amalgamation:

- (a) of a company with 1 or more other companies that is or that are directly or indirectly wholly owned by it; or
 - (b) of two or more companies each of which is directly or indirectly wholly owned by the same person,
- may be approved in accordance with clause 4.

2. Contents of amalgamation proposal-(1) An amalgamation proposal must set out the terms of the amalgamation, and, in particular:

- (a) the name of the amalgamated company, which may be the name of 1 of the amalgamating companies, or a new name that complies with section 10; and
 - (b) whether the amalgamated company is a private company or a public company; and
 - (c) the full name and residential address and postal address of every proposed director of the amalgamated company; and
 - (d) the registered office of the amalgamated company; and
 - (e) the postal address of the amalgamated company, which may be either the postal address of the registered office or any other postal address; and
 - (f) the manner in which the shares of each amalgamating company are to be converted into shares of the amalgamated company; and
 - (g) if shares of an amalgamating company are not to be converted into shares of the amalgamated company, the consideration that the holders of those shares are to receive instead of shares of the amalgamated company; and
 - (h) any payment to be made to a shareholder or director of an amalgamating company, other than a payment of the kind described in paragraph (g); and
 - (i) details of any arrangement necessary to complete the amalgamation and to provide for the subsequent management and operation of the amalgamated company.
- (2) The amalgamation proposal must:
- (a) specify whether the rules of the amalgamated company will be the model rules in Schedules 2, 3, or 4; or
 - (b) include a copy of the rules of the amalgamated company, if they differ from the model rules.

- (3) An amalgamation proposal may specify the date on which the amalgamation is intended to become effective.
- (4) If shares of 1 of the amalgamating companies are held by or on behalf of another of the amalgamating companies, the amalgamation proposal:
 - (a) must provide for the cancellation of those shares without payment or the provision of other consideration when the amalgamation becomes effective; and
 - (b) must not provide for the conversion of those shares into shares of the amalgamated company.

3. Process for approving amalgamation proposal-(1)

The directors of each amalgamating company must send to each shareholder of the company, not less than 20 working days before the amalgamation is proposed to take effect:

- (a) a copy of the amalgamation proposal; and
 - (b) a statement setting out the rights of shareholders under section 147; and
 - (c) a statement of any material interests of the directors in the proposal, whether in that capacity or otherwise; and
 - (d) such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed amalgamation.
- (2) The amalgamation proposal must be approved:
- (a) by the shareholders of each amalgamating company by special resolution, as if the proposal were a proposal to alter the rules of the company; and
 - (b) if a provision in the amalgamation proposal would, if contained in an amendment to an amalgamating company's rules or otherwise proposed in relation to that company, require the approval of an interest group, by -
 - (i) a special resolution of each interest group; or
 - (ii) all shareholders under section 51.

4. Short form amalgamation-(1) An amalgamation proposal in relation to a company (parent company) and 1 or more other companies that is or that are directly or indirectly wholly owned by it may be approved by a resolution of the directors of each amalgamating company, if the amalgamation proposal provides that:

- (a) the shares of each amalgamating company, other than the parent company, will be cancelled without payment or other consideration; and
- (b) the rules of the amalgamated company will be the same as the rules of the parent company.

(2) An amalgamation proposal in relation to 2 or more companies, each of which is directly or indirectly wholly owned by the same person, may be approved by a resolution of the directors of each amalgamating company, if the amalgamation proposal provides that:

- (a) the shares of all but 1 of the amalgamating companies will be cancelled without payment or other consideration; and
- (b) the rules of the amalgamated company will be the same as the rules of the amalgamating company whose shares are not cancelled.

Schedule 7

ss 3(i), 155(1)

Company charges

Contents

| <i>Preliminary provisions</i> | <i>Rectification of register and extension of time</i> |
|---|--|
| 1 Charges to which this schedule applies | 5 Court orders |
| 2 Charges to which this schedule does not apply | 6 Grounds for Court orders |
| 3 Charge documents executed outside Samoa | <i>Registration</i> |
| 4 Constructive notice of registered documents | 7 Registrable documents |
| | 8 Who may apply for registration |

| | | | |
|----|---|----|--|
| 9 | Prescribed time for submitting registrable documents | | <i>Satisfaction of company charge, etc</i> |
| 10 | What must accompany copy of registrable document | 19 | Entries of satisfaction and release of Property from registered charge |
| 11 | Requirements for company charges registered under another Act | 20 | Prescribed time for submitting notices |
| 12 | Copy of priority document may be registered | 21 | Matters on which notices may be deferred |
| | <i>Registration of document</i> | 22 | Registrar must enter memorandum of satisfaction in register |
| 15 | When document is registered | 23 | Court may order entry of memorandum in Register |
| 16 | Certificate of registration | | |
| 17 | Endorsement of certificate of registration on debentures | | <i>Transitional</i> |
| 18 | No presumption of validity | 24 | Status of registered existing charges |
| | | 25 | Status of unregistered existing charges |

Preliminary provisions

1. Charges to which this schedule applies - This schedule applies to the following charges created by a company or an overseas company:

- (a) a charge for the purpose of securing an issue of debentures;
- (b) in the case of an existing company, a charge on uncalled share capital of the company;
- (c) a charge created or evidenced by a document that, if executed by an individual, would require registration under the Chattels Transfer Act 1975;
- (d) a charge on any motor vehicle of the company;
- (e) floating charge on any property of the company;
- (f) a charge on land, wherever situated;
- (g) a charge on book debts of the company;

- (h) a charge on amounts payable on issued shares of the company, but not paid;
- (i) a charge on a ship or any share in a ship;
- (j) a charge on any aircraft;
- (k) a charge on goodwill, on a patent or a licence under a patent, on a trade mark or a licence under a trade mark, or on a copyright or a licence under a copyright.

2. Charges to which this schedule does not apply - The following are not charges to which this schedule applies:

- (a) a charge under a charging order issued by a Court in favour of a judgment creditor;
- (b) if a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the negotiable instrument for the purposes of securing an advance to the company.

3. Charge documents executed outside Samoa - A charge document executed outside Samoa and registered more than 20 working days after its execution, but within 3 months after that date, has effect over property in Samoa, subject to any rights acquired before the registration of the document.

4. Constructive notice of registered documents - Registration of a document under this Act:

- (a) constitutes notice to all persons of the details of the document entered in the register; but
- (b) except as provided in sections 5(2) of the Chattels Transfer Act 1975, does not in itself constitute notice to any person of the contents of the document.

Rectification of register and extension of time

5. Court orders-(1) The Court may, on the application of the company or any interested person, order that:

- (a) the omission to register a registrable document be rectified:

- (b) the omission or misstatement of any information registered under this Act be rectified;
 - (c) the prescribed time for submitting to the Registrar a registrable document be extended.
- (2) An order may be made on any conditions that the Court thinks fit.

6. Grounds for Court orders - The Court may make an order under clause 5 only if the Court is satisfied that:

- (a) the omission to register a registrable document within the prescribed time was accidental, due to misadventure or some other sufficient cause, or was not of a nature to prejudice the position of creditors or shareholders of the company; or
- (b) the omission or misstatement of anything registered under this Act was accidental, due to misadventure or some other sufficient cause, or was not of a nature to prejudice the position of creditors or shareholders of the company; or
- (c) on other grounds, it is just and equitable to grant relief.

Registration

7. Registrable documents-(1) A company must ensure that the following documents are registered under this Act:

- (a) a copy of every charge document executed by the company;
- (b) in the case of a series of debentures for which there is no charge document, a copy of 1 of the debentures of the series;
- (c) a copy of every charge document over property acquired by the company that would, if the charge had been created by the company, have required registration under this Act;
- (d) copy of every alteration document executed by the company.

(2) An assignee must ensure that a copy of every assignment document executed by the assignee is registered under this Act.

(3) This clause applies even though:

- (a) the charge includes property outside Samoa; and
- (b) further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situated.

(4) If, within the prescribed time, a company fails to submit to the Registrar a copy of a registrable document and registration is not effected on the application of an interested person:

- (a) the company commits an offence, and is liable on conviction to a fine not exceeding 50 penalty units; and
- (b) every director of the company commits an offence, and is liable on conviction to a fine not exceeding 50 penalty units.

8. Who may apply for registration-(1) The following persons may submit a registrable document for registration:

- (a) in the case of an assignment document, the assignee;
- (b) in all cases, the company or any other interested person.

(2) An interested person is entitled to recover from the following persons the amount of any fees paid by that person to the Registrar for the registration of the registrable document:

- (a) in the case of an assignment of charge, the assignee;
- (b) in all cases, the company.

9. Prescribed time for submitting registrable documents

- A copy of each registrable document must be submitted to the Registrar:

- (a) if the registrable document is executed in Samoa, within 20 working days after the date of its execution; or
- (b) if the registrable document is executed outside Samoa, within 3 months after the date of its execution; or
- (c) if the registrable document is for a charge that is already over property at the time of its acquisition by the company and the property is in

Samoa, within 20 working after the acquisition is completed; or

- (d) if the registrable document is for a charge that is already over property at the time of its acquisition by the company and the property is outside Samoa, within 3 months after the acquisition is completed.

10. What must accompany copy of registrable document - Every copy of a registrable document must be accompanied by:

- (a) the applicable certificate of execution in the prescribed form (if any); and
- (b) the prescribed fee (if any).

11. Requirements for company charges registered under another Act - If a company charge is registered under any other Act, the requirements of this schedule are met if, within the applicable prescribed time, a certificate in the prescribed form (if any) is submitted to the Registrar for registration.

12. Copy of priority document may be registered-(1) A copy of a priority document may, but is not required to, be registered under this Act.

(2) The following persons may submit to the Registrar for registration a copy of the priority document:

- (a) the company to which the priority document relates;
- (b) the secured party who consents to the postponement of its registered charge;
- (c) the assignee.

(3) Every copy of a priority document must be accompanied by:

- (a) the applicable certificate of execution in the prescribed form (if any); and
- (b) the prescribed fee (if any).

Rejection of non-complying document

13. Registrar may reject non-complying document - The Registrar may reject a document that is submitted for registration if it:

- (a) does not comply with this Act;
- (b) is not in a form that can be entered in the register.

14. Consequences of rejecting non-complying document-

(1) If the Registrar rejects a document, the Registrar must inform the person who submitted the document of the Registrar's reasons for rejecting the document, and request the person to:

- (a) amend the rejected document so that it complies with this Act and submit the amended document to the Registrar within the time allowed by the Registrar; or
- (b) submit to the Registrar a new document in its place that complies with this Act within the time allowed by the Registrar.

(2) If the person submits to the Registrar an amended or new document, this schedule, with the necessary modifications, applies to the document.

(3) If the person does nothing, the rejected document must be treated as if it had never been submitted to the Registrar for registration.

Registration of document

15. When document is registered-(1) A document or information is registered when the document or information is entered in the register.

(2) The Registrar may:

- (a) accept as correct the information in any certificate submitted to the Registrar under this subpart; and
- (b) enter the certified information in the register.

16. Certificate of registration-(1) The Registrar must give a certificate of the registration (certificate of registration) of any document that is registered under this Act.

(2) A certificate of registration is conclusive evidence that the registration requirements in this Act have been met.

17. Endorsement of certificate of registration on debentures-(1) A company must ensure that a copy of every certificate of registration is endorsed on every debenture or certificate of debenture stock issued by the company.

(2) Nothing in subclause (1) requires a company to ensure that a certificate of registration is endorsed on a debenture or certificate of debenture stock issued by the company before the charge was created.

(3) Every person who fails to comply with subclause (1) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

18. No presumption of validity - Neither registration, nor the rejection, of a document by the Registrar under this schedule affects, or creates a presumption about, the validity of the document or the correctness of the information contained in it.

Satisfaction of company charge, etc

19. Entries of satisfaction and release of property from registered charge-(1) A company must submit to the Registrar the prescribed fee (if any) and:

- (a) a notice in the prescribed form (if any) signed by the secured party of any of the applicable matters specified in subclause (2); or
 - (b) a notice in any other form approved by the Registrar of any of those applicable matters; or
 - (c) provide any other evidence to the satisfaction of the Registrar of any of those applicable matters.
- (2) The matters referred to in subclause (1) are that:
- (a) the registered charge has been satisfied in whole or part; or
 - (b) the secured property has been released; or

- (c) the secured property has been disposed of subject to the registered charge.

20. Prescribed time for submitting notices - A notice or evidence to which clause 19 applies must be submitted to the Registrar within 20 working days after:

- (a) the debt for which the registered charge was given has been paid or satisfied in whole or in part; or
- (b) all or any part of the secured property has been released from the registered charge; or
- (c) all or any part of the secured property has been disposed of subject to the registered charge.

21. Matters on which notice may be deferred - Until a final discharge is signed by the secured party, the company need not submit to the Registrar a notice or evidence to which clause 19 applies on the occurrence of:

- (a) any sum being paid to the secured party; or
- (b) any account between the company and the secured party being in credit.

22. Registrar must enter memorandum of satisfaction in register - On receipt of a notice or other evidence to which clause 19 applies and on payment of the prescribed fee (if any), the Registrar must enter in the register:

- (a) a memorandum of the full or partial satisfaction of the registered charge;
- (b) a memorandum of the fact that all or any part of the secured property has been released from the registered charge; or
- (c) a memorandum of the fact that all or any part of the secured property has ceased to belong to the company.

23. Court may order entry of memorandum in register-(1) The Court may order that a memorandum under clause 22 be entered in the register.

(2) If the Court makes an order under subclause (1), the Registrar must enter the memorandum in the register.

Transitional

24. Status of registered existing charges-(1) Except as expressly provided in this Act, nothing in this Act invalidates the registration of an existing charge that, immediately before the commencement of this Act, was valid.

(2) An existing charge that, immediately before the commencement of this Act, was registered under Part IV of the Companies Act 1955 is deemed to be registered under this Act.

25. Status of unregistered existing charges - Except as expressly provided in this Act, an existing charge that, immediately before the commencement of this Act, was valid and effectual without registration continues, on and after that commencement, to be valid and effectual without being registered under this Act.

Schedule 8

ss 3(i), 156

Powers, functions, and liabilities of administrators

Contents

| Part 1 | Part 2 |
|---|---|
| Preliminary provisions | Powers and functions of administrators |
| 1 Administrator is company's agent | 6 General powers of administrators |
| 2 Administrator has qualified privilege | 7 Limitations on administrator's powers |
| 3 Administrator may seek directions | 8 Dealing with property subject to floating charge that has become fixed charge |
| 4 Exercise of powers, etc, by 2 or more administrators | 9 When administrator may dispose of encumbered property |
| 5 Exercise of powers, etc, by 2 or more administrators under compromise | |

Part 3
Liability of Administrators

General liability

10 Administrator not liable in damages for refusing consent

1 Liability of administrator for company's debts
12 Liability of administrator for debts incurred by administrator

Liability for rent, etc

13 Application of clauses 15 to 18
14 Liability of administrator for rent

15 Notice stating company does not propose to exercise rights over property

16 Effect of notice

17 When notice ceases to have effect

Indemnity

18 Administrator is entitled to indemnity

19 Administrator's indemnity has priority over unsecured debts, etc

20 Exception for debts secured by floating charge

21 Extent of administrator's indemnity when floating charge has priority

Part 1
Preliminary provisions

1. Administrator is company's agent - When exercising a power, or performing a function, as administrator of a company, the administrator is taken to be acting as the company's agent.

2. Administrator has qualified privilege - A person who is, or has been, the administrator of a company has qualified privilege in respect of a statement that he or she has made, whether orally or in writing, in the course of exercising his or her powers, or performing his or her functions, as administrator of the company.

3. Administrator may seek directions-(1) The administrator of a company, or any person who chairs a meeting of creditors held under subpart 1 of Part 9, may apply to the Court for directions about a matter arising in connection with the exercise of his or her powers or the performance of his or her functions.

(2) The administrator under a compromise approved under subpart 1 of Part 9 may apply to the Court for directions about a matter arising in connection with the operation of, or giving effect to, the compromise.

4. Exercise of powers, etc, by 2 or more administrators-

(1) If subpart 1 of Part 9 provides for an administrator of a company to be appointed, 2 or more persons may be appointed as administrators of the company.

(2) If there are 2 or more administrators of a company:

- (a) a function or power of an administrator of the company may be performed or exercised by any 1 of them, or by any 2 or more of them together, except so far as the document or resolution appointing them otherwise provides; and
- (b) a reference in this Act to an administrator, or to the administrator, of a company is a reference to whichever 1 or more of those administrators the case requires.

5. Exercise of powers, etc, by 2 or more administrators under compromise - If there are 2 or more administrators of a compromise approved under subpart 1 of Part 9:

- (a) a function or power of an administrator under the compromise may be performed or exercised by any 1 of them, or by any 2 or more of them together, except so far as the document or resolution appointing them otherwise provides; and
- (b) a reference in this Act to an administrator under a compromise is a reference to whichever 1 or more of those administrators the case requires.

Part 2**Powers and functions of administrators**

6. General powers of administrator -While a company is under administration, the administrator has control of the company's business, property, and affairs and may:

- (a) carry on the company's business;
- (b) manage the company's property and affairs;
- (c) terminate or dispose of all or any part of the company's business;
- (d) dispose of all or any part of the company's property;
- (e) exercise any power, and perform any function, that the company or any of its officers could perform or exercise if the company were not under administration;
- (f) with leave of the Court, remove from office a director of the company;
- (g) with leave of the Court, appoint a person as a director of the company, whether to fill a vacancy or not;
- (h) execute a document, bring or defend proceedings, or do anything else, in the company's name and on its behalf;
- (i) do whatever else is necessary for the purposes of subpart 1 of Part 9.

