

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER No. 146.

*Companies.*

GENERAL ANNOTATION.

ADMINISTRATION.

The administration of this Chapter was vested in the Minister for Justice at the date of its preparation for inclusion, except for Section 40(7)(b), Section 40(7)(c) and Section 40(8) the administration of which is vested in the Minister for Finance.

The present administration may be ascertained by reference to the most recent Determination of Titles and Responsibilities of Ministers made under Section 148(1) of the Constitution.

References in and in relation to this Chapter to—

“the Departmental Head”—should be read as references to the Secretary for Justice;

“the Department”—should be read as references to the Department of Justice.

TABLE OF CONTENTS.

	<i>Page.</i>
<i>Companies Act</i> .....	3
<i>Companies Regulation</i> .....	315
<i>Companies Rules</i> .....	409
Subsidiary Legislation <sup>1</sup> .....	479
Appendixes—	
1. Source of Act	
2. Source of Regulation	
3. Source of Rules	

<sup>1</sup>Subsidiary legislation has not been up-dated



INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 146.

*Companies Act.*

ARRANGEMENT OF SECTIONS.

PART I.—PRELIMINARY.

1. Interpretation—

- "annual general meeting"
- "annual return"
- "articles"
- "banking corporation"
- "the Board"
- "books"
- "borrowing corporation"
- "branch register"
- "calendar year"
- "certified"
- "charge"
- "the commencement date"
- "company"
- "company having a share capital"
- "company limited by guarantee"
- "company limited by shares"
- "contributory"
- "corporation"
- "corresponding previous law"
- "the Court"
- "creditors' voluntary winding-up"
- "debenture"
- "director"
- "document"
- "emoluments"
- "exempt proprietary company"
- "expert"
- "filed"
- "financial year"
- "foreign company"
- "guarantor corporation"
- "land"
- "Land Registration Authority"
- "limited company"
- "lodged"
- "manager"
- "marketable securities"
- "members' voluntary winding-up"
- "memorandum"
- "minimum subscription"

"mining company"  
 "mining purposes"  
 "no liability company"  
 "officer"  
 "officer who is in default"  
 "official liquidator"  
 "official manager"  
 "principal register"  
 "printed"  
 "profit and loss account"  
 "promoter"  
 "property"  
 "proprietary company"  
 "prospectus"  
 "public company"  
 "registered"  
 "registered company auditor"  
 "registered liquidator"  
 "the Registrar"  
 "the regulations"  
 "related company"  
 "related corporation"  
 "the repealed legislation"  
 "resolution for voluntary winding-up"  
 "share"  
 "statutory meeting"  
 "statutory report"  
 "Table A"  
 "Table B"  
 "this Act"  
 "undischarged bankrupt"  
 "unit"  
 "unlimited company".

2. Ownership of shares in exempt proprietary companies.
3. Related companies.
4. Application of Act to banks and financial institutions.

PART II.—ADMINISTRATION.

*Division 1.—The Registrar, etc.*

5. Appointment of Registrar, Deputy Registrars and officers.
6. Payment of fees to Registrar.
7. Registers, returns, etc.
8. Relodging of lost documents.
9. Appeals.

*Division 2.—Companies Auditors Board.*

10. The Board.
11. Functions of the Board.



PART III.—AUDITORS AND LIQUIDATORS.

12. Registration of company auditors and liquidators.
13. Official liquidators.
14. Disqualification of company auditors.
15. Disqualification of liquidators.

PART IV.—CONSTITUTION OF COMPANIES.

*Division 1.—Incorporation.*

16. Formation.
17. Proprietary companies.
18. Registration and incorporation.

*Division 2.—Membership.*

19. Membership generally.
20. Membership of holding companies.
21. Minimum membership.

*Division 3.—Name.*

22. Restriction on names.
23. Change of name.
24. Omission of "Limited".

*Division 4.—Conversion to other Types of Company.*

25. Unlimited companies and companies limited by guarantee.
26. Public companies and proprietary companies.

*Division 5.—Memorandum and Articles.*

27. Memorandum.
28. Alteration of memorandum generally.
29. Alterations of objects in memorandum.
30. Articles of association.
31. Tables A and B in Schedule 3.
32. Alteration of articles.
33. Memorandum and articles of companies limited by guarantee.
34. Effect of memorandum and articles.
35. Copies of memorandum and articles.

*Division 6.—Powers, etc.*

36. Powers generally.
37. Ultra vires transactions.
38. Form of contracts, etc.

PART V.—SHARES, DEBENTURES AND CHARGES.

*Division 1.—Prospectuses.*

39. Issue of application for shares or debentures.
40. Invitations to the public to lend money.
41. Requirements as to prospectuses.
42. Certain advertisements deemed to be prospectuses.
43. Over-subscriptions in debenture issues.
44. Registration of prospectuses.
45. Written offers of shares for sale.

46. Allotment of shares and debentures where prospectus indicates application to list on Stock Exchange.
47. Statements by experts.
48. Civil liability for statements in prospectus.
49. Criminal liability for statements in prospectus.

*Division 2.—Restrictions on Allotment and Commencement of Business.*

50. Allotment of shares without minimum subscription.
51. Dealing with application moneys, etc.
52. Restriction on allotment.
53. Statements in lieu of prospectus.
54. Variation of contracts referred to in prospectus, etc.
55. Commencement of business.

*Division 3.—Shares.*

56. Return as to allotments.
57. Differences in calls and payments.
58. Reserve liability.
59. Share warrants.
60. Payment of commissions, etc.
61. Issue of shares at a discount.
62. Issue of shares at a premium.
63. Redeemable preference shares.
64. Shares improperly issued.
65. Alteration of share capital.
66. Reduction of share capital by special resolution.
67. Rights of holders of classes of shares.
68. Rights of holders of preference shares.
69. Dealing by a company in its own shares.
70. Options over unissued shares.
71. Payment of interest out of capital.

*Division 4.—Debentures.*

72. Register of debenture holders and copies of trust deeds.
73. Contents of trust deeds.
74. Trustees for debenture holders.
75. Retirement of trustees.
76. Liability of trustees.
77. Specific performances of contracts.
78. Perpetual debentures.
79. Re-issue of redeemed debentures.
80. Power of Court re certain irredeemable issues.
81. Duties of trustees.
82. Applications to Court by trustees.
83. Obligations of borrowing corporations.
84. Guarantor corporations to furnish information.
85. Repayment of loans and deposits.
86. Exemption of invitations by prescribed corporations.

## Companies

Ch. No. 146

### *Division 5.—Interests other than Shares, Debentures, etc.*

87. Interpretation of Division 5—
  - "company"
  - "financial year"
  - "interest"
  - "investment contract"
  - "management company"
  - "proclaimed State".
88. Application of Division 5.
89. Approval of deeds.
90. Approval of trustees.
91. Contents of deeds.
92. Issue of interests.
93. Statements as to issues and offers of interests.
94. Issue, etc., without approved deeds.
95. Registers of interest holders.
96. Returns, information, etc., relating to interests.
97. Winding-up of schemes, etc.
98. Offences against Division 5.

### *Division 6.—Title and Transfers.*

99. Nature of shares.
100. Numbering of shares.
101. Share certificates.
102. Loss or destruction of certificates.
103. Transfers of shares, debentures, etc.
104. Registration of transfers.
105. Refusal to register transfers.
106. Certification of transfers.
107. Issue of certificates.

### *Division 7.—Registration of Charges.*

108. Interpretation of Division 7.
109. Application of Division 7.
110. Registration of charges.
111. Registration of charges on property acquired.
112. Register of charges.
113. Endorsement of certificate of registration on debentures.
114. Registration of satisfaction and release.
115. Extension of time and rectification of register.
116. Copies of charging instruments and register of charges.
117. Documents made outside Papua New Guinea.

## PART VI.—MANAGEMENT AND ADMINISTRATION.

### *Division 1.—Registered Office, etc.*

118. Registered offices.
119. Notice of office and office hours.
120. Publication of name.

*Division 2.—Directors and Officers.*

121. Directors.
122. Restriction on appointment or advertisement of directors.
123. List of proposed directors.
124. Qualification of directors.
125. Undischarged bankrupts acting as directors.
126. Voting on appointment of directors.
127. Removal of directors.
128. Age limit for directors.
129. Disclosure of interests.
130. Duty of disclosure generally.
131. Loans to directors.
132. Registers of directors' share-holdings, etc.
133. Tax-free payments to directors.
134. Payments to directors for loss of office.
135. Disclosure of directors' emoluments.
136. Assignment of office by director or manager.
137. Company secretaries.
138. Validation of acts.
139. Duties and liabilities.
140. Indemnity.
141. Registers of directors, managers and secretaries.
142. Restriction on management of companies.

*Division 3.—Meetings and Proceedings.*

143. Statutory meeting and statutory report.
144. Annual general meeting.
145. Calling of meetings.
146. Calling of extra-ordinary general meetings on requisition.
147. Meetings ordered by Court.
148. Right to demand poll.
149. Procedures, etc.
150. Proxies.
151. Circulation of members' resolutions, etc.
152. Special resolutions.
153. Resolutions requiring special notice.
154. Resolutions at adjourned meetings.
155. Minutes of meetings.
156. Inspection of minute books.
157. Registration of resolutions, etc.

*Division 4.—Registers of Members.*

158. Registers of members.
159. Indexes of members.
160. Keeping of registers.
161. Inspection and closing of registers.
162. Defaults by agents.
163. Rectification of registers.

- 164. Branch registers.
- 165. Liability of trustees, etc., registered as owners.

*Division 5.—Annual Returns.*

- 166. Annual returns by companies having share capital.
- 167. Annual returns by companies not having share capital.
- 168. Exemptions.

PART VII.—ACCOUNTS AND AUDIT.

*Division 1.—Accounts.*

- 169. Accounts to be kept.
- 170. Accounting periods of groups.
- 171. Profit and loss account, balance-sheet and directors' report.
- 172. Offences against Division 1.
- 173. Entitlement to balance-sheet, etc.

*Division 2.—Audit.*

- 174. Appointment of auditors.
- 175. Auditors' remuneration.
- 176. Powers and duties of auditors as to reports on accounts.
- 177. Duties of auditors to trustees for debenture holders.

*Division 3.—Inspection.*

- 178. Interpretation of Division 3—  
"officer or agent".
- 179. Investigations at direction of Minister.
- 180. Investigations by resolution of company.
- 181. Procedures, powers, etc., as to investigations.
- 182. Costs of investigations.

*Division 4.—Special Investigations.*

- 183. Interpretation of Division 4—  
"company to which this Division applies"  
"officer or agent".
- 184. Appointment of inspectors.
- 185. Suspension of actions and proceedings.
- 186. Winding-up.
- 187. Obstruction, etc.
- 188. Investigation of ownership of corporations.
- 189. Investigation of ownership of shares, etc.
- 190. Restrictions on shares.
- 191. Inspectors appointed in Australia.

PART VIII.—ARRANGEMENTS AND RECONSTRUCTIONS.

- 192. Compromises.
- 193. Information as to compromises.
- 194. Reconstructions and amalgamations.
- 195. Take-over offers.
- 196. Dissenting shareholders.
- 197. Oppression.

PART IX.—RECEIVERS AND MANAGERS.

198. Disqualification for appointment as receiver.
199. Liability of receivers.
200. Appointment of liquidators as receivers.
201. Notification of appointment of receivers.
202. Remuneration of receivers and managers.
203. Documents of companies under receivership.
204. Statements, etc., where receiver or manager appointed.
205. Statements for receivers.
206. Lodging of accounts of receivers and managers.
207. Priorities as to floating charges.
208. Returns, etc., by receiver.

PART X.—OFFICIAL MANAGEMENT.

209. Interpretation of Part X.—  
    "special notice"  
    "special resolution".
210. Meeting of creditors to appoint official manager.
211. Submission statement of affairs to meetings.
212. Adjournment of meetings.
213. Placing companies under official management.
214. Committees of management.
215. Notice of appointment, etc., of official managers.
216. Effect of resolutions.
217. Meetings of creditors and members.
218. Stay of proceedings.
219. Extension of official management.
220. Termination of appointment.
221. Saving of appointment and duties of auditors.
222. Duties of official manager.
223. Undue preferences.
224. Application and disposal of assets.
225. Application to Court for directions.
226. Application of winding-up provisions to official management.
227. Termination of official management.
228. Appeals.
229. Lodgement of office copies of Court orders.
230. Release of official manager.
231. Documents of companies under official management.
232. Functions of committees of management.
233. Accidental omission to give notice.

PART XI.—WINDING-UP.

*Division 1.—Preliminary.*

234. Modes of winding-up.
235. Application of Part XI. to the State.
236. Contributories generally.

- 237. Contributories in cases of death or bankruptcy.
- 238. Liability of contributories.

*Division 2.—Winding-up by the Court.*

Subdivision A.—General.

- 239. Application for winding-up.
- 240. Grounds of winding-up by Court.
- 241. Commencement of winding-up.
- 242. Preliminary costs, etc.
- 243. Powers on hearing of petition.
- 244. Staying or restraint of proceedings.
- 245. Avoidance of certain dispositions of property, etc.
- 246. Petition as *lis pendens*.
- 247. Lodgement of copies of orders, etc.

Subdivision B.—Liquidators.

- 248. Appointment of official liquidator.
- 249. General provisions as to liquidators.
- 250. Custody and vesting of company property.
- 251. Submission of statements of company's affairs to liquidators.
- 252. Reports by liquidators.
- 253. Powers of liquidators.
- 254. Exercise and control of liquidators' powers.
- 255. Payment by liquidators into banks.
- 256. Release of liquidators and dissolution of company.
- 257. Orders for release or dissolution.

Subdivision C.—Committees of Inspection.

- 258. Appointment of committees.
- 259. Constitution and proceedings of committees.
- 260. Powers of Court.

Subdivision D.—General Powers of Court.

- 261. Staying of winding-up.
- 262. Settlement of lists of contributories and application of assets.
- 263. Delivery of property to liquidators, etc.
- 264. Appointment of special managers.
- 265. Claims of creditors and distribution of assets.
- 266. Inspection of books by creditors and contributories.
- 267. Summoning persons connected with company.
- 268. Public examination of promoters, directors, etc.
- 269. Examinations under Sections 267 and 268.
- 270. Arrest of absconding contributories.
- 271. Delegation to liquidators.
- 272. Powers of Court generally.

*Division 3.—Voluntary Winding-up.*

Subdivision A.—Introductory.

- 273. Resolution for voluntary winding-up.
- 274. Commencement of winding-up.
- 275. Effect of winding-up.
- 276. Declarations of solvency.

Subdivision B.—Provisions applicable only to Members' Voluntary Winding-up.

- 277. Liquidators.
- 278. Creditors' meeting in case of insolvency.

Subdivision C.—Provisions Applicable only to Creditors' Voluntary Winding-up.

- 279. Meetings of creditors.
- 280. Liquidators.
- 281. Committees of inspection.
- 282. Transfer of property to liquidator.
- 283. Proceedings against companies.

Subdivision D.—Provisions Applicable to every Voluntary Winding-up.

- 284. Limitation on right to wind up.
- 285. Distribution of property.
- 286. Appointment and removal of liquidators.
- 287. Review of liquidator's remuneration.
- 288. Validity of acts of liquidators.
- 289. Powers and duties of liquidators generally.
- 290. Acceptance of shares, etc., as consideration.
- 291. Annual meetings of creditors.
- 292. Final meeting and dissolution.
- 293. Binding arrangements.
- 294. Applications to Court.
- 295. Costs of winding-up.

*Division 4.—Provisions Applicable to Every Mode of Winding-up.*

Subdivision A.—General.

- 296. Documents of companies in liquidation.
- 297. Control of Court over liquidators.
- 298. Making good defaults.
- 299. Appeals.
- 300. Notice of appointment, etc., of liquidators.
- 301. Liquidators' books and accounts.
- 302. Company books.
- 303. Investment of surplus funds on general account.
- 304. Unclaimed assets.
- 305. Expenses of winding-up where assets insufficient.
- 306. Meetings of creditors and contributories.
- 307. Dates of resolutions.
- 308. Commissions for receiving evidence.



## Companies

Ch. No. 146

### Subdivision B.—Proof and Ranking of Claims.

- 309. Proof of debts.
- 310. Priorities.

### Subdivision C.—Effect on Other Transactions.

- 311. Settlements, preferences, etc.
- 312. Floating charges.
- 313. Liquidator's right to recover in respect of certain sales.
- 314. Disclaimer of onerous property.
- 315. Restriction of rights of creditors.
- 316. Duties of Sheriff as to goods taken in execution.

### Subdivision D.—Offences.

- 317. Delinquent officers and members of company.

### Subdivision E.—Dissolution and Striking-off.

- 318. Avoidance of dissolution.
- 319. Striking off defunct companies.
- 320. Registrar as representative of defunct companies.
- 321. Outstanding assets of defunct companies.
- 322. Outstanding interests in property.
- 323. Government liability as to property vested in Registrar.
- 324. Accounts.

### Division 5.—Winding-up of Unregistered Companies.

- 325. Interpretation of Division 5—  
“unregistered company”.
- 326. Winding-up of unregistered companies.
- 327. Contributories in winding-up of unregistered companies.
- 328. Staying or restraint of proceedings.
- 329. Outstanding assets of defunct unregistered companies.

## PART XII.—VARIOUS KINDS OF COMPANIES, ETC.

### Division 1.—No Liability Companies.

- 330. Application of Act to no liability companies.
- 331. Liability of shareholders.
- 332. Payment of dividends.
- 333. Calls.
- 334. Forfeiture of shares.
- 335. Sale of forfeited shares.
- 336. Shares held by or in trust for company.
- 337. Sale of shares for non-payment of calls.
- 338. Postponement of sale.
- 339. Redemption of forfeited shares.
- 340. Office to be open before sale.
- 341. Distribution generally.
- 342. Distribution where cessation of business within 12 months.
- 343. Preference shares issued to promoters.
- 344. Restrictions on tribute arrangements.

*Division 2.—Investment Companies.*

- 345. Interpretation of Division 2—  
“investment company”  
“net tangible assets”.
- 346. Special requirements as to articles and prospectus.
- 347. Borrowings.
- 348. Investments.
- 349. Underwritings.
- 350. Holding of shares in other investment companies.
- 351. Speculation in commodities.
- 352. Balance-sheets and accounts.
- 353. Investment fluctuation reserves.
- 354. Offences against Division 2.

*Division 3.—Foreign Companies.*

- 355. Interpretation of Division 3—  
“agent”  
“carrying on business”.
- 356. Application of Division 3.
- 357. Holding of land.
- 358. Lodgement of documents, etc.
- 359. Returns as to alterations.
- 360. Balance-sheets and annual returns.
- 361. Fees.
- 362. Names of foreign companies.
- 363. Service of documents.
- 364. Cesser of business, etc.
- 365. Branch registers.
- 366. Certificates re share-holdings.
- 367. Offences against Division 3.

*Division 4.—Companies in Respect of Which the Provisions of this Act may  
be Varied.*

- 368. Interpretation of Division 4—  
“local person”  
“substitute provision”.
- 369. Application of Division 4.
- 370. Relief from statutory requirements.
- 371. Appeals.
- 372. Effect of order of Registrar.

*Division 5.—Co-operative Companies.*

- 373. Interpretation of Division 5—  
“co-operative company”.
- 374. Incorporation of co-operative companies.
- 375. Loss of co-operative company status.
- 376. Issue and redemption of shares.
- 377. Articles of association.
- 378. Distribution, etc., of profits.

PART XIII.—OFFENCES AND PENALTIES GENERALLY.

379. Interpretation of Part XIII.—  
    “appropriate officer”  
    “company to which this section applies”  
    “the relevant day”.
380. Offering shares, debentures, etc.
381. Offences by officers.
382. Keeping of accounts.
383. Bad debts.
384. Inducement to be appointed liquidator, etc.
385. Falsification of books.
386. Frauds by officers.
387. False and misleading statements.
388. Payment of dividends.
389. Use of “limited” and “no liability”.
390. Use of “proprietary”.
391. General penalty.
392. Taking of proceedings.

PART XIV.—MISCELLANEOUS.

393. Interpretation of Part XIV.—  
    “company to which this section applies”.
394. Service on companies.
395. Costs in certain cases.
396. Disposal of shares of shareholder whose whereabouts unknown.
397. Relief to honest defaulter.
398. Irregularities in proceedings.
399. Privileged communications.
400. Examination of defaulting officers.
401. Damages against delinquent officers.
402. Production and inspection of books where offence suspected.
403. Form of registers, etc.
404. Inspection of registers.
405. Translations of instruments.
406. Refusal to make books, etc., available.
407. Rule against perpetuities.
408. Directions with respect to meetings ordered by Court.
409. Statutory declarations.
410. Incorporation of business groups as companies.
411. Regulations.

*Companies*

SCHEDULES.

SCHEDULE 1.—Fees.

SCHEDULE 2.—Powers.

SCHEDULE 3.—

Table A.—Regulations for Management of a Company Limited by Shares.

Table B.—Regulations for Management of a No Liability Company.

SCHEDULE 4.—Prospectus.

SCHEDULE 5.—Statement in Lieu of Prospectus.

SCHEDULE 6.—Statement Required under Division V.5.

SCHEDULE 7.—Annual Return of a Company having a Share Capital.

SCHEDULE 8.—Accounts.

SCHEDULE 9.—Take-over Offers.

SCHEDULE 10.—Substitute Provisions in Respect of Certain Companies.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 146.

*Companies Act.*

Being an Act relating to companies<sup>1</sup>.

PART I.—PRELIMINARY.

1. Interpretation.

(1) In this Act, unless the contrary intention appears—

“annual general meeting”, in relation to a company, means a meeting of the company required by Section 144;

“annual return”—

(a) in relation to a company having a share capital—means the return required by Section 166; and

(b) in relation to a company not having a share capital—means the return required by Section 167,

and includes any document accompanying the return;

“articles” means articles of association;

“banking corporation” means a bank as defined in Section 1 of the *Banks and Financial Institutions Act*;

“the Board” means the Companies Auditors Board established by Section 10<sup>3</sup>;

“books” includes accounts, deeds, writings and documents;

“borrowing corporation” means a corporation that is or will be under a liability, present or future, to pay any money received or to be received by it in response to an invitation to the public to subscribe for or purchase debentures of the corporation;

“branch register”—

(a) in relation to a company—means a branch register of members of the company kept under Section 164; and

(b) in relation to a foreign company—means a branch register of members of the company kept under Section 365;

“calendar year” means a period of 12 months commencing on 1 January;

<sup>1</sup> Because of complications with references in other legislation, this Act is printed as amended by the *Companies (Auditor-General) Act 1975* (No. 105 of 1975) and the *Companies (Co-operative Companies) Act 1975* (No. 106 of 1975), which were not in force on the effective date. The effect of the amendments made by these pre-Independence Acts is indicated in footnotes.

In addition, Part VI. of the pre-Independence *Accountants Registration and Practice Act 1975* (No. 23 of 1975) affected Division II.2 of this Act, and read as follows:—

“PART VI.—COMPANY AUDITORS AND LIQUIDATORS.

“39. SUSPENSION OF OPERATION OF SECTION 8 OF THE COMPANIES ACT.

The operation of Section 8 of the *Companies Act 1963*, as in force from time to time, is on and from the date of commencement of this Part suspended.

“40. BOARD TO HAVE ALL THE POWERS, ETC., OF COMPANIES AUDITORS BOARD.

Notwithstanding any provision of the *Companies Act 1963*, as in force from time to time, the Board has, for the purposes of that Act, all the powers, functions, duties and responsibilities of the Companies Auditors Board established under that Act.”

The Board referred to in Section 40 is the Accountants Registration Board, and Section 8 of the *Companies Act 1963* is in this Chapter Division II.2 of the Act. Part VI of the *Accountants Registration and Practice Act 1975* is not reproduced in this Chapter.

"certified"—

- (a) in relation to a copy of a document—means certified in the prescribed manner to be a true copy of the document; and
- (b) in relation to a translation of a document—means certified in the prescribed manner to be a correct translation of the document into the English language;

"charge" includes a mortgage and an agreement to give or execute a charge or mortgage;

"the commencement date" means 1 July 1964 (being the date of commencement of the pre-Independence *Companies Act 1963*);

"company" means a company incorporated under this Act or under any corresponding previous law;

"company having a share capital" includes an unlimited company with a share capital;

"company limited by guarantee" means a company formed on the principle of having the liability of its members limited by the memorandum of the company to such amount as the members respectively undertake to contribute to the assets of the company in the event of its being wound up;

"company limited by shares" means a company formed on the principle of having the liability of its members limited by the memorandum of the company to the amount (if any) unpaid on the shares respectively held by them;

"contributory", in relation to a company, means a person who is liable to contribute to the assets of the company in the event of its being wound up, and includes the holder of fully paid shares in the company and, before the final determination of the persons who are contributories, includes any person alleged to be a contributory;

"corporation" means a body corporate wherever formed or incorporated and includes a foreign company, but does not include—

- (a) a body corporate incorporated within Papua New Guinea or within Australia that is a public authority or an instrumentality or agency of the State or of the Crown in right of Australia or a State of Australia; or
- (b) a corporation sole; or
- (c) a society registered under the *Savings and Loan Societies Act*<sup>1</sup>;

"corresponding previous law", in relation to a provision of this Act, means a law in force before the commencement date corresponding with the provision;

"the Court" means the National Court;

"creditors' voluntary winding-up" means a winding up under Division XI.3 other than a members' voluntary winding-up;

"debenture" includes debenture stock, bonds, notes and any other securities of a corporation, whether constituting a charge on the assets of the corporation or not, and any document that is deemed by Subsection (3)(d) to be a debenture;

<sup>1</sup> This paragraph is printed as amended by the pre-Independence *Companies (Co-operative Companies) Act 1975*, which was not in force on the effective date. Before that Act came into force the paragraph read as follows:—

"(c) a society registered under the *Co-operative Societies Act 1950* (Adopted) or the *Savings and Loan Societies Act*;"

See Footnote <sup>1</sup> on p. 17.