7. Limitations on administrators power's-(1) If clause 23 of Schedule 10 applies, the administrator's powers and functions are subject to the powers and functions of:

- (a) the secured creditor; or
- (b) a receiver or person of a kind referred to in clause 23 of Schedule 10 (even if appointed after the decision period).

(2) If clause 19 of Schedule 10 applies, then, so far as concerns perishable property of the company, the administrator's powers and functions are subject to the powers and functions of:

- (a) the secured creditor; or
 - (b) a receiver or person appointed (at any time) as mentioned in paragraphs (a), (b), or (d) of the definition of enforce in clause 1 of Schedule 1.
- (3) If clauses 14, 15, or 20 of Schedule 10 apply, then, so far as concerns the property referred to in those clauses, the administrator's powers and functions are subject to the powers and functions of the secured creditor, receiver, or other person.

8. Dealing with property subject to floating charge that has become fixed charge - If a floating charge over property of a company has become a fixed charge, then, subject to this Schedule, the administrator may deal with any of that property as if the charge were still a floating charge.

9. When administrator may dispose of encumbered property-(1) The administrator of a company must not dispose of:

- (a) property of the company that is subject to a charge; or
 - (b) property that is used or occupied by, or is in the possession of, the company but of which someone else is the owner or lessor.
- (2) Subclause (1) does not prevent a disposal:
- (a) in the ordinary course of the company's business if it is authorised by the terms of the relevant charge, agreement authorising use or possession, lease or without agreement of the secured creditor, owner, or lessor; or
 - (b) with the written consent of the secured creditor, owner, or lessor, as the case may be; or
 - (c) with the leave of the Court.
- (3) The Court may give leave under subclause (2)(c) only if it is satisfied that arrangements have been made to protect adequately the interests of the secured creditor, owner, or lessor, as the case may be.

Part 3
Liability of administrators

General liability

10. Administrator not liable in damages for refusing consent - A company's administrator is not liable to an action or other proceeding for damages for refusing to give an approval or consent under subpart 1 of Part 9.

11. Liability of administrator for company's debts - Except as expressly provided in subpart 1 of Part 9 or this schedule, the administrator of a company is not liable for the company's debts.

12. Liability of administrator for debts incurred by administrator-(1) The administrator of a company is liable for the debts that the administrator incurs in the exercise of his or her powers, or performance of his or her functions, as administrator for:

- (a) services rendered:
- (b) goods bought:
- (c) property hired, leased, used, or occupied.

(2) Subclause (1) has effect despite any agreement to the contrary, but without prejudice to the administrator's rights against the company or anyone else.

Liability for rent, etc

13. Application of clauses 14 to 17 - Clauses 14 to 17 apply if, under an agreement made before the administration of a company began, the company continues to use or occupy, or to be in possession of, property of which someone else is the owner or lessor.

14. Liability of administrator for rent-(1) Subject to this clause, the administrator is liable for that part of the rent or other amounts payable by the company under the agreement referred to in clause 13 for any period:

- (a) that begins more than 10 working days after the administration began; and
- (b) throughout which -
 - (i) the company continues to use or occupy, or to be in possession of, the property; and
 - (ii) the administration continues.
- (2) Subclause (1) does not apply to so much of a period that elapses after:
 - (a) a receiver of the property is appointed; or
 - (b) a secured creditor appoints an agent, under the provisions of a charge on the property, to enter into possession, or to assume control, of the property; or
 - (c) a secured creditor takes possession, or assumes control, of the property under the provisions of a charge on the property.
- (3). Subclause (1) does not apply in so far as a Court, by order, excuses the administrator from liability.
- (4) Subclauses (2) and (3) do not affect the liability of the company.
- (5) The administrator is not taken because of subclause (1) -
 - (a) to have adopted the agreement; or
 - (b) to be liable under the agreement otherwise than as mentioned in subclause (1).

15. Notice stating company does not propose to exercise rights over property - Within 10 working days after the beginning of the administration, the administrator may give to the owner or lessor a notice that:

- (a) specifies the property; and
- (b) states that the company does not propose to exercise rights in relation to the property.

16. Effect of notice – Despite clause 14, the administrator is not liable for so much of the rent or other amounts payable by the company under the agreement that is attributable to a period during which a notice under clause 15 is in force, but such a notice does not affect a liability of the company.

17. When notice ceases to have effect-(1) A notice under clause 14 ceases to have effect if:

- (a) the administrator revokes it in writing given to the owner or lessor; or
- (b) the company exercises, or appears to exercise, a right in relation to the property.

(2) For the purposes of subclause (1), the company does not exercise, or appear to exercise, a right in relation to the property merely because the company continues to occupy, or to be in possession of, the property, unless the company:

- (a) also uses the property; or
- (b) asserts a right, as against the owner or lessor, so to continue.

Indemnity

18. Administrator is entitled to indemnity-(1) The administrator of a company is entitled to be indemnified out of the company's property for:

- (a) the debts for which the administrator is liable under this Act; and
- (b) the costs incurred in relation to holding a meeting of creditors under subpart 1 of Part 9; and
- (c) his or her remuneration.

(2) To secure the administrator's indemnity, the administrator has a lien on the company's property.

(3) An administrator's lien has priority over a charge to the extent that the indemnity has priority over debts secured by the charge.

19. Administrator's indemnity has priority over unsecured debts, etc - Subject to claims having preference under Part 3 of Schedule 18, an administrator's indemnity has priority over:

- (a) all the company's unsecured debts; and
- (b) subject to clauses 20 and 21, debts of the company secured by a floating charge on property of the company.

20. Exception for debts secured by floating charge - An administrator's indemnity does not have priority over debts secured by a floating charge if:

- (a) before the beginning of the administration, the secured party -
 - (i) appointed a receiver of property of the company under a power contained in the floating charge document concerned; or
 - (ii) obtained an order for the appointment of a receiver of property of the company for the purpose of enforcing the charge; or
 - (iii) entered into possession, or assumed control, of property of the company for the purpose of enforcing the charge; or
 - (iv) appointed a person so to enter into possession or assume control (whether as agent for the secured creditor or for the company); and
- (b) the receiver or person is still in office, or the secured party is still in possession or control of the property.

21. Extent of administrator's indemnity when floating charge has priority - The extent to which a floating charge has priority over an administrator's indemnity is limited to debts incurred, or remuneration accruing, after the secured party gave written notice to the administrator of the matter specified in clause 20(a) that gave the secured party priority over the indemnity.

Schedule 9

ss 3(i), 156, 158(2)(a)

Office of administrator

Contents

| <i>Restrictions on appointment of administrator</i> | <i>Vacancy in office of administrator</i> |
|---|--|
| 1 Who may not be appointed or act as administrator | 5 Vacancy in office of administrator |
| 2 Validity of acts of administrators | 6 Replacement administrator to hold creditors' meeting |
| 3 Person must consent to being appointed administrator | 7 Court order if vacancy in office of administrator |
| 4 Court may declare whether administrator validly appointed | 8 Vacancy in office of administrator under compromise |
| | <i>Administrators' remuneration</i> |
| | 9 Remuneration of administrator |

*Restrictions on appointment of administrators***1. Who may not be appointed or act as administrator -**

None of the following may be appointed or act as an administrator of a company or under a compromise:

- (a) a corporation;
- (b) a person who is under 21 years of age;
- (c) a creditor of the company under administration;
- (d) a person who has, within the 2 years immediately before the commencement of the administration, been a shareholder, director, auditor, or receiver of the company or of a related company;
- (e) an undischarged bankrupt;
- (f) a person who has been adjudged to be mentally defective under the Mental Health Ordinance 1961;

- (g) a person who would, but for the repeal of the Companies Act 1955, be prohibited from being a director or promoter, or being concerned or taking part in the management, of a company within the meaning of that Act;
- (h) a person who is prohibited from being a director or promoter of or being concerned or taking part in the management of, a company under this Act;
- (i) a person who is prohibited from acting as a liquidator under this Act;
- (j) a person who is prohibited from acting as a receiver under the Receiverships Act 2005.

2. Validity of acts of administrators - The acts of a person as an administrator are valid even though that person may not be qualified to act as an administrator.

3. Person must consent to being appointed administrator-(1) A person must not be appointed as administrator of a company or under a compromise unless the person has consented in writing to the appointment.

(2) The administrator must lodge his or her consent, with the registration, together with notice of his or her appointment.

4. Court may declare whether administrator validly appointed-(1) If there is doubt on a specific ground about whether the appointment of a person as administrator of a company is valid, the person, the company, or any of the company's creditors may apply to the Court for an order under subclause (2).

(2) The Court may, on application, make an order declaring whether or not the appointment was valid on the ground specified in the application or on some other ground.

Vacancy in office of administrator

5. Vacancy in office of administrator-(1) The person who appointed an administrator of a company may appoint someone else as administrator of the company if the administrator:

- (a) dies; or
- (b) becomes prohibited from acting as administrator of the company; or
- (c) resigns by notice in writing given to his or her appointer and to the company.

(2) Where the board of directors of a company appointed the administrator of the company, an appointment under subclause (1) may be made by the board despite clause 2 of Schedule 10.

(3) If a company is under administration, but for some reason no administrator is acting, the Court may appoint a person as administrator on the application of the Registrar or a creditor or shareholder or, despite clause 2 of Schedule 10, of an officer of the company.

6. Replacement administrator to hold creditors' meeting-(1) Within 10 working days after being appointed as administrator of a company under clause 5 otherwise than by the Court, the administrator must hold a meeting of the company's creditors in accordance with Schedule 12 so that they may:

- (a) determine whether to remove the person from office; and
 - (b) if so, appoint someone else as administrator of the company.
- (2) At least 5 working days before a creditors' meeting is held under this clause, the administrator must give:
- (a) written notice of the meeting to every secured party who holds a registered charge over the property of the company; and
 - (b) written notice of the meeting to as many of the company's other creditors as reasonably practicable; and

(c) public notice of the meeting.

7. Court order if vacancy in office of administrator-(1)

The Court may make such order as it thinks just if the Court is satisfied that:

(a) a company is under administration but -

(i) there is a vacancy in the office of administrator of the company; or

(ii) no administrator of the company is acting; or

(b) a compromise approved under subpart 2 of Part 9 has not yet terminated but

(i) there is a vacancy in the office of administrator under the compromise; or

(ii) no administrator under the compromise is acting.

(2) The Registrar, or a creditor or shareholder of the company, are the only persons who may apply for an order under subclause (1).

8. Vacancy in office of administrator under compromise-

(1) The Court may appoint someone else as administrator under a compromise if the administrator:

(a) dies; or

(b) becomes prohibited from acting as administrator under the compromise; or

(c) resigns by notice in writing given to the company.

(2) If a compromise has not yet terminated, but for some reason no administrator under the compromise is acting, the Court may appoint a person as administrator under the compromise.

(3) An appointment may be made on the application of the Registrar or of an officer, shareholder or creditor of the company.

Administrators' remuneration

9. Remuneration of administrator-(1) The administrator of a company under administration, or acting under a compromise approved by creditors in accordance with section 187(1)(a), is entitled to:

- (a) any remuneration that is -
- (i) fixed by a resolution of the company's creditors passed at a meeting convened under section 183; or
 - (ii) specified by the document setting out the terms of the compromise; or
- (b) if no remuneration is fixed, any remuneration that the Court fixes on the application of the administrator.
- (2) Despite clause 2 of Schedule 10, if remuneration is fixed under subclause (1)(a), the Court may review the remuneration and confirm, increase, or reduce it on the application of -
- (a) the administrator of the company; or
 - (b) a director of the company; or
 - (c) a shareholder of the company; or
 - (d) a creditor of the company.

Schedule 10

ss 3(i), 156, cl 7 of Schedule 8,
cls 5(4) and 9(2) of Schedule 9

Effect of administration

Contents

| | |
|--|---|
| <p style="text-align: center;">Part 1 Preliminary provisions</p> <p>1 Time for doing act does not run while act prevented by administration</p> | <p>4 Restrictions on putting company into liquidation</p> |
| <p style="text-align: center;">Part 2 Effect on company's officers and shareholders, etc</p> <p>2 Functions and powers of company officers suspended used by company</p> <p>3 Effect on company's shareholders</p> | <p style="text-align: center;">Part 3 Effect on proceedings</p> <p>5 Stay of civil proceedings</p> <p>6 Suspension of enforcement process</p> <p>7 Duties of Court officer in relation to property of company</p> <p>8 Court officer must deliver company property, etc, to administrator</p> |

- 9 Good faith buyer under execution process gets good title

Part 4
Restrictions on dealing with company's property

General

- 10 Only administrator can deal with company's property
11 Offence for company officer to enter into void transaction or dealing
12 Order for compensation
13 Owner or lessor not to recover property
14 Exception: perishable property
15 Exception: recovery of property before administration
16 Court may limit powers of receiver, etc, in relation to property used by company
17 Giving notice relating to property used by company

Secured creditors

- 18 Charge unenforceable
19 Exception: charge on perishable property
20 Exception: enforcement of charge before administration
21 Court may limit powers of secured creditor, etc, in relation to charged property
22 Giving notice under charge
23 When secured creditor acts before or during decision period

Part 5
Effect on guarantees

- 24 Administration not to trigger liability under guarantee
25 Court orders
26 Grounds for making order under clause 25
27 Interim order
28 No undertaking as to damages
29 Variation or discharge of order
30 Operation of orders
31 Application of Bankruptcy Act 1908

Part 1
Preliminary provisions

1. Time for doing act does not run while act prevented by administration - If, for any purpose, an act must or may be done within a particular period or before a particular time, and this Act prevents the act from being done within that period or before that time, the period is extended, or the time is deferred, according to how long this Act prevented the act from being done.

Part 2**Effect on company's officers and shareholders, etc****2. Functions and powers of company officers suspended-**

(1) Subject to clauses 19(2), 20(2), 22, and 23(3), while a company is under administration, no person (other than the administrator) may, without the administrator's written approval, perform a function, or exercise a power, as an officer of the company.

(2) Subclause (1) does not have the effect of removing an officer of a company from his or her office.

3. Effect of administration on company's shareholders -

A transfer of shares in a company, or an alteration in the status of shareholders of a company, that is made during the administration of the company is void except:

- (a) with the consent of the administrator; or
- (b) so far as the Court otherwise orders.

4. Restrictions on putting company into liquidation - If a company is under administration:

- (a) the shareholders and the directors of the company must not appoint a liquidator;
- (b) if the Court is satisfied that it is in the interests of the company's creditors for the company to continue under administration, rather than for a liquidator or an interim liquidator to be appointed, as the case may be -
 - (i) the Court must adjourn the hearing of an application for an order to appoint a liquidator; and
 - (ii) the Court must not appoint an interim liquidator.

Part 3
Effect on proceedings, etc

5. Stay of civil proceedings - During the administration of a company, a civil proceeding in a Court against the company or in relation to any of its property must not be started or proceeded with, except with:

- (a) the administrator's written consent; or
- (b) the leave of the Court and in accordance with any conditions that the Court imposes.

6. Suspension of enforcement process - During the administration of a company, any enforcement process in relation to property of the company must not be started or proceeded with, except:

- (a) with the leave of the Court; and
- (b) in accordance with any conditions that the Court imposes.

7. Duties of Court officer in relation to property of company - A court officer who receives written notice of the fact that a company is under administration must not -

- (a) take action to sell property of the company under a process of execution; or
- (b) pay to a person who is not the administrator -
 - (i) proceeds of selling property of the company (at any time) under a process of execution; or
 - (ii) money of the company seized (at any time) under a process of execution; or
 - (iii) money paid (at any time) to avoid seizure or sale of property of the company under a process of execution; or
- (c) take action in relation to the attachment of a debt due to the company; or
- (d) pay to a person (other than the administrator) money received because of the attachment of such a debt.

8. Court officer must deliver company property, etc, to administrator-(1) The Court officer must:

- (a) deliver to the administrator any property of the company that is ever in the Court officer's possession under a process of execution; and
 - (b) pay to the administrator all proceeds or money of a kind referred to in clause 7(b) or (d) that -
 - (i) are in the Court officer's possession;
 - or
 - (ii) have been paid into the Court and have not since been paid out.
- (2) The costs of the execution or attachment are a first charge on property delivered, or proceeds or money paid, to the administrator.
- (3) In order to give effect to a charge on proceeds or money, the Court officer may retain, on behalf of the person entitled to the charge, so much of the proceeds or money as the Court officer thinks necessary.
- (4) The Court may, if it is satisfied that it is appropriate to do so, permit the Court officer to take action, or to make a payment, that would otherwise be prevented.

9. Good faith buyer under execution process gets good title - Despite anything in clauses 7 and 8, a person who buys property in good faith under a sale under a process of execution gets a good title to the property as against the company and the administrator.

Part 4

Restrictions on dealing with company's property

General provisions

10. Only administrator can deal with company's property-(1) A transaction or dealing that affects property of a company under administration is void unless:

- (a) the administrator entered into it on the company's behalf; or

- (b) the administrator consented to it in writing before it was entered into; or
 - (c) it was entered into under an order of the Court.
- (2) Subclause (1) has effect subject to any order that the Court makes after the transaction or dealing.

11. Offence for company officer to enter into void transaction or dealing-(1) Every officer of a company that is under administration commits an offence if the officer of the company:

- (a) purported to enter into a void transaction or dealing on the company's behalf; or
 - (b) was in any other way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the void transaction or dealing.
- (2) Every officer of a company who commits an offence against subclause (1) is liable on conviction to a fine not exceeding 50 penalty units.

12. Order for compensation-(1) The Court may order a person who has been convicted of an offence against clause 11(1) to pay compensation of a specified amount to the company or other person who has suffered loss or damage as a result of the offence.

(2) An order under subclause (1) may be enforced as if it were a judgment of the Court.

(3) The defences available under section 76 to relieve a person from liability for an offence referred to in that section extend to relieving a person from liability to be ordered under this clause to pay compensation.

13. Owner or lessor not to recover property used by company - During the administration of a company, the owner or lessor of property that is used or occupied by, or is in the possession of, the company must not take possession of the property or otherwise recover it, except:

- (a) with the administrator's written consent; or
- (b) with the leave of the Court.

14. Exception: perishable property-(1) Nothing in clauses 2 or 13 prevents a person from taking possession of, or otherwise recovering, perishable property.

(2) Clause 10 does not apply in relation to a transaction or dealing that:

- (a) affects perishable property; and
- (b) is entered into for the purpose of enforcing a right of the owner or lessor of the property to take possession of the property or otherwise recover it.

15. Exception: recovery of property before administration - If, before the beginning of the administration of a company, a receiver or other person, for the purpose of enforcing a right of the owner or lessor of property that is used or occupied by, or in possession of, the company, enters into possession or assumes control of, or exercises any other power in relation to, the property:

- (a) nothing in clauses 2 or 13 prevents the receiver or other person from performing a function, or exercising a power, in relation to the property; and
- (b) clause 10 does not apply in relation to a transaction or dealing that affects the property and is entered into in the performance of a function, or exercise of a power, of the receiver or other person.

16. Court may limit powers of receiver, etc, in relation to property used by company-(1) Despite clauses 14 and 15, the Court may, on application by the administrator of a company, order a person not to perform specified functions, or exercise specified powers, in relation to property:

- (a) that is used or occupied by, or in the possession of, the company; and
- (b) in respect of which the person, for the purpose of enforcing a right as owner or lessor of the property, has entered into possession, assumed control, or exercised any other power.

(2) The Court may make an order only if it is satisfied that what the administrator proposes to do during the administration will adequately protect the interests of the owner or lessor.

(3) An order may be made under this clause, and has effect, only during the administration of the company.

17. Giving notice relating to property used by company

- Nothing in clauses 2 or 13 prevents a person from giving a notice to a company under an agreement relating to property that is used or occupied by, or is in the possession of, the company.

Secured creditors

18. Charge unenforceable - Subject to clauses 20, 22, and 23, during the administration of a company, a person must not enforce a charge on property of the company, except:

- (a) with the administrator's written consent; or
- (b) with the leave of the Court.

19. Exception: charge on perishable property - Despite anything in this schedule, a secured creditor who has a charge over perishable property of a company under administration, or a receiver or other appointed person who is entitled to enforce the charge, may:

- (a) enforce the charge on the perishable property;
- (b) enter into a transaction or dealing that affects the perishable property.

20. Exception: enforcement of charge before administration-(1) If, before the beginning of the administration of a company, a secured creditor, receiver, or other person, has, for the purpose of enforcing a charge on property of the company, done any of the things specified in subclause (2):

- (a) nothing in clauses 2 or 18 prevents the secured creditor, receiver, or other person from enforcing the charge in relation to the property; and

- (b) clause 10 does not apply in relation to a transaction or dealing that affects the property and is entered into -
 - (i) in the exercise of a power of the secured creditor as secured creditor; or
 - (ii) in the performance of a function, or exercise of a power, of the receiver or other person.
- (2) The things referred to in subclause (1) are the secured creditor as secured creditor or the receiver or other person has:
 - (a) entered into possession, or assumed control, of property of the company; or
 - (b) entered into an agreement to sell the property; or
 - (c) made arrangements for the property to be offered for sale by public auction; or
 - (d) publicly invited tenders for the purchase of the property; or
 - (e) exercised any other power in relation to the property.

21. Court may limit powers of secured creditor, etc. in relation to charged property-(1) Despite clauses 19 and 20, the Court may, on application by the administrator of a company, order a secured creditor, receiver, or other person not to perform specified functions or exercise specified powers if, for the purpose of enforcing a charge on property of a company, the secured creditor, receiver, or other person, does an act of a kind referred to in clause 19(1).

(2) Subclause (1) does not apply in a case to which clause 23 applies.

(3) The Court may make an order only if it is satisfied that what the administrator proposes to do during the administration will adequately protect the secured creditor's interests.

(4) An order may be made under this clause, and has effect, only during the administration of the company.

22 Giving notice under charge - Nothing in clauses 2 or 18 prevents a person from giving a notice under the charge.

23 When secured creditor acts before or during decision period-(1) This clause applies if:

- (a) all of the property of a company under administration is subject to a charge; and
 - (b) before or during the decision period, the secured creditor enforced the charge in relation to all property of the company subject to the charge, whether or not the charge was enforced in the same way in relation to all that property.
- (2) This clause also applies if:
- (a) a company is under administration; and
 - (b) the same person is the secured creditor in relation to each of 2 or more charges on property of the company; and
 - (c) the property of the company subject to the respective charges together constitutes all, or almost all, of the company's property; and
 - (d) before or during the decision period, the secured creditor enforced the charges in relation to all the charged property -
 - (i) whether or not the charges were enforced in the same way in relation to all the charged property; and
 - (ii) whether or not any of the charges were enforced in the same way in relation to all the property of the company subject to that charge; and
 - (iii) in so far as the charges were enforced in relation to property of the company in a way referred to in paragraphs (a), (b), or (d) of the definition of enforce in clause 1 of Schedule 1, whether or not the same person was appointed in respect of all of that property.
- (3) Nothing in clauses 2 or 18 prevents any of the following from enforcing the charge, or any of the charges:

- (a) the secured creditor entitled to the charge or charges:
 - (b) a receiver or person referred to in paragraphs (a), (b), or (d) of the definition of enforce, or any of the charges (even if appointed after the decision period).
- (4) Clause 10 does not apply in relation to a transaction or dealing that affects property of the company and is entered into by the secured creditor, a receiver, or person of a kind referred to in subclause (3)(b), in the performance of a function, or exercise of a power, as secured creditor, or as a receiver, or person, as the case may be.

Part 5

Effect on guarantees

24. Administration not to trigger liability under guarantee - Except with the leave of the Court and in accordance with any conditions that the Court imposes, during the administration of a company:

- (a) a guarantee of a liability of the company must not be enforced as against -
 - (i) a director or shareholder of the company who is a natural person; or
 - (ii) a spouse or relative of the director or shareholder; and
- (b) without limiting paragraph (a), a proceeding, in relation to a guarantee, must not be started against a director, shareholder, spouse, or relative.

25. Court orders-(1) Despite clause 24, the Court may, on application by the creditor, make 1 or more of the following orders:

- (a) an order prohibiting a person who is indebted to the guarantor or to an associate of the guarantor from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;

- (b) an order prohibiting a person holding money, securities, futures contracts or other property, on behalf of the guarantor, or on behalf of an associate of the guarantor, from paying all or any of the money, or transferring, or otherwise parting with possession of, the securities, futures contracts or other property, to, or to another person at the direction or request of, the person on whose behalf the money, securities, futures contracts or other property, is or are held:
 - (c) an order prohibiting the taking or sending out of the jurisdiction of Samoa by a person, money of the guarantor or of an associate of the guarantor:
 - (d) an order prohibiting the taking, sending or transfer by a person of securities, futures contracts or other property of the guarantor, or of an associate of the guarantor –
 - (i) from a place under the jurisdiction of Samoa to a place outside the jurisdiction (including the transfer of securities from a register in the jurisdiction of Samoa to a register outside that jurisdiction); or
 - (ii) from a place in Samoa to a place outside Samoa (including the transfer of securities from a register in Samoa to a register outside Samoa):
 - (e) an order appointing, a receiver or trustee, having such powers as the Court orders, of the property or of part of the property of a person who is an individual:
 - (f) an order appointing a receiver, having such powers as the Court orders, of all or any part of the property of a guarantor who is a body corporate:
 - (g) an order prohibiting a guarantor who is an individual from leaving Samoa without the consent of the Court.
- (2) A reference in subclause (1)(d), (e), or (f) to property of a person includes reference to property that the person holds otherwise than as sole beneficial owner, for example:

- (a) as trustee for, as nominee for, or otherwise on behalf of or on account of, another person; or
 - (b) in a fiduciary capacity.
- (3) An order under subclause (1) prohibiting conduct may prohibit the conduct either absolutely or subject to conditions.

26. Grounds for making order under clause 25 - The Court may make an order under clause 25 if the Court considers it necessary or desirable to do so for the purpose of protecting the interests of the creditor to whom a guarantor is liable, or may become liable, to pay money, whether in respect of a debt, by way of damages or compensation or otherwise, or to account for securities, futures contracts, or other property.

27. Interim order - If an application is made to the Court for an order under clause 25, the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order (being an order of the kind applied for) that is expressed to have effect pending the determination of the application.

28. No undertaking as to damages - On an application under clause 25, the Court must not require the applicant or any other person, as a condition of granting an interim order, to give an undertaking as to damages.

29. Variation or discharge of order - If the Court has made an order on a person's application under clause 25, the Court may, on application by that person or by any person affected by the order, make a further order discharging or varying the first order.

30. Operation of orders - An order made under clauses 25 or 27 may be expressed to operate for a specified period or until the order is discharged by a further order.

31. Application of Bankruptcy Act 1908 - Clauses 24 to 30 have effect subject to the Bankruptcy Act 1908 as modified by the Samoa Bankruptcy Order 1922.

Schedule 11

ss 3(i), 156

Creditors' committees

1. Functions of committees of creditors-(1) The functions of a committee of creditors of a company under administration are:

- (a) to consult with the administrator about matters relating to the administration; and
 - (b) to receive and consider reports by the administrator.
- (2) A committee must not give directions to the administrator, except as provided in subclause (3).
- (3) As and when a committee reasonably requires, the administrator must report to the committee about matters relating to the administration.
- (4) Schedule 12, with the necessary modifications, applies to meetings of committees of creditors.

2. Membership of committee - A person may be a member of a committee of creditors of a company under administration if, and only if, he or she is:

- (a) a creditor of the company; or
- (b) the attorney of such a creditor because of a general power of attorney; or
- (c) authorised in writing by such a creditor to be such a member.

Schedule 12

ss 3, 156(5), 179(3), 183, 187(2), 205(2)
 206(1), 211, 245(4)(c), 246(3)(b),
 cl 6(1) Schedule 9, cl 1(4) Schedule 11

Meetings of creditors

Contents

| <i>General provisions</i> | <i>Proxies</i> |
|------------------------------------|--|
| 1 Procedure generally | 12 Proxies |
| 2 Effect of irregularity or defect | 13 Administrator or liquidator may act as proxy |
| | 14 Irregularity in notice of proxy |
| | 15 Limits on holder of proxy |
| | <i>Voting</i> |
| | 16 Creditors entitled to vote in liquidations |
| | 17 Entitlement to vote, etc, determined by chairperson |
| | 18 Voting by secured creditors |
| | 19 When resolution adopted |
| | <i>Postal voting</i> |
| | 20 Who may cast postal vote |
| | 21 Postal vote cast in respect of different resolution |
| | 22 Person authorised to receive and count postal votes |
| | 23 How to cast postal vote |
| | 24 Duty of person authorised to receive and count postal votes |
| | 25 Duty of chairperson |

Methods of holding meetings

3 Methods of holding meetings

Notice of meeting

4 Notice of meeting
 5 Contents of notice
 6 Effect of irregularity, etc, in notice

Meeting

7 Adjournment of meeting
 8 Chairperson
 9 Quorum
 10 Corporations may act by representatives
 11 Keeping of record of attendance and minutes

General provisions

1. Procedure generally - Except as provided in this schedule and in any regulations made under this Act, a meeting of creditors may regulate its own procedure.

2. Effect of irregularity or defect-(1) An irregularity or defect in the proceedings at a meeting of creditors does not invalidate anything done by a meeting of creditors, unless the Court orders otherwise.

(2) The Court may, on the application of the administrator or liquidator, as the case may be, or a creditor of the company, make an order under subclause (1) if it is satisfied that substantial injustice would be caused if the order were not made.

Methods of holding meetings

3. Methods of holding meetings - A meeting of creditors may be held:

- (a) by assembling together those creditors entitled to take part and who choose to attend at the place, date, and time appointed for the meeting by the person convening the meeting as being in his or her opinion the most convenient place, date and time for the majority of creditors; or
- (b) by means of audio, or audio and visual, communication by which all creditors participating can simultaneously hear each other throughout the meeting; or
- (c) by conducting a postal ballot in accordance with clauses 19 to 24 of those creditors entitled to take part.

Notice of meeting

4. Notice of meeting - At least 5 working days before a creditors meeting, written notice must be sent to every creditor entitled to attend the meeting of:

- (a) the time and place of every meeting to be held under clause 3(a); or
- (b) the time and method of communication for every meeting to be held under clause 3(b); or
- (c) the time and address for the return of voting papers for every meeting to be held under clause 3(a), (b), or (c).

5. Contents of notice - The notice must:

- (a) state the nature of the business to be transacted at the meeting in sufficient detail to enable a creditor to form a reasoned judgment in relation to it; and
- (b) set out the text of any resolution to be submitted to the meeting; and
- (c) include a voting paper in respect of each such resolution and voting and mailing instructions; and
- (d) state that if a creditor votes by casting a postal vote in respect of a resolution that is to be submitted to the meeting and a different resolution is submitted to the meeting –
 - (i) the creditors postal vote is invalid in respect of that different resolution; but
 - (ii) the creditor may vote, in respect of that different resolution, either by being present in person or by proxy.

6. Effect of irregularity, etc, in notice - An irregularity in or a failure to receive a notice of meeting of creditors does not invalidate anything done by a meeting of creditors if:

- (a) the irregularity or failure is not material; or
- (b) all the creditors entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity or failure; or
- (c) all such creditors agree to waive the irregularity or failure.

Meeting

7. Adjournment of meeting-(1) If the meeting of creditors agrees, the chairperson may adjourn the meeting from time to time and from place to place.

(2) An adjourned meeting must be held in the same place unless another place is specified in the resolution for the adjournment.

(3) If a meeting of creditors under clause 3(a) or (b) is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that is adjourned.

8. Chairperson-(1) If an administrator or liquidator, as the case may be, has been appointed and is present, or if the administrator or liquidator has appointed a nominee and the nominee is present, he or she must act as chairperson of a meeting held in accordance with clause 3(a) or (b).

(2) At any meeting of creditors, if the administrator or liquidator or any nominee of the administrator or liquidator, as is applicable, is not present, or if there is no administrator or liquidator holding office for the time being, the creditors participating must choose 1 of their number to act as chairperson of the meeting.

(3) The person convening a meeting under clause 3(c) must do everything necessary that would otherwise be done by the person chairing a meeting.

9. Quorum-(1) A quorum for a meeting of creditors is present if:

- (a) three creditors who are entitled to vote or their proxies are present or have cast postal votes; or
- (b) if the number of creditors entitled to vote does not exceed 3, the creditors who are entitled to vote or their proxies are present or have cast postal votes.

(2) If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time and place, or

to such other date, time, and place as the chairperson may appoint, and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the creditors present or their proxies are a quorum.

10. Corporations may act by representatives - A body corporate that is a creditor may appoint a representative to attend a meeting of creditors on its behalf.

11. Keeping of record of attendance and minutes-(1) The chairperson of a meeting of creditors, or in the case of a meeting held under clause 3(c), the person convening the meeting must:

- (a) ensure that an accurate record is kept of all creditors present or represented at the meeting, including -
 - (i) the name of each creditor present or represented; and
 - (ii) whether the creditor has made a claim, and the amount of the claim; and
 - (iii) whether the creditor has filed a proxy or is present in person; and
 - (iv) the total number of creditors present or represented; and
 - (b) ensure that minutes are kept of all proceedings.
- (2) Records of attendance or minutes that have been signed correct by the chairperson or the person convening the meeting are prima facie evidence of the details recorded and proceedings of the meeting.

Proxies

12. Proxies-(1) A creditor may exercise the right to vote either by being present in person or by proxy.(2) A proxy for a creditor is entitled to attend and be heard at a meeting of creditors as if the proxy were the creditor.(3) A proxy must be appointed by notice in writing signed by the creditor and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months.

(4) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is delivered to the administrator or liquidator, as the case may be, or, if no administrator or liquidator is acting in respect of a company in administration or liquidation, to the person by whom the notice convening the meeting was given, not less than 2 working days before the start of the meeting.

13. Administrator or liquidator may act as proxy-(1) A creditor may appoint any person, including the administrator or liquidator or, if there is no administrator or liquidator, the chairperson of a meeting, to act as his or her proxy.

(2) Subject to a direction of a meeting of creditors, an administrator or liquidator must not solicit for proxies.

(3) Without limiting the orders that a Court may make, if an administrator or liquidator, as the case may be, has not complied with subclause (2), the Court may:

- (a) order that the administrator or liquidator is not entitled to his or her remuneration;
- (b) make an order removing the administrator or liquidator from office;
- (c) make an order declaring any transaction entered into by the administrator or liquidator to be void or overturning any vote, and granting such consequential relief as the Court thinks fit.

14. Irregularity in notice of proxy - If an irregularity that is not material is contained in the notice of proxy, the administrator or liquidator or chairperson of a meeting, as the case may be, may accept the proxy as being valid for voting purposes, if he or she is satisfied that the proxy holder represents the creditor.

15. Limits on holder of proxy-(1) Subject to subclause (2), no person acting under a proxy may vote in favour of or against any resolution that would place that person, either directly or indirectly, in a position to receive any benefit out of the assets of the company otherwise than as a creditor rateably with the other creditors of the company.

(2) Any person who holds a proxy to vote for the appointment of an administrator or liquidator, as the case may be, may use the proxy to vote in favour of the appointment of himself or herself as administrator or liquidator if it is not inconsistent with the terms of the proxy to do so.