"director" includes any person occupying the position of director of a corporation and any person in accordance with whose directions or instructions the directors of a corporation are accustomed to act;

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

"emoluments", in relation to a director or auditor of a company, includes any fees, percentages or other payments (including the money value of any allowances or perquisites) paid or made, or consideration given, directly or indirectly, to the director or auditor by the company or by a holding company or a subsidiary of the company, whether made or given to him in his capacity as a director or auditor or otherwise in connexion with the affairs of the company or of the holding company or the subsidiary;

"exempt proprietary company" means a proprietary company no share in which is, or is by virtue of Section 2 deemed to be, owned by a public company;

"expert" includes an engineer, valuer, accountant and any other person whose profession or reputation gives authority to a statement made by him;

"filed" means filed under this Act or a corresponding previous law;

"financial year", in relation to a corporation, means the period in respect of which any profit and loss account of the corporation laid before it in general meeting is made up, whether the period is a year or not;

"foreign company" means—

(a) a company, corporation, society, association or other body incorporated outside Papua New Guinea; or

(b) an unincorporated society, association or other body that, under the law of its place of origin, may sue or be sued, or hold property in the name of the secretary or other officer of the body or association duly appointed for that purpose, and that does not have its head office or principal place of business in Papua New Guinea;

"guarantor corporation", in relation to a borrowing corporation, means a corporation that has guaranteed or has agreed to guarantee the repayment of any money received or to be received by the borrowing corporation in response to an invitation to the public to subscribe for or purchase debentures of the borrowing corporation;

"land" does not include customary land;

"Land Registration Authority" means—

(a) where the land is subject to the *Real Property Act*, 1913 of the former Territory of Papua or the *Lands Registration Act* 1924 of the former Territory of New Guinea—the Registrar of Titles appointed under that Act; or

(b) in any other case—the Director of Natural Resources;

"limited company" means a company limited by shares or by guarantee or both by shares and guarantee, but does not include a no liability company;

"lodged" means lodged under this Act or a corresponding previous law;

"manager", in relation to a company, means the principal executive officer of the company, whether or not he is a director;

- "marketable securities" means debentures, funds, stocks, shares or bonds of any Government or local government authority or of any corporation or society, and includes a right or option in respect of shares in a corporation and an interest as defined by Section 87;
- "members' voluntary winding-up" means a winding-up under Division XI.3 in a case where a declaration has been made and lodged under Section 276;
- "memorandum" means memorandum of association;
- "minimum subscription", in relation to shares offered to the public for subscription, means the amount stated in the prospectus relating to the offer in pursuance of Section Sch. 4.4(a) as the minimum amount that, in the opinion of the directors, must be raised by the issue of the shares so offered;
- "mining company" means a company all the objects of which are mining purposes;
- "mining purposes" means purposes of prospecting for or obtaining by any mode or method, or of selling or otherwise disposing of, ores, metals, minerals and all products of mining, and includes—
- (a) all or any of those purposes wherever carried on; and
  - (b) purposes necessary for or incidental to those purposes,
- but does not include quarrying operations for the sole purpose of obtaining stone for building, roadmaking or similar purposes;
- "no liability company" means a company in which the acceptance of a share does not constitute a contract to pay calls;
- "officer", in relation to a corporation, includes—
- (a) a director, secretary or employee of the corporation; and
  - (b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; and
  - (c) an official manager or deputy official manager appointed under Part X.; and
  - (d) a liquidator of the corporation appointed in a voluntary winding-up,
- but does not include—
- (e) a receiver who is not also a manager; or
  - (f) a receiver and manager appointed by the Court; or
  - (g) a liquidator appointed by the Court or by the creditors;
- "officer who is in default" has the meaning attributed to it by Subsection (6);
- "official liquidator" means a person appointed as an official liquidator under Section 13;
- "official manager" means a person appointed as an official manager under Part X.;
- "principal register", in relation to a company, means the register of members of the company kept under Section 158;
- "printed" includes type-written, lithographed or reproduced by any mechanical means;
- "profit and loss account" includes income and expenditure account, revenue account and any other account showing the results of the business of a corporation for a period;



"promoter", in relation to a prospectus issued by or in connexion with a corporation, means a promoter of the corporation who was a party to the preparation of the prospectus or of any relevant portion of it, but does not include a person by reason only of his acting in a professional capacity;

"property" means real or personal property, and includes a thing in action;

"proprietary company" means—

(a) a company that, immediately before the commencement date, was a proprietary company under the provisions of the repealed legislation; or

(b) a company incorporated as a proprietary company by virtue of Section 17; or

(c) a company converted into a proprietary company under Section 26(1), being a company that has not ceased to be a proprietary company under Section 17(3) or (4) or Section 26(2);

"prospectus" means a prospectus, notice, circular, advertisement or invitation—

(a) inviting applications or offers from the public to subscribe for or purchase; or

(b) offering to the public for subscription or purchase, any shares in or debentures of, or any units of shares in or units of debentures of, a corporation or proposed corporation;

"public company" means a company other than a proprietary company;

"registered" means registered under this Act or a corresponding previous law;

"registered company auditor" means a person registered as such under Section 12 and, in relation to a corporation that is not a company, includes a person qualified to act as the auditor of the corporation under the law of the place in which the corporation is incorporated;

"registered liquidator" means a registered company auditor who has been registered under Section 12 as a liquidator;

"the Registrar" means the Registrar of Companies appointed under Section 5, and includes a Deputy Registrar of Companies appointed under that section;

"the regulations" means any regulations made under this Act;

"related company", in relation to a corporation, means, subject to Section 3, a company that—

(a) is the holding company of the corporation; or

(b) is a subsidiary of the corporation; or

(c) is a subsidiary of the holding company of the corporation;

"related corporation", in relation to a corporation, means, subject to Section 3, a corporation that—

(a) is the holding company of the corporation; or

(b) is a subsidiary of the corporation; or

(c) is a subsidiary of the holding company of the corporation;

"the repealed legislation"—

(a) in relation to the former Territory of Papua—means the *Companies Act*, 1912 of that Territory;

(b) in relation to the former Territory of New Guinea—means the *Companies Act*, 1912-1926 of the Territory of Papua, in its application to the Territory of New Guinea from time to time before the commencement date;

"resolution for voluntary winding-up" means the resolution referred to in Section 273;

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

"statutory meeting" means the meeting referred to in Section 143;

"statutory report" means the report referred to in Section 143;

"Table A" means Table A in Schedule 3;

"Table B" means Table B in Schedule 3;

"this Act" includes the regulations;

"undischarged bankrupt" means a person who has, under the *Insolvency Act*, or under any law in force in Australia relating to bankruptcy or insolvency, the status of an undischarged bankrupt;

"unit", in relation to a share, debenture or other interest, means any right or interest in it;

"unlimited company" means a company formed on the principle of having no limit placed on the liability of its members.

(2) For the purposes of this Act, a person shall not be regarded as a person in accordance with whose directions or instructions the directors of a company are accustomed to act by reason only of the fact that the directors act on advice given by him in a professional capacity.

(3) For the purposes of this Act—

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

(b) a statement shall be deemed to be included in a prospectus or statement in lieu of prospectus if it is contained in a report or memorandum appearing on the face of the statement or prospectus, or is incorporated by reference in it or issued with it; and

(c) an invitation to the public to deposit money with or to lend money to a corporation shall be deemed to be an invitation to subscribe for or purchase debentures of the corporation; and

(d) subject to Subsection (4), a document that is issued or intended or required to be issued by a corporation acknowledging or evidencing, or constituting an acknowledgement of, the indebtedness of the corporation in respect of any money that is or may be deposited with or lent to the corporation in response to an invitation referred to in Paragraph (c) shall be deemed to be a debenture.

(4) Notwithstanding Subsection (3)(d), a document that merely acknowledges the receipt of the money referred to in that paragraph where the corporation, in compliance with Section 40, issues in respect of the money the document prescribed by Section 40(2), and complies with the other requirements of that section, shall be deemed not to be a debenture.

(5) Unless the contrary intention appears, a reference in this Act to offering shares or debentures to the public includes a reference to offering shares or debentures to any section of the public, whether selected as clients of the person issuing the prospectus or in any other manner, but a bona fide offer or invitation with respect to shares or debentures shall not be deemed to be an offer to the public if it—

- (a) is an offer or invitation to enter into an underwriting agreement; or
- (b) is made to a person whose ordinary business it is to buy or sell shares or debentures, whether as principal or as agent; or
- (c) is made to existing members or debenture holders of a corporation and relates to shares in or debentures of that corporation; or
- (d) is made to existing members of the proposed transferor company referred to in Section 290 and relates to shares in the proposed transferee corporation within the meaning of that section.

(6) For the purposes of a provision of this Act that provides that an officer of a company or corporation who is in default is guilty of an offence, or is liable to a penalty or punishment, the phrase "officer who is in default" or a similar phrase includes an officer of the company or corporation who knowingly and wilfully authorizes or permits the commission of the offence.

## 2. Ownership of shares in exempt proprietary companies.

(1) For the purposes of the definition of "exempt proprietary company" in Section 1(1), a share in a proprietary company shall be deemed to be owned by a public company if a beneficial interest in the share is held, directly or indirectly, by—

- (a) a public company; or
- (b) a proprietary company a beneficial interest in a share in which is held, directly or indirectly, by a public company; or
- (c) a proprietary company a beneficial interest in a share in which is held, directly or indirectly, by a proprietary company a beneficial interest in a share in which is held, directly or indirectly, by—
  - (i) a public company; or
  - (ii) another proprietary company a beneficial interest in a share in which is held, directly or indirectly, otherwise than by a natural person.

(2) For the purposes of, but without limiting the generality of, Subsection (1)—

- (a) a reference in that subsection to a public company shall be read as including a reference to a foreign company other than a foreign company that (whether or not Division XII.3 applies to it) is of a kind referred to in Section 360(5); and
- (b) a reference in that section to a public company or to a proprietary company does not include a reference to a company in respect of which a licence under Section 24, or under a corresponding previous law, is in force; and

(c) where a corporation holds a beneficial interest in a redeemable preference share in a proprietary company and—

(i) no voting rights attach to the share; or

(ii) any voting rights attaching to the share are exercisable only in special circumstances and do not include the right (except where a dividend in respect of the share is in arrears) to vote at an election of directors of the proprietary company,

the share shall be treated as if the beneficial interest in the share were held by a natural person; and

(d) a person shall be deemed to hold a beneficial interest in a share—

(i) if the person, either alone or together with other persons, is entitled (otherwise than as trustee for, on behalf of or on account of another person) to receive, directly or indirectly, dividends in respect of the share or to exercise, or to control the exercise of, rights attaching to the share; or

(ii) if the person is a corporation and holds a beneficial interest in a share of another corporation that holds, or a subsidiary of which holds, a beneficial interest in that first-mentioned share.

### 3. Related companies.

(1) For the purposes of this Act, a corporation shall, subject to Subsection (3), be deemed to be a subsidiary of another corporation if—

(a) that other corporation—

(i) controls the composition of the board of directors of the first-mentioned corporation; or

(ii) controls more than 50% of the voting power of the first-mentioned corporation; or

(iii) holds more than 50% of the issued share capital of the first-mentioned corporation (excluding any part of it that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or

(b) the first-mentioned corporation is a subsidiary of a corporation that is that other corporation's subsidiary.

(2) For the purposes of Subsection (1), the composition of a corporation's board of directors shall be deemed to be controlled by another corporation if the other corporation, by the exercise of a power exercisable by it without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors, and for the purposes of this provision the other corporation shall be deemed to have power to make such an appointment if—

(a) a person cannot be appointed as a director without the exercise in his favour by the other corporation of such a power; or

(b) a person's appointment as a director follows necessarily from his being a director or other officer of the other corporation.

(3) In determining whether a corporation is a subsidiary of another corporation—

(a) any shares held or power exercisable by the other corporation in a fiduciary capacity shall be treated as not held or exercisable by it; and

- (b) subject to Paragraphs (c) and (d), any shares held or power exercisable—
- (i) by a person as a nominee for the other corporation (except where it is concerned only in a fiduciary capacity); or
  - (ii) by, or by a nominee for, a subsidiary of the other corporation, not being a subsidiary that is concerned only in a fiduciary capacity, shall be treated as held or exercisable by that other corporation; and
- (c) any shares held or power exercisable by a person by virtue of the provisions of any debentures of the first-mentioned corporation, or of a trust deed for securing an issue of any such debentures, shall be disregarded; and
- (d) any shares held or power exercisable by, or by a nominee for, the other corporation or a subsidiary of it (otherwise than as mentioned in Paragraph (c)) shall be treated as not held or exercisable by the other corporation if—
- (i) the ordinary course of business of the other corporation or its subsidiary, as the case may be, includes the lending of money; and
  - (ii) the shares are held or the power is exercisable by way of security only for the purposes of a transaction entered into in the ordinary course of the business.

(4) A reference in this Act to the holding company of a company or other corporation shall be read as a reference to a corporation of which that last-mentioned company or corporation is a subsidiary.

#### 4. Application of Act to banks and financial institutions.

In relation to banks and financial institutions within the meaning of the *Central Banking Act*, this Act shall be read subject to that Act and the *Banks and Financial Institutions Act*.

### PART II.—ADMINISTRATION.

#### Division 1.—The Registrar.

#### 5. Appointment of Registrar, Deputy Registrars and officers.

(1) For the purposes of this Act, the Minister may, by notice in the National Gazette, appoint—

- (a) a Registrar of Companies; and
- (b) such Deputy Registrars of Companies and other officers as the Minister considers necessary.

(2) A Deputy Registrar of Companies may, subject to the directions of the Registrar, exercise any power or perform any function of the Registrar.

(3) The appointment of a Deputy Registrar of Companies does not affect the exercise of a power or the performance of a function by the Registrar of Companies.

(4) The Registrar shall have and use as the seal of his office a seal in such form as the Minister, by notice in the National Gazette, determines.

(5) All courts, Judges and persons acting judicially shall take judicial notice of—

- (a) the signature of any person who holds or has held the office of Registrar or Deputy Registrar and of the fact that that person holds or has held that office; and
- (b) the seal of the Registrar.

(6) For the purpose of ascertaining whether a corporation is complying with the provisions of this Act, the Registrar or a person authorized by him may inspect, and may require an officer of the corporation to produce to him, any book, minute book, register or record required by or under this Act to be kept by the corporation.

(7) A person shall not make an inspection under Subsection (6) unless he has made a declaration in the prescribed form.

(8) A person—

(a) who makes an inspection under Subsection (6) before he has made a declaration referred to in Subsection (7); or

(b) who, after making such a declaration, makes a record of, or divulges or communicates to any other person, (otherwise than for the purposes of this Act or in the course of criminal proceedings) any information that he has acquired by reason of such an inspection,

is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(9) A person who fails to comply with a requirement made under Subsection (6) by the Registrar or a person authorized by the Registrar is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(10) A person who obstructs or hinders the Registrar or a person authorized by the Registrar while he is exercising any of the powers referred to in Subsection (6) is guilty of an offence.

Penalty: A fine not exceeding K200.00.

**6. Payment of fees to Registrar.**

(1) There shall be paid to the Registrar—

(a) the fees specified in Schedule 1; and

(b) such other fees as are prescribed.

(2) The regulations may amend Schedule 1 by altering or omitting any item, or by inserting a new item.

(3) Where a fee is payable to the Registrar for or in respect of the lodging of a document with the Registrar, the document shall be deemed not to have been lodged until the fee has been paid.

(4) Where the Registrar is satisfied that a proposed company will, when incorporated, be a company of a kind referred to in Division XII.4, or that an existing company is of such a kind, the payment of fees required on or in conjunction with the incorporation of the company or on an increase in nominal capital or number of members is suspended while the company remains such a company.

**7. Registers, returns, etc.**

(1) The Registrar shall, subject to this Act, keep such registers as he thinks necessary in such form as he thinks proper.

(2) On payment of the prescribed fee, a person may—

(a) inspect a document filed or lodged with the Registrar; or

(b) require—

(i) a certificate of the incorporation of a company; or

- (ii) any other certificate issued under this Act; or
- (iii) a copy of or extract from a document kept by the Registrar,  
to be given or certified by the Registrar.

(3) A copy of or extract from a document filed or lodged at the office of the Registrar, or a certificate issued by the Registrar, certified to be a true copy or extract under the hand and seal of the Registrar is, in any proceedings, admissible in evidence as of equal validity with the original document or certificate.

(4) In any proceedings, a certificate under the hand and seal of the Registrar that a requirement of this Act specified in the certificate—

- (a) had or had not been complied with at a date or within a period specified in the certificate; or
- (b) had been complied with on a date specified in the certificate but not before that date,

is evidence of the matters specified in the certificate.

(5) If the Registrar is of opinion that a document submitted to him—

- (a) contains matter contrary to law; or
- (b) by reason of any omission or misdescription has not been duly completed; or
- (c) does not comply with the requirements of this Act; or
- (d) contains an error, alteration or erasure,

he may refuse to register or receive the document, and may request that the document be appropriately amended or completed and re-submitted, or that a fresh document be submitted in its place.

(6) If in his opinion it is no longer necessary or desirable to retain them, the Registrar may destroy, or give to the Chief Archivist—

- (a) in the case of any corporation—
  - (i) any return of allotment of shares for cash that has been lodged or filed for not less than two years; or
  - (ii) any annual return or balance sheet that has been lodged or filed for not less than seven years or any document creating or evidencing a charge, or the complete or partial satisfaction of a charge, where a memorandum of satisfaction of the charge has been registered for not less than seven years; or
  - (iii) any other document (other than the memorandum and articles or any other document affecting them) that has been lodged, filed or registered for not less than 15 years; or
- (b) in the case of a corporation that has been dissolved or has ceased to be registered for not less than 15 years—any document lodged, filed or registered.

(7) If a corporation or person makes default in complying with—

- (a) any provision of this Act or of any other law that requires the lodging or filing in any manner with the Registrar of any return, account or other document, or the giving of notice to him on any matter; or

- (b) a request of the Registrar to amend or complete and re-submit a document or to submit a fresh document,

and fails to make good the default within 14 days after service on the corporation or person of a notice requiring it to be done, the Court or a District Court may, on an application by a member or creditor of the corporation or by the Registrar, make an order directing the corporation or any officer of it, or the person, as the case may be, to make good the default within a time specified in the order.

(8) An order under Subsection (7) may provide that all costs of and incidental to the application be borne by the corporation or by any officer responsible for the default, or by the person referred to in that subsection.

(9) Nothing in this section prejudices the operation of any law imposing penalties on a corporation or its officers, or on a person referred to in Subsection (7), in respect of a default referred to in that subsection.

#### 8. Relodging of lost documents.

(1) If, in the case of a corporation incorporated or registered in Papua New Guinea, the memorandum or articles or any other document relating to the corporation filed or lodged with the Registrar has been lost or destroyed, the corporation may apply to the Registrar for leave to lodge a copy of the document as originally filed or lodged.

(2) On an application under Subsection (1), the Registrar may direct notice of it to be given to such persons and in such manner as he thinks proper.

(3) On being satisfied—

- (a) that the original document has been lost or destroyed; and
- (b) of the date of the filing or lodging of it with the Registrar; and
- (c) that a copy of it produced to the Registrar is a correct copy,

the Registrar may certify on the copy that he is so satisfied and direct that the copy be lodged in the manner required by law in respect of the original.

(4) On lodgement the copy has, from the date mentioned in the certificate as the date of the filing or lodging of the original with the Registrar, the same force and effect for all purposes as the original.

(5) On application by a person aggrieved and after notice to any other person as directed by the Court, the Court may, by order, confirm, vary or rescind the certificate, and the order may be lodged with the Registrar and shall be registered by him, but no payment, contract, dealing, act or thing made, had or done in good faith before the registration of the order and on the faith of and in reliance on the certificate is invalidated or affected by the variation or rescission.

(6) A fee is not payable on the lodging of a document under this section.

#### 9. Appeals.

A person aggrieved by the refusal of the Registrar to register a corporation or to register or receive a document, or by any other act or decision of the Registrar, may appeal to the Court, and the Court may—

- (a) confirm the refusal, act or decision; or
- (b) give such directions in the matter as seem proper; or



(c) otherwise determine the matter,

but this section does not apply to an act or decision of the Registrar—

- (d) in respect of which provision in the nature of an appeal or review is expressly made by this Act; or
- (e) that is declared by this Act to be conclusive or final, or is embodied in a document declared by this Act to be conclusive evidence of any act, matter or thing.

*Division 2.—Companies Auditors Board<sup>1</sup>.*

**10. The Board.**

(1) A Companies Auditors Board is hereby established.

(2) The Board shall consist of three persons appointed by the Minister, by notice in the National Gazette, of whom—

- (a) one must be a lawyer of not less than five years' standing, who shall be the Chairman of the Board; and
- (b) one must be a member of The Institute of Chartered Accountants in Australia resident in Papua New Guinea; and
- (c) one must be a member of the Australian Society of Accountants resident in Papua New Guinea.

(3) With the approval of the Minister, a member of the Board may appoint a person to be his deputy, and the deputy holds office during the pleasure of the Minister.

(4) A person appointed to be deputy of the Chairman of the Board must be a lawyer of not less than five years' standing.

(5) The deputy of a member of the Board is, in the event of the absence of the member of whom he is the deputy from a meeting of the Board, entitled to attend the meeting and, when so attending, shall be deemed to be a member of the Board and, in the case of the deputy of the Chairman of the Board, to be the Chairman of the Board.

(6) An appointment of a deputy and an act done by him as such shall not be questioned on the ground that the occasion for the exercise of his powers or functions had not arisen or had ceased.

(7) Two members of the Board are a quorum for a meeting of the Board.

(8) A member of the Board holds office for such period, not exceeding three years, as is fixed by the terms of his appointment, and is eligible for reappointment.

(9) If a member of the Board—

- (a) is absent, without leave of the Board, from three consecutive meetings of the Board; or
- (b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (c) is convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for a term of three months or more; or

---

<sup>1</sup> See Note <sup>1</sup> on p.17.

(d) becomes of unsound mind,

the Minister shall, by notice in the National Gazette, declare the office of the member to be vacant.

(10) A member of the Board may resign his office by writing under his hand addressed to the Minister.

(11) A member of the Board, and the deputy of a member of the Board, shall be paid such fees and allowances as are prescribed.

### 11. Functions of the Board.

In addition to its other functions and duties under this Act, the Board shall—

- (a) report to the Minister on any matters relating to the operation of Part VII. that the Board has investigated, either on its own motion or at the request of the Minister; and
- (b) effect and control the registration of company auditors and liquidators as prescribed by this Act.

### PART III.—AUDITORS AND LIQUIDATORS.

### 12. Registration of company auditors and liquidators.

(1) A person who—

- (a) is a member of The Institute of Chartered Accountants in Australia or the Australian Society of Accountants or any other body established outside Australia that is, on the recommendation of the Board, prescribed as a body for the purposes of this subsection; or
- (b) is a registered company auditor in a State or Territory of Australia; or
- (c) holds a degree or diploma from a University in Papua New Guinea or Australia and has passed examinations in the course for such degree or diploma in such subjects, under whatever name, as the appropriate authority of the University certifies to the Board to represent a course of study in accountancy or auditing of three years' duration and in commercial law (including company law) of two years' duration; or
- (d) holds the certificate in accountancy of a prescribed Institute of Technology or Technical College; or
- (e) has satisfied the Board that he has a thorough knowledge of accounts and auditing and the provisions of this Act, and of such other subjects as are prescribed,

is, if the Board is satisfied with his general conduct and character, entitled to be registered, on payment of the prescribed fee, as a company auditor or, if he is a registered company auditor, to the renewal of his registration.

(2) Notwithstanding any other provision of this section, the Auditor-General shall, for the purposes of this Act and of any other law, be deemed to be a registered company auditor<sup>1</sup>.

(3) A registered company auditor may apply to the Board for registration as a liquidator and the Board, if it is satisfied as to his experience and capacity, shall on payment of the prescribed fee register him as a registered liquidator.

<sup>1</sup> Subsection (2) was inserted (as Section 9(7A)) by the *Companies (Auditor-General) Act 1975*, which was not in force as at the effective date. It came into force on 22 January 1976. See Footnote <sup>1</sup> on p.17.

(4) A registration, including a renewal of registration, of a company auditor or liquidator remains in force until 31 March in the year after the year in which the registration was effected.

(5) After giving notice to a registered company auditor or a registered liquidator, the Board may inquire into his conduct, character and abilities, but shall not do so without giving him an opportunity of being heard.

(6) For the purposes of an inquiry under Subsection (5), the Chairman of the Board may, by notice in the prescribed form, require any person to appear at the inquiry and to give evidence on oath or affirmation (which the Chairman is authorized to administer) as to any matter in relation to the subject-matter of the inquiry.

(7) A notice under Subsection (6) may require the production of all or any books and documents in the custody or under the control of the person to whom it is given.

(8) If, at an inquiry by the Board, a registered company auditor or a registered liquidator is found—

- (a) to have been guilty of conduct discreditable to an auditor or liquidator, as the case may be; or
- (b) to be incapable of performing the duties of a registered company auditor or liquidator, as the case may be,

the Board may punish or deal with him in any one or more of the following ways :—

- (c) by admonishing or reprimanding him; or
- (d) by requiring him to pay the costs of and incidental to the inquiry by the Board; or
- (e) by requiring him to give an undertaking to abstain from some specific conduct; or
- (f) by imposing on him a fine not exceeding K100.00<sup>1</sup>; or
- (g) by suspending his registration for a term not exceeding one year; or
- (h) by cancelling his registration and ordering the removal of his name from the register.

(9) The amount of any fine or costs imposed under Subsection (8) may be recovered by the State as a debt.

(10) A person aggrieved by a decision of the Board may, within three months after the decision, appeal to the Court from the decision, and the Court may confirm, vary or reverse the decision and, if it thinks fit, may direct the Board to register a person whom the Board has refused to register.

(11) Where the registration of a person has been cancelled under this section, the person shall not be re-registered without the express direction of the Board.

### 13. Official liquidators.

(1) For the purpose of conducting proceedings in winding up companies and assisting the Court in any such proceedings, the Minister may appoint as many registered liquidators as he thinks fit to be official liquidators, and may require of each of them the prescribed security for the due fulfilment of his duties.

(2) Where a security given under Subsection (1) is a bond to the State with or without sureties, the Court may, on application and on being satisfied that any condition of the bond

<sup>1</sup> But see Constitution, Sections 158, 159.

has been broken, order the Registrar of the Court to assign the bond to a person named in the order.

(3) The person to whom the bond is assigned or his executor or administrator is entitled to sue on the bond in his own name as if the bond had in the first instance been given to him, and is entitled to receive on it, as trustee for all persons interested, the full amount recoverable in respect of a breach of its condition.

#### 14. Disqualification of company auditors.

(1) A person who—

- (a) knowingly consents to be appointed as auditor of a company; or
- (b) knowingly acts as auditor of a company; or
- (c) prepares for or on behalf of a company any report required by this Act to be prepared by a registered company auditor,

and who—

- (d) is not a registered company auditor; or
- (e) is indebted to the company or to a related corporation in an amount exceeding K1 000.00; or
- (f) except where the company is an exempt proprietary company, is—
  - (i) an officer of the company; or
  - (ii) a partner, employer or employee of an officer of the company; or
  - (iii) a partner or employee of an employee of an officer of the company,

is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(2) For the purposes of Subsection (1), a person shall be deemed to be an officer of a company if he is an officer of a related corporation or, unless the Board in the circumstances of a particular case directs otherwise, he has, at any time within the preceding period of 12 months, been an officer or promoter of the company or of such a corporation.

(3) For the purposes of this section, a person shall not be deemed to be an officer of a company by reason only of his having been appointed as auditor of a corporation or, for any purpose relating to taxation, a public officer of a corporation.

(4) A firm must not—

- (a) consent to be appointed as an auditor of a company; or
- (b) act as an auditor of a company; or
- (c) prepare, for or on behalf of a company, any report required by this Act to be prepared by a registered company auditor,

unless—

- (d) all the partners of the firm resident in Papua New Guinea or in Australia are registered company auditors and, unless the business name under which they are carrying on business is registered under the *Business Names Act*, a return in the prescribed form showing the full names and addresses of all the partners of the firm has been lodged with the Registrar; and
- (e) no partner is, in relation to the company, a person to whom Subsection (1)(e) or (f) applies.

(5) If a firm contravenes Subsection (4), each member of the firm is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(6) A company or person shall not appoint a person as auditor of a company unless the last-mentioned person has, before his appointment, consented in writing to act as the auditor, and a company or person shall not appoint a firm as auditor of a company unless the firm has, before its appointment, consented in writing under the hand of at least one partner of the firm to act as the auditor.

#### 15. Disqualification of liquidators.

(1) Subject to this section, a person who, except with the leave of the Court, consents to be appointed, or who acts, as liquidator of a company—

- (a) if he is not a registered liquidator or a corporation authorized by law to act as a liquidator; or
- (b) if he is indebted to the company or to a related corporation in an amount exceeding K1 000.00; or
- (c) if he is—
  - (i) an officer of the company; or
  - (ii) a partner, employer or employee of an officer of the company; or
  - (iii) a partner or employee of an employee of an officer of the company,

is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(2) Subsection (1)(a) does not apply to a member's voluntary winding-up of an exempt proprietary company, and Subsection (1)(c) does not apply—

- (a) to a member's voluntary winding-up; or
- (b) to a creditor's voluntary winding-up if, by a resolution carried by a majority of the creditors in number and value present in person or by proxy and voting at a meeting of which seven days' notice stating the object of the meeting has been given to every creditor, it is determined that that paragraph shall not so apply.

(3) For the purposes of Subsection (1), a person shall be deemed to be an officer of a company if he is an officer of a related corporation or has, at any time within the preceding period of 24 months, been an officer or promoter of the company or of such a corporation.

(4) A person shall not be appointed as liquidator of a company unless he has, before his appointment, consented in writing to act as the liquidator.

(5) Nothing in this section affects an appointment of a liquidator made before the commencement date.

PART IV.—CONSTITUTION OF COMPANIES.

*Division 1.—Incorporation.*

**16. Formation.**

(1) Subject to this Act, five or more persons, or (where the company to be formed will be a proprietary company) two or more persons, who are associated for a lawful purpose may by—

- (a) subscribing their names to a memorandum; and
- (b) complying with the requirements of this Act as to registration,

form an incorporated company.

(2) A company may be—

- (a) a company limited by shares; or
- (b) a company limited by guarantee; or
- (c) a company limited both by shares and by guarantee; or
- (d) an unlimited company; or
- (e) in the case of a mining company, a no liability company.

(3) An association or partnership consisting—

- (a) in the case of an association or partnership formed for the purpose of carrying on any profession or calling declared by the Minister, by notice in the National Gazette, to be a profession or calling that is not customarily carried on in the country by a corporation—of more than 50 persons; or
- (b) in any other case—of more than 20 persons,

that has for its object the acquisition of gain by the association or partnership or individual members of it may not be formed unless it is incorporated under this or some other Act, or letters patent.

**17. Proprietary companies.**

(1) A company having a share capital (other than a no liability company) may be incorporated as a proprietary company if its memorandum or articles—

- (a) restricts the right to transfer its shares; and
- (b) limits to not more than 50 the number of its members (counting joint holders of shares as one person and not counting any person in the employment of the company or of a subsidiary of it, or any person who, while previously in the employment of the company or of a subsidiary, was and has continued to be a member of the company); and
- (c) prohibits any invitation to the public to subscribe for shares in or debentures of the company; and
- (d) prohibits any invitation to the public to deposit money with the company for fixed periods or payable at call, whether or not bearing interest.

(2) A proprietary company may, by special resolution, alter any restriction on the right to transfer its shares included in its memorandum or articles, or any limitation on the number of its members included in its memorandum or articles, but not so that the memorandum and articles of the company cease to include the limitation required by Subsection (1)(b).

(3) Where, on the application of the Principal Legal Adviser with respect to a proprietary company or of a member or creditor of a proprietary company, the Court is satisfied that default has been made in relation to the company in complying with a prohibition of a kind specified in Subsection (1)(c) or (d) that is included in the memorandum or articles of the company, the Court may by order determine that, on such date as the Court specifies in its order, the company ceased to be a proprietary company.