(3) If an administrator or liquidator, as the case may be, who holds a proxy cannot attend a meeting of creditors called under this Act, he or she may, in writing, nominate his or her partner (if the administrator or liquidator or the administrator or liquidator is a member of a partnership) or some person in his or her employment, to use the proxy on his or her behalf and in such manner as he or she may direct.

(4) Nothing in subclause (3) authorises the person nominated to vote in a manner that would be in contravention of subclauses (1) and (2) if the administrator or liquidator had acted under the proxy personally.

Voting

16. Creditors entitled to vote in liquidations-(1) In the case of a company that is in liquidation, a person is not entitled to vote as a creditor unless, by the time the vote is taken, the creditor has made a claim and either:

- (a) the liquidator has admitted the claim wholly or in part either for payment or for voting purposes; or
- (b) the chairperson of the meeting of creditors allows the person to vote in accordance with clause 17.

(2) A creditor may not vote in respect of any claim that is of an uncertain amount unless the value of the claim has been estimated by the liquidator or determined by the Court in accordance with clause 4 of Schedule 18.

17. Entitlement to vote, etc, determined by chairperson-

(1) For the purpose of determining whether a person is allowed to vote at a meeting and the value of the person's claim for voting purposes, the chairperson has the power to determine for the purpose of the meeting:

- (a) that the person is a creditor of the company; and
- (b) the value of a creditor's claim against the company.

(2) If the chairperson is uncertain as to whether a person is a creditor of the company or as to the value of the person's claim against the company, the chairperson must allow the person to vote subject to the vote being subsequently declared invalid in whole or in part by the chairperson.

(3) A creditor who is not entitled to vote, may, with the leave of the administrator or liquidator, attend and speak at a meeting of creditors.

(4) A creditor chairing the meeting does not have a casting vote.

18. Voting by secured creditors-(1) In the case of a meeting of creditors held under subpart 1 of Part 9 (Administrations):

- (a) a secured creditor is entitled to vote at the meeting:
- (b) a secured creditor who votes at the meeting is not taken to have surrendered his or her charge over any property of the company.

(2) In the case of a meeting of creditors held under subpart 3 of Part 9 (Liquidations):

- (a) a secured creditor is entitled to vote -
 - (i) for the whole debt if he or she surrenders the charge to the liquidator for the general benefit of creditors; or
 - (ii) in respect of the balance of the debt if he or she values the charge and claims as an unsecured creditor for the balance due; or
 - (iii) in respect of the balance of the debt if he or she realises property subject to a charge and claims as an unsecured creditor for any balance due after deducting the net amount realised:
- (b) subject to this Act, if a secured creditor votes in respect of the creditor's whole debt, the creditor is taken to have surrendered his or her charge:
- (c) a creditor who is not entitled to vote may with the leave of the liquidator attend and speak at the meeting.

19. When resolution adopted - At any meeting of creditors or a class of creditors, a resolution is adopted if a majority in number and value of the creditors or the class of creditors voting in person or by proxy or by postal vote, vote in favour of the resolution.

Postal voting

20. Who may cast postal vote - A creditor entitled to vote at a meeting of creditors held in accordance with clause 3(a), (b), or (c) may exercise the right to vote by casting a postal vote in relation to a matter to be decided at that meeting.

21. Postal vote cast in respect of different resolution - If a creditor votes by casting a postal vote in respect of a resolution that is to be submitted to the meeting and a different resolution is submitted to the meeting:

- (a) the creditor's postal vote is invalid in respect of that different resolution; but
- (b) the creditor may vote, in respect of that different resolution, either by being present in person or by proxy.

22. Person authorised to receive and count postal votes-(1) The notice of meeting must state the name of the person authorised to receive and count postal votes in relation to that meeting.

(2) If no person has been authorised to receive and count postal votes in relation to a meeting, or if no person is named as being so authorised in the notice of the meeting, the administrator or liquidator, is deemed to be so authorised.

23. How to cast postal vote - A creditor may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a marked voting paper to a person authorised to receive and count postal votes in relation to that meeting, so as to reach that person not less than 2 working days before the start of the meeting or, if the meeting is held under clause 3(c), not later than the date named for the return of the voting paper.

24. Duty of person authorised to receive and count postal votes-(1) It is the duty of a person authorised to receive and count postal votes in relation to a meeting:

- (a) to collect together all postal votes received by him or her; and
 - (b) in relation to each resolution to be voted on -
 - (i) to count the number of creditors or creditors belonging to a class of creditors, as the case may be, voting in favour of the resolution and determine the total amount of the debts owed by the company to those creditors; and
 - (ii) to count the number of creditors or creditors belonging to a class of creditors, as the case may be, voting against the resolution and determine the total amount of the debts owed by the company to those creditors; and
 - (c) to sign a certificate -
 - (i) that he or she has carried out the duties set out in paragraphs (a) and (b); and
 - (ii) stating the results of the counts and determinations required by paragraph (b); and
 - (d) to ensure that the certificate required by paragraph (c) is presented to the person chairing or convening the meeting.
- (2) A certificate given under subclause (1) in relation to the postal votes cast in respect of a meeting of creditors must be annexed to the minutes of the meeting.

25. Duty of chairperson - If a vote is taken at a meeting held under clause 3(a) or (b) on a resolution on which postal votes have been cast, the person chairing the meeting must include the results of voting by all creditors who have sent in a voting paper duly marked as for or against the resolution.

Schedule 13

ss 3(i), 211, cls 13(2) and 14(1) of Schedule 14,
cl 3 of Schedule 16

Powers, functions, and liabilities of liquidators

Contents

| | | |
|----|----|--|
| | 14 | Investment of funds |
| | 15 | Duties in relation to accounts |
| | 16 | Meaning of failure to comply |
| | 17 | Failure to comply |
| | 18 | Consequences of non-compliance with Court order |
| | 19 | Prohibition order |
| | 20 | Who may apply for orders under clauses 17 to 19 |
| | 21 | Court order under clauses 17 to 19: general |
| | | Part 1 |
| | | Preliminary provisions |
| 1 | | Power to appoint 2 or more liquidators |
| 2 | | Liquidators to act jointly |
| 3 | | When liquidator not required to act |
| | | Part 2 |
| | | Powers of liquidators |
| 4 | | Liquidator controls company's assets |
| 5 | | General powers |
| 6 | | Specific powers |
| 7 | | Liquidator may enforce liability of shareholders |
| 8 | | Liquidator may disclaim onerous property |
| 9 | | Liquidator may be required to elect whether to disclaim onerous property |
| | | Part 3 |
| | | Duties of liquidators |
| 10 | | Principal duties of liquidators |
| 11 | | Restriction on purchase of company's assets by liquidator |
| 12 | | Restriction on purchase of goods or services from persons connected with liquidation |
| 13 | | Deposit of company funds |
| | | Part 4 |
| | | Court supervision of liquidators |
| | 22 | Court orders |
| | 23 | Court orders are additional to other Court powers |
| | 24 | Defence to act in accordance with Court directions |

Part 1
Preliminary provisions

1. Power to appoint 2 or more liquidators - For the purposes of this Act, the power to appoint a liquidator of a company includes the power to appoint 2 or more persons as liquidators of a company.

2. Liquidators to act jointly - If 2 or more persons are appointed as liquidators of a company, those persons must act jointly unless the special resolution of shareholders, the resolution of the directors of the company, or the order of the Court appointing the liquidators states that the liquidators may exercise their powers individually.

3. When liquidator not required to act - Despite anything in this Act:

- (a) except if the charge is surrendered or taken to be surrendered or redeemed, a liquidator may, but is not required to, carry out any duty or exercise any power in relation to property that is subject to a charge:
- (b) the Official Assignee is not required, without the consent of the Minister, to carry out any duty or exercise any power in connection with the liquidation if, to do so, would or would be likely to involve incurring any expense if -
 - (i) a company is put into liquidation under section 217; and
 - (ii) the Official Assignee is the liquidator of the company; and
 - (iii) the company has no assets available for distribution to creditors of the company.

Part 2
Powers of liquidators

4. Liquidator controls company's assets - With effect from the commencement of the liquidation of a company, the liquidator has custody and control of the company's assets.

5 General powers - A liquidator has the powers:

- (a) necessary to carry out the functions and duties of a liquidator under this Act; and
- (b) conferred on a liquidator by this Act.

6 Specific powers - Without limiting clause 5, a liquidator of a company has power to:

- (a) commence, continue, discontinue, and defend legal proceedings;
- (b) the extent necessary for the liquidation, carry on the business of the company;
- (c) appoint a solicitor;
- (d) pay any class of creditors in full;
- (e) make a compromise or an arrangement with creditors or persons claiming to be creditors or who have or allege the existence of a claim against the company, whether present or future, actual or contingent, or ascertained or not;
- (f) compromise calls and liabilities for calls, debts, and liabilities capable of resulting in debts, and claims, present or future, actual or contingent, ascertained or not, subsisting or supposed to subsist between the company and any person and all questions relating to or affecting the assets or the liquidation of the company, on such terms as may be agreed, and take security for the discharge of any such call, debt, liability, or claim, and give a complete discharge;
- (g) sell or otherwise dispose of the property of the company;

- (h) act in the name and on behalf of the company and enter into deeds, contracts, and arrangements in the name and on behalf of the company;
- (i) prove, rank, and claim in the bankruptcy or insolvency of a shareholder for any balance against that person's estate, and to receive dividends in the bankruptcy or insolvency, as a separate debt due from the bankrupt or insolvent and rateably with the other separate creditors;
- (j) draw, accept, make, and endorse a bill of exchange or promissory note in the name and on behalf of the company, with the same effect as if the bill or note had been drawn, accepted, made, or endorsed by or on behalf of the company in the course of its business;
- (k) borrow money on the security of the company's assets;
- (l) take out, in his or her name as liquidator, letters of administration to a deceased shareholder, and to do in that name any other act necessary for obtaining payment of money due from a shareholder or his or her estate, which cannot be conveniently done in the name of the company. In all such cases the money due is, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, deemed to be due to the liquidator;
- (m) call a meeting of creditors or shareholders for -
 - (i) the purpose of informing creditors or shareholders of progress in the liquidation;
 - (ii) the purpose of ascertaining the views of creditors or shareholders on any matter arising in the liquidation;
 - (iii) such other purpose connected with the liquidation as the liquidator thinks fit;
- (n) appoint an agent to do anything that the liquidator is unable to do.

7. Liquidator may enforce liability of shareholders - A liquidator may enforce the liability of the shareholder or former shareholder in respect of any shares issued to the shareholder or former shareholder.

8. Liquidator may disclaim onerous property-(1) Subject to clause 9, a liquidator may disclaim onerous property even though the liquidator has taken possession of it, tried to sell it, or otherwise exercised rights of ownership in relation to it.

(2) A disclaimer:

- (a) brings to an end on and from the date of the disclaimer the rights, interests, and liabilities of the company in relation to the property disclaimed;
- (b) does not, except so far as necessary to release the company from a liability, affect the rights or liabilities of any other person.

(3) A liquidator who disclaims onerous property must, within 10 working days of the disclaimer, give notice in writing of the disclaimer to every person whose rights are, to the knowledge of the liquidator, affected by the disclaimer.

(4) A person suffering loss or damage as a result of a disclaimer under this clause may:

- (a) claim as a creditor of the company for the amount of the loss or damage, taking account of the effect of an order made by the Court under paragraph (b);
 - (b) apply to the Court for an order that the disclaimed property be delivered to or vested in that person.
- (5) The Court may make an order under subclause (4)(b) if it is satisfied that it is just that the property should be vested in the applicant.

9. Liquidator may be required to elect whether to disclaim onerous property - A liquidator is not entitled to disclaim onerous property if:

- (a) a person whose rights would be affected by the disclaimer of onerous property gives the liquidator notice in writing requiring the liqui-

dator to elect whether to disclaim the onerous property before the close of a date specified in the notice, which must be at least 20 working days after the date on which the notice is received by the liquidator; and

- (b) the liquidator does not disclaim the onerous property before the close of that date.

Part 3 **Duties of liquidators**

10 Principal duties of liquidator - The principal duties of a liquidator of a company are, in a reasonable and efficient manner:

- (a) to take possession of, protect, realise, and distribute the assets, or the proceeds of the realisation of the assets, of the company to its creditors in accordance with this Act; and
- (b) if there are surplus assets remaining, to distribute them, or the proceeds of the realisation of the surplus assets, in accordance with section 251.

11 Restriction on purchase of company's assets by liquidator-(1) Subject to the leave of the Court, a liquidator must not, either directly or indirectly, become a purchaser of any part of the company's assets.

(2) The Court may set aside any purchase made contrary to this clause, and grant any consequential relief that it thinks fit.

(3) The Court may give its leave on any conditions that it thinks fit.

12 Restriction on purchase of goods or services from persons connected with liquidator-(1) Subject to the leave of the Court, a liquidator must not purchase goods or services for the purposes of the liquidation from any person whose connection with him or her would result in the liquidator directly or indirectly obtaining any benefit arising out of the transaction.

(2) The Court may disallow or recover any benefit made contrary to this clause.

(3) The Court may give its leave on any conditions that it thinks fit.

13. Deposit of company funds - A liquidator must deposit the funds of a company under his or her administration in a bank account to the credit of the company, or in a trust account at a bank on trust for the benefit of the company.

14. Investment of funds-(1) Despite clause 13, in any liquidation all or any part of the balance standing to the credit of the company in any bank account or trust account kept by the liquidator, and not required for the time being to meet claims made against the company, may be invested in any bank or in any Government securities or, if authorised by the Court, any other securities.

(2) All dividends, interest, and other profits from investments must immediately on being received be paid into the bank account or trust account kept by the liquidator under clause 13.

15. Duties in relation to accounts-(1) Subject to subclause (2), the liquidator of a company must:

(a) keep accounts and records of the liquidation and permit those accounts and records, and the accounts and records in the company, to be inspected by -

(i) any appointed liquidation committee, unless the liquidator believes on reasonable grounds that inspection would be prejudicial to the liquidation; and

(ii) if the Court so orders, a creditor or shareholder; and

(b) retain the accounts and records of the liquidation and of the company for not less than 1 year after completion of the liquidation, and

- (c) if a liquidator carries on the business of the company, keep accounting records for the carrying on of the business of the company that comply with section 129 to the extent that that section is applicable.
- (2) The Registrar may, whether before or after the completion of the liquidation:
- (a) authorise the disposal of any accounts and records; and
 - (b) require any accounts or records to be retained for longer than 1 year after the completion of the liquidation.

16. Meaning of failure to comply - In clauses 17 to 19, failure to comply means a failure of a liquidator to comply with a relevant duty arising -

- (a) under this or any other Act or rule of law or rules of Court; or
- (b) under any order or direction of a Court other than an order to comply made under clause 17.

17. Failure to comply - If the Court is satisfied that there is, or has been, a failure to comply, the Court may:

- (a) relieve the liquidator of the duty to comply wholly or in part; or
- (b) without prejudice to any other remedy that may be available in relation to a breach of duty by the liquidator, order the liquidator to comply to the extent specified in the order.

18. Consequences of non-compliance with Court order - A Court may, in relation to a person who fails to comply with an order made under clause 17, or is or becomes disqualified to become or remain a liquidator:

- (a) remove the liquidator from office; or
- (b) order that the person may be appointed and act, or may continue to act, as liquidator, despite being disqualified to act as liquidator.

19. Prohibition order-(1) The Court must make, in relation to a person, a prohibition order for a period not exceeding 5 years if it is shown to the satisfaction of a Court that the person is unfit to act as liquidator by reason of:

- (a) persistent failures to comply; or
 - (b) the seriousness of a failure to comply.
- (2) A person to whom a prohibition order applies must not:
- (a) act as a liquidator in a current or other liquidation; or
 - (b) act as a receiver in a current or other receivership; or
 - (c) act as an administrator of a company under subpart 1 of Part 9.

(3) The following is, in the absence of special reasons to the contrary, evidence of persistent failures to comply for the purposes of this clause:

- (a) evidence that on 2 or more occasions within the preceding 5 years, a Court has made an order to comply under this clause in respect of the same person;
 - (b) evidence that on 2 or more occasions within the preceding 5 years, an application for an order to comply under this clause has been made in respect of the same person and that in each case the person has complied after the making of the application and before the hearing.
- (4) A copy of every prohibition order must, within 10 working days of the order being made, be delivered by the applicant to the Official Assignee for Samoa, who must keep it on a file indexed by reference to the name of the liquidator concerned.

20. Who may apply for orders under clauses 17 to 19-(1)

An application for an order under this Part may be made by:

- (a) a liquidator;
- (b) a person seeking appointment as a liquidator;
- (c) a liquidation committee;
- (d) a creditor, shareholder or a director of the company in liquidation;
- (e) a receiver appointed in relation to property of the company in liquidation;

(f) an Official Assignee.

(2) No application may be made to a Court by a person other than a liquidator in relation to a failure to comply unless notice of the failure to comply has been served on the liquidator not less than 5 working days before the date of the application and, as at the date of the application, there is a continuing failure to comply.

21 Court orders under clauses 17 to 19: general-(1) In making an order under this clause a Court may, if it thinks fit:

- (a) make an order extending the time for compliance; or
- (b) impose terms or conditions; or
- (c) make an ancillary order.

Part 4

Court supervision of liquidations

22 Court orders - On the application of the liquidator, a liquidation committee, or, with the leave of the Court, a creditor, shareholder, or director of a company in liquidation, the Court may:

- (a) give directions in relation to any matter arising in connection with the liquidation;
- (b) confirm, reverse, or modify an act or decision of the liquidator;
- (c) order an audit of the accounts of the liquidation;
- (d) order the liquidator to produce the accounts and records of the liquidation for audit and to provide the auditor with such information concerning the conduct of the liquidation as the auditor requests;
- (e) in respect of any period, review or fix the remuneration of the liquidator at a level that is reasonable in the circumstances;
- (f) to the extent that an amount retained by the liquidator as remuneration is found by the Court to be unreasonable in the circumstances, order the liquidator to refund the amount;

- (g) declare whether or not the liquidator was validly appointed or validly assumed custody or control of property;
- (h) make an order concerning the retention or the disposition of the accounts and records of the liquidation or of the company.

23. Court orders are additional to other Court powers-

The powers given by clause 22:

- (a) are in addition to any other powers a Court may exercise in its jurisdiction relating to liquidators under this Act; and
- (b) may be exercised -
 - (i) in relation to a matter occurring either before or after the commencement of the liquidation or the removal of the company from the Samoa register; and
 - (ii) whether or not the liquidator has ceased to act as liquidator when the application or the order is made.

24. Defence to act in accordance with Court direction-

(1) Subject to subclause (2), a liquidator is entitled to rely on having so acted as a defence to a claim in relation to anything done or not done in accordance with the direction if the liquidator has:

- (a) obtained a direction of a Court with respect to a matter connected with the exercise of the powers or functions of liquidator; and
- (b) acted in accordance with the direction.

(2) A Court may, on the application of any person, order that, by reason of the circumstances in which a direction by the Court was obtained, the liquidator does not have the protection given by subclause (1).

Schedule 14

ss 3(i), 212, 213(2)(a)

Office of liquidator

Contents

Restrictions on appointment of liquidators

- 1 Who may not be appointed or act as liquidator
- 2 Validity of acts of liquidators
- 3 Person must consent to being appointed liquidator
- 4 Court may declare whether liquidator validly appointed

Vacancy in office of liquidator

- 5 Vacancy in office of liquidator
- 6 How liquidator may resign
- 7 Court may review appointment of successor
- 8 Vacancy not caused by resignation
- 9 Appointment of liquidator until successor appointed
- 10 Appointment of successor by Court
- 11 Notice of appointment given by successor
- 12 Vacating liquidator's successor to be helped
- 13 Liquidator ceases to hold office on completion of liquidation

Liquidators' remuneration

- 14 Remuneration of liquidators
- 15 Expenses and remuneration payable out of assets of company

Restrictions on appointment of liquidators

1. Who may not be appointed or act as liquidator –

None of the following may be appointed or act as a liquidator of a company:

- (a) a corporation;
- (b) a person who is under 21 years of age;
- (c) a creditor of the company;
- (d) a person who has, within the 2 years immediately before the beginning of the liquidation, been a shareholder, director, auditor, or receiver of the company or of a related company;
- (e) an undischarged bankrupt;

- (f) a person who has been adjudged to be mentally defective under the Mental Health Ordinance 1961;
- (g) a person who would, but for the repeal of the Companies Act 1955, be prohibited from being a director or promoter, or being concerned or taking part in the management, of a company within the meaning of that Act;
- (h) a person who is prohibited from being a director or promoter, or being concerned or taking part in the management, of a company under this Act;
- (i) a person who is prohibited from acting as an administrator under this Act;
- (j) a person who is prohibited from acting as a receiver under the Receiverships Act 2006.

2. Validity of acts of liquidators-(1) The acts of a person as a liquidator are valid even though that person may not be qualified to act as a liquidator.

(2) No defect or irregularity in the appointment of a liquidator invalidates any act done by him or her in good faith.

3. Person must consent to being appointed liquidator – A person, other than an Official Assignee, must not be appointed as liquidator of a company unless:

- (a) the person has consented in writing to the appointment; and
- (b) as at the time of the appointment, the person has not withdrawn the consent.

4. Court may declare whether liquidator validly appointed-(1) If there is doubt on a specific ground about whether the appointment of a person as liquidator of a company is valid, the person, the company, or any of the company's creditors may apply to the Court for an order under subclause (2).

(2) The Court may, on application, make an order declaring whether or not the appointment was valid on the ground specified in the application or on some other ground.

Vacancy in office of liquidator

5. Vacancy in office of liquidator - The office of liquidator becomes vacant if the person holding office resigns, dies, or is or becomes disqualified to act as liquidator.

6. How liquidator may resign - A person may resign from the office of liquidator by appointing another person as his or her successor and sending or delivering notice in writing of the appointment of his or her successor to the Registrar for registration.

7. Court may review appointment of successor - The Court may, on the application of the company, or a shareholder or other entitled person, or a director or creditor of the company, review the appointment of a successor to a liquidator and may appoint any person who could be appointed as liquidator under sections 215, 216, or 218, as the case may be, to be the liquidator of the company.

8. Vacancy not caused by resignation - If, for any reason other than resignation, a vacancy occurs in the office of liquidator, written notice of the vacancy must immediately be sent or delivered to the Official Assignee by the person vacating office or, if that person is unable to act, by his or her personal representative.

9. Appointment of liquidator until successor appointed - If, as the result of the vacation of office by a liquidator, other than the Official Assignee, no person is acting as liquidator, the Official Assignee may appoint a person to act as liquidator until a successor is appointed under this clause.

10. Appointment of successor by Court - If a vacancy occurs in the office of the liquidator, or a liquidator has been appointed under clause 9, as the case may be, the Court may, on the application of the company, or a shareholder or other entitled person, or a director or creditor of the company, or the

Official Assignee for Samoa, appoint any person who could be appointed as liquidator under sections 215, 216, or 218, as the case may be, to be the liquidator of the company.

11. Notice of appointment given by successor - A liquidator appointed under clause 10 must, within 10 working days of being appointed or being notified of his or her appointment, deliver a notice of his or her appointment to the Registrar for registration.

12. Vacating liquidator-(1) A person vacating the office of liquidator must, if practicable, provide such information and give such assistance to that person's successor as he or she reasonably requires in taking over the duties of liquidator.

(2) A person vacating the office of liquidator must immediately, or within any reasonable time that may be specified by that person's successor, deliver to his or her successor the following things that are in his or her possession or under his or her control:

- (a) any records or documents of the company;
- (b) other property of the company;
- (c) all claims;
- (d) accounts and records of the liquidation.

(3) A person vacating the office of liquidator is entitled to deduct fees and expenses properly incurred by him or her in carrying out the duties and exercising the powers of the liquidator and his or her remuneration as liquidator as provided for in the Act, and such fees, expenses, and remuneration rank in priority to the fees, expenses, and remuneration of that person's successor.

(4) If there are no available assets of the company from which to pay the vacating liquidator's fees, expenses, and remuneration at the time the person vacates the office of liquidator, then the new liquidator must pay such fees, expenses, and remuneration from the assets of the company as soon as is practicable.

13. Liquidator ceases to hold office on completion of liquidation-(1) A liquidator ceases to hold office on the completion of the liquidation.

(2) Subclause (1) does not limit Parts 3 or 4 of Schedule 13.

Liquidators' remuneration

14. Remuneration of liquidators-(1) Subject to clause 22(f) of Schedule 13, every liquidator, not being an Official Assignee, appointed under sections 215 or 216 is entitled to charge reasonable remuneration for carrying out his or her duties and exercising his or her powers as liquidator.

(2) Unless the Court otherwise orders, every Official Assignee who is appointed a liquidator under section 214 and every liquidator appointed under section 218 must charge remuneration either:

(a) of an amount equal to the amount fixed under regulations made under this Act; or

(b) at, or in accordance with, such rate or rates as may be prescribed under regulations made under this Act.

(3) Subject to the Act, a liquidator must not make any arrangement for, or accept from any person, any benefit beyond the remuneration to which he or she is entitled as liquidator.

(4) A liquidator must not make any arrangement for giving up, whether in whole or in part, his or her remuneration to any person.

(5) If a liquidator receives remuneration for his or her services as such, no payment is allowed on his or her accounts in respect of the performance by any other person of the ordinary duties which are required by the Act to be performed by himself or herself.

(6) If a liquidator is a solicitor or chartered accountant, he or she may contract that the remuneration for his or her services as liquidator includes all professional services.

15. Expenses and remuneration payable out of assets of company - The expenses and remuneration of the liquidator are payable out of the assets of the company.

Schedule 15

ss 3(i)

Effect of liquidation

Contents

| | | |
|---------------|---|---|
| Part 1 | | |
| | Preliminary provisions | 4 Legal proceedings not to be commenced or continued |
| 1 | Company's rules not to be altered | 5 Effect on proceedings commenced before the commencement of liquidation |
| Part 2 | | |
| | Effect on company's officers and shareholders, etc | 6 No enforcement of rights over company's property |
| 2 | Functions and powers of company's directors suspended | 7 Restriction on rights of creditors to complete execution, distraint, attachment |
| 3 | Effect on company's shareholders | 8 Duties of officer in execution process |
| Part 3 | | |
| | Effect on proceedings | |
| Part 4 | | |
| | Effect on certain conduct | 9 Certain conduct prohibited |

Part 1

Preliminary provisions

1 Company's rules not to be altered - With effect from the commencement of the liquidation of a company, the rules of the company cannot be altered.

Part 2

Effect on company's officers and shareholders, etc

2. Functions and powers of company's directors suspended - With effect from the commencement of the liquidation of a company, the directors remain in office but cease to have powers, functions, or duties other than those required or permitted to be exercised by this Act.

3. Effect on company's shareholders - With effect from the commencement of the liquidation of a company:

- (a) unless the Court orders otherwise, a share in the company must not be transferred;
- (b) an alteration must not be made to the rights or liabilities of a shareholder or former shareholder of the company;
- (c) a shareholder must not exercise a power under the rules of the company or this Act, except for the purposes of this Act.

Part 3

Effect on proceedings

4. Legal proceedings not to be commenced or continued - With effect from the commencement of the liquidation of a company, a person must not, unless the liquidator agrees or the Court orders otherwise, commence or continue legal proceedings against the company or in relation to its property.

5. Effect on proceedings commenced before commencement of liquidation-(1) At any time after the making of an application to the Court to appoint a liquidator of a company and before a liquidator is appointed, the company or any creditor or shareholder of the company may:

- (a) in the case of any application or proceeding against the company that is pending in the Court or Court of Appeal, apply to the Court or Court of Appeal, as the case may be, for a stay of the application or proceeding;
 - (b) in the case of any other application or proceeding pending against the company in any Court or tribunal, apply to the Court to restrain the application or proceeding.
- (2) The Court or Court of Appeal, as the case may be, may stay or restrain the application or proceedings on any terms that it thinks fit.

6. No enforcement of rights over company's property-

(1) With effect from the commencement of the liquidation of a company, a person must not, unless the liquidator agrees or the Court orders otherwise, exercise or enforce, or continue to exercise or enforce, a right or remedy over or against property of the company.

(2) Nothing in subclause (1) or in clause 4 affects the right of a secured creditor to take possession of, realise or otherwise deal with, property of the company over which that creditor has a charge.

7. Restriction on rights of creditors to complete execution, distraint, or attachment-(1) Subject to subclauses

(2) and (3), a creditor is not entitled to retain the benefit of any execution process, distress, or attachment over or against the property of a company unless the execution process, distress, or attachment is completed before:

- (a) the passing of a special resolution appointing a liquidator of the company, or the date on which the creditor had notice of the calling of a meeting at which such a resolution was proposed, whichever occurs first; or

- (b) the passing of a resolution by the directors of a company appointing a liquidator of the company, or the date on which the creditor had notice of the calling of a meeting at which such a resolution was proposed, whichever occurs first; or
 - (c) the making of an application to the Court to appoint a liquidator of the company.
- (2) Despite subclause (1):
- (a) a person who, in good faith, purchases property of a company from a court officer charged with an execution process acquires a good title as against the liquidator of the company:
 - (b) a person who, in good faith, purchases property of a company on which distress has been levied acquires a good title as against the liquidator of the company.
- (3) The Court may set aside the application of subclause (1) to the extent and on any conditions that the Court thinks fit.
- (4) For the purposes of this clause:
- (a) an execution or distraint against personal property is completed by seizure and sale;
 - (b) an attachment of a debt is completed by receipt of the debt;
 - (c) an execution against land is completed by sale, and, in the case of an equitable interest, by the appointment of a receiver.
- (5) Nothing in this clause limits or affects Part 2 of Schedule 17.

8. Duties of court officer in execution process-(1) A court officer must, on being required by a liquidator of a company to do so, deliver or transfer the company's property and any money received in satisfaction or partial satisfaction of an execution or paid to avoid a sale of the property, as the case may be, to the liquidator if:

- (a) the property has been taken in an execution process; and

- (b) before completion of the execution process the court officer charged with the execution process receives notice that the liquidator of the company has been appointed.
- (2) The costs of the execution process are a first charge on any property or money delivered or transferred to the liquidator under subclause (1) and the liquidator may sell all or some of the property to satisfy that charge.
- (3) The court officer must retain the proceeds of sale or the money paid for 10 working days if:
 - (a) property of a company is sold in an execution process in respect of a judgment for a sum exceeding \$500; or
 - (b) money is paid to the court officer charged with the execution process to avoid a sale of the property.
- (4) The court officer must deduct from the amount the costs of the execution process and pay the balance to the liquidator if:
 - (a) within the period of 10 working days, the court officer has notice of –
 - (i) the calling of a meeting at which a special resolution is proposed to appoint a liquidator; or
 - (ii) the calling of a meeting of the directors at which a resolution is proposed to appoint a liquidator or of a meeting of the directors at which the appointment of a liquidator is to be considered; or
 - (iii) the making of an application to the Court to appoint a liquidator; and
 - (b) The company is put into liquidation.
- (5) A liquidator to whom money is paid under subclause (4) is entitled to retain it as against the execution creditor.
- (6) The Court may set aside the application of this clause to the extent and on any conditions that it thinks fit.

Part 4
Effect on certain conduct

9 Certain conduct prohibited-(1) If a company is in liquidation, or an application has been made to the Court for an order that a company be put into liquidation, as the case may be, no person may:

- (a) leave Samoa with the intention of -
 - (i) avoiding payment of money due to the company; or
 - (ii) avoiding examination in relation to the affairs of the company; or
 - (iii) avoiding compliance with an order of the Court or some other obligation under this Part in relation to the affairs of the company;or
- (b) conceal or remove property of the company with the intention of preventing or delaying the liquidator taking custody or control of it; or
- (c) destroy, conceal, or remove records or other documents of the company.

(2) A person who does not comply with subclause (1) commits an offence and is liable on conviction to a fine not exceeding 250 penalty units or to imprisonment for a term not exceeding 2 years, or both.

Schedule 16

ss 3(i), 245(1)(a)

Liquidation committees

Contents

Part 1
Liquidation committee

- | | | | |
|---|--------------------------------|---|------------------|
| 1 | Appointment of members | 5 | Inability to act |
| 2 | Membership | | |
| 3 | Powers | | |
| 4 | Application of company's rules | | |

| | | | |
|---|--|----|--------------------------------|
| 6 | Restriction on purchase of company's assets by liquidation committee | | |
| 7 | Members not entitled to benefit from dealings with company's assets | 10 | Frequency of meetings |
| 8 | No remuneration | 11 | Majorities |
| 9 | Disallowance or recovery of benefits or payments | 12 | Resignation |
| | | 13 | Office becoming vacant |
| | | 14 | Removal of member |
| | | 15 | Vacancy filled |
| | | 16 | Committee with vacancy may act |

Part 2
Proceedings at meetings

Part 1
Liquidation committee

1 Appointment of members-(1) The members of a liquidation committee chosen by a meeting of creditors or of shareholders take office immediately.

(2) The liquidator must refer the matter to the Court, and the Court may make any decision that it thinks fit if there is a difference between the decisions of meetings of creditors and meetings of shareholders on:

- (a) the question of appointing a liquidation committee;
or
- (b) the membership of a liquidation committee.

2. Membership - A liquidation committee must consist of not fewer than 3 persons who are:

- (a) creditors or shareholders; or
- (b) persons holding general powers of attorney from creditors or shareholders; or
- (c) authorised directors or representatives of companies which are creditors or shareholders of the company in liquidation.

3. Powers - A liquidation committee has the power to:

- (a) call for reports from the liquidator on the progress of the liquidation; and

- (b) call a meeting of creditors or of shareholders; and
- (c) apply to the Court under Parts 3 or 4 of Schedule 13;
and
- (d) assist the liquidator as appropriate in the conduct of the liquidation.

4. Application of company's rules - A meeting of shareholders called under clause 3(b) must be held in accordance with the company's rules (except that the liquidator has power to give notice of a meeting of shareholders and to act as, or appoint, the chairperson of the meeting).

5. Inability to act - If, by reason of vacancies in a liquidation committee, the committee is unable to act, the liquidator must call attention to the situation in the next six-monthly report required to be prepared and sent under section 248.

6. Restriction on purchase of company's assets by liquidation committee-(1) Subject to the leave of the Court, a member of a liquidation committee of a company must not, either directly or indirectly, become a purchaser of any part of the company's assets.

(2) The Court may set aside any purchase made contrary to this regulation, and grant any consequential relief that it thinks fit.

(3) The Court may give its leave on any conditions that it thinks fit.

7. Members not entitled to benefit from dealings with company's assets-(1) Subject to the leave of the Court, no member of a liquidation committee may directly or indirectly be entitled to:

- (a) derive any benefit from any transaction arising out of the assets of the company; or

- (b) receive out of the assets of the company any payment for services rendered by him or her in connection with the administration of the assets, or for any goods supplied by him or her to the liquidator for or on account of the company; or
 - (c) directly or indirectly become the purchaser of any part of the company's assets.
- (2) If the leave of the Court is sought under subclause (1) in respect of any payment for services, the leave may be given only if the services performed are of a special nature and the order must specify the nature of the services for which leave is given.

8 No remuneration - Except by the leave of the Court, no remuneration may, under any circumstances, be paid to a member of a liquidation committee for services rendered by him or her in the discharge of the duties attaching to his or her office as a member of the committee.