(4) Where—

- (a) default has been made in relation to a proprietary company in complying with a limitation of a kind specified in Subsection (1)(b) that is included in the memorandum or articles of the company; or
- (b) a proprietary company has been convicted of an offence against Subsection (9); or
- (c) the memorandum or articles of a proprietary company have been so altered that they no longer include restrictions, limitations or prohibitions of the kind specified in Subsection (1); or
- (d) a proprietary company has ceased to have a share capital,

the Registrar may, by notice served on the company, determine that, on such date as is specified in the notice, the company ceased to be a proprietary company.

(5) Where, under this section, the Court or the Registrar determines that a company has ceased to be a proprietary company—

- (a) the company is a public company, and shall be deemed to have been a public company, on and from the date specified in the order or notice; and
- (b) the company shall, on the date so specified, be deemed to have changed its name by the omission from the name of the word "Proprietary" or the abbreviation "Pty.", as the case requires; and
- (c) the company shall, within a period of 14 days after the date of the order or the notice, lodge with the Registrar—
  - (i) a statement in lieu of prospectus; and
  - (ii) a statutory declaration in the prescribed form verifying that Section 55(2)(b) has been complied with; and
  - (iii) where an order has been made under Subsection (3)—an office copy of the order.

(6) Where the Court is satisfied that a default or alteration referred to in Subsection (3) or (4) has occurred but that it was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, the Court may, on such terms and conditions as seem to the Court just and expedient, determine that the company has not ceased to be a proprietary company.

(7) A company that, by virtue of a determination made under this section, has become a public company shall not convert to a proprietary company without the leave of the Court.

(8) If default is made in complying with Subsection (5)(c), the company and each officer of the company who is in default is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

(9) Where a subscription for shares in or debentures of, or a deposit of money with, a proprietary company is arranged by or through a lawyer, broker, agent or other person (whether an officer of the company or not) who—

(a) invites the public to make use of his services in arranging investments; or

(b) holds himself out to the public as being in a position to arrange investments, the company, and each person, including an officer of the company, who is a party to the arrangement, is guilty of an offence.

Penalty: A fine not exceeding K1 000.00.

(10) Where default is made in relation to a proprietary company in complying with any restriction, limitation or prohibition of a kind specified in Subsection (1) that is included in the memorandum or articles of the company, the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K1 000.00.

#### **18. Registration and incorporation.**

(1) Persons desiring the incorporation of a company shall lodge the memorandum and the articles (if any) of the proposed company with the Registrar together with the other documents required to be lodged by or under this Act, and, on payment of the appropriate fees, the Registrar shall, subject to this Act, register the company by registering the memorandum and articles (if any).

(2) If he thinks fit, the Registrar may require to be lodged with him a statutory declaration in the prescribed form by a lawyer engaged in the formation of the company or by a person named in the articles as a director or secretary of the company stating that all or any of the requirements of this Act have been complied with, and the Registrar may accept such a declaration as sufficient evidence of compliance.

(3) On the registration of the memorandum, the Registrar shall certify under his hand and seal, by a certificate in the prescribed form, that the company is, on and from the date specified in the certificate, incorporated, and that the company is—

(a) a company limited by shares; or

(b) a company limited by guarantee; or

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

(d) an unlimited company; or

(e) a no liability company,

as the case may be, and, where applicable, that it is a proprietary company.

(4) On and from the date of incorporation specified in the certificate of incorporation, but subject to this Act, the subscribers to the memorandum, together with such other persons as may from time to time become members of the company, are a corporation by the name contained in the memorandum capable of exercising all the functions of an incorporated company and of suing and being sued and having perpetual succession and a common seal with power to hold land, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is provided by this Act.

(5) A certificate of incorporation under the hand and seal of the Registrar is conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental to registration have been complied with, and that the company referred to in the certificate is duly incorporated under this Act.



(6) This section shall, in relation to the acceptance of a memorandum or articles and the issue of a certificate of incorporation, be read subject to Division III.8 of the *Stamp Duties Act*.

*Division 2.—Membership.*

**19. Membership generally.**

The subscribers to the memorandum shall be deemed to have agreed to become members of the company and, on the incorporation of the company, shall be entered as members in its register of members, and every other person who agrees to become a member of a company and whose name is entered in its register of members is a member of the company.

**20. Membership of holding companies.**

(1) A corporation cannot be a member of a company that is its holding company, and any allotment or transfer of shares in a company to a subsidiary of it is void.

(2) Subsection (1) does not apply where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary of the holding company is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business that includes the lending of money.

(3) This section does not prevent a subsidiary that was, at the commencement date, a member of its holding company from continuing to be such a member but, subject to Subsection (2), the subsidiary has no right to vote at meetings of the holding company or of any class of members of the holding company.

(4) This section does not prevent a subsidiary from continuing to be a member of its holding company if, at the time when it became a subsidiary of the holding company, it already held shares in the holding company, but—

(a) subject to Subsection (2), the subsidiary has no right to vote at meetings of the holding company or of any class of members of the holding company; and

(b) the subsidiary shall, within the period of 12 months, or such longer period as the Court allows, after becoming the subsidiary of its holding company, dispose of all of its shares in the holding company.

(5) Subject to Subsection (2), Subsections (1), (3) and (4) apply in relation to a nominee for a corporation that is a subsidiary as if references in those subsections to such a corporation included references to a nominee for it.

(6) In relation to a holding company that is a company limited by guarantee or an unlimited company, any reference in this section to shares, whether or not the company has a share capital, shall be construed as including a reference to the interest of its members as such, whatever the form of the interest.

**21. Minimum membership.**

If—

(a) at any time the number of members of a company is reduced—

(i) in the case of a proprietary company (other than a proprietary company the whole of the issued shares of which are held by a holding company that is a public company under this Act or under the law of a State or Territory of Australia)—below two; or

(ii) in the case of any other company—below five; and

(b) it carries on business for more than six months while the number is so reduced,

all persons who are members of the company during the time that it so carries on business after those six months and are cognizant of the fact that it is carrying on business with fewer than two or five members (as the case may be) are severally liable for the payment of the whole debts of the company contracted during the time that it so carries on business after those six months and may be severally sued for them, and the company and each such member is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

*Division 3.—Name.*

**22. Restriction on names.**

(1) Except with the consent of the Minister, a company shall not be registered by a name that is, in the opinion of the Registrar, undesirable or is a name, or a name of a kind, that the Minister has directed the Registrar not to accept for registration.

(2) The Minister shall cause a direction given by him under Subsection (1) to be published in the National Gazette and a copy of the direction to be forwarded to the Attorney-General of Australia and of each State of Australia.

(3) A limited company shall have the word "Limited" or the abbreviation "Ltd." as part of and at the end of its name.

(4) A no liability company shall have the words "No Liability" or the abbreviation "N.L." as part of and at the end of its name.

(5) A proprietary company shall have the word "Proprietary" or the abbreviation "Pty." as part of its name, inserted immediately before the word "Limited" or before the abbreviation "Ltd." or, in the case of an unlimited company, at the end of its name.

(6) A description of a company shall not be deemed to be inadequate or incorrect by reason of the use of—

- (a) the abbreviation "Co." or "Coy." instead of the word "Company" contained in the name of the company; or
- (b) the abbreviation "Pty." instead of the word "Proprietary" contained in the name of the company; or
- (c) the abbreviation "Ltd." instead of the word "Limited" contained in the name of the company; or
- (d) the character "&" instead of the word "and" contained in the name of the company; or
- (e) the abbreviation "N.L." instead of the words "No Liability" contained in the name of the company; or
- (f) any of such words in place of the corresponding abbreviation or character contained in the name of the company.

(7) A person may apply in the prescribed form to the Registrar for the reservation of a name set out in the application as—

- (a) the name of an intended company; or
- (b) the name to which a company proposes to change its name; or

(c) the name under which a foreign company proposes to be registered, either originally or on change of name.

(8) If the Registrar is satisfied as to the bona fides of the application and that the proposed name is a name by which the intended company, company or foreign company could be registered without contravention of Subsection (1), he shall reserve the proposed name for a period of two months from the date of lodging of the application.

(9) If at any time during a period for which a name is reserved application is made to the Registrar for an extension of that period and the Registrar is satisfied as to the bona fides of the application, he may extend that period for a further period of two months.

(10) During a period for which a name is reserved, no company, foreign company, person, firm or society (other than the intended company, company or foreign company in respect of which the name is reserved) shall be registered under this Act or under any other Act, whether originally or on change of name, under the reserved name or under any other name that, in the opinion of the Registrar, so closely resembles the reserved name as to be likely to be mistaken for that name.

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

### 23. Change of name.

(1) A company may, by special resolution and with the approval of the Registrar, change its name to a name by which the company could be registered without contravention of Section 22(1).

(2) If the name of a company is (whether through inadvertence or otherwise and whether originally or by change of name) a name by which the company could not be registered without contravention of Section 22(1), the company may by special resolution change its name to a name by which the company could be registered without contravention of that subsection and, if the Registrar so directs, shall so change it within six weeks after the date of the direction or such longer period as the Registrar allows unless the Minister by written notice annuls the direction.

(3) A company that fails to comply with a direction under Subsection (2) is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

(4) Where the name of a company incorporated under a corresponding previous law has not been changed since the commencement date, the Registrar shall not, except with the approval of the Minister, exercise his power under Subsection (2) to direct the company to change its name.

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

**24. Omission of "Limited".**

(1) Where it is proved to the satisfaction of the Minister that a proposed limited company—

- (a) is being formed for the purpose of providing recreation or amusement or promoting commerce, industry, art, science, religion, charity or pension or superannuation schemes or any other object useful to the community; and
- (b) will apply its profits (if any) or other income in promoting its objects; and
- (c) will prohibit the payment of any dividend to its members,

the Minister may (after requiring, if he thinks fit, the proposal to be advertised in such manner as he directs either generally or in a particular case) by licence direct that it be registered as a company with limited liability without the addition of the word "Limited" to its name, and the company may be registered accordingly.

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

- (a) that the objects of a limited company are restricted to those specified in Subsection (1) and to objects incidental or conducive to the objects so specified; and
- (b) that, by its constitution, the company is required to apply its profits (if any) or other income in promoting its objects and is prohibited from paying any dividend to its members,

the Minister may by licence authorize the company to change its name to a name approved by the Registrar that does not contain the word "Limited".

(3) A licence under this section may be issued on such conditions as the Minister thinks proper, and those conditions are binding on the company and, if the Minister so directs, shall be inserted in the memorandum or articles of the company, and the memorandum or articles may, by special resolution, be altered to give effect to any such direction.

(4) While a licence issued under this section or under any corresponding previous law is in force, the company is exempted from complying with the provisions of this Act relating to the use of the word "Limited" as any part of its name and, except where the Minister otherwise directs, from the lodging of annual returns and of returns of particulars of directors, managers and secretaries and the publication of accounts.

(5) Subject to Subsection (6), a licence issued under this section or under any corresponding previous law may be revoked by the Minister and, on revocation, the Registrar shall enter the word "Limited" at the end of the name of the company on the register, and the company thereupon ceases to enjoy the exemptions and privileges granted by this Act by reason of the licence.

(6) Before a licence is revoked under Subsection (5), the Minister shall give to the company written notice of his intention and shall afford it an opportunity to be heard.

*Division 4.—Conversion to other Types of Company.*

**25. Unlimited companies and companies limited by guarantee.**

(1) Subject to this section, an unlimited company may convert to a limited company, or a company limited by guarantee may convert to a company limited both by shares and guarantee, by passing a special resolution determining to convert and lodging with the Registrar for registration a copy of the resolution.

(2) On the lodging of the copy of the resolution, the Registrar shall, subject to this Act—

- (a) register the copy; and
- (b) make such endorsements in or alterations to his registers as are necessary to record the effect of the resolution with respect to the conversion; and
- (c) issue to the company a certificate of incorporation of the company altered to meet the circumstances of the case, and cancel the previous certificate of incorporation of the company.

(3) On issuing the certificate of incorporation, the Registrar may, by written notice served on the company, dispense with the lodging by the company of any document that had been lodged with him on the occasion of or after the incorporation of the company.

(4) The conversion takes effect on the issue of the certificate of incorporation under Subsection (2).

(5) A conversion of a company under this section does not affect the identity of the company or any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that could have been continued or commenced by or against it before the conversion may, notwithstanding the conversion, be continued or commenced by or against it after the conversion.

## 26. Public companies and proprietary companies.

(1) A public company having a share capital (other than a no liability company) may convert to a proprietary company by lodging with the Registrar a copy of a special resolution (together with notice of it in the prescribed form)—

- (a) determining to convert to a proprietary company and specifying an appropriate alteration to its name; and
- (b) altering the provisions of its memorandum or articles so far as is necessary to impose the restrictions, limitations and prohibitions referred to in Section 17(1).

(2) A proprietary company may, subject to anything contained in its memorandum or articles, convert to a public company by lodging with the Registrar—

- (a) a copy of a special resolution (together with notice of it in the prescribed form) determining to convert to a public company and specifying an appropriate alteration to its name; and
- (b) a statement in lieu of prospectus; and
- (c) a statutory declaration in the prescribed form verifying that Section 55(2)(b) has been complied with,

and thereupon the restrictions, limitations and prohibitions of the kind referred to in Section 17(1) as included in the memorandum or articles of the company cease to form part of the memorandum or articles.

(3) On compliance by a company with the provisions of Subsection (1) or (2), the Registrar shall issue, in the prescribed form, a certificate of incorporation of the company altered accordingly and, on the issue of the certificate, the company becomes a proprietary company or a public company, as the case may be.

(4) A conversion of a company under Subsection (1) or (2) does not affect the identity of the company or any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that could have been

continued or commenced by or against it before the conversion may, notwithstanding any change in the company's name or capacity in consequence of the conversion, be continued or commenced by or against it after the conversion.

*Division 5.—Memorandum and Articles.*

**27. Memorandum.**

(1) The memorandum of a company shall be printed, divided into numbered paragraphs, and dated, and shall state, in addition to other requirements—

- (a) the name of the company; and
- (b) the objects of the company; and
- (c) unless the company is an unlimited company—the amount of share capital (if any) with which the company proposes to be registered and the division of it into shares of a fixed amount; and
- (d) if the company is a company limited by shares—that the liability of the members is limited; and
- (e) if the company is a company limited by guarantee—that the liability of the members is limited and that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member or within one year after he ceases to be a member—
  - (i) for payment of the debts and liabilities of the company contracted before he ceases to be a member and of the costs, charges and expenses of winding up; and
  - (ii) for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount, in addition to the amount (if any) unpaid on any shares held by him; and
- (f) if the company is an unlimited company—that the liability of the members is unlimited; and
- (g) if the company is a no liability company—that the acceptance of shares in the company does not constitute a contract to pay calls in respect of the shares or to make any contribution towards the debts and liabilities of the company; and
- (h) the full names, and the addresses and the occupations, of the subscribers to the memorandum; and
- (i) that the subscribers—
  - (i) are desirous of being formed into a company in accordance with the memorandum; and
  - (ii) where the company is to have a share capital—respectively agree to take the number of shares in the capital of the company set out opposite their respective names.

(2) If the company is to have a share capital, each subscriber to the memorandum must state in his own handwriting, in words, the number of shares (being not less than one) that he agrees to take and, whether or not the company is to have a share capital, must sign the memorandum in the presence of at least one witness (not being another subscriber) who must attest the signature and add his address.

(3) A statement in the memorandum of a company limited by shares that the liability of members is limited means that the liability of the members is limited to the amount (if any) unpaid on the shares respectively held by them.

**28. Alteration of memorandum generally.**

(1) The memorandum of a company may be altered only to the extent and in the manner provided by this Act.

(2) In addition to observing, and subject to, any other provision of this Act requiring the lodging with the Registrar of any resolution of a company or order of the Court, or other document, affecting the memorandum of a company, the company must, within 14 days after the passing of any such resolution, the making of any such order or the execution of any such document, lodge with the Registrar notice of it in the prescribed form and a copy of the resolution, an office copy of the order or a copy of the document, as the case may be, together with (unless the Registrar dispenses with it) a printed copy of the memorandum as altered.

(3) If default is made in complying with Subsection (2), the company and each officer of the company who is in default is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

(4) The Registrar shall register every resolution, order or other document lodged with him under this Act that affects the memorandum of a company, and shall certify by a certificate in the prescribed form the registration of every such order, and the alteration of the memorandum takes effect on the registration.

(5) The certificate of the Registrar is conclusive evidence that all the requirements of this Act with respect to the alteration and any confirmation of the alteration have been complied with.

(6) Notice of the registration shall be published in such manner (if any) as the Court or the Registrar directs.

(7) The Registrar shall, where appropriate, issue a certificate of incorporation in the prescribed form and in accordance with the alteration made to the memorandum.

**29. Alterations of objects in memorandum.**

(1) Subject to this section, a company may by special resolution alter the provisions of its memorandum with respect to the objects of the company.

(2) Where a company proposes to alter its memorandum with respect to the objects of the company, it shall give, by post, 21 days' written notice specifying the intention to propose the resolution as a special resolution and to submit it for passing to a meeting of the company to be held on a day specified in the notice.

(3) The notice shall be given—

(a) to all members of the company; and

(b) to all trustees for debenture holders in the company; and

(c) if there are no trustees for a particular class of debenture holders—to all debenture holders of that class whose names are, at the time of the posting of the notice, known to the company.

(4) The Court may, in the case of a person or class of persons, for such reasons as to it seem sufficient, dispense with the notice required by Subsection (2).

(5) If an application for the cancellation of an alteration is made to the Court in accordance with this section by—

- (a) the holders of not less in the aggregate than 10% in nominal value of the company's issued share capital or any class of that capital or, if the company is not limited by shares, not less than 10% of the company's members; or
- (b) the holders of not less than 10% in nominal value of the company's debentures,

the alteration does not have effect except so far as it is confirmed by the Court.

(6) The application shall be made within 21 days after the date on which the resolution altering the company's objects is passed, and may be made on behalf of the persons entitled to make the application by such of them as they appoint in writing for the purpose.

(7) On the application, the Court—

- (a) shall have regard to the rights and interests of the members of the company and to each class of them as well as to the rights and interests of the creditors; and
- (b) may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase (otherwise than by the company) of the interests of dissentient members; and
- (c) may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement; and
- (d) may make an order cancelling the alteration or confirming the alteration wholly or in part and on such terms and conditions as it thinks fit.

(8) Notwithstanding any other provision of this Act, a copy of a resolution altering the objects of a company shall not be lodged with the Registrar before the expiration of 21 days after the passing of the resolution or, if an application has been made to the Court in accordance with this section, before the application has been determined by the Court, whichever is the later.

(9) Notice in the prescribed form of the resolution, and a copy of the resolution, must be lodged with the Registrar by the company within 14 days after the expiration of the 21 days referred to in Subsection (8), but if an application has been made to the Court in accordance with this section the notice and copy must be lodged with the Registrar together with an office copy of the order of the Court within 14 days after the application has been determined by the Court.

### 30. Articles of association.

(1) Articles signed by the subscribers to the memorandum of a company prescribing regulations for the company—

- (a) in the case of a company limited by shares or a no liability company, may; and
- (b) in the case of a company limited by guarantee or limited both by shares and by guarantee or an unlimited company, shall,

be registered with the memorandum.

(2) Articles shall be—

- (a) printed; and
- (b) divided into numbered paragraphs; and



(c) signed by each subscriber to the memorandum in the presence of at least one witness (not being another subscriber) who shall attest the signature and add his address.

(3) In the case of an unlimited company that has a share capital, the articles shall state the amount of share capital with which the company proposes to be registered and the division of it into shares of a fixed amount.

(4) In the case of an unlimited company, a company limited by guarantee or a company limited both by shares and guarantee, the articles shall state the number of members with which the company proposes to be registered.

(5) Where a company to which Subsection (4) applies increases the number of its members beyond the registered number, it must, within one month after the increase was resolved on or took place, lodge with the Registrar notice in the prescribed form of the increase.

(6) Where a company makes default in complying with Subsection (5), the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K20.00.

### **31. Tables A and B in Schedule 3.**

(1) Articles may adopt all or any of the regulations contained in Table A or, in the case of a no liability company, in Table B.

(2) In the case of a company limited by shares incorporated after the commencement date, if articles are not registered, or if articles are registered then in so far as the articles do not exclude or modify them, the regulations contained in Table A are, as far as applicable, the articles of the company in the same manner and to the same extent as if they were contained in registered articles.

(3) In the case of a no liability company incorporated after the commencement date, if articles are not registered, or if articles are registered then in so far as the articles do not exclude or modify them, the regulations contained in Table B are, as far as applicable, the articles of the company in the same manner and to the same extent as if they were contained in registered articles.

### **32. Alteration of articles.**

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

(2) Subject to this Act, an alteration or addition made to the articles under Subsection (1) is, on and from the date of the special resolution or such later date as is specified in the resolution, as valid as if originally contained in the articles and is subject in the same manner to alteration by special resolution.

(3) Subject to this section, a company has the power to amend its articles by the adoption of all or any of the regulations contained in Table A, or, in the case of a no liability company, contained in Table B, by reference only to the regulations in the Table, or to the numbers of particular regulations contained in the Table, without being required to set out in the special resolution effecting the amendment the text of the regulations so adopted.

**33. Memorandum and articles of companies limited by guarantee.**

(1) In the case of a company limited by guarantee and not having a share capital, and registered on or after the commencement date, any provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member is void.

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

**34. Effect of memorandum and articles.**

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

(2) Subject to the provisions of this Act relating to no liability companies, any money payable by a member of a company to the company under the memorandum or articles of the company is a debt due from him to the company and is of the nature of a specialty debt.

(3) Notwithstanding anything in the memorandum or articles of a company, unless either before or after the alteration is made he agrees in writing to be bound by it no member of the company is bound by an alteration made in the memorandum or articles after the date on which he became a member so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of or otherwise to pay money to the company.

**35. Copies of memorandum and articles.**

(1) On being required to do so by any member of the company, a company must send to him a copy of the memorandum and of the articles (if any) of the company, subject to the payment of K2.00 or the cost of the copies, whichever is the less.

(2) Where an alteration is made in the memorandum or articles of a company, a copy of the memorandum or articles must not be issued by the company after the date of alteration unless—

- (a) the copy is in accordance with the alteration; or
- (b) a printed copy of the order or resolution making the alteration is annexed to the copy of the memorandum or articles and the particular clauses or articles affected are indicated in ink.

(3) Where an agreement required to be lodged with the Registrar under Section 157 affects the memorandum or articles of a company, a copy of the memorandum or articles must not be issued by the company after the agreement is entered into unless a copy of the agreement is annexed to the copy of the memorandum or articles.

(4) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K20.00.

## Division 6.—Powers, etc.

**36. Powers generally.**

The powers of a company include—

- (a) power to make donations for patriotic or for charitable purposes; and
- (b) except so far as expressly excluded or modified by the memorandum or articles, the powers set out in Schedule 2.

**37. Ultra vires transactions.**

(1) No act of a company (including the entering into of an agreement by the company), and no conveyance or transfer of property, whether real or personal, to or by a company, is invalid by reason only of the fact that the company was without capacity or power to do the act or to execute or take the conveyance or transfer.

(2) Any such lack of capacity or power may be asserted or relied on only in—

- (a) proceedings against the company by a member of the company (or, where the company has issued debentures secured by a floating charge over all or any of the company's property, by the holder of any of the debentures or the trustees for the holders of the debentures) to restrain the doing of any act or acts or the conveyance or transfer of any property to or by the company; or
- (b) proceedings by the company, or by a member of the company, against the present or former officers of the company; or
- (c) a petition by the Principal Legal Adviser to wind up the company.

(3) If the unauthorized act, conveyance or transfer sought to be restrained in any proceedings under Subsection (2)(a) is being, or is to be, performed or made in pursuance of a contract to which the company is a party, the Court may, if all the parties to the contract are parties to the proceedings and if the Court thinks it just and equitable to do so—

- (a) set aside and restrain the performance of the contract; and
- (b) allow to the company or to the other parties to the contract (as the case requires) compensation for any loss or damage sustained by either of them resulting from the action of the Court in setting aside and restraining the performance of the contract,

but anticipated profits to be derived from the performance of the contract shall not be awarded by the Court as a loss or damage sustained.

**38. Form of contracts, etc.**

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

- (a) a contract that, if made between private persons, would be by law required to be in writing under seal may be made on behalf of the company in writing under the common seal of the company; and
- (b) a contract that, if made between private persons, would be by law required to be in writing signed by the parties to be charged with it may be made on behalf of the company in writing signed by a person acting under its express or implied authority; and
- (c) a contract that, if made between private persons, would by law be valid although made by parol only and not reduced into writing may be made by

parol on behalf of the company by a person acting under its express or implied authority,

and any contract so made is effectual in law and binds the company and its successors and all other parties to it and may be varied or discharged in the manner in which it is authorized to be made.

(2) A document or proceeding requiring authentication by a company may be signed by an authorized officer of the company and need not be under its common seal.

(3) A company may, by instrument under its common seal, appoint, either generally or in respect of a specified matter, a person as its agent or attorney to execute deeds on its behalf, and a deed signed by such an agent or attorney on behalf of the company and under his seal, or, subject to Subsection (5), under the appropriate official seal of the company, binds the company and has the same effect as if it were under its common seal.

(4) The authority of an agent or attorney appointed under Subsection (3) continues as between the company and a person dealing with him during the period (if any) mentioned in the instrument of appointment or, if no period is so mentioned, until notice of the revocation or determination of his authority has been given to the person dealing with him.

(5) A company whose objects require or comprise the transaction of business outside Papua New Guinea may, if authorized by its articles, have for use in any place outside Papua New Guinea an official seal, which shall be a facsimile of the common seal of the company with the addition on its face of the name of every place where it is to be used, and the person affixing any such official seal shall, by instrument under his hand, certify on the instrument to which it is affixed the date on which and the place at which it is affixed.

#### PART V.—SHARES, DEBENTURES AND CHARGES.

##### Division 1.—Prospectuses.

#### 39. Issue of application for shares or debentures.

(1) A person who issues, circulates or distributes a form of application for shares in or debentures of a corporation without a prospectus a copy of which has been registered by the Registrar is guilty of an offence.

Penalty: A fine not exceeding K2 000.00.

(2) Subsection (1) does not apply if the form of application is issued, circulated or distributed in connexion with shares or debentures that are not offered to the public, but otherwise that subsection applies to a form of application referred to in that subsection whether issued, circulated or distributed on or with reference to the formation of a corporation or subsequently.

#### 40. Invitations to the public to lend money.

(1) An invitation to the public to deposit money with or lend money to a corporation or proposed corporation must not be issued, circulated or distributed by the corporation or by any other person, unless—

(a) a prospectus in relation to the invitation has been registered by the Registrar; and

(b) the prospectus contains an undertaking by the corporation that it will, within two months after the acceptance of any money as a deposit or loan from any

person in response to the invitation, issue to him a document that acknowledges or evidences, or constitutes an acknowledgement of, the indebtedness of the corporation in respect of the deposit or loan; and

(c) the document is described or referred to in the prospectus, and in any other document, constituting or relating to the invitation, as—

- (i) an unsecured note or an unsecured deposit note; or
- (ii) a mortgage debenture or certificate of mortgage debenture stock; or
- (iii) a debenture or certificate of debenture stock,

in accordance with this section.

(2) Where, in pursuance of an invitation referred to in Subsection (1), a corporation has accepted from any person any money as a deposit or loan, the corporation must, within two months after the acceptance of the money, issue to that person a document that—

(a) acknowledges or evidences, or constitutes an acknowledgement of, the indebtedness of the corporation in respect of the deposit or loan; and

(b) complies with the other requirements of this section.

(3) The document must be described or referred to in the prospectus, and in any other document constituting or relating to the invitation, and in the document itself, as an unsecured note or an unsecured deposit note unless under Subsection (4) or (5) it may be otherwise described.

(4) The document may be described or referred to in the prospectus or in any other document, or in the document itself, as a mortgage debenture or certificate of mortgage debenture stock, only if there is included in the prospectus the statements and the valuation referred to in Clause 31 of Schedule 4.

(5) The document may be described or referred to in the prospectus or in any other document, or in the document itself, as a debenture or certificate of debenture stock only if—

(a) by virtue of Subsection (4) it may be (but is not) described or referred to in the prospectus or document as a mortgage debenture or certificate of mortgage debenture stock; or

(b) there is included in the prospectus the statements and the summary referred to in Clause 32 of Schedule 4.

(6) This section does not apply to a prescribed corporation, and this Act does not require a prospectus to be issued in connexion with an invitation to the public to deposit money with a prescribed corporation.

(7) In Subsection (6), "prescribed corporation" means—

(a) a banking corporation; or

(b) a corporation that is declared by the Minister<sup>1</sup>, by notice in the National Gazette, to be an authorized dealer in the short-term money market; or

(c) a corporation that—

- (i) is registered under the law of Australia relating to life insurance or is a corporation the whole of the issued shares of which are held beneficially by a corporation so registered; or

<sup>1</sup> As at the effective date the reference was to the Minister for Finance.

(ii) is a subsidiary of a banking corporation, if the repayment of all existing and future deposits with and loans to the subsidiary are guaranteed by the banking corporation,

and is declared by the Minister<sup>1</sup> by notice in the National Gazette to be a prescribed corporation for the purposes of this section.