9 Disallowance or recovery of benefits or payments-(1) The Court may disallow or recover any benefit or payment made contrary to clauses 7 or 8.

(2) The Court may give leave under clauses 7 or 8 on any conditions that it thinks fit.

Part 2

Proceedings at meetings

10. Frequency of meetings-(1) The committee must meet at the times as it from time to time appoints.

(2) The liquidator or a member of the committee may also call a meeting of the committee as and when necessary.

11. Majorities - The committee may act by a majority of its members present at a meeting, but may not act unless a majority of the committee are present.

12. Resignation - A member of the committee may resign by notice in writing signed by the member and delivered to the liquidator.

13. Office becoming vacant - The office of a member of the committee becomes vacant if the member:

- (a) becomes bankrupt; or
- (b) compounds or arranges with his or her creditors; or
- (c) is absent from 3 consecutive meetings of the committee without the leave of those members who together with that member represent the creditors or shareholders, as the case may be.

14. Removal of member-(1) A member of the committee may be removed by a resolution:

- (a) carried at a meeting of creditors if the member represents creditors; or
- (b) carried at a meeting of shareholders if the member represents shareholders.

(2) At least 5 working days' notice of the resolution must be given, which states the object of the meeting.

15 Vacancy filled – A vacancy in the committee may be filled by the appointment to the committee of:

- (a) a creditor or shareholder, as the case may be; or
- (b) a person holding a general power of attorney from, or being an authorised director or representative of, a company which is a creditor or shareholder, as the case may be.

16. Committee with vacancy may act - The continuing members of the committee, if not less than 2, may act even though a vacancy exists in the committee.

Pooling of assets

23 Guidelines for orders

22 Pooling of assets of related companies

Part 1**Voidable transactions and charges***Voidable transactions***1 Definitions - In clause 2:**

“restricted period” means:

- (a) the period of 6 months before the date of commencement of the liquidation together with the period commencing on that date and ending at the time at which the liquidator is appointed; and
- (b) in the case of a company that was put into liquidation by the Court, the period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date on which, and at the time at which, the order of the Court was made; and
- (c) the period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation if -
 - (i) an application was made to the Court to put a company into liquidation; and
 - (ii) after the making of the application to the Court a liquidator was appointed under sections 215 or 216; and
- (d) in the case of a liquidator appointed under section 187(1)(c), the period of 6 months before the administration begins together with the period

commencing on that date and ending at the time the liquidator is appointed “specified period” means;

- (a) the period of 2 years before the date of commencement of the liquidation together with the period commencing on that date and ending at the time at which the liquidator is appointed; and
 - (b) in the case of a company that was put into liquidation by the Court, the period of 2 years before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date on which, and at the time at which, the order was made; and
 - (c) the period of 2 years before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation if -
 - (i) an application was made to the Court to put a company into liquidation; and
 - (ii) after the making of the application to the Court a liquidator was appointed under sections 215 or 216; and
 - (d) in the case of a liquidator appointed under section 187(1)(c), the period of 2 years before the administration begins together with the period commencing on that date and ending at the time the liquidator is appointed;
- “transaction”, in relation to a company, means:
- (a) a conveyance or transfer of property by the company;
 - (b) the giving of a security or charge over the property of the company;
 - (c) the incurring of an obligation by the company;
 - (d) the acceptance by the company of execution under a judicial proceeding;

- (e) the payment of money by the company, including the payment of money under a judgment or order of a Court.

2. Voidable transactions-(1) A transaction by a company is voidable on the application of the liquidator if the transaction:

- (a) was made -
 - (i) at a time when the company was unable to pay its due debts; and
 - (ii) within the specified period; and
- (b) enabled another person to receive more towards satisfaction of a debt than the person would otherwise have received or be likely to have received in the liquidation.

(2) Subclause (1) does not apply if the transaction took place in the ordinary course of business.

(3) Unless the contrary is proved, a transaction that took place within the restricted period is presumed to have been made:

- (a) at a time when the company was unable to pay its debts; and
- (b) otherwise than in the ordinary course of business.

(4) In determining whether a transaction took place in the ordinary course of business, no account is, unless that other person knew that that was the intent or purpose of the company, to be taken of any intent or purpose on the part of a company:

- (a) to enable another person to receive more towards satisfaction of a debt than the person would otherwise receive or be likely to receive in the liquidation; or
- (b) to reduce or cancel the liability, whether in whole or in part, of another person in respect of a debt incurred by the company; or
- (c) to contribute towards the satisfaction of the liability, whether in whole or in part, of another person in respect of a debt incurred by the company.

*Voidable charges***3. Definitions** - In clause 4, -

“restricted period” means:

- (a) the period of 6 months before the date of commencement of the liquidation together with the period commencing on that date and ending at the time at which the liquidator is appointed; and
- (b) in the case of a company that was put into liquidation by the Court, the period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of the application and ending on the date on which, and at the time at which, the order of the Court was made; and
- (c) the period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation if -
 - (i) an application was made to the Court to put a company into liquidation; and
 - (ii) after the making of the application to the Court a liquidator was appointed under sections 215 or 216; and
- (d) in the case of a liquidator appointed under section 187(1)(c), the period of 6 months before the administration begins together with the period commencing on that date and ending at the time the liquidator is appointed

“specified period” means -

- (a) the period of 1 year before the date of commencement of the liquidation together with the period commencing on that date and ending at the time at which the liquidator is appointed; and

- (b) in the case of a company that was put into liquidation by the Court, the period of 1 year before the making of the application to the Court together with the period commencing on the date of the making of the application and ending on the date on which, and at the time at which, the order of the Court was made; and
- (c) the period of 1 year before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation if -
 - (i) an application was made to the Court to put a company into liquidation; and
 - (ii) after the making of the application to the Court a liquidator was appointed under sections 215 or 216; and
- (d) in the case of a liquidator appointed under section 187(1)(c), the period of 1 year before the administration begins together with the period commencing on that date and ending at the time the liquidator is appointed.

4. Voidable charges-(1) A charge over any property or undertaking of a company is voidable on the application of the liquidator if the charge was given within the specified period, unless:

- (a) the charge secures -
 - (i) money actually advanced or paid; or
 - (ii) the actual price or value of property sold or supplied to the company; or
 - (iii) any other valuable consideration given in good faith by the grantee of the charge at the time of, or at any time after, the giving of the charge; or
- (b) immediately after the charge was given, the company was able to pay its due debts; or
- (c) the charge is in substitution for a charge given before the specified period.

(2) Unless the contrary is proved, a company giving a charge within the restricted period is presumed to have been unable to pay its due debts immediately after giving the charge.

5. Exception: certain kinds of substituted charges -

Clause 4(1)(c) does not apply to the extent that:

- (a) the amount secured by the substituted charge exceeds the amount secured by the existing charge; or
- (b) the value of the property subject to the substituted charge at the date of the substitution exceeds the value of the property subject to the existing charge at that date.

6. Exception: charge that secures unpaid purchase price - Nothing in clause 4 applies to a charge given by a company that secures the unpaid purchase price of property, whether or not the charge is given over that property, if:

- (a) the charge document is executed not later than 30 days after the sale of the property; or
- (b) in the case of the sale of an estate or interest in land, the charge document is executed not later than 30 days after the final settlement of the sale.

7. Payments received by secured party - For the purposes of clauses 4(1)(a) and 6, if a charge was given by the company within the period specified in clause 4, all payments received by the secured party entitled to the charge after it was given are deemed to have been appropriated so far as may be necessary:

- (a) towards repayment of money actually advanced or paid by the secured party to the company on or after the giving of the charge; or
- (b) towards payment of the actual price or value of property sold by the secured party to the company on or after the giving of the charge; or
- (c) towards payment of any other liability of the company to the secured party in respect of any other valuable consideration given in good faith on or after the giving of the charge.

Procedure for setting aside voidable transactions and charges

8. Procedure-(1) A liquidator who wishes to have a transaction that is voidable or a charge that is voidable set aside must:

- (a) file in the Court a notice to that effect specifying the transaction or charge to be set aside and, in the case of a transaction, the property or value which the liquidator wishes to recover, and also the effect of subclauses (2), (3), and (4); and
 - (b) serve a copy of the notice on the other party to the transaction or the secured creditor entitled to the charge and on every other person from whom the liquidator wishes to recover.
- (2) A person:
- (a) who would be affected by the setting aside of the transaction or charge specified in the liquidator's notice; and
 - (b) who considers that the transaction or charge is not voidable,

may file in the Court a notice objecting to the transaction or charge being set aside, and serve a copy of that notice on the liquidator, within 20 working days after the service of the liquidator's notice.

(3) Unless a person on whom the liquidator's notice was served has given notice under subclause (2), the transaction or charge is set aside on the 20th working day after the date of service of the notice.

(4) If 1 or more persons have given notice under subclause (2), the liquidator may apply to the Court for an order that the transaction or charge be set aside. That application must be served on every person referred to in subclause (1)(b), whether or not that person gave a notice under subclause (2).

9. Other orders - If a transaction or charge is set aside, the Court may make 1 or more of the following orders:

- (a) an order requiring a person to pay to the liquidator, in respect of benefits received by that person as a result of the transaction or charge, such sums as fairly represent those benefits;
- (b) an order requiring property transferred as part of the transaction to be restored to the company;
- (c) an order requiring property to be vested in the company if it represents in a person's hands the application, either of the proceeds of sale of property, or of money, so transferred;
- (d) an order releasing, in whole or in part, a charge given by the company;
- (e) an order requiring security to be given for the discharge of an order made under this clause;
- (f) an order specifying the extent to which a person affected by the setting aside of a transaction or by an order made under this clause is entitled to claim as a creditor in the liquidation.

10. Additional provisions relating to setting aside transactions and charges-

(1) The setting aside of a transaction or an order made under clause 9 does not affect the title or interest of a person in property that the person has acquired:

- (a) from a person other than the company; and
- (b) for valuable consideration; and
- (c) without knowledge of the circumstances under which the property was acquired from the company.

(2) The setting aside of a charge or an order made under clause 9 does not affect the title or interest of a person in property that the person has acquired:

- (a) as the result of the exercise of a power of sale by the secured creditor entitled to the charge; and
- (b) for valuable consideration; and
- (c) without knowledge of the circumstances relating to the giving of the charge.

(3) Recovery by the liquidator of property or its equivalent value, whether under clause 9 or any other provision of this Act, or under any other enactment, or in equity or otherwise, may be denied wholly or in part if:

- (a) the person, from whom recovery is sought, received the property in good faith and has altered his or her position in the reasonably held belief that the transfer to that person was validly made and would not be set aside; and
 - (b) in the opinion of the Court, it is inequitable to order recovery or recovery in full.
- (4) Nothing in the Land Registration Act 1992/1993 restricts the operation of this clause or clauses 4 to 9.

Part 2
Recovery in other cases

Transactions at undervalue

11. Definitions - In clause 12:

“specified period” means:

- (a) the period of 1 year before the date of commencement of the liquidation together with the period commencing on that date and ending at the time at which the liquidator is appointed; and
- (b) in the case of a company that was put into liquidation by the Court, the period of 1 year before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date on which, and at the time at which, the order of the Court was made; and
- (c) the period of 1 year before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation if -
 - (i) an application was made to the Court to put a company into liquidation; and

- (ii) after the making of the application to the Court a liquidator was appointed under sections 215 or 216; and
 - (d) in the case of a liquidator appointed under section 187(1)(c), the period of 1 year before the administration begins together with the period commencing on that date and ending at the time the liquidator is appointed,
- transaction includes the giving of a guarantee by a company.

12. Transactions at undervalue-(1) A liquidator of a company may recover from any other party to a transaction any amount by which the value of the consideration or benefit provided by the company exceeded the value of the consideration or benefit received by the company if:

- (a) the transaction was entered into by a company within the specified period; and
 - (b) the value of the consideration or benefit received by the company was less than the value of the consideration provided by the company, or the company received no consideration or benefit; and
 - (c) when the transaction was entered into, the company-
 - (i) was unable to pay its due debts; or
 - (ii) was engaged, or about to engage, in business for which its financial resources were unreasonably small; or
 - (iii) incurred an obligation knowing that the company would not be able to perform the obligation when required to do so; and
 - (d) when the transaction was entered into, the other party to the transaction knew or ought to have known of the matter referred to in paragraph (c).
- (2) A liquidator of a company may recover from any other party to a transaction any amount by which the value of the

consideration or benefit provided by the company exceeded the value of the consideration or benefit received by the company if:

- (a) the transaction was entered into by a company within the specified period; and
- (b) the value of the consideration or benefit received by the company was less than the value of the consideration provided by the company, or the company received no consideration or benefit; and
- (c) the company became unable to pay its due debts as a result of the transaction; and
- (d) when the transaction was entered into, the other party to the transaction knew or ought to have known that the company would become unable to pay its due debts as a result of the transaction.

Transactions for inadequate or excessive consideration with directors, etc

13. Definitions-(1) In clause 14, specified period means:

- (a) the period of 3 years before the date of commencement of the liquidation together with the period commencing on that date and ending at the time at which the liquidator is appointed; and
- (b) in the case of a company that was put into liquidation by the Court, the period of 3 years before the making of the application to the Court together with the period commencing on the date of the making of the application and ending on the date on which, and at the time at which, the order of the Court was made; and
- (c) the period of 3 years before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation if -

- (i) an application was made to the Court to put a company into liquidation; and
 - (ii) after the making of the application to the Court a liquidator was appointed under sections 215 or 216; and
 - (d) in the case of a liquidator appointed under section 187(1)(c), the period of 3 years before the administration begins together with the period commencing on that date and ending at the time the liquidator is appointed.
- (2) For the purposes of clause 14:
- (a) the value of a business or property includes the value of any goodwill attaching to the business or property:
 - (b) without limiting the circumstances in which a company may be taken to be controlled by a person, a company is controlled by a person, if that person can, by exercising a power exercisable by that person (whether with or without the consent or concurrence of any other person), appoint or remove all the directors of the company, or any number of directors as together hold a majority of voting rights at a meeting of directors.

14. Transactions for excessive consideration with directors, etc - A liquidator of a company may recover from the person, relative, company, or related company, as the case may be, any amount by which the value of the consideration given for the acquisition of the business, property, or services exceeded the value of the business, property, or services at the time of the acquisition if, within the specified period, the company has acquired a business or property from, or the services of:

- (a) a person who was, at the time of the acquisition, a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company; or

- (b) a person, or a relative of a person, who, at the time of the acquisition, had control of the company; or
- (c) another company that was, at the time of the acquisition, controlled by a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company; or
- (d) another company that was, at the time of the acquisition, a related company.

15. Transactions for inadequate consideration with directors, etc - A liquidator of a company may recover from the person, relative, company, or related company, as the case may be, any amount by which the value of the business, property, or services, or the value of the shares, at the time of the disposition, provision, or issue exceeded the value of any consideration received by the company if, within the specified period, a company has disposed of a business or property, or provided services, or issued shares, to:

- (a) a person who was, at the time of the disposition, provision, or issue, a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company; or
- (b) a person, or a relative of a person, who, at the time of the disposition, provision, or issue, had control of the company; or
- (c) another company that was, at the time of the disposition, provision, or issue, controlled by a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company; or
- (d) another company that, at the time of the disposition, provision, or issue, was a related company.

Court may set aside certain securities and charges

16. Court may set aside certain securities and charges-

(1) The Court may, on the application of the liquidator of a company, order that a security or charge, or part of it, created by the company over any of its property in favour of any of the persons referred to in subclause (2) must, so far as any security on the property is conferred, be set aside as against the liquidator if:

- (a) the company is unable to meet all its debts; and
 - (b) the Court considers that, having regard to the circumstances in which the security or charge was created, the conduct of the person, relative, company, or related company, as the case may be, in relation to the affairs of the company, and any other relevant circumstances, it is just and equitable to make the order.
- (2) The persons referred to in subclause (1) are as follows:
- (a) a person who was, at the time the security or charge was created, a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company; or
 - (b) a person, or a relative of a person, who, at the time when the security or charge was created, had control of the company; or
 - (c) another company that was, when the security or charge was created, controlled by a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company; or
 - (d) another company, that at the time when the security or charge was created, was a related company.

17. Certain securities exempted - Clause 16 does not apply to a security or charge that has been transferred by the person (person A) in whose favour it was originally created and has been purchased by another person (whether or not from person A) if:

- (a) at the time of the purchase, the purchaser was not a person specified in that clause; and
- (b) the purchase was made in good faith and for valuable consideration.

18. Other orders, etc-(1) The Court may make any other orders that it thinks proper for the purpose of giving effect to an order under this clause.

(2) Nothing in the Land Registration Act 1992/1993 restricts the operation of this clause or clauses 16 and 17.

Contribution for not keeping proper accounting records

19. Contribution for not keeping proper accounting records-(1) The Court, on the application of the liquidator, may, if it thinks it proper to do so, declare that any 1 or more of the directors and former directors of a company is, or are, personally responsible, without limitation of liability, for all or any part of the debts and other liabilities of the company that the Court may direct if:

- (a) the company that is in liquidation and is unable to pay all its debts has failed to comply with -
 - (i) section 129 (which relates to the keeping of accounting records); or
 - (ii) section 130 (which relates to the preparation of financial statements); and
 - (b) the Court considers that -
 - (i) the failure to comply has contributed to the company's inability to pay all its debts, or has resulted in substantial uncertainty as to the assets and liabilities of the company, or has substantially impeded the orderly liquidation; or
 - (ii) for any other reason it is proper to make a declaration.
- (2) The Court may give any direction it thinks fit for the purpose of giving effect to the declaration.

(3) The Court may make a declaration under this clause even though the person concerned is liable to be convicted of an offence.

(4) An order under this clause is deemed to be a final judgment within the meaning of section 26(f) of the Bankruptcy Act 1908.

20. When Court may not make declaration under clause 19 - The Court must not make a declaration under clause 19 in relation to a person if the Court considers that the person:

- (a) took all reasonable steps to secure compliance by the company with clause 19(1)(a); or
- (b) had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that that provision was complied with and was in a position to discharge that duty.

Court may require persons to repay money or return property

21. Court may require persons to repay money or return property-(1) The Court may, on the application of the liquidator or a creditor or shareholder, do any of the things set out in subclause (2) if, in the course of the liquidation of a company, it appears to the Court that a person who has taken part in the formation or promotion of the company, or a past or present director, manager, liquidator, administrator, receiver, or officer of the company, has:

- (a) misapplied, or retained, or become liable or accountable for, money or property of the company; or
 - (b) been guilty of negligence, default, or breach of duty or trust in relation to the company.
- (2) The Court may:
- (a) inquire into the conduct of the promoter, director, manager, liquidator, administrator, receiver, or officer; and

- (b) order that person -
 - (i) to repay or restore the money or property or any part of it with interest at a rate the Court thinks just; or
 - (ii) to contribute such sum to the assets of the company by way of compensation as the Court thinks just; or
 - (c) if the application is made by a creditor, order that person to pay or transfer the money or property or any part of it with interest at a rate the Court thinks just to the creditor.
- (3) This clause has effect even though the conduct may constitute an offence.
- (4) An order for payment of money under this clause is deemed to be a final judgment within the meaning of section 26(f) of the Bankruptcy Act 1908.

Pooling of assets

22. Pooling of assets of related companies-(1) On the application of the liquidator, or a creditor or shareholder, the Court, if satisfied that it is just and equitable to do so, may order that:

- (a) a company that is, or has been, related to the company in liquidation must pay to the liquidator the whole or part of any or all of the claims made in the liquidation:
 - (b) if 2 or more related companies are in liquidation, the liquidations in respect of each company must proceed together as if they were 1 company to the extent that the Court so orders and subject to such terms and conditions as the Court may impose.
- (2) The Court may make any other order or give any directions to facilitate giving effect to an order under subclause (1) that it thinks fit.

23. Guidelines for orders-(1) In deciding whether it is just and equitable to make an order under clause 22(1)(a), the Court must consider the following matters:

- (a) the extent to which the related company took part in the management of the company in liquidation;
- (b) the conduct of the related company towards the creditors of the company in liquidation;
- (c) the extent to which the circumstances that gave rise to the liquidation of the company are attributable to the actions of the related company;
- (d) any other matters as the Court thinks fit.

(2) In deciding whether it is just and equitable to make an order under clause 22(1)(b), the Court must consider the following matters:

- (a) the extent to which any of the companies took part in the management of any of the other companies;
- (b) the conduct of any of the companies towards the creditors of any of the other companies;
- (c) the extent to which the circumstances that gave rise to the liquidation of any of the companies are attributable to the actions of any of the other companies;
- (d) the extent to which the businesses of the companies have been combined;
- (e) any other matters that the Court thinks fit.

(3) The fact that creditors of a company in liquidation relied on the fact that another company is, or was, related to it is not a ground for making an order under clause 22.

Schedule 18

ss 3(i), 228(2), 250, 251(5)

Creditors' claims

Contents

| | |
|--|--|
| <p style="text-align: center;">Part 1</p> <p>Preliminary provisions</p> <ol style="list-style-type: none"> 1. Application of bankruptcy rules to liquidation of insolvent companies 2. Admissible claims 3. Ascertainment of amount of claim 4. Claim not of ascertained amount 5. Fines and penalties 6. Claims relating to debts payable after commencement of liquidation 7. Claims by unsecured creditors <p style="text-align: center;">Part 2</p> <p>Secured claims</p> <ol style="list-style-type: none"> 8. Powers of secured creditors 9. Realising secured property 10. Valuation of security 11. Liquidator's duties on receipt of claim by secured creditor 12. Liquidator may redeem security 13. Liquidator may require secured creditor to exercise powers 14. Offence to make false or misleading Claim <p style="text-align: center;">Part 3</p> <p>Preferential claims</p> <ol style="list-style-type: none"> 15. Definitions | <ol style="list-style-type: none"> 16. First priority claims 17. Second priority claims 18. Third priority claims 19. Ranking of claims in clauses 17 and 18 20. When landlord or other person has distrained on goods, etc <p style="text-align: center;">Part 4</p> <p>Mutual credit and set-off</p> <ol style="list-style-type: none"> 21. Definitions 22. Mutual credit and set-off 23. Proof for person who is not related person 24. Proof for person who is related person 25. Exceptions for amounts paid or payable by shareholder <p style="text-align: center;">Part 5</p> <p>Set-off under netting agreement</p> <ol style="list-style-type: none"> 26. Definitions 27. Application 28. Calculation of netted balance 29. Bilateral netting agreements: mutuality 30. Recognised multilateral netting agreements: mutuality 31. Application of set-off under Part 4 32. Transactions under netting agreement 33. Effect of liquidation on rights under netting agreement |
|--|--|

- | | |
|---|--|
| 34. Effect of notice | 42. Trade discounts |
| 35. Court may set aside certain bilateral netting agreements | 43. Periodical payments |
| 36. Recognised clearing houses | 44. Employees' claims |
| 37. Matters for bank to consider | 45. Notice to creditors to claim |
| 38. Bank may impose conditions | 46. Failure to claim by day fixed for claims |
| 39. Bank to notify recognised clearing house | 47. Failure to establish priority by day fixed for claims |
| 40. Effect of variation or revocation of declaration | 48. Dividends in respect of rejected claims |
| | 49. Costs of proceedings relating to liquidator's decision on claims |
- Part 6**
Miscellaneous
41. Interest on claims

Part 1
Preliminary provisions

1. Application of bankruptcy rules to liquidation of insolvent companies-(1) Subject to this Act, the rules in force under the law of bankruptcy with respect to the estates of persons adjudged bankrupt apply in the liquidation of a company that is unable to pay its debts to:

- (a) the rights of secured and unsecured creditors; and
- (b) claims by creditors; and
- (c) the valuation of annuities and future and contingent liabilities.

(2) All persons who in any such case would be entitled to make claims and receive payment in whole or in part are so entitled in the liquidation.

(3) In applying in a liquidation the rules in force under the law of bankruptcy, a claim made under clause 3 and admitted by a liquidator is to be treated as if it were a debt proved in accordance with the requirements of the Bankruptcy Act 1908.

2 Admissible claims-(1) Subject to subclause (2), a debt or liability, present or future, certain or contingent, whether it is an ascertained debt or a liability for damages, may be admitted as a claim against a company in liquidation.

(2) Fines, monetary penalties, and costs to which clause 5 applies are not claims that may be admitted against a company in liquidation.

3. Ascertainment of amount of claim-(1) The amount of a claim must be ascertained as at the date and time of commencement of the liquidation.

(2) The amount of a claim based on a debt or liability denominated in a currency other than the currency of Samoa must be converted into the currency of Samoa at the rate of exchange on the date of commencement of the liquidation.

4. Claim not of ascertained amount-(1) If a claim is subject to a contingency, or is for damages, or, if for some other reason the amount of the claim is not certain, the liquidator may:

- (a) make an estimate of the amount of the claim; or
- (b) refer the matter to the Court for a decision on the amount of the claim.

(2) On the application of the liquidator, or of a claimant who is aggrieved by an estimate made by the liquidator, the Court may determine the amount of the claim that it thinks fit.

5. Fines and penalties - Nothing in this Act limits or affects the recovery of:

- (a) a fine imposed on a company, whether before or after the commencement of the liquidation of the company, for the commission of an offence; or
- (b) a monetary penalty payable to the State imposed on a company by a Court, whether before or after the commencement of the liquidation of the company, for the breach of any enactment; or
- (c) costs ordered to be paid by the company in relation to proceedings for the offence or breach.

6. Claims relating to debts payable after commencement of liquidation-(1) A claim in respect of a debt that, but for the liquidation, would not be payable until a date that is 6 months, or later than 6 months, after the date of commencement of the liquidation is to be treated, for the purposes of this Part, as a claim for the present value of the debt.

(2) For the purposes of subclause (1), the present value of a debt is to be determined by deducting from the amount of the debt interest at the prescribed rate for the period from the date on which the company is put into liquidation to the date when the debt is due.

(3) For the purpose of this clause prescribed rate means the prescribed rate for interest on judgment debts within the meaning of the Supreme Court (Civil Procedure) Rules made under the Judicature Ordinance 1961.

7. Claims by unsecured creditors-(1) A claim by an unsecured creditor against a company in liquidation must be made in the prescribed form and must:

- (a) contain full details of the claim; and
- (b) identify any documents that evidence or substantiate the claim.

(2) The liquidator may require the production of a document referred to in subclause (1)(b).

(3) The liquidator:

- (a) must, as soon as practicable, either admit or reject a claim in whole or in part; and
- (b) if the liquidator later considers that a claim has been wrongly admitted or rejected in whole or in part, may revoke or amend that decision; and
- (c) must record in writing any decision made under this subclause.

(4) If a liquidator rejects a claim, whether in whole or in part, he or she must immediately give notice in writing of the rejection to the creditor.

(5) The costs of making a claim under subclause (1) or producing a document under subclause (2) must be met by the creditor making the claim.

(6) Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding 250 penalty units, or both if the person:

- (a) makes, or authorises the making of, a claim under this clause that is false or misleading in a material particular knowing it to be false or misleading; or
- (b) omits, or authorises the omission, from a claim under this clause of any matter knowing that the omission makes the claim false or misleading in a material particular.

Part 2

Secured claims

8. Powers of secured creditors-(1) A secured creditor may:

- (a) realise property subject to a charge, if entitled to do so; or
- (b) value the property subject to the charge and claim in the liquidation as an unsecured creditor for the balance due, if any; or
- (c) surrender the charge to the liquidator for the general benefit of creditors and claim in the liquidation as an unsecured creditor for the whole debt.

(2) A secured creditor may exercise the power referred to in subclause (1)(a) whether or not the secured creditor has exercised the power referred to in subclause (1)(b).

9. Realising secured property - A secured creditor who realises secured property:

- (a) may, unless the liquidator has accepted a valuation and claim by the secured creditor under clause 11, claim as an unsecured creditor for any balance due after deducting the net amount realised;
- (b) must account to the liquidator for any surplus remaining from the net amount realised after its

satisfaction of the debt, including interest payable in respect of that debt up to the time of its satisfaction, and after making any proper payments to the holder of any other charge over the property subject to the charge.

10. Valuation of security-(1) If a secured creditor values the security and claims as an unsecured creditor for the balance due, if any, the valuation and any claim must be made in the prescribed form and:

- (a) contain full details of the valuation and any claim; and
 - (b) contain full details of the charge including the date on which it was given; and
 - (c) identify any documents that substantiate the claim and the charge.
- (2) The liquidator may require production of any document referred to in subclause (1)(c).

11. Liquidator's duties on receipt of claim by secured creditor – If a claim is made by a secured creditor under clause 10, the liquidator must:

- (a) accept the valuation and claim; or
- (b) reject the valuation and claim, in whole or in part, but -
 - (i) if a valuation and claim is rejected in whole or in part, the creditor may make a revised valuation and claim within 10 working days of receiving notice of the rejection; and
 - (ii) the liquidator may, if he or she later considers that a valuation and claim was wrongly rejected, in whole or in part, revoke or amend that decision; and
- (c) record in writing any decision made by the liquidator under this clause.

12. Liquidator may redeem security - The liquidator may, unless the secured creditor has realised the property, at any time, redeem the security on payment of the assessed value if the liquidator:

- (a) accepts a valuation and claim under clause 11(a); or
- (b) accepts a revised valuation and claim under clause 11(b)(i); or
- (c) accepts a valuation and claim on revoking or amending a decision to reject a claim under clause 11(b)(ii).

13 Liquidator may require secured creditor to exercise powers-(1) The liquidator may at any time, by notice in writing, require a secured creditor, within 20 working days after receipt of the notice, to:

- (a) elect which of the powers referred to in clause 8 the creditor wishes to exercise; and
- (b) if the creditor elects to exercise the power referred to in clause 8(1)(b) or (c) , exercise the power within that period.

(2) A secured creditor on whom notice has been served under subclause (1) who fails to comply with the notice, is to be taken as having surrendered the charge to the liquidator under clause 8(c) for the general benefit of creditors, and may claim in the liquidation as an unsecured creditor for the whole debt.

(3) A secured creditor who has surrendered a charge under clause 8(1)(c) or who is taken as having surrendered a charge under subclause (2) may, with the leave of the Court or the liquidator and subject to any conditions that the Court or the liquidator thinks fit, at any time before the liquidator has realised the property charged, -

- (a) withdraw the surrender and rely on the charge; or
- (b) submit a new claim under this clause.

14 Offence to make false or misleading claim - Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding 1000 penalty units, or both if the person:

- (a) makes, or authorises the making of, a claim under clause 10 that is false or misleading in a material particular knowing it to be false or misleading; or
- (b) omits, or authorises the omission, from a claim under that clause of any matter knowing that the omission makes the claim false or misleading in a material particular.

Part 3 **Preferential claims**

15 Definitions - For the purposes of this Part:

- (a) remuneration in respect of a period of holiday or of absence from work through sickness or other good cause is to be treated as wages in respect of services rendered to the company during that period;
- (b) paid annual leave, in relation to a person, means all sums payable to that person by the company under sections 26 of the Labour and Employment Act 1972, and includes all sums that by or under any other enactment or any award, agreement, or contract of service are payable to that person by the company as holiday pay.

16 First priority claims - The liquidator must first pay, in the order of priority in which they are listed:

- (a) the fees and expenses properly incurred by the liquidator in carrying out the duties and exercising the powers of the liquidator and the remuneration of the liquidator;
- (b) the reasonable costs of a person who applied to the Court for an order that the company be put into liquidation, including the reasonable costs of a person appearing on the application whose costs are allowed by the Court;

- (c) the actual out-of-pocket expenses necessarily incurred by a liquidation committee.

17 Second priority claims-(1) After paying the claims referred to in clause 16, the liquidator must next pay the following claims:

Employees' wages or salary

- (a) subject to subclause (2), all wages or salary of any employee, whether or not earned wholly or in part by way of commission, and whether payable for time or for piece work, in respect of services rendered to the company during the 4 months before the commencement of the liquidation;

Employees' annual leave

- (b) subject to subclause (2), paid annual leave becoming payable to an employee (or if the employee has died, to any other person in the employee's right) on the termination of the employment before or by reason of the commencement of the liquidation;

Accident compensation

- (c) amounts due in respect of any compensation or liability for compensation under the Law Reform Act 1964 or Accident Compensation Act 1986 accrued before the commencement of the liquidation;

Amounts deducted by company from employees' wages or salary

- (d) subject to subclause (2), amounts deducted by the company from the wages or salary of an employee in order to satisfy obligations of the employee;

Amounts payable under Maintenance Affiliation Act 1967

- (e) subject to subclause (2), amounts payable in accordance with section 37 of the Maintenance Affiliation Act 1967;

Preferential claims under section 154

- (f) amounts that are preferential claims under section 250;

Amounts payable to apprentices

- (g) any amount payable to an apprentice by virtue of the Apprenticeship Act 1972, who is deprived of employment by reason of the commencement of the liquidation;

National Provident Fund contributions

- (h) any contributions payable by the company under section 16(1) of the National Provident Fund Act 1972;

Priority payments under other enactments

- (i) all sums that by any other enactment are required to be paid in accordance with the priority established by this clause;

Workers' compensation

- (j) unless the company is being liquidated merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has at the commencement of the liquidation under such a contract of insurance rights capable of being transferred to and vested in the worker, all amounts due in respect of any workers compensation or liability for workers compensation accrued before the relevant date.

(2) The total sum to which priority is to be given under subclause (1)(a), (b), (d), or (e) must not, in the case of any 1 employee exceed \$3,000 or any greater amount that is prescribed at the commencement of the liquidation.

(3) If a payment has been made to the following persons out of money advanced by some person for that purpose, the person by whom the money was advanced has, in a liquidation, the same right of priority in respect of the money advanced as the employee, or other person receiving the payment in right of the employee, would have if the payment had not been made:

- (a) an employee of a company on account of wages or salary:
- (b) any such employee or, if the employee has died, to any other person in the employee's right, on account of holiday pay.

18 Third priority claims - After paying the sums referred to in clause 17, the liquidator must next pay the following to the extent that the amount is for the time being unpaid to the Commissioner of Inland Revenue or to the Collector of Customs, as the case may require:

Income tax

- (a) tax payable by the company in the manner required by Part IV of the Income Tax Administration Act 1974;

Tax deductions

- (b) tax deductions made by the company under Part V of the Income Tax Administration Act 1974;

Non-resident withholding tax,

- (c) non-resident withholding tax deducted by a company on behalf of an agent, absentee or non resident under Part IV of the Income Tax Act 1974;

Resident withholding tax

- (d) every resident withholding tax deduction made by a company under Part II of the Income Tax Act 1974;

Customs and excise duty

- (e) duty payable within the meaning of section 2 (1) of the Customs Act 1977 and excise duty payable under Part V of the Excise Tax (Domestic Administration) Act 1984 and section 5 of the Excise Tax (Import Administration) Act 1984.

19. Ranking of claims in clauses 17 and 18-(1) The claims listed in each of clauses 17 and 18:

- (a) rank equally among themselves and must be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions; and
- (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of persons in respect of assets that are subject to a floating charge and must be paid accordingly out of those assets.

(2) To the extent that the claims to which subclause (1) applies are paid out of assets referred to in paragraph (b) of that subclause, the amount so paid is an unsecured debt due by the company to the secured party.