(8) The Minister<sup>1</sup> may, by notice in the National Gazette, specify terms and conditions subject to which Subsection (6) has effect in relation to a corporation specified in Subsection (7)(c).

(9) A corporation or any other person that contravenes or fails to comply with this section, and every officer of the corporation who is in default, is guilty of an offence.

Penalty: A fine not exceeding K2 000.00 or imprisonment for a term not exceeding six months.

(10) For the purposes of this section, where a document is issued by a borrowing corporation certifying that a person named in it is, in respect of any deposit with or loan to the corporation, the registered holder of a specified number or value—

- (a) of unsecured notes or unsecured deposit notes; or
- (b) of mortgage debentures or certificates of mortgage debenture stock; or
- (c) of debentures or certificates of debenture stock,

issued by the corporation on or subject to the terms and conditions contained in a trust deed referred to or identified in the certificate, it shall be deemed to be a document evidencing the indebtedness of the corporation in respect of the deposit or loan.

#### 41. Requirements as to prospectuses.

(1) To comply with the requirements of this Act, a prospectus—

- (a) must be printed in type of a size not less than the type known as eight point Times unless the Registrar, before the issuing, advertising, circulating or distributing of the prospectus in the country, certifies in writing that the type and size of letters are legible and satisfactory; and
- (b) must be dated and the date shall, unless the contrary is proved, be taken as the date of issue of the prospectus; and
- (c) must, as to one copy, be lodged with the Registrar as required by this Act, must state that a copy of the prospectus has been so lodged and must also state immediately after that statement that the Registrar takes no responsibility as to its contents; and
- (d) must, subject to Part III. of Schedule 4, state the matters specified in Part I. of that Schedule and set out the reports specified in Part II. of that Schedule; and
- (e) must, where the persons making any report specified in Part II. of Schedule 4 have made in it, or have, without giving the reasons, indicated in it, any such adjustments as are mentioned in Clause 30 of that Schedule, have endorsed on it or attached to it a statement by those persons setting out the adjustments and giving the reasons for them; and
- (f) must contain a statement that no shares or debentures, or that no shares and debentures, (as the case requires) will be allotted on the basis of the

<sup>1</sup> As at the effective date, the reference was to the Minister for Finance.

prospectus later than six months after the date of the issue of the prospectus; and

- (g) must, if it contains any statement made by an expert or contained in what purports to be a copy of or extract from a report, memorandum or valuation of an expert, state the date on which the statement, report, memorandum or valuation was made and whether or not it was prepared by the expert for incorporation in the prospectus; and
- (h) must not contain the name of any person as—
  - (i) a trustee for holders of debentures; or
  - (ii) an auditor; or
  - (iii) a banker; or
  - (iv) a lawyer; or
  - (v) a stock broker; or
  - (vi) a share broker,of the corporation or proposed corporation or for or in relation to the issue or proposed issue of shares or debentures, unless—
  - (vii) he has consented in writing, before the issue of the prospectus, to act in that capacity in relation to the prospectus; and
  - (viii) in the case of a company or proposed company, a copy of the consent, verified as prescribed by statutory declaration, has been lodged with the Registrar; and
- (i) must, where the prospectus offers shares in or debentures of a foreign company incorporated or to be incorporated, contain particulars with respect to—
  - (i) the instrument constituting or defining the constitution of the company; and
  - (ii) the enactments or provisions having the force of an enactment by or under which the incorporation of the company was effected or is to be effected; and
  - (iii) an address in Papua New Guinea where the instrument, enactments or provisions, or certified copies of it or them, may be inspected; and
  - (iv) the date on which and the place where the company was or is to be incorporated; and
  - (v) whether or not the company has established a place of business in Papua New Guinea and, if so, the address of its principal office in Papua New Guinea.

(2) Subsection (1)(i)(i), (ii) and (iii) does not apply in the case of a prospectus issued more than two years after the day on which the company is entitled to commence business, and in the application, for the purposes of Subsection (1), to a foreign company of Part I. of Schedule 4 Clause 2 of that Schedule has effect as if a reference to the constitution of the company were substituted for the reference to the articles.

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

(4) Where a prospectus relating to any shares in or debentures of a corporation is issued that does not comply with the requirements of this Act, each director of the corporation and other person responsible for the prospectus is guilty of an offence.

Penalty: A fine not exceeding K2 000.00.

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

- (a) as regards any matter not disclosed, he proves that he did not know of it; or
- (b) he proves that the non-compliance or contravention arose from an honest mistake on his part concerning the facts; or
- (c) the non-compliance or contravention was in respect of a matter that, in the opinion of the court dealing with the case, was immaterial or was otherwise such as ought, in opinion of that court, having regard to all the circumstances of the case, reasonably to be excused.

(6) In the event of failure to include in a prospectus a statement with respect to the matters specified in Clause 16 of Schedule 4, a director or other person does not incur any liability in respect of the failure unless it is proved that he had knowledge of the matters not disclosed.

(7) Nothing in this section limits or diminishes any liability that a person may incur under any rule of law or any other enactment, or under this Act apart from Subsection (4).

#### 42. Certain advertisements deemed to be prospectuses.

(1) Every advertisement offering, or calling attention to an offer or intended offer of, shares in or debentures of a corporation or proposed corporation to the public for subscription or purchase shall be deemed to be a prospectus if it contains any information or matter other than—

- (a) the number and description of the shares or debentures concerned; and
- (b) the name and date of registration of the corporation and its paid-up share capital; and
- (c) the general nature of the main business or proposed main business of the corporation; and
- (d) the names, addresses and occupations of—
  - (i) the directors or proposed directors; and
  - (ii) the brokers or underwriters to the issue; and
  - (iii) in the case of debentures, the trustee for the debenture holders; and
- (e) the name of the Stock Exchange of which the brokers or underwriters to the issue are members; and
- (f) particulars of the opening and closing dates of the offer and the time and place at which copies of the full prospectus and forms of application for the shares or debentures may be obtained,

or if it does not state that applications for shares or debentures will proceed only on one of the forms of application referred to in and attached to a printed copy of the prospectus.

(2) All enactments and rules of law as to the contents of prospectuses and as to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses apply to and in respect of an advertisement that is deemed to be a prospectus by virtue of Subsection (1) as though it were a prospectus.



(3) A statement that, or to the effect that, an advertisement is not a prospectus does not affect the operation of this section.

(4) This section applies to advertisements published or disseminated in Papua New Guinea by newspaper, broadcasting, television, cinematograph or other means.

(5) Where an advertisement that is deemed to be a prospectus by virtue of Subsection (1) does not comply with the requirements of this Act as to prospectuses, the person who published or disseminated the advertisement, and each officer of the corporation concerned, or other person, who knowingly authorized or permitted the publication or dissemination, is guilty of an offence.

Penalty: A fine not exceeding K1 000.00.

(6) For the purposes of this section, where—

(a) an advertisement offering or calling attention to an offer or intended offer to the public of shares in or debentures of a corporation or proposed corporation for subscription or purchase is published or disseminated; and

(b) the person who published or disseminated the advertisement, before so doing, obtained a certificate signed by at least two directors of the corporation, or two proposed directors of the proposed corporation, that the proposed advertisement is an advertisement that will not be deemed to be a prospectus by virtue of Subsection (1); and

(c) the advertisement is not patently an advertisement that is deemed to be a prospectus by virtue of that subsection,

the corporation and the persons who signed the certificate shall be deemed to be the persons who published or disseminated the advertisement, but no other person shall be deemed to have done so.

(7) A person who has obtained a certificate referred to in Subsection (6)(b) shall, when so requested by the Registrar, deliver the certificate to the Registrar without delay.

Penalty: A fine not exceeding K1 000.00.

Default penalty: A fine not exceeding K120.00.

(8) This section does not limit or diminish any liability that any person may incur under any rule of law, or under any provision of this Act apart from this section.

#### 43. Over-subscriptions in debenture issues.

(1) A corporation must not accept or retain subscriptions to a debenture issue in excess of the amount of the issue as disclosed in the prospectus unless the corporation has specified in the prospectus—

(a) that it expressly reserves the right to accept or retain over-subscriptions; and

(b) a limit on the amount of over-subscriptions that may be accepted or retained.

(2) Subject to Schedule 4, where a corporation specifies in a prospectus relating to a debenture issue that it reserves the right to accept or retain over-subscriptions—

(a) the corporation must not make, authorize or permit any statement or reference as to the asset-backing for the issue to be made or contained in any prospectus relating to the issue, other than a statement or reference to the total assets and the total liabilities of the corporation; and

- (b) the prospectus must contain a statement or reference as to what the total assets and total liabilities of the corporation would be if over-subscriptions to the limit specified in the prospectus were accepted or retained.

Penalty: A fine not exceeding K2 000.00.

**44. Registr ation of prospectuses.**

(1) A prospectus must not be issued, circulated or distributed by any person unless a copy of it has first been registered by the Registrar.

(2) The Registrar shall not register a copy of a prospectus unless—

- (a) the copy, signed by every director and by every person who is named in the prospectus as a proposed director of the corporation or by his agent authorized in writing, is lodged with the Registrar on or before the date of its issue; and

- (b) the prospectus appears to comply with the requirements of this Act or the Registrar is satisfied, if the corporation is a foreign company incorporated in a State or Territory of Australia, that it—

- (i) has been registered or is acceptable for registration by the Registrar of Companies in that State or Territory; and

- (ii) complies with the requirements of Section 41(1)(i); and

- (c) there are also lodged with the Registrar copies, verified as prescribed by statutory declaration, of any consents required by Section 47 to the issue of the prospectus and of all material contracts referred to in the prospectus, or in the case of such a contract not reduced into writing a memorandum giving full particulars of the contract verified as prescribed by statutory declaration.

(3) A prospectus must not contain any statement or matter that is misleading in the form or context in which it is included.

(4) If a prospectus is issued without a copy of it having been registered under Subsection (1), the corporation and each person who is knowingly a party to the issue of the prospectus is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding six months.

(5) Every corporation shall cause a true copy of every document referred to in Subsection (2)(c) to be deposited within seven days after registration of the prospectus at the registered office of the corporation in Papua New Guinea or, if it has no registered office in Papua New Guinea, at the address in Papua New Guinea specified in the prospectus for that purpose, and shall keep each such copy for a period of at least six months after the registration of the prospectus for the inspection of the members and creditors of the corporation without fee.

**45. Written offer of shares for sale.**

(1) Where a corporation allots or agrees to allot to a person any shares in or debentures of the corporation with a view to all or any of them being offered for sale to the public—

- (a) any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the corporation; and

(b) all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements and non-disclosures in prospectuses, or otherwise relating to prospectuses, apply accordingly as if—

(i) the shares or debentures had been offered to the public; and

(ii) persons accepting the offer in respect of any shares or debentures were subscribers for the shares or debentures, as the case may be,

but without prejudice to the liability (if any) of the persons by whom the offer is made in respect of statements or non-disclosures in the document or otherwise.

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

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

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

(3) The requirements of this Division as to prospectuses have effect as though the persons making an offer to which this section relates were persons named in a prospectus as directors of a corporation.

(4) In addition to complying with the other requirements of this Division, the document making the offer shall state—

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

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

(5) Where an offer to which this section relates is made by a corporation or a firm, it is sufficient if the document referred to in Subsection (1) is signed on behalf of the corporation or firm by two directors of the corporation or not less than 50% of the members of the firm, as the case may be, and any director or member may sign by his agent authorized in writing.

#### **46. Allotment of shares and debentures where prospectus indicates application to list on Stock Exchange.**

(1) Where a prospectus states or implies that application has been or will be made for permission for the shares or debentures offered by it to be listed for quotation on the official list of any Stock Exchange, any allotment made on an application in pursuance of the prospectus is, subject to Subsection (3), void whenever made, if—

(a) the permission is not applied for in the form for the time being required by the Stock Exchange before the third day on which the Stock Exchange is open after the date of issue of the prospectus; or

(b) the permission is not granted before the expiration of six weeks from the date of the issue of the prospectus or such longer period not exceeding 12 weeks from the date of the issue as is, within that period of six weeks, notified to the applicant by or on behalf of the Stock Exchange.

(2) Where permission has not been applied for, or has not been granted, in accordance with Subsection (1), the corporation shall, subject to Subsection (3), without delay repay without interest all money received from applicants in pursuance of the prospectus, and if

any such money is not repaid within 14 days after the corporation so becomes liable to repay it, then, in addition to the liability of the corporation, the directors of the corporation are jointly and severally liable to repay it with interest at the rate of 5% per annum from the expiration of that period of 14 days.

(3) Where, in relation to any shares or debentures—

- (a) permission is not applied for in accordance with Subsection (1)(a); or
- (b) permission is not granted as specified in Subsection (1)(b),

the Minister may, by notice in the National Gazette, on the application of the corporation made before any share or debenture is purported to be allotted, exempt the allotment of the shares or debentures from the operation of this section.

(4) A director is not liable under Subsection (2) if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to do so, is void.

(6) Without limiting the application of any of its provisions, this section has effect—

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

(b) in relation to a prospectus offering shares for sale as if—

- (i) a reference to sale were substituted for a reference to allotment; and
- (ii) the persons by whom the offer is made, and not the corporation, were liable under Subsection (2) to repay money received from applicants, and references to the corporation's liability under that subsection were construed accordingly; and
- (iii) for the reference in Subsection (7) to the corporation and every officer of the corporation who is in default there were substituted a reference to any person by or through whom the offer is made and who knowingly and wilfully authorizes or permits the default.

(7) All money referred to in Subsection (2) shall be kept in a separate bank account for so long as the corporation may become liable to repay it under that subsection, and if default is made in complying with this subsection the corporation and each officer of the corporation who is in default is guilty of an offence.

Penalty: A fine not exceeding K1 000.00.

(8) Where the Stock Exchange has, within the period of six weeks referred to in Subsection (1)(b) or, where a longer period is applicable under that paragraph, within that longer period, granted permission subject to compliance with any requirements specified by the Stock Exchange, permission shall be deemed to have been granted by the Stock Exchange if the directors have given to the Stock Exchange an undertaking in writing to comply with the requirements of the Stock Exchange.

(9) If an undertaking under Subsection (8) is not complied with, each director who is in default is guilty of an offence against this Act.

Penalty: A fine not exceeding K1 000.00 or imprisonment for a term not exceeding three months.

(10) A person who issues a prospectus inviting persons to subscribe for shares in or debentures of a corporation that includes—

- (a) an untrue statement that permission has been granted for the shares or debentures to be dealt in or quoted or listed on any Stock Exchange; or
- (b) any statement in any way referring to—
  - (i) any such permission or to any application or intended application for any such permission; or
  - (ii) dealing in or the quoting or listing of the shares or debentures on any Stock Exchange; or
  - (iii) any requirements of a Stock Exchange,unless the statement is or is to the effect that permission has been granted or that application has been or will be made to the Stock Exchange within three days after the issue of the prospectus,

is guilty of an offence.

Penalty: A fine not exceeding K1 000.00 or imprisonment for a term not exceeding six months.

(11) Where a prospectus contains a statement to the effect that the memorandum and articles of the corporation comply, or have been drawn so as to comply, with the requirements of any Stock Exchange, the prospectus shall, unless the contrary intention appears from it, be deemed for the purposes of this section to imply that application has been, or will be, made for permission for the shares or debentures offered by the prospectus to be listed for quotation on the official list of the Stock Exchange.

#### 47. Statements by experts.

(1) A prospectus that—

- (a) invites subscription for, or the purchase of, shares in or debentures of a corporation; and
- (b) includes a statement purporting to be made by an expert, or to be based on a statement made by an expert,

must not be issued unless—

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

(2) If a prospectus is issued in contravention of this section, the corporation and each person who is knowingly a party to its issue is guilty of an offence.

Penalty: A fine not exceeding K1 000.00.

#### 48. Civil liability for statements in prospectus.

(1) Subject to this section, each of the following persons is liable to pay compensation to all persons who subscribe for or purchase any shares or debentures on the faith of a prospectus for any loss or damage sustained by reason of an untrue statement in the

prospectus, or by reason of the wilful nondisclosure in the prospectus of any matter of which he had knowledge and which he knew to be material :—

- (a) every person who is a director of the corporation at the time of the issue of the prospectus; and
- (b) every person who authorized or caused himself to be named, and is named, in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time; and
- (c) every person who is a promoter of the corporation; and
- (d) every person who authorized or caused the issue of the prospectus.

(2) Notwithstanding anything in Subsection (1), where the consent of an expert is required to the issue of a prospectus and he has given that consent, he is not, by reason only of having given the consent, liable as a person who has authorized or caused the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert, and the inclusion in the prospectus of a name of a person as a trustee for debenture holders, auditor, banker, lawyer, stock broker or share broker shall not for that reason alone be construed as an authorization by him of the issue of the prospectus.

(3) A person is not liable under Subsection (1) if he proves—

- (a) that, having consented to become a director of the corporation, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
- (b) that the prospectus was issued without his knowledge or consent and he gave reasonable public notice of the lack without delay after he became aware of its issue; or
- (c) that, after the issue of the prospectus and before allotment or sale under it, he, on becoming aware of any untrue statement in it, withdrew his consent and gave reasonable public notice of the withdrawal and of the reason for it; or
- (d) that—
  - (i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official, document or statement, he had reasonable ground to believe, and did up to the time of the allotment or sale of the shares or debentures believe, that the statement was true; and
  - (ii) as regards every untrue statement purporting to be a statement made by an expert or to be based on a statement made by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the person making the statement—
    - (A) was competent to make it; and
    - (B) had given the consent required by Section 47 to the issue of the prospectus, and had not withdrawn that consent before delivery of a copy of the prospectus for registration, or, to the defendant's knowledge, before any allotment or sale under it; and

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

(4) Subsection (3) does not apply in the case of a person who is liable, by reason of his having given a consent required of him by Section 47, as a person who has authorized or caused the issue of the prospectus in respect of an untrue statement purporting to have been made by him as an expert.

(5) A person who, apart from this subsection, would under Subsection (1) be liable, by reason of his having given a consent required of him by Section 47, as a person who has authorized the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert is not so liable if he proves—

- (a) that, having given his consent under Section 47 to the issue of the prospectus, he withdrew it in writing before a copy of the prospectus was lodged with the Registrar; or
- (b) that, after a copy of the prospectus was lodged with the Registrar and before allotment or sale under it, he, on becoming aware of the untrue statement, withdrew, in writing, his consent and gave reasonable public notice of the withdrawal and of the reasons for it; or
- (c) that he was competent to make the statement and that he had reasonable ground to believe, and did up to the time of the allotment or sale of the shares or debentures believe, that the statement was true.

(6) Where—

- (a) the prospectus contains the name of a person as a director of the corporation, or as having agreed to become a director, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue of it; or
- (b) the consent of a person is required under Section 47 to the issue of the prospectus and he has not given that consent or has withdrawn it before the issue of the prospectus,

the directors of the corporation (except any of them without whose knowledge or consent the prospectus was issued) and each other person who authorized or caused the issue of the prospectus are liable to indemnify the person so named or whose consent was so required against all damages, costs and expenses to which he is made liable—

- (c) by reason of his name having been inserted in the prospectus or of the inclusion in it of a statement purporting to be made by him as an expert; or
- (d) in defending himself against any action or legal proceeding brought against him in respect of the prospectus.

#### 49. Criminal liability for statements in prospectus.

(1) Where in a prospectus there is an untrue statement or wilful non-disclosure, any person who authorized or caused the issue of the prospectus is guilty of an offence unless he proves that the statement or non-disclosure was immaterial or that he had reasonable

grounds to believe and did, up to the time of the issue of the prospectus, believe the statement to be true or the non-disclosure immaterial.

Penalty: A fine not exceeding K2 000.00 or imprisonment for a term not exceeding one year, or both.

(2) A person shall not be deemed to have authorized or caused the issue of a prospectus by reason only of his having given the consent required by this Division to the inclusion in it of a statement purporting to be made by him as an expert.

*Division 2.—Restrictions on Allotment and Commencement of Business.*

**50. Allotment of shares without minimum subscription.**

(1) An allotment must not be made of any shares in a company offered to the public unless—

- (a) the minimum subscription has been subscribed; and
- (b) the sum payable on application for the shares so subscribed has been received by the company,

but if a cheque for the sum payable has been received by the company the sum shall be deemed not to have been received by it until it is paid by the bank on which the cheque is drawn.

(2) The minimum subscription shall be—

- (a) calculated on the nominal value of each share or, where the shares are issued at a premium, on the nominal value of, and the amount of the premium payable on, each share; and
- (b) reckoned exclusively of any amount payable otherwise than in cash.

(3) The amount payable on application on each share offered to the public must, except in the case of a no liability company, be not less than 5% of the nominal amount of the share.

(4) If the conditions referred to in Subsection (1)(a) and (b) have not been satisfied on the expiration of four months after the first issue of the prospectus, all money received from applicants for shares must, without delay, be repaid to them without interest, and if any such money is not so repaid within five months after the issue of the prospectus the directors of the company are jointly and severally liable to repay the money with interest at the rate of 5% per annum from the expiration of that period of five months, but a director is not liable under this subsection if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) An allotment made by a company to an applicant in contravention of this section or of Section 52(1) is voidable at the option of the applicant.

(6) The option to avoid conferred by Subsection (5) may be exercised by written notice served on the company—

- (a) within one month after the holding of the statutory meeting of the company; or
- (b) where the company is not required to hold a statutory meeting or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment,

and the allotment is voidable notwithstanding that the company is in course of being wound up.



(7) A director of a company who knowingly contravenes, or permits or authorizes the contravention of, this section or Section 52(1) is guilty of an offence.

Penalty: A fine not exceeding K1 000.00.

(8) In addition to the penalty provided for by Subsection (7), a person who is guilty of an offence against that subsection is liable to compensate the company and the allottee respectively for any loss, damages or costs that the company or the allottee has sustained or incurred by reason of the contravention, but no proceedings for the recovery of any such compensation shall be commenced after the expiration of two years from the date of the allotment.

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

(10) A company shall not allot, and an officer or promoter of a company or a proposed company shall not authorize or permit to be allotted, shares or debentures to the public on the basis of a prospectus more than six months after the issue of the prospectus.

(11) Where an allotment of shares or debentures is made on the basis of a prospectus more than six months after the issue of the prospectus, the allotment is not, by reason only of that fact, voidable or void.

**51. Dealing with application moneys, etc.**

(1) Until the allotment of the shares or debentures, all application and other moneys paid prior to allotment by any applicant on account of shares or debentures offered to the public must be held by the company or, in the case of an intended company, by the persons named in the prospectus as proposed directors and by the promoters, in trust for the applicant, but there is no obligation or duty on any bank or third person with whom any such moneys have been deposited to inquire into or see to the proper application of the moneys so long as the bank or person acts in good faith.

(2) If default is made in complying with this section, each officer of the company in default or, in the case of an intended company, each person named in the prospectus as a proposed director, and each promoter, who knowingly authorizes or permits the default is guilty of an offence.

Penalty: A fine not exceeding K1 000.00.

**52. Restriction on allotment.**

(1) A public company having a share capital that does not issue a prospectus on or with reference to its formation must not allot any of its shares or debentures unless, at least three days before the first allotment of either shares or debentures, there has been registered by the Registrar a statement in lieu of prospectus.

(2) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K1 000.00.

**53. Statements in lieu of prospectus.**

(1) The Registrar shall not register a statement in lieu of prospectus unless it appears to him to comply with the requirements of this Act.

(2) To comply with the requirements of this Act, a statement in lieu of prospectus lodged by or on behalf of a company—

- (a) must be signed by every person who is named in it as a director or a proposed director of the company, or by his agent authorized in writing; and
- (b) must, subject to Part III. of Schedule 5, be in the form and state the matters specified in Part I. of that Schedule and set out the reports specified in Part II. of that Schedule; and
- (c) must, where the persons making any report specified in Part II of Schedule 5 have made in the report or have, without giving the reasons, indicated in the report any such adjustments as are mentioned in Clause 3 of Part III. of that Schedule, have endorsed on it or attached to it a written statement signed by those persons setting out the adjustments and giving the reasons for them.

(3) Where, in a statement in lieu of prospectus, there is an untrue statement or a wilful non-disclosure, any director who signed the statement in lieu of prospectus is guilty of an offence unless he proves that—

- (a) the untrue statement or non-disclosure was immaterial; or
- (b) he—
  - (i) had reasonable ground to believe; and
  - (ii) did, up to the time of the lodging for registration of the statement in lieu of prospectus, believe,

that the untrue statement was true or the non-disclosure immaterial.

Penalty: A fine not exceeding K1 000.00 or imprisonment for a term not exceeding one year, or both.

#### 54. Variation of contracts referred to in prospectus, etc.

A company shall not, before the statutory meeting, vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus unless the variation is made subject to the approval of the statutory meeting.

#### 55. Commencement of business without issue of prospectus, etc.

(1) Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares, the company must not commence any business or exercise any borrowing power—

- (a) if any money is or may become liable to be repaid to applicants for any shares or debentures offered for public subscription by reason of any failure to apply for or obtain permission for listing for quotation on any Stock Exchange; or
- (b) unless—
  - (i) shares held subject to the payment of the whole amount of the shares in cash have been allotted to an amount not less in the whole than the minimum subscription; and
  - (ii) every director has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and
  - (iii) there has been lodged with the Registrar a statutory declaration by the secretary or one of the directors of the company in the prescribed form

verifying that the conditions set out in Subparagraphs (i) and (ii) have been complied with.

(2) Where a public company having a share capital has not issued a prospectus inviting the public to subscribe for its shares, the company must not commence any business or exercise any borrowing power unless—

- (a) there has been lodged with the Registrar a statement in lieu of prospectus that complies with the provisions of this Act; and
- (b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and
- (c) there has been lodged with the Registrar a statutory declaration in the prescribed form, by the secretary or one of the directors of the company, verifying that Paragraph (b) has been complied with.

(3) On the lodging of the statutory declaration in accordance with this section, the Registrar shall certify by a certificate in the prescribed form that the company is entitled to commence business and to exercise its borrowing powers, and the certificate is conclusive evidence of the facts so certified.

(4) A contract made by a company before the date on which it is entitled to commence business is provisional only and is not binding on the company until that date, but, on that date, it becomes binding on the company.

(5) Where shares and debentures are offered simultaneously by a company for subscription, this section does not prevent the receipt by the company of any money payable on application for the debentures.

(6) If a company commences business or exercises borrowing powers in contravention of this section, each person who is responsible for the contravention is guilty of an offence.

Penalty: A fine not exceeding K400.00.

Default penalty: A fine not exceeding K100.00.

#### *Division 3.—Shares.*

#### **56. Return as to allotments.**

(1) Where a company makes an allotment of its shares, the company must lodge with the Registrar, within one month after the date on which the shares are allotted, a return of the allotment in the prescribed form stating—

- (a) the number and nominal amounts of the shares comprised in the allotment; and
- (b) the amount (if any) paid, deemed to be paid or due and payable on the allotment of each share; and
- (c) where the capital of the company is divided into shares of different classes—the class of shares to which each share comprised in the allotment belongs; and
- (d) subject to Subsection (2), the full name, or the surname and at least one given name and other initials, and the address, of each of the allottees and the number and class of shares allotted to him.

(2) The particulars mentioned in Subsection (1)(d) need not be included in the return—

(a) where the shares have been allotted for cash by a no liability company; or

(b) where a company to which Section 168(1) applies has allotted shares—

(i) for cash; or

(ii) for a consideration other than cash and the number of persons to whom the shares have been allotted exceeds 500.

(3) Where shares are allotted as fully or partly paid up otherwise than in cash and the allotment is made in pursuance of a contract in writing, the company must lodge with the return the contract evidencing the entitlement of the allottee or a copy of the contract verified as prescribed by statutory declaration.

(4) If a verified copy of a contract is lodged, the original contract must, if the Registrar so requests, be produced at the same time to the Registrar.

(5) Where shares are allotted as fully or partly paid up otherwise than in cash and the allotment is made—

(a) in pursuance of a contract not reduced to writing; or

(b) in pursuance of a provision in the memorandum or articles; or

(c) in satisfaction of a dividend declared in favour of, but not payable in cash to, the shareholders,

the company must lodge with the return a statement in the prescribed form.

(6) For the purposes of this section, shares issued, without formal allotment, to subscribers to the memorandum shall be deemed to have been allotted to those subscribers on the date of the incorporation of the company.

(7) If default is made in complying with this section, each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K400.00.

Default penalty: A fine not exceeding K100.00.

#### 57. Differences in calls and payments.

If it is so authorized by its articles, a company may—

(a) make arrangements on the issue of shares for varying the amounts and times of payments of calls as between shareholders; and

(b) accept from any member the whole or a part of the amount remaining unpaid on any shares even if no part of that amount has been called up; and

(c) except in the case of a no liability company, pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

#### 58. Reserve liability.

(1) A limited company may, by special resolution, determine that any portion of its share capital that has not been already called up shall not be capable of being called up except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital is not capable of being called up except in the event of and for the purposes of the company being wound up.

(2) A resolution under Subsection (1) does not prejudice the rights of any person acquired before the passing of the resolution.

#### 59. Share warrants.

(1) A company shall not issue a share warrant.

(2) Subsection (1) does not affect a share warrant issued before the commencement date.

#### 60. Payment of commissions, etc.

(1) A company may pay a commission to any person in consideration of his subscribing or agreeing to subscribe, absolutely or conditionally, for any shares, or procuring or agreeing to procure subscriptions, absolute or conditional, for any shares, in the company, if—

- (a) the payment is authorized by the articles; and
- (b) the commission does not exceed 10% of the price at which the shares are issued, or the amount or rate authorized by the articles, whichever is the less; and
- (c) the amount or rate of the commission is—
  - (i) in the case of shares offered to the public for subscription—disclosed in the prospectus; and
  - (ii) in the case of shares not so offered—disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in the same manner as a statement in lieu of prospectus and lodged before the payment of the commission with the Registrar, and, where a circular or notice not being a prospectus inviting subscription for the shares is issued, also disclosed in the circular or notice; and
- (d) the number of shares for which persons have agreed, for a commission, to subscribe absolutely is disclosed in the same manner.

(2) Except as provided in Subsection (1), a company must not apply any of its shares or capital money directly or indirectly in payment of a commission, discount or allowance to a person in consideration of his—

- (a) subscribing or agreeing to subscribe, absolutely or conditionally, for any shares; or
- (b) procuring or agreeing to procure subscriptions, absolute or conditional, for any shares in the company,

whether—

- (c) the shares or money are so applied by being added to—
  - (i) the purchase money of any property acquired by the company; or
  - (ii) the contract price of any work to be executed for the company; or
- (d) the money is paid out of the nominal purchase money or contract price or otherwise.

(3) Nothing in this section affects the power of a company to pay such brokerage (in addition to or instead of the commission referred to in Subsection (1)) as, before the

commencement date, it was lawful for a company to pay, but the amount or rate per centum of the brokerage paid or agreed to be paid by the company must—

- (a) in the case of shares offered to the public for subscription—be disclosed in the prospectus; or
- (b) in the case of shares not offered to the public for subscription—be disclosed in the statement in lieu of prospectus or in a statement in the prescribed form signed in the same manner as a statement in lieu of prospectus and lodged before the payment of the brokerage with the Registrar,

and where a circular or notice not being a prospectus inviting subscription for the shares is issued also disclosed in that circular or notice.

(4) A vendor to, promoter of, or other person who receives payment in money or shares from a company may apply any part of the money or shares received from the company in payment of any commission the payment of which, if it were made directly by the company, would be lawful under this section.

(5) If default is made in complying with a provision of this section by reason of a failure to lodge with the Registrar a statement in the prescribed form referred to in Subsection (1)(c)(ii), or in Subsection (3), the company and each officer of the company who is in default is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

#### 61. Issue of shares at a discount.

(1) Subject to this section, a company may issue at a discount shares of a class already issued if—

- (a) the issue of the shares at a discount is authorized by resolution passed in general meeting of the company, and is confirmed by order of the Court; and
- (b) the resolution specifies the maximum rate of discount at which the shares are to be issued; and
- (c) at the date of the issue, not less than one year has elapsed since the date on which the company was entitled to commence business; and
- (d) the shares are issued within one month after the date on which the issue is confirmed by order of the Court or within such extended time as the Court allows.

(2) The Court may, if having regard to all the circumstances of the case it thinks it proper to do so, make an order confirming the issue on such terms and conditions as it thinks proper.

(3) A prospectus relating to the issue of the shares must contain particulars of the discount allowed or of so much of the discount as has not been written off at the date of the issue of the prospectus.

(4) Notwithstanding any provision of its articles, a company must not issue at a discount shares of any class unless it first offers the shares to every holder of shares of that class in the company proportionately to the number of those shares held by him.

(5) An offer under Subsection (4) must be made by notice specifying the number of shares to which the member is entitled and limiting a time, not being less than 42 days from the date of the notice, within which the offer may be accepted.

(6) If any such offer is not accepted within the time limited by the notice, the shares may be issued on terms not more favourable than those offered to the shareholders.

(7) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

(8) This section does not affect the right of a no liability company to issue shares at a discount.

#### 62. Issue of shares at a premium.

(1) Where a company issues shares for which a premium is received by it, whether in cash or in the form of other valuable consideration, a sum equal to the aggregate amount or value of the premiums on the shares shall be transferred to an account, to be called "the share premium account", and the provisions of this Act relating to the reduction of the share capital of a company apply, subject to this section, as if the share premium account were paid-up share capital of the company.

(2) The share premium account may be applied—

- (a) in paying up unissued shares to be issued to members of the company as fully paid bonus shares; and
- (b) in paying up in whole or in part the balance unpaid on shares previously issued to members of the company; and
- (c) in the payment of dividends if the dividends are satisfied by the issue of shares to members of the company; and
- (d) in writing off—
  - (i) the preliminary expenses of the company; or
  - (ii) the expenses of, or the commission or brokerage paid or discount allowed on, any issue of shares or debentures of the company; and
- (e) in providing for the premium payable on the redemption of debentures or redeemable preference shares; and
- (f) in the case of a company that carries on life insurance business in Australia—by appropriation or transfer to any statutory fund established and maintained under the *Life Insurance Act 1945* of Australia, as in force from time to time.

(3) Where a company has, before the commencement date, issued any shares at a premium, the provisions of this section apply to and in relation to the premiums as if the shares had been issued after that date, but where any part of the premiums has been applied by the company in such a way that it does not, at the commencement date, form an identifiable part of the company's assets it shall be disregarded in determining the sum to be transferred to the share premium account.

#### 63. Redeemable preference shares.

(1) Subject to this section, a company having a share capital may, if so authorized by its articles, issue preference shares that are, or at the option of the company are to be, liable to be redeemed, but the redemption may be effected only on such terms and in such manner as are provided by the articles.

(2) The redemption shall not be taken as reducing the amount of authorized share capital of the company.

(3) The shares shall not be redeemed—

(a) except out of profits that would otherwise be available for dividend, or out of the proceeds of a fresh issue of shares made for the purposes of the redemption; and

(b) unless they are fully paid up.

(4) The premium (if any) payable on redemption shall be provided for out of profits or the share premium account before the shares are redeemed.

(5) Where any shares are redeemed otherwise than out of the proceeds of a fresh issue of shares, there shall, out of profits that would otherwise have been available for dividend, be transferred to a reserve, to be called "the capital redemption reserve", a sum equal to the nominal amount of the shares redeemed, and the provisions of this Act relating to the reduction of the share capital of a company apply, except as provided in this section, as if the capital redemption reserve were paid-up share capital of the company.

(6) Where, under this section, a company has redeemed or is about to redeem any preference shares, it may issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and the share capital of the company shall not, for the purposes of any fee payable under this Act, be deemed to be increased by the issue, but where new shares are issued before the redemption of the old shares the new shares shall not, for the purposes of any such fee, be deemed to have been issued under this subsection unless the old shares are redeemed within one month after the issue of the new shares.

(7) The capital redemption reserve may be applied in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

(8) If a company redeems any redeemable preference shares, it shall, within 14 days after so doing, give notice of the redemption to the Registrar in the prescribed form specifying the shares redeemed.

#### 64. Shares improperly issued.

Where a company has purported to issue or allot shares and the creation, issue or allotment of the shares is invalid by reason of any provision of this or any other Act or of the memorandum or articles of the company or otherwise, or the terms of issue or allotment are inconsistent with or unauthorized by any such provision, the Court may, on application made by—

(a) the company; or

(b) a holder or mortgagee of any of those shares; or

(c) a creditor of the company,

and on being satisfied that in all the circumstances it is just and equitable to do so, make an order validating the issue of the shares or confirming the terms of issue or allotment of them, or both, and on an office copy of the order being lodged with the Registrar the shares shall be deemed to have been validly issued or allotted on the terms of their issue or allotment.

#### 65. Alteration of share capital.

If it is so authorized by its articles, a company may, in general meeting, alter the conditions of its memorandum in any of the following ways:—

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



- (b) to consolidate and divide all or any of its share capital into shares of larger amount than its existing shares; and
- (c) to convert all or any of its paid-up shares into stock, and re-convert that stock into paid-up shares of any denomination; and
- (d) to subdivide its shares or any of them into shares of a smaller amount than is fixed by the memorandum, but so that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each reduced share is the same as it was in the case of the share from which the reduced share is derived; and
- (e) to cancel shares that, at the date of the passing of the relevant resolution, have not been taken or agreed to be taken by any person, or that have been forfeited, and to diminish the amount of its share capital by the amount of the shares so cancelled.

(2) A cancellation of shares under this section is not a reduction of share capital within the meaning of this Act.

(3) An unlimited company having a share capital may, by a resolution passed for the purposes of Section 25(1)—

- (a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital is capable of being called up except in the event of, and for the purposes of, the winding-up of the company; and
- (b) in addition or alternatively, provide that a specified portion of its uncalled share capital is not capable of being called up except in the event of, and for the purposes of, the winding-up of the company.

(4) Where a company has increased its share capital beyond the registered capital, it must, within 14 days after the passing of the resolution authorizing the increase, lodge with the Registrar notice in the prescribed form of the increase.

(5) If a company fails to comply with Subsection (4), the company and each officer of the company who is in default is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

#### **66. Reduction of share capital by special resolution.**

(1) Subject to confirmation by the Court, a company may, if so authorized by its articles, by special resolution reduce its share capital in any way and, in particular, without limiting the generality of the foregoing, may—

- (a) extinguish or reduce the liability of any of its shares in respect of share capital not paid up; or
- (b) cancel any paid-up capital that is lost or unrepresented by available assets; or
- (c) pay off any paid-up share capital that is in excess of the needs of the company, and may, so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to a shareholder of any paid-up share capital, and in any other case if the Court so directs—

- (a) every creditor of the company who, at the date fixed by the Court, is entitled to any debt or claim that, if that date were the commencement of the

winding-up of the company, would be admissible in proof against the company is entitled to object to the reduction; and

- (b) unless it is satisfied on affidavit that there are no such creditors, the Court—
- (i) shall settle a list of creditors so entitled to object and, for that purpose, ascertain as far as possible, without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims; and
  - (ii) may publish notices fixing a final day on or before which creditors not entered on the list may claim to be so entered; and
- (c) where a creditor who is entered on the list, and whose debt or claim is not discharged or has not determined, does not consent to the reduction, the Court may dispense with his consent on the company securing payment of his debt or claim by appropriating as the Court directs—
- (i) if the company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it—the full amount of the debt or claim; or
  - (ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained—an amount fixed by the Court after the same inquiry and adjudication as if the company were being wound up by the Court.

(3) Notwithstanding Subsection (2), the Court may, having regard to any special circumstances of the case, direct that all or any of the provisions of that subsection do not apply as regards any class of creditors.

(4) If it is satisfied with respect to every creditor who, under Subsection (2), is entitled to object that either his consent to the reduction has been obtained or his debt or claim has been discharged, has determined or has been secured, the Court may make an order confirming the reduction on such terms and conditions as it thinks proper, and may by order—

- (a) if for any special reason it thinks fit to do so—direct that the company shall, during such period (commencing on or at any time after the date of the order) as is specified in the order, add to its name as the last words of it the words “and reduced”; and
- (b) require the company to publish, in such manner as the Court directs, the reasons for reduction or such other information as the Court thinks expedient and, if the Court thinks fit, the causes that led to the reduction.

(5) An order made under Subsection (4) shall show the amount of the share capital of the company as altered by the order, the number of shares into which it is to be divided and the amount of each share, and the amount (if any) deemed to be paid up on each share as at the date of the order.

(6) The resolution for reducing share capital as confirmed by the order so lodged takes effect on the lodging of an office copy of the order with the Registrar.

(7) A certificate in the prescribed form, by the Registrar, that an office copy of the order has been lodged with him is conclusive evidence that the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the order.

(8) On the lodging of the copy of the order, the particulars shown in the order in accordance with Subsection (5) shall be deemed to be substituted for the corresponding

particulars in the memorandum and the substitution shall, and any addition ordered by the Court to be made to the name of the company shall for such period as is specified in the order of the Court, be deemed to be alterations of the memorandum for the purposes of this Act.

(9) Subject to Subsection (10), a member, past or present, is not liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount of the share as fixed by the order and the amount paid, or the reduced amount (if any) that is to be deemed to have been paid, on the share.

(10) Notwithstanding Subsection (9), where—

- (a) a creditor entitled to object to the reduction is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim, not entered on the list of creditors; and
- (b) after the reduction the company is unable, within the meaning of the provisions of this Act with respect to winding up by the Court, to pay the amount of his debt or claim,

then—

- (c) every person who was a member of the company at the date of the lodging of the copy of the order for reduction is liable to contribute for the payment of the debt or claim an amount not exceeding the amount that he would have been liable to contribute if the company had commenced to be wound up on the day before that date; and
- (d) if the company is wound up, the Court, on the application of any such creditor and on proof of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding up.

(11) Nothing in Subsection (9) or (10) affects the rights of the contributories among themselves.

(12) An officer of the company who—

- (a) wilfully conceals the name of a creditor entitled to object to the reduction; or
- (b) wilfully misrepresents the nature or amount of the debt or claim of any creditor,

is guilty of an offence.

Penalty: Imprisonment for a term not exceeding three years.

(13) This section does not apply to an unlimited company, but nothing in this Act prevents an unlimited company from reducing in any way its share capital, including any amount in its share premium account.

#### 67. Rights of holders of classes of shares.

(1) If, in the case of a company the share capital of which is divided into different classes of shares—

- (a) provision is made by the memorandum or articles for authorizing the variation or abrogation of the rights attached to any class of shares in the company subject to the consent of any specified proportion of the holders of the issued

shares of that class, or of the sanction of a resolution passed at a separate meeting of the holders of those shares; and

- (b) in pursuance of that provision the rights attached to any class of shares are at any time varied or abrogated,

the holders of not less in the aggregate than 10% of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation or abrogation, may apply to the Court to have the variation or abrogation cancelled, and if any such application is made the variation or abrogation does not have effect until confirmed by the Court.

(2) An application is not invalid by reason of an applicant having consented to or voted in favour of the resolution for the variation or abrogation if the Court is satisfied that any material fact was not disclosed by the company to that applicant before he so consented or voted.

(3) The application shall be made within one month, or such further time as the Court allows after the date on which the consent was given or the resolution was passed, and may be made on behalf of the shareholders entitled to make the application by such of them as they appoint in writing.

(4) On the application, the Court, after hearing the applicant and any other person who applies to the Court to be heard and appears to the Court to be interested—

- (a) may, if it is satisfied having regard to all the circumstances of the case that the variation or abrogation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation or abrogation, as the case may be; and

- (b) shall otherwise confirm it,

and the decision of the Court is final.

(5) The company shall, within 14 days after the making of an order by the Court on an application under this section, lodge an office copy of the order with the Registrar, and if default is made in complying with this provision the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K200.00.

Default penalty: A fine not exceeding K20.00.

(6) The issue by a company of preference shares ranking equally with existing preference shares issued by the company shall be deemed to be a variation of the rights attached to those existing preference shares unless the issue of the first-mentioned shares was authorized by the terms of issue of the existing preference shares or by the articles of the company in force at the time when the existing preference shares were issued.

#### **68. Rights of holders of preference shares.**

(1) A company shall not allot any preference shares or convert any issued shares into preference shares unless there is set out in its memorandum or articles the rights of the holders of the preference shares with respect to repayment of capital, participation in surplus assets and profits, cumulative or non-cumulative dividends, voting and priority of payment of capital and dividend in relation to other shares or other classes of preference shares.

(2) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K200.00.

**69. Dealing by a company in its own shares.**

(1) Except as is otherwise expressly provided by this Act, a company must not give, whether directly or indirectly and whether by means of a loan, guarantee or the provision of security or otherwise, any financial assistance for the purpose of or in connexion with a purchase or subscription made or to be made by any person of or for any shares in the company or, where the company is a subsidiary, in its holding company, or (except in the case of borrowing shares of a building society) in any way purchase, deal in or lend money on its own shares.

(2) Nothing in Subsection (1) prohibits—

- (a) where the lending of money is part of the ordinary business of a company—the lending of money by the company in the ordinary course of its business; or
- (b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of or subscription for fully-paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company; or
- (c) the making by a company of loans to persons, other than directors, bona fide in the employment of the company or of a subsidiary of the company with a view to enabling those persons to purchase fully-paid shares in the company to be held by themselves by way of beneficial ownership.

(3) If there is a contravention of this section, the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K1 000.00 or imprisonment for a term not exceeding three months.

**70. Options over unissued shares.**

(1) An option granted by a public company, after the commencement date, that enables any person to take up unissued shares of the company after a period of five years has elapsed from the date on which the option was granted is void.

(2) Subsection (1) does not apply where the holders of debentures have an option to take up shares of the company by way of redemption of the debentures.

**71. Payment of interest out of capital.**

Where shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant that cannot be made profitable for a long period, the company may pay interest on so much of that share capital as is for the time being paid up and charge the interest so paid to capital as part of the cost of the construction or provision, but—

- (a) no such payment shall be made unless it is authorized by the articles or by special resolution and is approved by the Court; and
- (b) before approving of any such payment, the Court may, at the expense of the company, appoint a person to inquire and report as to the circumstances of the case, and require the company to give security for the payment of the costs of the inquiry; and

- (c) the payment shall be made only for such period as is determined by the Court, but that period shall not extend beyond a period of 12 months after the works or buildings have been actually completed or the plant provided; and
- (d) the rate of interest shall not exceed 5% per annum or such other rate as is for the time being prescribed; and
- (e) the payment of the interest does not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

*Division 4.—Debentures.*

**72. Register of debenture holders and copies of trust deeds.**

(1) A company that issues debentures shall keep a register of holders of the debentures at the registered office of the company or at some other place in the country.

(2) A company shall, within seven days after the register is first kept at a place other than the registered office, lodge with the Registrar notice in the prescribed form of the place where the register is kept and shall, within seven days after any change in the place at which the register is kept, lodge with the Registrar notice in the prescribed form of the change.

(3) The register shall, except when duly closed, be open to the inspection of the registered holder of any debentures and of any holder of shares in the company, and shall contain particulars of the names and addresses of the debenture holders and the amount of debentures held by them.

(4) For the purposes of this section, a register shall be deemed to be duly closed if it is closed in accordance with provisions contained in the articles or in the debentures or debenture stock certificates, or in the trust deed or other document relating to or securing the debentures, during such periods (not exceeding in the aggregate 30 days in any calendar year) as are specified in those provisions.

(5) At the request of a registered holder of debentures or a holder of shares in the company, a company must supply to him a copy of the register of the holders of debentures of the company or any part of it on payment of 20t for every 100 words or part of 100 words required to be copied, but the copy need not include any particulars as to a debenture holder other than his name and address and the debentures held by him.

(6) A copy of any trust deed relating to or securing any issue of debentures must be forwarded by the company to a holder of any of those debentures at his request on payment of the sum of K1.00 or such lesser sum as is fixed by the company, or, where the copy has to be specially made to meet the request, on payment of 20t for every 100 words or part of 100 words required to be copied.

(7) If inspection is refused, or a copy is refused or not forwarded within a reasonable time (not exceeding 30 days) after a request has been made under this section, the company and each officer of the company who is in default is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

**73. Contents of trust deeds.**

(1) Where a corporation offers debentures to the public for subscription or purchase in the country, the debentures or the relevant trust deed must contain a limitation on the

amount that the borrowing corporation may borrow under the debentures or the deed, and must contain covenants by the borrowing corporation to the following effect :—

- (a) that the borrowing corporation will use its best endeavours to carry on and conduct its business in a proper and efficient manner; and
- (b) that, to the same extent as if the trustee for the holders of the debentures or registered company auditor appointed by the trustee were a director of the corporation, the borrowing corporation will—
  - (i) make available for its or his inspection the whole of the accounting or other records of the borrowing corporation; and
  - (ii) give to it or him such information as it or he requires with respect to all matters relating to the accounting or other records of the borrowing corporation; and
- (c) that the borrowing corporation will, on the application of persons holding not less than 10% in nominal value of the issued debentures to which the covenant relates delivered to its registered office, by giving notice—
  - (i) to each of the holders of the debentures (other than debentures payable to bearer) at his address as specified in the register of debentures; and
  - (ii) by an advertisement in a newspaper published in and circulating generally throughout the country not less frequently than once a week addressed to all holders of those debentures,
 

summon a meeting of the holders of those debentures to consider the accounts and balance-sheet that were laid before the last annual general meeting of the borrowing corporation and to give to the trustee directions in relation to the exercise of the trustee's powers,

and if the debentures do not or the trust deed does not expressly contain those covenants they or it shall be deemed to contain them.

(2) A meeting of the holders of debentures for the purposes of Subsection (1)(c) must be held at a time and place specified in the notice and advertisement under the chairmanship of a person nominated by the trustee or by a person appointed by the holders of the debentures present at the meeting.

(3) Where—

- (a) a debenture other than a debenture lawfully issued under a trust deed executed before 21 July 1966 (being the date of commencement of the pre-Independence *Companies Act 1966*) is issued in pursuance of an offer to the public; and
- (b) neither the debenture nor the trust deed relating to the issue of the debenture expressly contains the limitation on the amount that the borrowing corporation may borrow and the covenants referred to in Subsection (1),

the corporation that issued the debenture, and every officer of the corporation who is in default, is guilty of an offence.

Penalty: A fine not exceeding K200.00.

#### 74. Trustees for debenture holders.

(1) In this section, "trustee corporation" means the corporation the appointment of which as trustee for the holders of the debentures is provided for, or is to be provided for,

in the debentures, or in a trust deed relating to the debentures, in accordance with Subsection (2).

(2) Subject to this section, every corporation that offers debentures to the public for subscription or purchase in the country must make provision in the debentures, or in a trust deed relating to those debentures, for the appointment, as trustee for the holders of the debentures, of a corporation that is a person constituted as the Public Trustee or Public Curator in Papua New Guinea or in a State or Territory of Australia, or is a company within the meaning of Division 5 that is—

- (a) a corporation authorized by the law of Papua New Guinea or a State or Territory of Australia to take in its own name a grant of probate or of letters of administration of the estate of a deceased person; or
- (b) a corporation registered under the law of Australia relating to life insurance; or
- (c) a banking corporation; or
- (d) a corporation (in this paragraph called "the subsidiary") the whole of the issued shares of which are held beneficially by a corporation or corporations of a kind referred to in Paragraph (a), (b) or (c) (in this paragraph called "the holding company") if—
  - (i) the holding company is liable for all liabilities incurred or to be incurred by the subsidiary as trustee for the holders of the debentures; or
  - (ii) the holding company has subscribed for and beneficially holds shares in the subsidiary in respect of which there is a liability of not less than K500 000.00 that has not been called up and that the subsidiary has resolved by special resolution that it cannot be called up except in the event, and for the purpose, of the winding-up of the subsidiary; or
- (e) a corporation approved by the Minister, by notice in the National Gazette, for the purposes of this subsection.

(3) The approval of a corporation under Subsection (2)(e) may be—

- (a) general, in relation to a particular borrowing corporation or to a particular class of borrowing corporations, or in relation to a particular trust deed; and
- (b) subject to such terms and conditions as the Minister thinks proper and as are specified in the notice; and
- (c) varied or revoked by notice in the National Gazette,

but no revocation operates to prevent the corporation from continuing to act as the trustee corporation in accordance with this Act in relation to any moneys borrowed by a borrowing corporation before the date of the revocation.

(4) Where a borrowing corporation is required to appoint a trustee for the holders of debentures in accordance with Subsection (2), it must not allot any of those debentures until the appointment has been made and the trustee corporation has consented to act as trustee.

(5) Without leave of the Court, a trustee corporation must not be appointed, hold office or act as trustee for the holders of debentures of a borrowing corporation if the trustee corporation is—

- (a) a director of the borrowing corporation; or
- (b) a shareholder that beneficially holds shares in the borrowing corporation; or



- (c) beneficially entitled to moneys owed by the borrowing corporation; or
- (d) a corporation that has entered into a guarantee in respect of the principal debt secured by those debentures or in respect of interest on that debt; or
- (e) a corporation that is related to—
  - (i) a corporation of a kind referred to in Paragraph (a), (b), (c) or (d); or
  - (ii) the borrowing corporation.

(6) Subsection (5) does not prevent a trustee corporation from being appointed, holding office or acting as trustee for the holders of debentures of a borrowing corporation by reason only of the fact that—

- (a) the borrowing corporation owes to the trustee corporation, or to a corporation that is related to the trustee corporation, any moneys so long as those moneys are—
  - (i) moneys that (without taking into account any moneys referred to in Subparagraph (ii) or (iii)) do not, at the time of the appointment or at any time within a period of three months after the debentures are first offered to the public, exceed 10% of the amount of the debentures proposed to be offered to the public within that period and do not, at any time after the expiration of that period, exceed 10% of the amount owed by the borrowing corporation to the holders of the debentures; or
  - (ii) moneys that are secured by, and only by—
    - (A) a first mortgage over land of the borrowing corporation; or
    - (B) debentures issued by the borrowing corporation to the public; or
    - (C) debentures not issued to the public that are issued under the same trust deed as that creating other debentures issued by the borrowing corporation to the public; or
    - (D) debentures to which the trustee corporation, or a corporation that is related to the trustee corporation, is not beneficially entitled; or
  - (iii) moneys to which the trustee corporation, or a corporation that is related to the trustee corporation, is entitled as trustee for holders of any debentures of the borrowing corporation in accordance with the terms of the debentures or of the relevant trust deed; or
- (b) the trustee corporation, or a corporation that is related to the trustee corporation, is a shareholder of the borrowing corporation in respect of shares that it beneficially holds, so long as the shares in the borrowing corporation beneficially held by the trustee corporation and by all other corporations that are related to it do not carry the right to exercise more than 10% of the voting power at any general meeting of the borrowing corporation.

(7) Nothing in Subsection (5)—

- (a) affects the operation of any debentures or trust deed issued or executed before 21 July 1966 (being the date of commencement of the pre-Independence *Companies Act 1966*); or

(b) applies to or in relation to the trustee for the holders of any of those debentures,

unless, in pursuance of any of those debentures or the trust deed, a further offer of debentures is made to the public after that date.

(8) If default is made in complying with any provision of this section, the corporation and every officer of the corporation who is in default is guilty of an offence.

Penalty: A fine not exceeding K400.00.

Default penalty: A fine not exceeding K20.00.

**75. Retirement of trustee.**

(1) Notwithstanding any law or the relevant debentures or trust deed, a trustee for the holders of debentures shall not cease to be the trustee until a corporation that is qualified under Section 74 for appointment has been appointed to be the trustee for the holders of the debentures and has taken office as such.

(2) Subject to Section 74, where provision has been made in the debentures or in the relevant trust deed for the appointment of a successor to a trustee for the holders of the debentures, the successor may be appointed in accordance with that provision.

(3) Where no provision has been made in the debentures or in the relevant trust deed for the appointment of a successor to a retiring trustee, the borrowing corporation may appoint a successor that is qualified for appointment under Section 74.

(4) Notwithstanding anything in this Act or in any debentures or trust deed, a borrowing corporation may, with the consent of an existing trustee for the holders of the debentures, appoint as successor to the existing trustee any corporation that is qualified for appointment under Section 74 and is related to the existing trustee.

(5) Where the trustee for the holders of the debentures has ceased to exist or to be qualified under Section 74, or fails or refuses to act or is disqualified under that section, the Court may, on the application of—

- (a) the borrowing corporation; or
- (b) the trustee for the holders of the debentures; or
- (c) the holder of any of the debentures; or
- (d) the Principal Legal Adviser,

appoint any corporation qualified under Section 74 to be the trustee for the holders of the debentures in place of the trustee that has ceased to exist or to be qualified, or that has failed or refused to act as trustee or is disqualified.

(6) Where a corporation is appointed to be a trustee in place of any trustee, the successor must, within one month after the appointment, lodge with the Registrar notice in the prescribed form of the appointment.

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K20.00.

**76. Liability of trustee.**

(1) Subject to this section, any provision in a trust deed relating to or securing an issue of debentures, or in a contract with the holders of debentures secured by a trust deed, is void so far as it would have the effect of exempting a trustee of the debentures from, or indemnifying him against, liability for breach of trust where he fails to show the degree of

care and diligence required of him as trustee, having regard to the provisions of the trust deed or contract conferring on him any powers, authorities or discretions.

(2) Subsection (1) does not invalidate—

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

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

(i) with the agreement of a majority of not less than 75% in nominal value of the debenture holders present and voting in person, or, where proxies are permitted, by proxy, at a meeting summoned for the purpose; and

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

(3) Subsection (1) does not operate—

(a) to invalidate any provision in force at the commencement date so long as any trustee then entitled to the benefit of that provision remains a trustee of the deed in question; or

(b) to deprive any trustee of any exemption or right to be indemnified in respect of anything done or omitted to be done by the trustee while any such provision was in force.

#### 77. Specific performances of contracts.

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

#### 78. Perpetual debentures.

Notwithstanding anything in the underlying law, a condition contained in a debenture or in a deed for securing any debentures is not invalid by reason only of the fact that the condition makes the debentures irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long.

#### 79. Re-issue of redeemed debentures.

(1) Where a company has redeemed any debentures, then unless—

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

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

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

(2) After the re-issue, the person entitled to the debentures has the same priorities as if the debentures had never been redeemed.