20. When landlord or other person has distrained on goods, etc - If a landlord or other person has distrained on goods or effects of the company within the month before the commencement of the liquidation:

- (a) the claims to which priority is given by this Part are a first charge on the goods or effects so distrained on, or the proceeds from their sale; but
- (b) if any money is paid to a claimant under any such charge, the landlord or other person has the same rights of priority as that claimant.

Part 4
Mutual credit and set-off

21. Definitions - In this Part, -

“related person” includes a related company and includes a director of the company in liquidation

“restricted period” means -

- (a) the period of 2 years before the date of commencement of the liquidation together with the period commencing on that date and ending at the time at which the liquidator is appointed; and
- (b) in the case of a company that was put into liquidation by the Court, the period of 2 years before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date on which, and at the time at which, the order of the Court was made; and
- (c) the period of 2 years before the making of the application to the Court together with the period commencing on the date of the making of an application and ending on the date and at the time of the commencement of the liquidation if -
 - (i) the application was made to the Court to put a company into liquidation; and
 - (ii) after the making of the application to the Court a liquidator was appointed under sections 215 or 216; and
- (d) in the case of a liquidator appointed under section 187(1)(c), the period of 6 months before the administration begins together with the period commencing on that date and ending at the time the liquidator is appointed

“specified period” means:

- (a) the period of 6 months before the date of commencement of the liquidation together with the period commencing on that date and ending

at the time at which the liquidator is appointed;
and

- (b) in the case of a company that was put into liquidation by the Court, the period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date on which, and at the time at which, the order of the Court was made; and
- (c) the period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of an application and ending on the date and at the time of the commencement of the liquidation if -
 - (i) the application was made to the Court to put a company into liquidation; and
 - (ii) after the making of the application to the Court a liquidator was appointed under sections 215 or 216; and
- (d) in the case of a liquidator appointed under section 187(1)(c), the period of 6 months before the administration begins together with the period commencing on that date and ending at the time the liquidator is appointed.

22. Mutual credit and set-off - If there have been mutual credits, mutual debts, or other mutual dealings between a company and a person who seeks or, but for the operation of this clause, would seek to have a claim admitted in the liquidation of the company:

- (a) an account must be taken of what is due from the 1 party to the other in respect of those credits, debts, or dealings; and
- (b) an amount due from 1 party must be set off against an amount due from the other party; and
- (c) only the balance of the account may be claimed in the liquidation, or is payable to the company, as the case may be.

23. Proof for person who is not related person - Unless the person proves that, at the time of the transaction or assignment, the person did not have reason to suspect that the company was unable to pay its debts as they became due, a person who is not a related person is not entitled to claim the benefit of a set-off arising from:

- (a) a transaction made within the specified period, being a transaction by which the person gave credit to the company or the company gave credit to the person; or
- (b) the assignment within the specified period to that person of a debt owed by the company to another person.

24. Proof for person who is related person - Unless the related person proves that, at the time of the transaction or assignment, the related person did not have reason to suspect that the company was unable to pay its debts as they became due, the related person is not entitled to claim the benefit of a set-off arising from:

- (a) a transaction made within the restricted period, being a transaction by which the related person gave credit to the company or the company gave credit to the related person; or
- (b) the assignment within the restricted period to that person of a debt owed by the company to another person.

25. Exception for amounts paid or payable by shareholder - Clauses 22 to 24 do not apply to an amount paid or payable by a shareholder or former shareholder:

- (a) as the consideration, or part of the consideration, for the issue of a share; or
- (b) in satisfaction of a call in respect of an outstanding liability of the shareholder made by the directors or by the liquidator.

Part 5
Set-off under netting agreement

26. Definitions - In this Part, unless the context otherwise requires, -

“bank” means the Central Bank of Samoa;

“bilateral netting agreement” means an agreement that provides, in respect of transactions between 2 persons to which the agreement applies:

(a) that on the occurrence of an event specified in the agreement, all or any of those transactions must (or may, at the option of a party) be terminated and -

(i) an account taken of all money due between the parties in respect of the terminated transactions; and

(ii) all obligations in respect of that money satisfied by payment of the net amount due from or on behalf of the party having a net debit to or on behalf of the party having a net credit; or

(b) that each transaction is to be debited or credited to an account with the effect that the rights and obligations of each party that existed in respect of the relevant account before the transaction are extinguished and replaced by rights and obligations in respect of the net debit due on the relevant account after taking into account that transaction; or

(c) that amounts payable by each party to the other party are to be paid or satisfied by payment of the net amount of those obligations by the party having a net debit to the party having a net credit,

but does not include any bilateral netting agreement that is part of a multilateral netting agreement.

“clearing house” means a person that provides clearing or settlement services in respect of financial transactions between parties to a multilateral netting agreement;

“multilateral netting agreement” means an agreement that provides for the settlement, between more than 2 persons, of payment obligations arising under transactions that are subject to the agreement, and that provides, in respect of transactions to which it relates, that debits and credits arising between the parties are to be brought into account so that amounts payable by or to each party are satisfied by:

- (a) payment by or on behalf of each party having a net debit to or on behalf of a clearing house (whether as agent or as principal) or a party having a net credit; and
- (b) receipt by or on behalf of each party having a net credit from or on behalf of a clearing house (whether as agent or as principal) or a party having a net debit;

“netted balance” means any amount calculated under a netting agreement as the net debit payable by or on behalf of a party to the agreement to or on behalf of another party to the agreement in respect of all or any transactions to which the netting agreement applies;

“netting agreement” means a bilateral netting agreement or a recognised multilateral netting agreement;

“recognised clearing house” means a clearing house declared under clause 36 to be a recognised clearing house;

“recognised multilateral netting agreement” means a multilateral netting agreement that is contained in, or is subject to, the rules of a recognised clearing house.

27 Application-(1) Despite anything in section 251, clauses 26 to 40 apply:

- (a) to a netting agreement -

- (i) made in or evidenced by writing; and
 - (ii) in which the application of clauses 26 to 40 has not been expressly excluded; and
 - (iii) whether made before or after the commencement of this clause; and
- (b) to all obligations under a netting agreement (whether those obligations are payable in the currency of Samoa or in some other currency).
- (2) Clauses 26 to 40 apply despite:
 - (a) any disposal of rights under a transaction that is subject to a netting agreement in contravention of a prohibition in the netting agreement; or
 - (b) the creation of a charge or other interest in respect of the rights referred to in paragraph (a) in contravention of a prohibition in the netting agreement.
- (3) Nothing in clauses 26 to 40 applies to an amount paid or payable by a shareholder or former shareholder:
 - (a) as the consideration, or part of the consideration, for the issue of a share; or
 - (b) in the case of a company registered under the Companies Act 1955, in satisfaction of a call in respect of an outstanding liability of the shareholder made by the directors or directors or by the liquidator.

28. Calculation of netted balance - If a company that is a party to a netting agreement is in liquidation:

- (a) any netted balance payable by or to the company must be calculated in accordance with the netting agreement; and
- (b) that netted balance constitutes the amount that may be claimed in the liquidation or is payable to the company, as the case may be, in respect of the transactions that are included in the calculation.

29. Bilateral netting agreements mutuality - Clauses 26 to 40 apply to transactions that are subject to a bilateral netting agreement only if those transactions constitute mutual credits, mutual debts, or other mutual dealings.

30. Recognised multilateral netting agreements: mutuality-(1) Clauses 26 to 40 apply to transactions that are subject to a recognised multilateral netting agreement, whether or not those transactions constitute mutual credits, mutual debts, or other mutual dealings.

(2) Despite subclause (1), clauses 26 to 40 do not apply to transactions that are subject to a recognised multilateral netting agreement if:

- (a) those transactions do not constitute mutual credits, mutual debts, or other mutual dealings; and
- (b) a party to any of those transactions is acting as a trustee for another person; and
- (c) the party acting as trustee is not authorised by the terms of the trust of which the party is a trustee to enter into the transaction.

31. Application of set-off under Part 4-(1) Part 4 does not apply to transactions that are subject to a netting agreement to which this Part applies.

(2) However, a netted balance is to be treated as an amount to which clause 22 applies if the company that is in liquidation and the other party to the netting agreement also have mutual credits, mutual debts, or other mutual dealings between them that are not subject to the netting agreement.

32. Transactions under netting agreements-(1) Nothing in clauses 26 to 40 prevents the operation of section 29 or Schedule 17 in respect of a transaction that is subject to a netting agreement.

(2) However, nothing in clause 2(3) of Schedule 17 applies to a transaction that is subject to a netting agreement.

(3) For the purposes of Schedule 17, transaction, in relation to a company, does not include a netting agreement entered into by the company, except to the extent that the effect of entering into the netting agreement is to reduce any amount that was owing by or to the company at the time the company entered into the agreement.

33. Effect of liquidation on rights under netting agreement - Nothing in Schedule 15 affects, in respect of a company in liquidation, the exercise of any of the following rights under a netting agreement:

- (a) the termination, in accordance with the netting agreement, of all or any transactions that are subject to the netting agreement by reason of the occurrence of an event specified in the netting agreement, being an event (including the appointment of a liquidator) occurring not later than the commencement of the liquidation;
- (b) the taking of an account, in accordance with the netting agreement, of all money due between the parties to the netting agreement in respect of transactions affected by the termination.

34. Effect of notice - The filing of a notice under clause 8 of Schedule 17 in respect of any transaction that is subject to a netting agreement does not affect the operation of clause 28 in respect of the transaction, and that clause continues to apply to the transaction until the transaction is set aside.

35. Court may set aside certain bilateral netting agreements-(1) The Court may order, on the application of a liquidator, that a bilateral netting agreement entered into by a company, be set aside as against the liquidator of the company if:

- (a) the netting agreement is between the company and a person who was a related person at the time that the netting agreement was entered into; and

- (b) the netting agreement was entered into within the restricted period; and
 - (c) the related person does not prove that, at the time the netting agreement was entered into, the related person did not have reason to suspect that the company was unable to pay its debts as they became due.
- (2) The Court may make any other orders it thinks proper for the purpose of giving effect to an order under subclause (1).
- (3) In this clause, unless the context otherwise requires - “related person” in relation to the company in liquidation, means:
- (a) a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company; or
 - (b) a person, or a relative of a person, who has control of the company; or
 - (c) another company that is controlled by a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company; or
 - (d) A related company:
- “restricted period” has the same meaning as in clause 21.

36. Recognised clearing houses-(1) The Bank may, by public notice, declare any person that provides or proposes to provide clearing or settlement services to be a recognised clearing house for the purposes of clauses 26 to 40.

(2) The Bank may, by public notice, vary or revoke any declaration made under subclause (1).

37. Matters for bank to consider-(1) In determining whether a declaration should be made, varied, or revoked, the Bank must consider the extent to which the application of clauses 26 to 40 to any multilateral netting agreement that is subject to the rules of that clearing house would assist in promoting the soundness or efficiency of the financial system.

(2) In determining whether a declaration should be made, varied, or revoked, the Bank may consider any of the following matters:

- (a) the type of transactions that may be effected through the clearing house; and
- (b) any laws or regulatory requirements relating to the operation of that clearing house and compliance with those laws or regulatory requirements; and
- (c) any other matters that the Bank may, in any particular case, consider appropriate.

38. Bank may impose conditions-(1) The Bank may, in any declaration made or varied under clause 36, impose conditions relating to any of the matters referred to in clause 37.

(2) If a recognised clearing house fails to comply with any conditions referred to in subclause (1), the Bank may revoke the declaration made under clause 36 that relates to the clearing house.

39. Bank to notify recognised clearing house - The Bank must not revoke or vary a declaration made under clause 36 unless:

- (a) the recognised clearing house to which the notice applies has been given not less than 5 working days' notice in writing of the Bank's intention to do so; and
- (b) the clearing house has had a reasonable opportunity to make submissions to the Bank; and
- (c) the Bank considers those submissions.

40. Effect of variation or revocation of declaration - The variation or revocation of a declaration under clause 36 does not affect the application of sections 26 to 40 to any transaction:

- (a) that is or was subject to a recognised multilateral netting agreement; and
- (b) that was entered into before the variation or revocation of the declaration.

Part 6
Miscellaneous

41. Interest on claims-(1) The amount of a claim may include interest up to the date of commencement of the liquidation:

- (a) at such rate as may be specified or contained in any contract that makes provision for the payment of interest on that amount; or
- (b) in the case of a judgment debt, at such rate as is payable on the judgment debt.

(2) If any surplus assets remain after the payment of all admitted claims, interest must be paid at the prescribed rate on those claims from the date of commencement of the liquidation to the date on which each claim is paid, and if the amount of the surplus assets is insufficient to pay interest in full on all claims, payment must abate rateably among all claims.

(3) If any surplus assets remain after the payment of interest in accordance with subclause (2), interest must be paid on all admitted claims referred to in subclause (1) from the date of commencement of the liquidation to the date on which the claim is paid at a rate equal to the excess between the prescribed rate and the rate referred to in subclause (1)(a), as the case may be, and, if the amount of the surplus assets is insufficient to pay interest in full on all claims, payment must abate rateably among all claims.

(4) For the purposes of this clause, prescribed rate means the prescribed rate for interest on judgment debts within the meaning of the Supreme Court (Civil Procedure) Rules made under the Judicature Ordinance 1961.

42. Trade discounts - A creditor making his or her claim must deduct all trade discounts that he or she would otherwise have given if the company had not gone into liquidation.

43. Periodical payments-(1) When any payment (including rent) falls due at stated periods, and liquidation commences at any time other than at the beginning of 1 of those periods, the

persons entitled to the payment may claim up to the date of commencement of liquidation as if the payment accrued on a daily basis.

(2) Nothing in subclause (1) affects the right of the lessor of the property to claim rent that accrues on or after the commencement of liquidation.

44. Employees' claims-(1) A person may make a claim on behalf of all or a number of employees of the company.

(2) A schedule setting out the names of the employees, and the amounts due to each of them, must be attached to the claim.

(3) Any claim made in compliance with this regulation has the same effect as if separate claims had been made by each of the employees.

45. Notice to creditors to claim-(1) Subject to the provisions of the Act, and unless otherwise ordered by the Court, the liquidator may fix a certain day, which must not be less than 10 working days from the date of the notice, on or before which the creditors of the company are to make their claims, and to establish any priority their claims may have under Part 3.

(2) The liquidator must give public notice of the day fixed in accordance with subclause (1).

46. Failure to claim by day fixed for claims-(1) Subject to subclause (2), any creditor who fails to make a claim on or before the day fixed in accordance with clause 45 will be excluded from the benefit of any distribution made before his or her claim is made.

(2) A creditor who makes a claim after the day fixed in accordance with clause 45 and whose claim is admitted is entitled to receive the benefit of any distribution from which the creditor was previously excluded if any assets remain, or, in the opinion of the liquidator, are likely to remain, available for distribution.

47. Failure to establish priority by day fixed for claims-

(1) Subject to subclause (2), any creditor who fails to establish any priority that the creditor's claim may have on or before the day fixed in accordance with clause 45 must be excluded from objecting to any distribution made before the priority of that claim is established.

(2) The liquidator may, in making any distribution after the claim is admitted, make an assumption as to the priority that the claim may have and accord the creditor the benefit of the distribution accordingly.

(3) A creditor who establishes the priority of the creditor's claim after the day fixed in accordance with clause 45 is entitled to receive the benefit of any distribution from which the creditor was previously excluded (if any) if any assets remain, or, in the opinion of the liquidator, are likely to remain, available for distribution.

48. Dividends in respect of rejected claims-(1)

If any creditor applies to the Court for an order reversing or modifying the decision of a liquidator to reject the creditor's claim, the liquidator may in any such case make provision for the dividend on the claim, and the probable cost of the application in the event of the claim being admitted.

(2) If no notice of an application has been given within the time specified in the Supreme Court Rules for appeals to the Court, the liquidator must exclude all claims that have been rejected from participation in the dividend.

49. Costs of proceedings relating to liquidator's decision on claim-If any creditor applies to the Court for an order reversing or modifying the decision of a liquidator to reject the creditor's claim, the Court may, if it thinks fit:

- (a) allow any costs of any creditor to be added to the creditor's claim;
- (b) allow any costs of any party to be paid out of the assets of the company, such costs being deemed to be expenses of the liquidator;

- (c) order any costs to be paid by any party to the proceedings other than the liquidator.

Schedule 19

ss 3(i), 292

Liquidation of assets of overseas companies

1. Modified application of subpart 3 of Part 9 - Subpart 3 of Part 9 applies to the liquidation of the assets in Samoa of an overseas company, with the following modifications and exclusions:

- (a) references to assets are to be taken as references to assets in Samoa;
- (b) references to a company are to be taken as references to an overseas company;
- (c) references to removal from the Samoa register are to be taken as references to ceasing to carry on business in Samoa;
- (d) the following provisions do not apply to such a liquidation-
 - (i) clause 6 of Schedule 13;
 - (ii) clauses 1 and 3 of Schedule 15;
- (e) clause 2 of Schedule 15 does not affect the tenure of directors of an overseas company, but the overseas company and its directors cease to have any powers, functions, or duties in relation to the company's assets in Samoa, other than those required or permitted to be exercised by subpart 3 of Part 9;
- (f) section 253 applies to such a liquidation, but instead of making the statement required by subsection (1)(b)(iii) of that section, the liquidator must state that the company has ceased to carry on business in Samoa and is ready to be removed from the overseas register.

2. Rights of action not affected - Nothing in this Act excludes the right of a creditor of an overseas company in relation to the assets of which a liquidator has been appointed:

- (a) to bring proceedings outside Samoa against the overseas company in relation to a debt not claimed in the liquidation or the balance of a debt remaining unpaid after the completion of a liquidation; or
- (b) to bring an action in Samoa in relation to the balance of a debt remaining unpaid after the completion of a liquidation.”

**The Companies Amendment Act 2006 is administered in the
Ministry of Commerce, Industry and Labour.**