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

**80. Power of Court re certain irredeemable issues.**

(1) Notwithstanding anything in any debenture or trust deed, the security for any debentures that are irredeemable or redeemable only on the happening of a contingency are, if the Court so orders, enforceable immediately or at such other time as the Court directs if, on the application of the trustee for the holders of the debentures or (where there is no trustee) on the application of the holder of any of the debentures, the Court is satisfied that—

- (a) at the time of the issue of the debentures the assets of the corporation that constituted or were intended to constitute the security for them were sufficient or likely to become sufficient to discharge the principal debt and any interest on it; and
- (b) if the security was realized under the circumstances existing at the time of the application it would be likely to bring not more than 60% of the principal sum of moneys outstanding (regard being had to all prior charges and charges ranking equally, if any); and
- (c) on a fair valuation of the assets covered by the security on the basis of a going concern after allowing a reasonable amount for depreciation, they are worth less than the principal sum and the borrowing corporation is not making sufficient profit to pay the interest due on the principal sum or (where no definite rate of interest is payable) interest at such rate as the Court thinks would be a fair rate to expect from a similar investment.

(2) Subsection (1) does not affect any power to vary rights or accept any compromise or arrangement created by the terms of the debentures or the relevant trust deed, or under a compromise or arrangement between the borrowing corporation and creditors.

**81. Duties of trustees.**

(1) A trustee for the holders of debentures—

- (a) shall exercise reasonable diligence to ascertain whether or not the assets of the borrowing corporation and of each of its guarantor corporations that are or may be available (whether by way of security or otherwise) are sufficient or likely to become sufficient to discharge the principal debt as and when it becomes due; or
- (b) shall satisfy itself that no prospectus relating to the debentures contains any matter that is inconsistent with the terms of the debentures or with the relevant trust deed; and
- (c) shall ensure that the borrowing corporation and each of its guarantor corporations comply with the provisions of Division 7 so far as they relate to the debentures and are applicable; and
- (d) shall exercise reasonable diligence to ascertain whether or not the borrowing corporation or any of its guarantor corporations has committed any breach of the covenants, terms and provisions of the debentures or the trust deed; and
- (e) except where it is satisfied that the breach will not materially prejudice the security (if any) for the debentures or the interests of the holders of the debentures—shall take all such steps and do all such things as it is empowered to do to cause the borrowing corporation and any of its guarantor corporations to remedy any breach of the covenants, terms and provisions of the debentures or the trust deed; and

- (f) where the borrowing corporation or any of its guarantor corporations fails, when so required by the trustee, to remedy a breach of the covenants, terms and provisions of the debentures or the trust deed—may place the matter before a meeting of holders of the debentures, submit such proposals for the protection of their investment as the trustee thinks necessary or appropriate and obtain the directions of the holders in relation to those proposals; and
- (g) where the borrowing corporation submits to the holders of the debentures a compromise or arrangement—shall give to them a statement explaining the effect of the compromise or arrangement and, if it thinks fit, recommend to them an appropriate course of action to be taken by them in relation to it.

(2) Where, after due inquiry, the trustee for the holders of the debentures at any time is of opinion that the assets of the borrowing corporation and of any of its guarantor corporations that are or should be available (whether by way of security or otherwise) are insufficient, or likely to become insufficient, to discharge the principal debt as and when it becomes due, the trustee may apply to the Minister for an order under Subsection (3).

(3) On an application under Subsection (2), the Minister, after giving to the borrowing corporation an opportunity of making representations in relation to the application, may—

- (a) by written order served on the corporation at its registered office in the country, impose such restrictions on the activities of the corporation, including restrictions on advertising for deposits or loans and on borrowing by the corporation, as the Minister thinks necessary for the protection of the interests of the holders of the debentures; or
- (b) if the borrowing corporation so requires, direct the trustee to apply to the Court for an order under Subsection (5).

(4) Where—

- (a) after due inquiry, the trustee is of the opinion that the assets of the borrowing corporation and of any of its guarantor corporations that are or should be available (whether by way of security or otherwise) are insufficient or likely to become insufficient to discharge the principal debt as and when it becomes due; or
- (b) the corporation has contravened or failed to comply with an order made by the Minister under Subsection (3)(a),

the trustee may apply to the Court for an order under Subsection (5), and where—

- (c) the borrowing corporation has requested the trustee to do so; or
- (d) the Minister has so directed under Subsection (3)(b),

the trustee shall do so.

(5) Where an application is made to the Court under Subsection (3) or (4), the Court may, after giving to the borrowing corporation an opportunity of being heard, by order do all or any of the following things :—

- (a) direct the trustee to convene a meeting of the holders of the debentures for the purpose of placing before them such information relating to their interests, and such proposals for the protection of their interests, as the trustee thinks necessary or appropriate, and of obtaining their directions in relation to those proposals, and give such directions in relation to the conduct of the meeting as the Court thinks proper; and

- (b) stay all or any actions or proceedings in any court by or against the borrowing corporation; and
- (c) restrain the payment of any moneys by the borrowing corporation to the holders of debentures of the corporation or to any class of those holders; and
- (d) appoint a receiver of such of the property as constitutes the security (if any) for the debentures; and
- (e) give such further directions from time to time as are necessary to protect the interests of the holders of the debentures, the members of the borrowing corporation or of any of its guarantor corporations or the public,

but in making any such order the Court shall have regard to the rights of all creditors of the borrowing corporation.

(6) In making an application to the Minister or to the Court, a trustee shall have regard to the nature and kind of the security given when the debentures were offered to the public, and if no security was given shall have regard to the position of the holders of the debentures as unsecured creditors of the borrowing corporation.

#### 82. Applications to Court by trustee.

(1) The trustee for the holders of debentures may apply to the Court—

- (a) for directions in relation to any matter arising in connexion with the performance of the functions of the trustee; or
- (b) to determine any question in relation to the interest of the holders of debentures,

and the Court may—

- (c) give such directions to the trustee as the Court thinks proper; and
- (d) if satisfied that the determination of the question will be just and beneficial, accede wholly or partially to the application on such terms and conditions as the Court thinks proper, or make such other order on the application as the Court thinks just.

(2) On an application under this section, the Court may order a meeting of all or any of the holders of debentures to be called to consider any matters in which they are concerned and to advise the trustee on them, and may give such ancillary or consequential directions as the Court thinks proper.

(3) The meeting shall be held and conducted in such manner as the Court directs, under the chairmanship of a person nominated by the trustee or of a person appointed by the meeting.

#### 83. Obligations of borrowing corporations.

(1) Where there is a trustee for the holders of any debentures of a borrowing corporation, the directors of the borrowing corporation must—

- (a) at the end of a period not exceeding three months ending on a date not later than six months after the date of the relevant prospectus, which date the trustee must notify to the borrowing corporation in writing; and

(b) at the end of each succeeding period of three months or such shorter time as the trustee, in special circumstances, allows, prepare a report that relates to that period and complies with Subsection (2), and within one month after the end of each such period lodge a copy of the report relating to the period with the Registrar and with the trustee.

Penalty: A fine not exceeding K400.00.

Default penalty: A fine not exceeding K100.00.

(2) The report referred to in Subsection (1) must be signed by not less than two of the directors on behalf of all of them and set out in detail whether or not any matters adversely affect the security or the interests of the holders of the debentures, and in particular must state—

- (a) whether or not the limitations on the amount that the corporation may borrow have been exceeded; and
- (b) whether or not the borrowing corporation and each of its guarantor corporations have observed and performed all the covenants and provisions binding on them by or under the debentures or any relevant trust deed; and
- (c) whether or not any event has happened that has caused or could cause the debentures or any provision of the relevant trust deed to become enforceable and, if so, particulars of the event; and
- (d) whether or not any circumstances affecting the borrowing corporation, or any of its subsidiaries or guarantor corporations, have occurred that materially affect any security or charge included in or created by the debentures or any trust deed and, if so, particulars of the circumstances; and
- (e) whether or not there has been any substantial change in the nature of the business of the borrowing corporation or any of its subsidiaries or guarantor corporations since the debentures were first issued to the public that has not previously been reported on as required by this section and, if so, particulars of the change; and
- (f) where the borrowing corporation has deposited money with or lent money to, or assumed any liability of, a corporation that is related to the borrowing corporation, particulars in respect of each corporation of—
  - (i) the total amounts so deposited or loaned and the extent of any liability so assumed during the period covered by the report; and
  - (ii) the total amounts owing to the borrowing corporation in respect of money so deposited or loaned and the extent of any liability so assumed as at the end of the period covered by the report,

distinguishing between deposits, loans and assumptions of liability that are secured and those that are unsecured, but not including any deposit with or loan to, or any liability assumed on behalf of, a corporation that has guaranteed the repayment of the debentures of the borrowing corporation and has secured the guarantee by a charge over its assets in favour of the trustee for the holders of the debentures of the borrowing corporation.

(3) Where there is a trustee for the holders of any debentures issued by a borrowing corporation, the borrowing corporation and each of its guarantor corporations that has guaranteed the repayment of the moneys raised by the issue of the debentures shall, within 21 days after the creation of the charge, furnish the trustee for the holders of the debentures with particulars in writing of any charge created by the corporation or the

guarantor corporation, as the case may be, and when the amount to be advanced on the security of the charge is indeterminate with particulars, in writing, within seven days after the advance, of the amount or amounts in fact advanced.

(4) Where any advances referred to in Subsection (3) are merged in a current account with bankers or trade creditors it is sufficient for particulars of the net amount outstanding in respect of them to be furnished every three months.

(5) The directors of a corporation to which this subsection applies must, not later than—

- (a) 10 months; or
- (b) in the case of any particular corporation, the expiration of such other period as is fixed by the Registrar, with the consent of the trustee, for the debenture holders for that corporation,

after the expiration of each financial year of the corporation, cause to be made out and lodged with the Registrar, and with the trustee for the holders of the debentures (if any)—

- (c) a profit and loss account for the period from the end of the financial year until the expiration of six months after the end of the financial year; and
- (d) a balance sheet as at the end of the period to which the profit and loss account relates.

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K20.00.

(6) Subsection (5) applies to a borrowing corporation that has issued debentures (other than debentures of a kind that if issued after 21 July 1966, being the date of commencement of the pre-Independence *Companies Act* 1966, could be lawfully described under Section 40 as mortgage debentures or certificates of mortgage debenture stock) and every guarantor corporation that has guaranteed the repayment of the moneys raised by the issue of the debentures.

(7) Subject to Subsections (10) and (11), the provisions of Section 171(4) to (13) (inclusive) and of Section 176(1), (2) and (4) apply, with such adaptations as are necessary, to every profit and loss account and balance-sheet made out and lodged under Subsection (5) as if the profit and loss account and balance-sheet were a profit and loss account and balance-sheet referred to in those sections.

(8) Notwithstanding Subsection (7), where a guarantor corporation, being a corporation that is incorporated in the United Kingdom or in a State or Territory of the United States of America, has lodged with the Board of Trade in the United Kingdom or with the Securities and Exchange Commission of the United States of America a profit and loss account and balance-sheet for the relevant period, it is sufficient compliance with Subsection (5) if, with the consent of the trustee for the debenture holders, there is lodged with the Registrar and the trustee for the debenture holders certified copies of the profit and loss account and balance-sheet so lodged.

(9) Where the directors of a borrowing corporation do not lodge with the trustee for the holders of debentures a report as required by Subsection (1), or where the directors of a borrowing corporation or the directors of a guarantor corporation do not lodge with the trustee the balance-sheets, profit and loss accounts and reports as required by Subsection (5), the trustee shall immediately lodge notice of that fact with the Registrar.

(10) Notwithstanding Subsection (8), a profit and loss account and balance-sheet of a borrowing corporation or its guarantor corporation required to be made out and lodged in accordance with Subsection (5) need not be audited, or the audit may be of a limited nature



or extent, if the trustee for the holders of the debentures of the borrowing corporation has, by written notice, consented to the audit being dispensed with or being of a limited nature or extent, as the case may be.

(11) Where the trustee has given his consent under Subsection (10), the directors of the corporation in respect of whose profit and loss account and balance-sheet the consent was given shall lodge with the Registrar a copy of the notice at the time when the profit and loss account and balance-sheet to which the notice relates are lodged with the Registrar.

(12) Notwithstanding Subsections (10) and (11), a profit and loss account and balance-sheet of a borrowing corporation or its guarantor corporation required to be made out and lodged in accordance with Subsection (5) may, unless the trustee for the holders of the debentures of the borrowing corporation otherwise requires in writing, be based on the value of the stock in trade of the borrowing corporation or the guarantor corporation, as the case may be, as reasonably estimated by its directors on the basis of the values of the stock in trade as adopted for the purpose of the profit and loss account and balance-sheet of the corporation laid before the corporation at its last annual general meeting, and certified in writing by them to be so.

#### **84. Guarantor corporation to furnish information.**

(1) For the purpose of the preparation of a report that is required by this Act to be signed by or on behalf of the directors of a borrowing corporation or any of them, the corporation may, by written notice, require any of its guarantor corporations to furnish it with any information relating to the guarantor corporation that is required by this Act to be contained in the report, and the guarantor corporation must furnish the borrowing corporation with that information before such date, being a date not earlier than 14 days after the notice is given, as is specified in the notice.

(2) A corporation that fails to comply with a requirement contained in a notice given under Subsection (1), and every officer of that corporation who is in default, is guilty of an offence.

Penalty: A fine not exceeding K400.00.

Default penalty: A fine not exceeding K20.00.

#### **85. Repayment of loans and deposits.**

(1) Where in any prospectus issued in connexion with an invitation to the public to subscribe for or to purchase debentures of a corporation there is a statement as to any particular purpose or project for which the moneys received by the corporation in response to the invitation are to be applied, the corporation shall, from time to time, make reports to the trustee for the holders of those debentures as to the progress that has been made towards achieving the purpose or completing the project.

(2) Each report under Subsection (1) shall be included in the report required to be furnished to the trustee for the holders of the debentures under Section 83.

(3) When it appears to the trustee for the holders of the debentures that the purpose or project has not been achieved or completed within the time stated in the prospectus as the time within which the purpose or project is to be achieved or completed, or where no such time was stated within a reasonable time, the trustee may, and if in his opinion it is necessary for the protection of the interests of the holders of the debentures shall, give written notice to the corporation requiring it to repay the moneys so received by the corporation and, within one month after the notice is given, shall lodge a copy of the notice with the Registrar.

(4) The trustee need not give a notice under Subsection (3) if he is satisfied that—

- (a) the purpose or project has been substantially achieved or completed; or
- (b) the interests of the holders of the debentures have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time; or
- (c) the failure to achieve the purpose or project was due to circumstances beyond the control of the corporation that could not reasonably have been foreseen by the corporation at the time when the prospectus was issued.

(5) On receipt by the corporation of a notice under Subsection (3), the corporation is liable to repay, and on written demand by him shall immediately repay, to any person entitled to it, any money owing to him as the result of a loan or deposit made in response to the invitation, unless—

- (a) before the moneys were accepted by the corporation the corporation had given written notice to the persons from whom the moneys were received specifying the purpose or project for which the moneys would in fact be used, and the moneys were accepted by the corporation accordingly; or
- (b) the corporation, by written notice served on the holders of the debentures—
  - (i) had specified the purpose or project for which the moneys would in fact be applied by the corporation; and
  - (ii) had offered to repay the moneys to the holders of the debentures, and the person concerned had not, within 14 days after the receipt of the notice or such longer time as was specified in the notice, demanded in writing from the corporation repayment of the money.

(6) Where the corporation has given a notice as provided in Subsection (5), specifying the purpose or project for which the moneys will in fact be applied by the corporation, the provisions of this section apply as if the purpose or project specified in the notice was the particular purpose or project specified in the prospectus as the purpose or project for which the moneys were to be applied.

#### 86. Exemption of invitations by prescribed corporations.

Notwithstanding any other provision of this Act, an invitation to the public by a prescribed corporation as defined in Section 40(7) to deposit money with the corporation shall be deemed, for the purposes of this Division, not to be an invitation or offer to the public to subscribe for or purchase debentures of the corporation.

#### *Division 5.—Interests other than Shares, Debentures, etc.*

#### 87. Interpretation of Division 5.

(1) In this Division, unless the contrary intention appears—

“company” means a public company, and includes a corporation that is a public company under the law of a proclaimed State and is registered as a foreign company in the country;

“financial year”, in relation to a deed, means the period of 12 months ending 30 June or on such other date as is specified in place of that date in the deed;

"interest" means a right to participate or an interest, whether enforceable or not, and whether actual, prospective or contingent—

- (a) in any profits, assets or realization of any financial or business undertaking or scheme in the country or elsewhere; or
- (b) in a common enterprise, in the country or elsewhere, in which the holder of the right or interest is led to expect profits, rent or interest from the efforts of the promoter of the enterprise or a third party; or
- (c) in an investment contract,

whether or not the right or interest is evidenced by a formal document and whether or not the right or interest relates to a physical asset, but does not include—

- (d) a share in or debenture of a corporation; or
- (e) an interest in or arising out of a policy of life insurance; or
- (f) an interest in a partnership agreement;

"investment contract" means any contract, scheme or arrangement that in substance and irrespective of its form involves the investment of money under such circumstances that the investor acquires or may acquire an interest in or right in respect of property that under or in accordance with the terms of investment will, or at the option of the investor may, be used or employed in common with any other interest in or right in respect of property acquired under similar circumstances;

"management company", in relation to any interests issued or proposed to be issued or any deed that relates to any interests issued or proposed to be issued, means a company by or on behalf of which the interests have been or are proposed to be issued, and includes any person for the time being exercising the functions of the management company;

"proclaimed State" means a State or Territory of Australia declared by the Minister, by notice in the National Gazette, to be a proclaimed State or Territory for the purposes of this Division.

(2) For the purposes of this Division, a deed is an approved deed if—

- (a) the Registrar has granted his approval to the deed under this Division; and
- (b) the Minister has granted his approval under this Division to the trustee or representative appointed for the purposes of the deed acting as trustee or representative, and the approval has not been revoked and the trustee or representative has not ceased to hold office.

(3) A reference in this Division to a deed includes a reference to any instrument amending or affecting the deed.

#### 88. Application of Division 5.

(1) The Minister may, by notice in the National Gazette, exempt a company, subject to such terms and conditions as are specified in the notice, from complying with all or any of the provisions of this Division in relation to an interest, or a class of interests, specified in the notice.

(2) This Division does not apply in the case of the sale of any interest by a personal representative, liquidator, receiver or trustee in bankruptcy in the normal course of realization of assets.

**89. Approval of deeds.**

(1) Where a deed makes provision for the appointment of a company as trustee for or representative of the holders of interests issued or proposed to be issued by a company, the Registrar may, subject to this section, grant his approval to the deed.

(2) The Registrar shall not grant his approval to a deed unless the deed—

(a) complies with this Division; and

(b) makes provision for such other matters and things as are required by or under the regulations to be included in the deed.

(3) Within seven days after a deed has been approved under this section, the management company must lodge in the office of the Registrar the deed, or a copy of the deed verified as prescribed by statutory declaration.

(4) A copy lodged under Subsection (3) shall, in the absence of proof that it is not a true copy, be regarded for all purposes as an original.

**90. Approval of trustees.**

(1) The Minister may, subject to such terms and conditions as he thinks proper, grant his approval to a company acting as trustee or representative for the purposes of a deed.

(2) The Minister may, for any reason, revoke an approval granted by him under this section.

**91. Contents of deeds.**

(1) A deed shall contain covenants to the following effect :—

(a) a covenant binding the management company that it will use its best endeavours to carry on and conduct its business in a proper and efficient manner and to ensure that any undertaking, scheme or enterprise to which the deed relates is carried on and conducted in a proper and efficient manner; and

(b) covenants binding the management company—

(i) that the management company will pay to the trustee or representative, within 30 days after the receipt by the company, any moneys that, under the deed, are payable by the company to the trustee or representative; and

(ii) that the management company will not sell any interest to which the deed relates otherwise than at a price calculated in accordance with the provisions of the deed; and

(iii) that the management company will, at the request of the holder of an interest, purchase the interest from the holder at a purchase price calculated in accordance with the provisions of the deed; and

(iv) that the management company will not, without the approval of the trustee or representative, publish or cause to be published any advertisement, circular or other document containing a statement with respect to the sale price of interests to which the deed relates or the yield from the interests or containing an invitation to buy interests; and

- (c) covenants binding the trustee or representative that it will—
- (i) exercise all due diligence and vigilance in carrying out its functions and duties and in watching the rights and interests of the holders of the interests to which the deed relates; and
  - (ii) keep or cause to be kept proper books of account in relation to the interests; and
  - (iii) cause the accounts to be audited at the end of each financial year by a registered company auditor; and
  - (iv) send or cause to be sent by post to each of the holders of the interests a statement of the accounts, with the report of the auditor on them, within two months after the end of the financial year; and
- (d) a covenant binding the management company and the trustee or representative, respectively, that no moneys available for investment under the deed will be invested in or lent to the management company, the trustee or representative or any company (other than a banking corporation or a corporation declared under Section 40(5)(b) to be an authorized dealer in the short term money market) that is a related company of the management company or of the trustee or representative; and
- (e) a covenant binding the management company that, to the same extent as if the trustee or representative were a director of the company, the company will—
- (i) make available to the trustee or representative, or to a registered company auditor appointed by it, for inspection the whole of the books of the company, whether kept at the registered office or elsewhere; and
  - (ii) give to the trustee or representative or to any such auditor such oral or written information as it or he requires with respect to all matters relating to the undertaking, scheme or enterprise of the company or any property (whether acquired before or after the date of the deed) of the company or otherwise relating to the affairs of the company; and
- (f) a covenant binding the management company that the management company will make available, or ensure that there is made available, to the trustee or representative such details as the trustee or representative requires with respect to all matters relating to the undertaking, scheme or enterprise to which the deed relates; and
- (g) covenants binding the management company and the trustee or representative that it or he will not, without the consent provided for by Subsection (2)(a), exercise the right to vote, in respect of shares to which, by virtue of Subsection (2)(b), this paragraph applies, at an election of directors of a corporation whose shares are held by the management company, trustee or representative; and
- (h) a covenant binding the management company that the management company will (within 21 days after an application is delivered to the company at its registered office, being an application by not less than 50, or 10% in number, whichever is the less, of the holders of the interests to which the deed relates)—
- (i) by sending notice by post of the proposed meeting at least seven days before the proposed meeting to each of those holders at his last-known

address or, in the case of joint holders, to the joint holder whose name stands first in the company's records; and

- (ii) by publishing at least 14 days before the proposed meeting an advertisement giving notice of the meeting in a newspaper published in the country not less frequently than once a week,

summon a meeting of the holders for the purpose of laying before the meeting the accounts and balance-sheet that were laid before the last annual general meeting of the management company, or the last audited statement of accounts of the trustee or representative, and for the purpose of giving to the trustee or representative such directions as the meeting thinks proper.

(2) For the purposes of Subsection (1)(g)—

- (a) the consent required is the consent of the majority of the holders of interests to which the deed relates, who are present in person and vote, at a meeting of those holders summoned in the manner provided for by Subsection (1)(b)(i) and (ii) for the purpose of authorizing the exercise, at the next election of directors referred to in Subsection (1)(g), of the right of the management company, trustee or representative to vote in that election; and
- (b) the shares to which that subsection applies are shares relating to interests to which the deed relates that are held by the management company, trustee or representative, as the case may be.

(3) A meeting summoned for the purposes of a covenant contained in a deed under Subsection (1)(g) or (b) shall be held at the time and place specified in the notice and advertisement, being a time not later than two months after the giving of the notice, under the chairmanship of—

- (a) a person appointed by the holders of the interests to which the deed relates who are present at the meeting; or
- (b) where no such appointment is made, a nominee of the trustee or representative approved by the Registrar,

and shall be conducted in accordance with the provisions of the deed or, so far as the deed makes no provision, as directed by the chairman of the meeting.

(4) Notwithstanding anything to the contrary in an approved deed, the undertaking, scheme, enterprise, contract or arrangement to which the deed relates may, if it appears to be in the interests of the holders of interests to which the deed relates, be continued in operation or existence during such period as is, or such periods as are, agreed upon by the trustee or representative and the management company.

(5) Where a direction is given to the trustee or representative at a meeting summoned under a covenant complying with Subsection (1)(b), the trustee or representative—

- (a) must comply with the direction unless it is inconsistent with the deed or this Act; and
- (b) is not liable for anything done or omitted to be done by it by reason only of its following the direction.

(6) Where the trustee or representative is of the opinion that any direction so given is inconsistent with the deed or this Act or is otherwise objectionable, the trustee or representative may apply to the Court for an order confirming, setting aside or varying the direction, and the Court may make such order as it thinks proper.

(7) Subject to Subsection (8), a provision contained in a deed that is or at any time has been an approved deed, or in a contract with the holders of interests to which such a deed relates, is void so far as it would have the effect of exempting a trustee or representative under the deed from, or indemnifying the trustee or representative against, liability for breach of trust where the trustee or representative fails to show the degree of care and diligence required of a trustee or representative, having regard to the provisions of the deed conferring on the trustee or representative any powers, authorities or discretions.

(8) Subsection (7) does not invalidate—

- (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee or representative before the giving of the release; or
- (b) any provision enabling such a release to be given—
  - (i) on the agreement of a majority of not less than 75% in nominal value of holders of interests present in person and voting at a meeting summoned for the purpose; and
  - (ii) either with respect to specific acts or omissions or on the trustee or representative ceasing to act.

#### 92. Issue of interests.

A person other than a company or an agent of a company authorized for the purpose under the seal of the company must not issue or offer to the public for subscription or purchase, or invite the public to subscribe for or purchase, any interest.

#### 93. Statements as to issues and offers of interests.

(1) Before a company or an agent of a company issues, or offers to the public for subscription or purchase, or invites the public to subscribe for or purchase, any interest, the company shall publish or cause to be published a written statement in connexion with the interest.

(2) A statement under Subsection (1) shall, for all purposes, be deemed to be a prospectus issued by a company and, subject to Subsection (3), all provisions of this Act and all rules of law relating to prospectuses, or to the offering or to intended offering of shares for subscription or purchase to the public, with the necessary modifications, apply and have effect accordingly as if—

- (a) the interest were shares offered or intended to be offered to the public for subscription or purchase; and
  - (b) persons accepting any offer or invitation in respect of or subscribing for or purchasing any such interest were subscribers for shares.
- (3) Subject to Subsection (4), the statement must set out—
- (a) the matters and reports specified in Schedule 6; and
  - (b) such other matters as are required by or under the regulations to be set out in the statement,

with such adaptations as the circumstances of each case require and the Registrar approves.

(4) A matter or report referred to in Subsection (3) may be omitted from a statement if, having regard to the nature of the interest, the Registrar is of the opinion that the matter or report is not appropriate for inclusion in the statement and has by writing under his hand approved the omission.

**94. Issue, etc., without approved deeds.**

(1) A person must not issue or offer to the public for subscription or purchase, or invite the public to subscribe for or purchase, any interest unless at the time of the issue, offer or invitation there is in force, in relation to the interest, a deed that is an approved deed.

(2) A person must not make any reference in any deed, prospectus, statement, advertisement or other document relating to any interest to an approval of a deed, or of a trustee or representative, granted under this Division.

**95. Registers of interest holders.**

(1) The management company must, in respect of each deed with which the company is concerned, keep a register of the holders of interests under the deed and enter in the register—

- (a) the names and addresses of the holders; and
- (b) the extent of the holding of each holder, and if his interest consists of a specific interest in any property a description of the property and its location sufficient to identify it; and
- (c) the date at which the name of each person was entered in the register as a holder; and
- (d) the date at which any person ceased to be a holder.

(2) The provisions of Division VI. 4 apply, as far as they are applicable and with such adaptations as are necessary, to and in relation to the register.

(3) A management company that—

- (a) keeps a register of holders of interests at a place in the town in which is situated the office of the Registrar in which it is registered; and
- (b) provides reasonable accommodation and facilities for persons to inspect and take copies of its list of interest holders,

need not comply with the provisions of Section 96(1)(a) in relation to the deed under which the interests are held unless the Minister, by notice in the National Gazette, otherwise directs.

**96. Returns, information, etc., relating to interests.**

(1) Where a deed is or has at any time been an approved deed, the management company must, so long as the deed or any deed in substitution in whole or in part for it remains in force, lodge with the Registrar, within two months after the end of each financial year applicable to the deed—

- (a) a return in the prescribed form containing a list of all persons who, at the end of the financial year, were holders of the interests to which the deed relates, showing the name and address of each holder and the extent of his holding, and if his interest consists of a specific interest in any property a description of the property and its location sufficient to identify it; and
- (b) a summary of—
  - (i) all purchases and sales of land and marketable securities affecting the interests of the holders during the financial year; and



- (ii) all other investments affecting the interests of the holders made during the financial year, showing the descriptions and quantities of the investments; and
  - (c) a statement of the total amount of brokerage affecting the interests of the holders paid or charged by the management company during the financial year and the proportion of the amount paid to any stock broker or share broker, or to a partner, employee or nominee of a stock broker or share broker, who is an officer of the company, and the proportion retained by the company; and
  - (d) a list of all parcels of land and marketable securities, and other investments, held by the trustee or representative in relation to the deed, as at the end of the financial year, showing the value of the land, securities or other investments and the basis of valuations; and
  - (e) such other statements and particulars (if any) as are prescribed.
- (2) A document required to be lodged with the Registrar by the management company under Subsection (1) must be signed by at least one director of the management company.
- (3) A company to which Subsection (1) applies must, if so requested by a holder of an interest to which the deed relates within a period of one month after the end of the financial year, send by post or cause to be sent by post to the holder, within a period of two months after the end of the financial year, a copy of the documents that the company is required to lodge with the Registrar.

#### 97. Winding-up of schemes, etc.

- (1) Where the management company under a deed is in liquidation or where, in the opinion of the trustee or representative, the management company has ceased to carry on business or has, to the prejudice of holders of interests to which the deed relates, failed to comply with a provision of the deed, the trustee or representative shall summon a meeting of the holders.
- (2) A meeting under Subsection (1) shall be summoned—
- (a) by sending by post notice of the proposed meeting, at least 21 days before the proposed meeting, to each holder at his last-known address or, in the case of joint holders, to the joint holder whose name stands first in the company's records; and
  - (b) by publishing, at least 42 days before the proposed meeting, an advertisement giving notice of the meeting in a newspaper published in the country not less frequently than once a week.
- (3) The provisions of Section 91(2) apply to such a meeting as if the meeting were a meeting referred to in that section.
- (4) If at any such meeting a resolution is passed, by a majority of not less than 75% in value of the holders of the interests present in person and voting at the meeting, that the undertaking, scheme, enterprise, contract or arrangement to which the deed relates be wound up, the trustee or representative shall apply to the Court for an order confirming the resolution.
- (5) On an application by the trustee or representative, the Court may, if it is satisfied that it is in the interest of the holders of the interests, confirm the resolution and may make

such orders as it thinks necessary or expedient for the effective winding-up of the undertaking, scheme, enterprise, contract or arrangement.

**98. Offences against Division 5.**

(1) A person who—

- (a) contravenes or fails to comply with a provision of this Division; or
- (b) fails to comply with a covenant contained or deemed to be contained in a deed that is or at any time has been an approved deed,

is guilty of an offence.

Penalty: A fine not exceeding K1 000.00 or imprisonment for a term not exceeding 12 months.

(2) A person is not relieved from liability to a holder of an interest by reason of being convicted of an offence under this section.

*Division 6.—Title and Transfers.***99. Nature of shares.**

The shares or other interests of a member in a company are personal estate, transferable in the manner provided by the articles, and not of the nature of real estate.

**100. Numbering of shares.**

(1) Each share in a company shall be distinguished by an appropriate number.

(2) Notwithstanding Subsection (1)—

- (a) if at any time all the issued shares in a company or all the issued shares in a company of a particular class are fully paid up and rank equally for all purposes, none of those shares need later have a distinguishing number as long as each of them remains fully paid up and ranks equally for all purposes with all shares of the same class for the time being issued and fully paid up; or
- (b) if all the issued shares in a company are evidenced by certificates in accordance with Section 101 and each certificate is distinguished by an appropriate number that is recorded in the register of members, none of those shares need have a distinguishing number.

**101. Share certificates.**

(1) A certificate under the common or official seal of a company specifying any shares held by a member of the company is evidence of the title of the member to the shares.

(2) Every share certificate shall be under the common seal of the company or, in the case of a share certificate relating to shares on a branch register, the common or official seal of the company, and shall state—

- (a) the name of the company and the authority under which the company is constituted; and
- (b) the address of the registered office of the company in the country or, where the certificate is issued by a branch office, the address of the branch office; and
- (c) the nominal value and the class of the shares, and the extent to which the shares are paid up.

(3) If it is authorized by its articles, a company may have as a duplicate common seal a facsimile of the common seal of the company with the addition on its face of the words "Share Seal", and a certificate under the duplicate seal shall be deemed to be sealed with the common seal of the company for the purposes of this Act.

(4) Failure to comply with this section does not affect the rights of any holder of shares.

(5) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence.

**102. Loss or destruction of certificates.**

(1) Subject to Subsection (2), where a certificate or other document of title to shares or debentures is lost or destroyed the company shall, on payment of a fee not exceeding 50 t, issue a duplicate certificate or document in place of it to the owner on his application accompanied by—

- (a) a statutory declaration that the certificate or document has been lost or destroyed and has not been pledged, sold or otherwise disposed of, and, if lost, that proper searches have been made; and
- (b) a written undertaking that if it is found or received by the owner it will be returned to the company.

(2) Before accepting an application for the issue of a duplicate certificate or document, the directors of the company may require the applicant—

- (a) to cause an advertisement to be inserted in a newspaper published not less frequently than once a week and circulating in a place specified by the directors stating that the certificate or document has been lost or destroyed and that the owner intends, after the expiration of 28 days after the publication of the advertisement, to apply to the company for a duplicate; or
- (b) to furnish a bond for an amount equal to at least the current market value of the shares or debentures indemnifying the company against loss following on the production of the original certificate or document,

or both.

**103. Transfer of shares, debentures, etc.**

(1) Notwithstanding its articles, a company shall not register a transfer of shares or debentures unless a proper instrument of transfer has been delivered to the company, but this subsection does not prejudice any power to register as a shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

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

(3) Where the personal representative of a deceased member duly constituted as such under the law of a State or Territory of Australia—

- (a) executes an instrument of transfer of a share or debenture of the deceased member to himself or to another person; and
- (b) delivers the instrument to the company, together with an affidavit made by him to the effect that, to the best of his knowledge, information and belief, no

grant of representation of the estate of the deceased member has been applied for or made in Papua New Guinea and no application for such a grant will be made (being an affidavit sworn within the period of 14 days before the date of delivery of the affidavit to the company),

the company shall register the transfer and pay to the personal representative any dividends or other moneys accrued in respect of the share or debenture up to the time of the execution of the instrument, but this subsection does not operate so as to require the company to do any act or thing that it would not have been required to do if the personal representative were the personal representative of the deceased member.

(4) A transfer or payment made under Subsection (3), and any receipt or acknowledgement of such a payment, is for all purposes as valid and effectual as if the personal representative were the personal representative of the deceased member.

(5) The production to a company of a document that is, under the law of Papua New Guinea or under the law of a State or Territory of Australia, sufficient evidence that probate of the will, or letters of administration of the estate, of a deceased person has been granted to some person shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of the grant.

#### **104. Registration of transfers.**

(1) On the written request of the transferor of any share, debenture or other interest in a company, the company shall enter in the appropriate register the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

(2) On the written request of the transferor of a share or debenture, the company shall, by written notice require the person having the possession, custody or control of the share certificate or debenture or the instrument of transfer to bring it into the office of the company within a stated period, being not less than seven and not more than 28 days after the date of the notice, to have the share certificate or debenture cancelled or rectified and the transfer registered or otherwise dealt with.

(3) If a person refuses or neglects to comply with a notice given under Subsection (2), the transferor may apply to the Court to issue a summons for that person to appear before the Court and show cause why the documents mentioned in the notice should not be delivered up or produced as required by the notice.

(4) On appearance of a person summoned under Subsection (3), the Court may examine him on oath and receive other evidence, or if he does not appear after being duly served with the summons the Court may receive evidence in his absence, and in either case the Court may order him to deliver up the documents to the company on such terms and conditions as to the Court seem proper, and the costs of the summons and of proceedings on it are in the discretion of the Court.

(5) Lists of share certificates or debentures called in under this section and not brought in shall be exhibited in the office of the company and shall be advertised in the National Gazette and in such newspapers and at such times as the company thinks proper.

#### **105. Refusal to register transfers.**

(1) If a company refuses to register a transfer of any share, debenture or other interest in the company, it shall, within two months after the date on which the transfer was lodged with it, send to the transferee notice of the refusal.

(2) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

#### 106. Certification of transfers.

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

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

(3) Where a certification is expressed to be limited to 42 days, or a longer period, from the date of certification, the company and its officers are not, in the absence of fraud, liable in respect of the registration of any transfer of shares, debentures or other interests comprised in the certification after the expiration of the period so limited or any extension of the period given by the company if the instrument of transfer has not, within that period, been lodged with the company for registration.

(4) For the purposes of this section—

- (a) an instrument of transfer shall be deemed to be certificated if it bears the words "certificate lodged" or words to that effect; and
- (b) the certification of an instrument of transfer shall be deemed to be made by a company if—
  - (i) the person issuing the instrument is a person authorized to issue certificated instruments of transfer on the company's behalf; and
  - (ii) the certification is signed by a person authorized to certificate transfers on the company's behalf or by an officer of the company or of a corporation so authorized; and
- (c) a certification that purports to be authenticated by a person's signature or initials shall be deemed to be signed by him unless it is shown that the signature or initials were not placed there by him or by any other person authorized to use the signature or initials for the purpose of certifying transfers on the company's behalf.

#### 107. Issue of certificates.

(1) Every company must, within two months after the allotment of any of its shares or debentures and within one month after the date on which a transfer (other than a transfer that the company is for any reason entitled to refuse to register and does not register) of any of its shares or debentures is lodged with the company, complete and have ready for delivery all the appropriate certificates and debentures in connexion with the allotment or transfer, unless in the case of shares the conditions of issue otherwise provide in which case the company must comply with those conditions.

(2) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

(3) If a company on which a notice has been served requiring the company to make good any default in complying with the provisions of this section fails to make good the default within 10 days after the service of the notice, the Court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as is specified in the order, and the order may provide that all costs of and incidental to the application be borne by the company, or by an officer of the company in default, in such proportions as the Court thinks proper.

*Division 7.—Registration of Charges.*

**108. Interpretation of Division 7.**

A reference in this Division to a company includes a reference to a foreign company to which Division XII.3 applies, but nothing in this Division applies to a charge on property outside Papua New Guinea of a foreign company.

**109. Application of Division 7.**

Except as is otherwise expressly provided, this Division applies to any charge that, immediately before the commencement date, was registrable under the repealed legislation but that at that time was not registered under that legislation, as well as to other charges.

**110. Registration of charges.**

(1) Subject to this Division, where a charge to which this section applies is created by a company there must be lodged with the Registrar for registration within 60 days after the creation of the charge a statement in the prescribed form and—

- (a) the instrument (if any) by which the charge is created or evidenced; or
- (b) a copy of the instrument together with a statutory declaration in the prescribed form verifying the execution of the charge and verifying the copy as being a true copy of the instrument,

and if this section is not complied with in relation to the charge the charge is, so far as any security on the company's property or undertaking is conferred by it, void against the liquidator and any creditor of the company.

(2) Subsection (1) does not prejudice any contract or obligation for repayment of the money secured by a charge, and when a charge becomes void under this section the money secured by it becomes payable immediately.

(3) The charges to which this section applies are—

- (a) charges (other than charges solely on land) to secure any issue of debentures; and
- (b) charges on uncalled share capital of a company; and
- (c) charges or assignments created or evidenced by instruments (including instruments creating or evidencing absolute bills of sale or absolute assignments or transfers of book debts) that, if executed by an individual, would be invalid or of limited effect if not registered under the *Instruments Act*; and
- (d) floating charges on the undertaking or property of a company; and
- (e) charges on calls made but not paid; and
- (f) charges on a ship or aircraft, or on a share in a ship or aircraft; and

- (g) charges on goodwill, on a patent or licence under a patent, on a trade mark, or on a copyright or a licence under a copyright; and
- (h) charges on the book debts of a company.

(4) Where a charge created in the country affects property outside the country, the instrument creating or purporting to create the charge, or a copy of it accompanied by the verifying statutory declaration, may be lodged for registration under and in accordance with Subsection (1) notwithstanding that further proceedings are necessary to make the charge valid or effectual according to the law of the place in which the property is situate.

(5) When a series of debentures containing or giving by reference to any other instrument a charge to the benefit of which the debenture holders of that series are entitled equally is created by a company, it is sufficient if there is lodged with the Registrar for registration within 60 days after the execution of the instrument containing the charge, or, if there is no such instrument, after the execution of the first debenture of the series, a statement in the prescribed form containing the following particulars :—

- (a) the total amount secured by the whole series; and
- (b) the dates of the resolutions authorizing the issue of the series and the date of the covering instrument (if any) by which the security is created or defined; and
- (c) a general description of the property charged; and
- (d) the names of the trustees (if any) for the debenture holders,

together with—

- (e) the instrument containing the charge; or
- (f) a copy of the instrument and a statutory declaration verifying the execution of the instrument and verifying the copy to be a true copy; or
- (g) if there is no such instrument, a copy of one of the debentures of the series and a statutory declaration verifying the copy to be a true copy.

(6) For the purposes of Subsection (5), where more than one issue is made of debentures in the series, particulars in the prescribed form of the date and amount of each issue must be lodged within 60 days after the issue, but an omission to do so does not affect the validity of the debentures issued.

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

(8) The deposit of any debentures as security for a debt of the company shall not be treated, for the purposes of Subsection (7), as the issue of the debentures at a discount.

(9) A charge to which this section applies need not be registered, and is not subject to avoidance, under the *Instruments Act*, and on registration under this Part a charge that, but for this subsection, would need to be registered under the provisions of that Act has effect and is as valid, for all purposes, as if it had been duly registered under that Act.

(10) Where—

- (a) a charge requiring registration under this section is created before the expiration of 60 days after the creation of a prior unregistered charge; and

- (b) the charge comprises all or any part of the property comprised in the prior charge; and
- (c) the subsequent charge is given as a security for the same debt as is secured by the prior charge, or for any part of that debt,

then, to the extent to which the subsequent charge is a security for the same debt or part of the same debt and so far as respects the property comprised in the prior charge, the subsequent charge is not operative and has no validity unless it is proved to the satisfaction of the Court that it was given in good faith for the purpose of correcting a material error in the prior charge or under other proper circumstances and not for the purpose of avoiding or evading this Division.

(11) Documents and particulars required to be lodged for registration in accordance with the preceding provisions of this section may be lodged for registration by the company concerned or by any person interested in the documents, but where registration is effected by a person other than the company he is entitled to recover from the company the amount of any fees properly paid by him on the registration.

(12) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

#### **111. Registration of charges on property acquired.**

(1) Where—

- (a) a company acquires any property that is subject to a charge of such a kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Division; or
- (b) a foreign company becomes registered in Papua New Guinea and has, before that registration, created a charge that, if it had been created by the company while it was registered in Papua New Guinea, would have been required to be registered under this Division; or
- (c) a foreign company becomes registered in Papua New Guinea and has, before that registration, acquired property that is subject to a charge of any kind that would, if it had been created by the company after the acquisition and while it was registered in Papua New Guinea, have been required to be registered under this Division,

the company must cause a statement in the prescribed form and the instrument, or a copy of the instrument, by which the charge was created or is evidenced (together with a statutory declaration in the prescribed form) to be lodged with the Registrar for registration within 60 days after the date on which the acquisition is completed or the date of the registration of the company in Papua New Guinea, as the case may be.

(2) If default is made in complying with this section, the company, or the foreign company, and each officer of the company or foreign company who is in default, is guilty of an offence.

Default penalty: A fine not exceeding K20.00.



**112. Register of charges.**

(1) The Registrar shall keep a register in the prescribed form of all the charges lodged for registration under this Division, and shall enter in the register the following particulars with respect to the charges :—

- (a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled—the particulars required to be contained in a statement furnished under Section 110(5); and
- (b) in the case of any other charge—
  - (i) if the charge is a charge created by the company, the date of its creation and, if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property; and
  - (ii) the amount secured by the charge; and
  - (iii) a description sufficient to identify the property charged; and
  - (iv) the name of the person entitled to the charge.

(2) The Registrar shall issue a certificate in the prescribed form of every registration stating (if applicable) the amount secured by the charge, and the certificate is conclusive evidence that the requirements as to registration have been complied with.

**113. Endorsement of certificate of registration on debentures.**

(1) The company must cause to be endorsed on every debenture forming one of a series of debentures, and on every certificate of debenture stock, that is issued by the company and the payment of which is secured by a charge registered under this Division—

- (a) a copy of the certificate of registration; or
- (b) a statement that the registration has been effected and the date of registration.

(2) Subsection (1) does not apply to a debenture or certificate of debenture stock that has been issued by the company before the charge was registered.

(3) A person who knowingly authorizes or permits the delivery of a debenture or certificate of debenture stock that is not endorsed as required by this section is guilty of an offence.

Penalty: A fine not exceeding K200.00.

**114. Registration of satisfaction and release.**

(1) Where, with respect to a registered charge—

- (a) the debt for which the charge was given has been paid or satisfied in whole or in part; or
- (b) the property or undertaking charged or any part of it has been released from the charge or has ceased to form part of the property or undertaking of the company concerned,

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

(2) The memorandum shall be verified by a statutory declaration in the prescribed form, and shall be supported by such evidence as the Registrar requires to satisfy him as to any relevant matter referred to in Subsection (1)(a) or (b).

**115. Extension of time and rectification of register.**

On being satisfied—

(a) that the omission to register a charge within the time required or that the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction—

(i) was accidental or due to inadvertence or to some other sufficient cause;  
or

(ii) is not of a nature to prejudice the position of creditors or shareholders;  
or

(b) that on other grounds it is just and equitable to grant relief,

the Court may, on the application of the company or a person interested and on such terms and conditions as seem to the Court just and expedient, order that the time for registration be extended or that the omission or mis-statement be rectified.

**116. Copies of charging instruments and register of charges.**

(1) A company must cause a copy of every instrument creating a charge requiring registration under this Division to be kept at the registered office of the company but, in the case of a series of debentures, the keeping of a copy of one debenture of the series is sufficient for the purposes of this subsection.

(2) A company must keep at the registered office of the company a register of charges and enter in it all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge and (except in the case of securities to bearer) the names of the persons entitled to it.

(3) The copies of instruments and the register of charges kept under this section shall be open to the inspection of any creditor or member of the company without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee, not exceeding 50 t for each inspection, as is fixed by the company.

(4) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K200.00.

Default penalty: A fine not exceeding K20.00.

**117. Documents made outside Papua New Guinea.**

Where under this Division an instrument, deed, statement or other document is required to be lodged with the Registrar within a specified time, the time so specified is, by force of this section, in relation to an instrument, deed, statement or other document executed or made in a place outside the country, extended by 14 days or such further period as the Registrar from time to time allows.

**PART VI.—MANAGEMENT AND ADMINISTRATION.**

*Division 1.—Registered Office, etc.*

**118. Registered offices.**

As from the day on which it begins to carry on business or as from the fourteenth day after the date of its incorporation, whichever is the earlier, a company must have a registered office within the country to which all communications and notices may be

addressed, and which must be open and accessible to the public for not less than three hours between the hours of 8.00 a.m. and 4.00 p.m. of each day, Saturdays, Sundays and public holidays excepted.

(2) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

**119. Notice of office and office hours.**

(1) Notice in the prescribed form of the situation of the registered office, and of the days and hours during which it is open and accessible to the public and of any change in them, must be lodged with the Registrar within one month after the date of incorporation or of any such change, as the case may be, but no notice of the days and hours during which the office is open and accessible to the public is required if the office is open for at least five hours between 9.00 a.m. and 3.00 p.m. of each day, Saturdays, Sundays and public holidays excepted.

(2) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

**120. Publication of name.**

(1) The name of a company must appear in legible characters on—

(a) its seal; and

(b) all business letters, statements of account, invoices, official notices, publications, bills of exchange, promissory notes, endorsements, cheques, orders, receipts and letters of credit of or purporting to be issued or signed by or on behalf of the company,

and if default is made in complying with this subsection the company is guilty of an offence.

(2) An officer of a company or any person on its behalf who—

(a) uses or authorizes the use of any seal purporting to be a seal of the company on which its name does not appear as required by Subsection (1); or

(b) issues or authorizes the issue of any business letter, statement of account, invoice or official notice or publication of the company on which its name does not so appear; or

(c) signs or issues, or authorizes to be signed or issued on behalf of the company, a bill of exchange, promissory note, cheque or other negotiable instrument or any endorsement, order, receipt or letter of credit on which its name does not so appear,

is guilty of an offence.

(3) A company must paint or affix, and keep painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position and in letters easily legible, its name, and also, in the case of the registered office, the words "Registered Office", and if it fails so to do, the company is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

*Division 2.—Directors and Officers.***121. Directors.**

(1) A public company must have at least three directors, and a proprietary company must have at least one director.

(2) In the case of a public company, at least two directors must be natural persons one of whom ordinarily resides within the country and the other within the country or Australia and, in the case of a proprietary company, at least one director must be a natural person who ordinarily resides within the country.

(3) Where a company does not conform or comply with this section, the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K20.00.

**122. Restriction on appointment or advertisement of directors.**

(1) A person shall not be named as a director or proposed director in the memorandum or articles of a company, or in a prospectus or a statement in lieu of prospectus, unless, before the registration of the memorandum or articles or the issue of the prospectus or the lodging of the statement in lieu of prospectus, as the case may be, he has, by himself or by his agent authorized in writing for the purpose, signed and lodged with the Registrar a written consent in the prescribed form to act as a director and—

- (a) signed the memorandum for a number of shares not less than his qualification (if any); or
- (b) signed and lodged with the Registrar a written undertaking in the prescribed form to take from the company and pay for his qualification shares (if any); or
- (c) made and lodged with the Registrar a statutory declaration in the prescribed form to the effect that a number of shares, not less than his qualification (if any), is registered in his name; or
- (d) in the case of a company formed or intended to be formed by way of reconstruction of another corporation or group of corporations or to acquire the shares in another corporation or group of corporations—made and lodged with the Registrar a statutory declaration in the prescribed form that he was a shareholder in that other corporation or in one or more of the corporations of that group and that, as a shareholder, he will be entitled, by virtue of the terms of an agreement relating to the reconstruction, to receive and have registered in his name a number of shares not less than his qualification.

(2) Where a person has signed and lodged an undertaking to take and pay for his qualification shares, he is, as regards those shares, in the same position as if he had signed the memorandum for that number of shares.

(3) The preceding provisions of this section (other than the provisions relating to the signing of a consent to act as director) do not apply to—

- (a) a company not having a share capital; or
- (b) a proprietary company; or
- (c) a prospectus or a statement in lieu of prospectus issued or lodged with the Registrar by or on behalf of a company after the expiration of one year from the date on which the company was entitled to commence business; or

- (d) articles adopted by a company after the expiration of one year from the date on which the company was entitled to commence business.

**123. List of proposed directors.**

On the lodging of the memorandum of a company for registration, the persons desiring the incorporation of the company shall also lodge with the Registrar a list in the prescribed form, certified by one of them to be correct, of the persons who have consented to be directors of the company, and if the list contains the name of a person who has not so consented the person who certified the list to be correct is guilty of an offence.

**124. Qualification of directors.**

(1) Without affecting the operation of any of the preceding provisions of this Division, a director who is required by the articles to hold a specified share qualification and who is not already qualified must obtain his qualification within two months after his appointment or such shorter period as is fixed by the articles.

(2) Unless otherwise provided by the articles, the qualification of any director of a company must be held by him solely and not as one of several joint holders.

(3) A director must vacate his office if he has not, within the period referred to in Subsection (1), obtained his qualification or, if after so obtaining it, he ceases at any time to hold his qualification.

Penalty: A fine not exceeding K400.00.

Default penalty: A fine not exceeding K20.00.

(4) A person vacating office under this section is incapable of being re-appointed as director until he has obtained his qualification.

**125. Undischarged bankrupts acting as directors.**

(1) A person who, being an undischarged bankrupt, acts as director of, or directly or indirectly takes part in or is concerned in the management of, a corporation except with the leave of the Court is guilty of an offence.

Penalty: A fine not exceeding K1 000.00 or imprisonment for a term not exceeding six months, or both.

(2) The Court shall not give leave to any person under this section unless notice of intention to apply for it has been served on the Principal Legal Adviser by post or otherwise, and the Principal Legal Adviser may be represented at the hearing of the application.

**126. Voting on appointment of directors.**

(1) At a general meeting of a public company, a motion for the appointment of two or more persons as directors by a single resolution shall not be moved unless a resolution that it be moved has first been agreed to by the meeting without any vote being given against it.

(2) A resolution passed in pursuance of a motion moved in contravention of this section is void, whether or not its being so moved was objected to at the time.

(3) Where a resolution in pursuance of a motion moved in contravention of this section is passed, no provision for the automatic re-appointment of retiring directors in default of another appointment applies.

(4) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.

(5) This section does not apply to a resolution altering the company's articles.

(6) This section does not prevent the election of two or more directors by ballot or poll.

**127. Removal of directors.**

(1) A public company may, by ordinary resolution, remove a director before the expiration of his period of office notwithstanding anything in its articles or in any agreement between it and him, but where a director so removed was appointed to represent the interests of a particular class of shareholders or debenture holders the resolution to remove him does not take effect until his successor has been appointed.

(2) Special notice shall be given of a resolution to remove a director under this section, or to appoint some person in place of a director so removed at the meeting at which he is removed, and on receipt of notice of an intended resolution to remove a director under this section the company shall, without delay, send a copy of it to the director concerned, and the director (whether or not he is a member of the company) is entitled to be heard on the resolution at the meeting.

(3) Where notice is given under Subsection (2) and the director concerned makes with respect to it written representations (not exceeding a reasonable length) to the company and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so—

- (a) in any notice of the resolution given to members of the company—state the fact of the representations having been made; and
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company),

and if a copy of the representations is not sent because they were received too late or because of the company's default the director may, without prejudice to his right to be heard orally, require that the representations be read out at the meeting.

(4) Notwithstanding the preceding provisions of this section, copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter, and the Court may order the company's costs on an application under this section to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

(5) If a vacancy created by the removal of a director under this section is not filled at the meeting at which he is removed, it may be filled as a casual vacancy.

(6) A person appointed director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become a director on the day on which the person in whose place he is appointed was last appointed a director.

(7) The preceding provisions of this section do not deprive a person removed under them of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with his appointment as director, or derogates any power to remove a director that exists apart from this section.

(8) Notwithstanding anything in the articles or any agreement, a director of a public company may not be removed or be required to vacate his office by reason of any resolution, request or notice of the directors or any of them.

**128. Age limit for directors.**

(1) Subject to this section, no person of or over the age of 72 years may be appointed a director of a public company or of a subsidiary of a public company.

(2) The office of a director of a public company or of a subsidiary of a public company becomes vacant at the conclusion of the annual general meeting commencing next after he attains the age of 72 years.

(3) An act done by a person as director is valid notwithstanding that it is afterwards discovered that his appointment had terminated by virtue of Subsection (2).

(4) Where the office of a director has become vacant by virtue of Subsection (2), no provision for the automatic re-appointment of retiring directors in default of another appointment applies in relation to the director.

(5) If any such vacancy has not been filled at the meeting at which the office became vacant, the office may be filled as a casual vacancy.

(6) Notwithstanding anything in this section, by a resolution referred to in Subsection (7) a person of or over the age of 72 years may be appointed or re-appointed as a director of the company to hold office until the next annual general meeting, or be authorized to continue in office as a director until the next annual general meeting.

(7) A resolution for the purposes of Subsection (6) is a resolution of which notice no shorter than that required to be given to the members of the company for an annual general meeting has been duly given and that is passed by a majority of not less than 75% of such members of the company as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the company.

(8) This section does not limit or affect the operation of any provision of the memorandum or articles of a company preventing any person from being appointed a director, or requiring any director to vacate his office at any age of less than 72 years.

**129. Disclosure of interests.**

(1) Subject to this section, a director of a company who is in any way, directly or indirectly, interested in a contract or proposed contract with the company must, as soon as practicable after the relevant facts have come to his knowledge, declare the nature of his interest at a meeting of the directors of the company.

(2) The requirements of Subsection (1) do not apply where the interest of the director consists only of being a member or creditor of a corporation that is interested in a contract or proposed contract with the first-mentioned company if the interest of the director may properly be regarded as not being a material interest.

(3) A director of a company shall not be deemed to be interested or to have been at any time interested in any contract or proposed contract by reason only of the fact that—

(a) where the contract or proposed contract relates to a loan to the company—he has guaranteed or joined in guaranteeing the re-payment of the loan or any part of the loan; or

- (b) where the contract or proposed contract has been or will be made with, for the benefit of or on behalf of a corporation that is related to the company—he is director of the corporation,

and this subsection has effect not only for the purposes of this Act but also for the purposes of any other law, but does not affect the operation of the articles of the company.

(4) For the purposes of Subsection (1), a general notice given to the directors of a company by a director to the effect that he is an officer or member of a specified company or a member of a specified firm and is to be regarded as interested in any contract that may, after the date of the notice, be made with the company or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made, but no such notice is of effect unless it is given at a meeting of the directors or the director takes reasonable steps to insure that it is brought up and read at the next meeting of the directors after it is given.

(5) A director of a company who holds an office or possesses any property by which, directly or indirectly, duties or interest might be created in conflict with his duties or interests as director must declare at a meeting of the directors of the company the fact and the nature, character and extent of the conflict.

(6) A declaration under Subsection (5) must be made at the first meeting of the directors held—

- (a) after the person concerned becomes a director; or  
(b) if he is already a director, after he commenced to hold the office or to possess the property,

as the case may be.

(7) The secretary of the company shall record every declaration under this section in the minutes of the meeting at which it was made.

(8) Except as provided in Subsection (3), this section is in addition to and not in derogation of the operation of any rule of law or any provision in the articles restricting a director from having an interest in contracts with the company, or from holding offices or possessing properties involving duties or interests in conflict with his duties or interests as a director.

Penalty: A fine not exceeding K1 000.00.

### 130. Duty of disclosure generally.

(1) A director shall give notice to the company of such matters relating to himself as are necessary for the purposes of Section 132, 141 or 195 or of Schedule 9.

(2) A notice under Subsection (1) shall be in writing and, if it is not given at a meeting of the directors, the director giving it must take reasonable steps to ensure that it is brought up and read at the next meeting of directors after it is given.

Penalty: A fine not exceeding K1 000.00.

### 131. Loans to directors.

(1) A company must not make a loan to a director of the company or of a related company, or enter into a guarantee or provide a security in connexion with a loan made to such a director by any other person, but this section does not apply—

- (a) to anything done by a company that is an exempt proprietary company; or  
(b) to anything done by a subsidiary in relation to such a director, where the director is its holding company; or



- (c) subject to Subsection (2), to anything done to provide such a director with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company; or
- (d) to anything done to provide such a director who is engaged in the full-time employment of the company or its holding company, as the case may be, with funds to meet expenditure incurred or to be incurred by him in purchasing or otherwise acquiring a home; or
- (e) to a loan made to such a director who is engaged in the full-time employment of the company or its holding company, as the case may be, where the company has, at a general meeting, approved a scheme for the making of loans to employees of the company and the loan is in accordance with the scheme; or
- (f) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connexion with loans made by other persons—to anything done by the company in the ordinary course of the business.

(2) Subsection (1)(c) and (d) do not authorize the making of a loan, the entering into of a guarantee or the provision of a security except—

- (a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed; or
- (b) on condition that, if the approval of the company is not given at or before the next annual general meeting, the loan will be repaid or the liability under the guarantee or security will be discharged, as the case may be, within six months from the conclusion of that meeting.

(3) Where the approval of the company is not given as required by a condition referred to in Subsection (2)(b), the directors authorizing the making of the loan, the entering into of the guarantee or the provision of the security are jointly and severally liable to indemnify the company against any loss arising from it.

(4) Where a company contravenes the provisions of this section, each director who authorized the making of a loan, the entering into of a guarantee or the providing of a security contrary to those provisions is guilty of an offence.

Penalty: A fine not exceeding K400.00.

(5) This section does not operate to prevent the company from recovering the amount of any loan or amount for which it becomes liable under a guarantee entered into or in respect of a security given contrary to the provisions of this section.

(6) Before a person accepts from a proprietary company a guarantee or security referred to in Subsection (1), the person may require the company to furnish him with a certificate signed by a director and the secretary of the company certifying that the company is an exempt proprietary company.

(7) Where the guarantee or security has been accepted by the person after the certificate is furnished, the person may enforce the guarantee or security against the company notwithstanding that at the time when the certificate was furnished or the guarantee or security was accepted the company was not an exempt proprietary company.

(8) A director or secretary of a company who furnishes a person with a certificate under Subsection (6) that is false is guilty of an offence.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding six months.

**132. Register of directors' share-holdings, etc.**

(1) A company must keep a register showing with respect to each director of the company (other than a director that is its holding company) the number, description and amount of any shares in or debentures of the company, or a related corporation, that are held by or in trust for him or of which he has any right to become the holder (whether on payment or not), but the register need not include shares in any corporation that is the wholly-owned subsidiary of another corporation.

(2) Where, under Subsection (1) an entry is or should have been made in the register in relation to a director by reason of a transaction entered into while he is a director, the register shall also show the date of and price or other consideration for the transaction, and where there is an interval between the agreement for any such transaction and its completion, the date shall be that of the agreement.

(3) If default is made in complying with Subsection (1) or (2) (not being a default due to the failure of a director to give notice of any matter to the company as required by Section 130 or a default due to a director giving incorrect information to the company), or if any inspection required under this section is refused or any copy required under it is not sent within a reasonable time, the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K1 000.00.

Default penalty: A fine not exceeding K20.00.

(4) The nature and extent of a director's interest or right in or over any shares or debentures recorded in relation to him in the register shall, if he so requires, be indicated in the register.

(5) The company is not, by virtue of anything done for the purposes of this section, affected with notice of or put on inquiry as to the rights of any person in relation to any shares or debentures.

(6) The register must, subject to this section, be kept at the company's registered office and must be open to inspection during ordinary business hours by any person acting on behalf of the Principal Legal Adviser and, during the period beginning 21 days before the date of the company's annual general meeting and ending five days after the date of its conclusion, to inspection by any member or holder of debentures of the company.

(7) The Principal Legal Adviser may at any time require the company to furnish him with a copy of the register or any part of the register.

(8) The register must also be produced at the commencement of the company's annual general meeting, and shall, during the continuance of the meeting, remain open and accessible to any person attending the meeting.

(9) If default is made in complying with Subsection (6) or (8), each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K1 000.00.

(10) For the purposes of this section, a director of a company shall be deemed to hold or to have an interest or a right in or over any shares or debentures if a corporation other than the company holds them or has that interest or right in or over them and—

- (a) the corporation or its directors are accustomed to act in accordance with his directions or instructions; or
- (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at any general meeting of that corporation.

(11) A reference in this section to shares or to debentures includes a reference to options to take up shares or to options to take up debentures, as the case may be.

### 133. Tax-free payments to directors.

(1) A company must not pay a director remuneration (whether as director or otherwise) free of income tax, or otherwise calculated by reference to or varying with the amount or rate of his income tax, except under a contract that was in force before the commencement date and that provides expressly, and not by reference to the articles, for payment of such remuneration.

(2) A provision contained in a company's articles, or in a contract (other than a contract referred to in Subsection (1)) or a resolution of a company or of a company's directors, for payment to a director of remuneration free of income tax, or otherwise calculated by reference to or varying with the amount or rate of his income tax, has effect as if it provided for payment as a gross sum subject to income tax of the net sum for which it actually provides.

(3) This section does not apply to remuneration due before the commencement date or in respect of a period before that date.

(4) Where a company contravenes the provisions of this section, the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K1 000.00.

### 134. Payment to directors for loss of office.

(1) It is not lawful—

- (a) for a company to make to a director any payment by way of compensation for loss of office as a director of the company or of a subsidiary of the company, or as consideration for or in connexion with his retirement from any such office; or
- (b) for any payment to be made to a director of a company in connexion with the transfer of the whole or any part of the undertaking or property of the company,

unless particulars with respect to the proposed payment (including the amount of it) have been disclosed to the members of the company and the proposal has been approved by the company in general meeting, and when any such payment has been unlawfully made the amount received by the director shall be deemed to have been received by him in trust for the company.

(2) Where a payment referred to in Subsection (1) is to be made to a director in connexion with the transfer to any person, as a result of an offer made to shareholders, of all or any of the shares in the company, the director must take all reasonable steps to secure that particulars with respect to the proposed payment (including the amount of it) are

included in or sent with any notice of the offer made for their shares that is given to any shareholders, unless the particulars are furnished to the shareholders under Section 195.

(3) A director who fails to comply with Subsection (2), and a person who has been properly required by a director to include in or send with any notice under this section the particulars required by that subsection and who fails to do so, is guilty of an offence, and if the requirements of Subsection (2) are not complied with any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any person who has sold his shares as a result of the offer made.

(4) If, in connexion with any such transfer, the price to be paid to a director of the company whose office is to be abolished, or who is to retire from office, for any shares in the company held by him is in excess of the price that could at the time have been obtained by other holders of similar shares, or if any valuable consideration is given to any such director, the excess or the money value of the consideration, as the case may be, shall, for the purposes of this section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connexion with his retirement from office.

(5) A reference in this section to payments to a director of a company by way of compensation for loss of office or as consideration for or in connexion with his retirement from office do not include—

- (a) a payment under an agreement entered into before the commencement date; or
- (b) a payment under an agreement particulars of which have been disclosed to and approved by the company in general meeting; or
- (c) a bona fide payment by way of damages for breach of contract; or
- (d) a bona fide payment by way of pension or lump sum payment in respect of past services, including any superannuation, retiring allowance, superannuation gratuity or similar payment, where the value or amount of the pension or payment (except so far as it is attributable to contributions made by the director) does not exceed the total emoluments of the director in the three years before his retirement or death; or
- (e) a payment to a director under an agreement made between the company and him before he became a director of the company as the consideration, or part of the consideration, for his agreeing to serve the company as a director.

(6) This section is in addition to and not in derogation of any rule of law requiring disclosure to be made with respect to any such payments or any other like payment.

### 135. Disclosure of directors' emoluments.

(1) If a company is served with a notice sent by or on behalf of—

- (a) at least 10% of the total number of members of the company; or
- (b) the holders in aggregate of not less than 10% in nominal value of the company's issued share capital,

requiring the emoluments of the directors of the company or of a subsidiary to be disclosed, the company must without delay—

- (c) prepare or cause to be prepared an audited statement showing the total emoluments paid to each of the directors of the company and to each director of a subsidiary, including any amount paid by way of salary for the financial year before the service of the notice; and

- (d) lay the statement before the company in general meeting; and
- (e) forward a copy of the statement to all persons entitled to receive notice of general meetings of the company.

(2) If default is made in complying with this section, the company and each director of the company is guilty of an offence.

Penalty: A fine not exceeding K1 000.00.

**136. Assignment of office by director or manager.**

(1) If, in the case of a public company, provision is made by the articles or by an agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any such assignment of office is, notwithstanding the article or the agreement, of no effect until approved by a special resolution of the company.

(2) This section does not prevent the appointment by a director, if authorized by the articles and subject to them, of an alternate or substitute director to act for or on behalf of the director during any inability to act as director.

**137. Company secretaries.**

(1) A company must have one or more secretaries approved in accordance with this section, each of whom is a natural person and one of whom is a person who ordinarily resides in the country.

(2) The sole director of a proprietary company may not be or act as secretary for the company.

(3) The secretary shall be appointed by the directors and shall be present at the registered office of the company by himself or his agent or clerk on the days and at the hours during which the registered office is to be open and accessible to the public.

(4) If the office of secretary is vacant or for any reason the secretary is not capable of acting, anything required or authorized to be done by or in relation to the secretary may be done by or in relation to an assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or in relation to an officer of the company authorized generally or specially for the purpose by the directors.

(5) A provision requiring or authorizing a thing to be done by or in relation to a director and the secretary is not satisfied by its being done by or in relation to the same person acting both as director and as, or in place of, the secretary.

(6) If default is made in complying with Subsection (1), the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K20.00.

**138. Validation of acts.**

The acts of a director, manager or secretary are valid notwithstanding any defect afterwards discovered in his appointment or qualification.

**139. Duties and liabilities.**

(1) For the purposes of this section, "instrumentality or agency of the Government" means a body declared by the Minister, by notice in the National Gazette, to be an instrumentality or agency of the Government.

(2) A director must at all times act honestly and use reasonable diligence in the discharge of the duties of his office.

(3) An officer of a company must not make use of any information acquired by virtue of his position as an officer to gain, directly or indirectly, an improper advantage for himself or to cause detriment to the company.

(4) An officer who commits a breach of this section—

(a) is liable—

(i) to pay to the company any profit made by him; and

(ii) to the company for any damage suffered by the company,  
as a result of the breach; and

(b) is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(5) A director who holds his office as director as a nominee of the Government or of an instrumentality or agency of the Government does not commit a breach of this section by disclosing to officials of the Government or of an instrumentality or agency of the Government, in the course of his official duties, information acquired by virtue of his position as a director.

(6) This section is in addition to and not in derogation of any other enactment or rule of law relating to the duty or liability of directors or officers of a company.

#### 140. Indemnity.

(1) For the purposes of this section, "instrumentality or agency of the Government" means a body declared by the Minister, by notice in the National Gazette, to be an instrumentality or agency of the Government.

(2) A provision, whether contained in the articles or in a contract with a company or otherwise, for exempting an officer or auditor of the company from, or indemnifying him against, any liability that by law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he is guilty in relation to the company is void.

(3) Notwithstanding this section, a company may, in pursuance of its articles or otherwise, indemnify any officer or auditor against any liability incurred by him in defending proceedings, civil or criminal, in which judgement is given in his favour, or in which he is acquitted, or in connexion with an application in relation to any such proceedings in which relief is, under this Act, granted to him by the Court.

(4) Notwithstanding any other provision of this Act, a director who holds his office as director as a nominee of the Government or of an instrumentality or agency of the Government is not liable under any enactment or rule of law relating to breach of duty or breach of trust for any act done by him as a director under instructions of the Government or of the instrumentality or agency of the Government, as the case may be.

#### 141. Register of directors, managers and secretaries.

(1) A company must keep at its registered office a register of its directors, managers and secretaries.

(2) The register must contain, with respect to each director, his written consent to his appointment as such (except in the case of an appointment made before the commencement date), and shall specify—

- (a) in the case of an individual—his present given name or other name and surname, any former given or other name or surname, his usual residential address and his business occupation (if any); and
- (b) in the case of a corporation—its corporate name and registered or principal office; and
- (c) particulars of any other directorships of public companies or companies that are subsidiaries of public companies held by the director,

but it is not necessary for the register to contain particulars of directorships held by a director in a related company.

(3) Where a person is a director in one or more subsidiaries of the same holding company, it is sufficient compliance with the provisions of Subsection (2) if it is disclosed that the person is the holder of one or more directorships in the group of companies, and the group may be described by the name of the holding company with the addition of the word "Group".

(4) The register must specify with respect to each manager and secretary his full name and address and other occupation (if any).

(5) The register must be open to the inspection of any member of the company without charge, and of any other person on payment of 50¢, or such lesser sum as the company requires, for each inspection.

(6) The company must lodge with the Registrar—

- (a) within one month after incorporation—a return in the prescribed form containing the particulars required to be specified in the register; and
- (b) within one month after a person ceases to be, or becomes, a director of the company—a return in the prescribed form notifying the Registrar of the change and containing, with respect to each then director of the company, the particulars required to be specified in the register; and
- (c) within one month after a person becomes a manager or secretary of the company—a return in the prescribed form notifying the Registrar of that fact and specifying the full name, address and other occupation (if any) of that person; and
- (d) within one month after a person ceases to be a manager or secretary of the company—a return in the prescribed form notifying the Registrar of that fact.

(7) If default is made in complying with this section, the company and each officer of the company who is in default, is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

(8) A certificate in the prescribed form by the Registrar, stating that, from any return lodged with the Registrar under this section, it appears that at any time specified in the certificate any person was a director, manager or secretary of a specified company shall, in all courts and by all persons having power to take evidence for the purposes of this Act, be received as evidence of the facts stated in it and, for the purposes of this subsection, a person who appears from a return so lodged to be a director, manager or secretary of a company shall be deemed to continue as such until, by a subsequent return so lodged or by

a notification of change in the prescribed form so lodged, it appears that he has ceased to be such a director, manager or secretary.

#### 142. Restriction on management of companies.

(1) A person who—

(a) is convicted whether within or outside the country—

(i) on indictment, of an offence in connexion with the promotion, formation or management of a corporation; or

(ii) of an offence involving fraud or dishonesty punishable on conviction with imprisonment for three months or more; or

(iii) of an offence under Section 139; and

(b) within a period of five years after his conviction or, if he is sentenced to imprisonment, after his release from prison, is without the leave of the Court a director or promoter of a company, or is in any way whether directly or indirectly concerned or takes part in the management of a company,

is guilty of an offence.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding six months, or both.

(2) A person intending to apply for the leave of the Court under this section shall give to the Principal Legal Adviser not less than 10 days' notice of his intention so to apply.

(3) On the hearing of an application under this section, the Principal Legal Adviser may be represented and may oppose the granting of the application.

#### *Division 3.—Meetings and Proceedings.*

#### 143. Statutory meeting and statutory report.

(1) A public company that is a limited company and has a share capital, and every no liability company, must, within a period of not less than one month and not more than three months after the date on which it is entitled to commence business, hold a general meeting of the members of the company.

(2) The directors must, at least seven days before the day on which the meeting is to be held, forward a report to every member of the company.

(3) The statutory report shall be in the prescribed form, shall be certified by not less than two directors of the company and shall state—

(a) the total number of shares allotted; and

(b) the number of shares allotted as fully or partly paid up otherwise than in cash and the consideration for which they have been allotted; and

(c) in the case of shares partly paid up, the extent to which they are so paid up, and the consideration for which they have been allotted; and

(d) the total amount of cash received by the company in respect of all the shares allotted and so distinguished; and

(e) an abstract of the receipts of the company and of the payments made out of them up to a date within seven days of the date of the report, showing under distinctive headings the receipts from shares, debentures and other sources, the payments made out of them and particulars concerning the balance



remaining in hand, and an account or estimate of the preliminary expenses; and

- (f) the names, addresses and descriptions of the directors, trustees for holders of debentures (if any), auditors (if any), managers (if any) and secretaries of the company; and
- (g) the particulars of any contract the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification.

(4) The statutory report shall, so far as it relates to the shares allotted and to the cash received in respect of those shares and to the receipts and payments on capital account, be examined and reported upon by the auditors (if any).

(5) The directors must cause a certified copy of the statutory report and a certified copy of the auditors report (if any) to be lodged with the Registrar at least seven days before the date of the statutory meeting.

(6) The directors must cause a list showing the names and addresses of the members, and the number of shares held by them respectively, to be produced at the commencement of the meeting and to remain open and accessible to all members during the meeting.

(7) The members present at the meeting may discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time and, at an adjourned meeting, any resolution of which notice has been given in accordance with the articles either before or after the former meeting may be passed, and the adjourned meeting has the same powers as an original meeting.

(9) The meeting may, by ordinary resolution, appoint a committee of inquiry, and at an adjourned meeting a special resolution may be passed that the company be wound up if, notwithstanding any other provision of this Act, at least seven days' notice of intention to propose the resolution has been given to every member of the company.

(10) In the event of a default in complying with the provisions of this section, each officer of the company who is in default, and each director of the company who failed to take all reasonable steps to secure compliance with the provisions of this section, is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

#### 144. Annual general meeting.

(1) A general meeting of a company must, in addition to any other meeting, be held at least once in every calendar year and not more than 15 months after the holding of the last annual general meeting, but if a company holds its first annual general meeting within 18 months of its incorporation it need not hold it in the year of its incorporation or in the following year.

(2) On the application of the company, the Registrar may, if for any special reason he thinks fit to do so, extend the period of 15 months or 18 months referred to in Subsection (1) notwithstanding that that period is so extended beyond the calendar year.

(3) Subject to notice being given to all persons entitled to receive notice of the meeting, a general meeting may be held at any time, and the company may resolve that any meeting held or summoned to be held be the annual general meeting of the company.

(4) If default is made in holding an annual general meeting—

- (a) the company and each officer of the company who is in default is guilty of an offence; and
- (b) the Court may, on the application of any member, order a general meeting to be called.

#### 145. Calling of meetings.

(1) So far as the articles do not make other provision for the purpose, two or more members holding not less than 10% of the issued share capital, or if the company has not a share capital not less than 5% in number of the members of the company, may call a meeting of the company.

(2) A meeting of a company or of a class of members, other than a meeting for the passing of a special resolution, shall be called by written notice of not less than seven days or such longer period as is provided in the articles.

(3) Notwithstanding that a meeting is called by notice shorter than is required by Subsection (2) it shall be deemed to be duly called if it is so agreed—

- (a) in the case of a meeting called as the annual general meeting—by all the members entitled to attend and vote at the meeting; or
- (b) in the case of any other meeting—by a majority in number of the members having a right to attend and vote at the meeting, being a majority that together holds not less than 95% in nominal value of the shares giving a right to attend and vote or, in the case of a company not having a share capital, together represents not less than 95% of the total voting rights at that meeting of all the members.

(4) So far as the articles do not make other provision for the purpose, notice of a meeting shall be served, in the manner in which notices are required to be served by Table A, on every member having a right to attend and vote at the meeting.

(5) The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, a member does not invalidate proceedings at a meeting.

#### 146. Calling of extra-ordinary general meetings on requisition.

(1) On the requisition of members—

- (a) holding at the date of the deposit of the requisition not less than 10% of such of the paid-up capital as at the date of the deposit carries the right of voting at general meetings; or
- (b) in the case of a company not having a share capital, representing not less than 10% of the total voting rights of all members having at that date a right to vote at general meetings,

the directors shall, without delay, proceed duly to convene an extraordinary general meeting of the company, to be held as soon as practicable but in any case not later than two months after the receipt by the company of the requisition.

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

(3) If the directors do not, within 21 days after the date of the deposit of the requisition, proceed to convene a meeting, the requisitionists, or any of them representing more than 50% of the total voting rights of all of them, may themselves, in the same

manner as nearly as possible as that in which meetings are to be convened by directors, convene a meeting, but a meeting so convened shall not be held after the expiration of three months from that date.

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

(5) A meeting at which a special resolution is to be proposed shall be deemed not to be duly convened by the directors if they do not give such notice of it as is required by this Act in the case of special resolutions.

#### 147. Meetings ordered by Court.

(1) If for any reason it is impracticable to call a meeting in any manner in which meetings may be called, or to conduct a meeting in the manner prescribed, by the articles or this Act, the Court may, either of its own motion or on the application of a director or of a member who would be entitled to vote at the meeting, order a meeting to be summoned, and the Court may direct that one person present in person or by proxy shall be deemed to constitute the meeting.

(2) A meeting called, held and conducted in accordance with any order made under this section shall, for all purposes, be deemed to be a meeting duly called, held and conducted.

#### 148. Right to demand poll.

(1) A provision in a company's articles is void so far as it would have the effect—

- (a) of excluding the right to demand a poll at a general meeting on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting; or
- (b) of making ineffective a demand for a poll on any question or matter, other than the election of the chairman of the meeting or the adjournment of the meeting, that is made—
  - (i) by not less than five members having the right to vote at the meeting; or
  - (ii) by a member or members representing not less than 10% of the total voting rights of all the members having the right to vote at the meeting; or
  - (iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than 10% of the total sum paid up on all the shares conferring that right; or
- (c) of requiring the instrument appointing a proxy, or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than 48 hours before a meeting or adjourned meeting in order that the appointment may be effective at the meeting.

(2) The instrument appointing a proxy to vote at a meeting of a company shall be deemed to confer authority to demand or join in demanding a poll, and for the purposes of

Subsection (1) a demand by a person as proxy for a member of the company shall be deemed to be the same as a demand by the member.

**149. Procedure at meetings.**

(1) So far as the articles do not make other provision for the purpose—

- (a) in the case of a proprietary company, two members of the company, and in the case of any other company, three members of the company, personally present are a quorum for a meeting of the company; and
- (b) any member elected by the members present at a meeting may be chairman of the meeting; and
- (c) in the case of a company having a share capital, every member has one vote in respect of each share or each K20.00 of stock held by him, and in any other case every member has one vote.

(2) On a poll taken at a meeting, a person entitled to more than one vote need not, if he votes, use all his votes or cast all the votes that he uses in the same way.

(3) A corporation may, by resolution of its directors or other governing body—

- (a) if it is a member of a company, authorize a person to act as its representative at a particular meeting or at all meetings of the company or of any class of members of the company; or
- (b) if it is a creditor (including a holder of debentures) of a company, authorize a person to act as its representative either at a particular meeting or at all meetings of any creditors of the company,

and a person so authorized is, in accordance with his authority and until his authority is revoked by the corporation, entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual member, creditor or holder of debentures of the company.

(4) Where—

- (a) a person present at a meeting is authorized to act as the representative of a corporation at the meeting by virtue of an authority given by the corporation under Subsection (3); and
- (b) the person is not otherwise entitled to be present at the meeting,

the corporation shall, for the purposes of Subsection (1), be deemed to be personally present at the meeting.

(5) A certificate under the seal of the corporation is evidence of the appointment or of the revocation of the appointment, as the case may be, of a representative under Subsection (3).

(6) Where a holding company holds the whole of the issued shares of a subsidiary and a minute is signed by a representative of the holding company authorized under Subsection (3) stating that an act, matter or thing, or an ordinary or special resolution, required by this Act or by the articles of the subsidiary to be made, performed or passed by or at an ordinary general meeting or an extraordinary general meeting of the subsidiary has been made, performed or passed, the act, matter, thing or resolution shall, for all purposes, be deemed to have been duly made, performed or passed by or at an ordinary general meeting or by or at an extraordinary general meeting, as the case may be, of the subsidiary.

## (7) Where—

- (a) by or under this Act, a notice, copy of a resolution or other document relating to a matter is required to be lodged by a company with the Registrar; and
- (b) a minute referred to in Subsection (6) is signed by the representative in accordance with that subsection; and
- (c) the minute relates to such a matter,

the company shall, within one month after the signing of the minute, lodge with the Registrar notice in the prescribed form of the signing of the minute and a copy of the minute.

**150. Proxies.**

(1) Subject to Subsection (2), a member of a company entitled to attend and vote at a meeting of the company, or at a meeting of any class of members of the company, is entitled to appoint another person (whether a member or not) as his proxy to attend and vote in his place at the meeting, and a proxy appointed to attend and vote in place of a member has the same right as the member to speak at the meeting but, unless the articles otherwise provide, a proxy is not entitled to vote except on a poll.

(2) A member of a proprietary company is not entitled to appoint another person as his proxy under Subsection (1) except—

- (a) in accordance with the articles of the company; or
- (b) with the leave of the Court.

(3) In a notice calling a meeting of a public company having a share capital or a meeting of any class of members of such a public company, there must appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of the member, and that a proxy need not also be a member, and if default is made in complying with this subsection with respect to a meeting each officer of the company who is in default is guilty of an offence.

(4) A person who authorizes or permits an invitation to appoint as proxy a person or one of a number of persons specified in the invitation to be issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote at the meeting by proxy is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(5) A person is not guilty of an offence against Subsection (4) by reason only of the issue to a member at his request of a form of appointment naming a proxy or a list of persons willing to act as proxies if the form or list is available on written request to every member entitled to vote by proxy at the meeting.

**151. Circulation of members' resolutions, etc.**

(1) Subject to this section, on the written requisition of such number of members of the company as is specified in Subsection (2) and (unless the company otherwise resolves) at the expense of the requisitionists a company must—

- (a) give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution that may properly be moved and is intended to be moved at that meeting; and
- (b) circulate to members entitled to have notice of a general meeting sent to them any statement of not more than 1 000 words with respect to the matter

referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under Subsection (1) is—

(a) a number of members representing not less than 5% of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or

(b) not less than 100 members holding shares in the company on which there has been paid up an average sum, per member, of not less than K200.00.

(3) Notice of a resolution referred to in Subsection (1) shall be given, and a statement referred to in that subsection shall be circulated, to members of the company entitled to have notice of the meeting sent to them by serving a copy of the resolution or statement on each member in any manner permitted for service of notice of the meeting, and notice of the resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company.

(4) For the purposes of Subsection (3), the copy referred to in that subsection shall be served, or notice of the effect of the resolution shall be given, as the case may be, in the same manner, and, so far as practicable, at the same time, as notice of the meeting, and where it is not practicable for it to be served or given at that time it shall be served or given as soon as practicable afterwards.

(5) A company is not bound under this section to give notice of a resolution or to circulate a statement unless—

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

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

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

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

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

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

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

(8) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K1 000.00.

### 152. Special resolutions.

(1) A resolution is a special resolution if it is passed by a majority of not less than 75% of such members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of which not less than 21 days' notice specifying the intention to propose the resolution as a special resolution has been duly given.

(2) Notwithstanding Subsection (1), if it is so agreed by a majority in number of the members having the right to attend and vote at the meeting, being a majority that together holds not less than 95% in nominal value of the shares giving the right or, in the case of a company not having a share capital, together represents not less than 95% of the total voting rights at that meeting, a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given.

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

(4) At a meeting at which a special resolution is submitted, a poll shall be deemed to be effectively demanded if it is demanded—

(a) by such number of members for the time being entitled under the articles to vote at the meeting as is specified in the articles, but it is not necessary for more than five members to make the demand; or

(b) if no such provision is made by the articles, by three members so entitled, or by one member or two members so entitled if that member holds, or those two members together hold, not less than 10% of the paid-up share capital of the company.

(5) In computing the majority on a poll demanded on the question that a special resolution be passed, reference shall be had to the number of votes cast for and against the resolution and to the number of votes to which each member is entitled by this Act or the articles of the company.

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

(7) An extraordinary resolution duly and appropriately passed before the commencement date shall for the purposes of this Act be treated as a special resolution.

(8) Where in the case of a company incorporated before the commencement date any matter is required or permitted to be done by extraordinary resolution, that matter may be done by special resolution.

### 153. Resolutions requiring special notice.

(1) Where by this Act special notice is required of a resolution, the resolution is not effective unless notice of the intention to move it has been given to the company not less than 28 days before the meeting at which it is moved.

(2) The company shall give to its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable,

shall give them notice of it, in any manner allowed by the articles, not less than 14 days before the meeting, but if after notice of the intention to move such a resolution has been given to the company a meeting is called for a date not more than 28 days after the notice has been given, the notice, although not given to the company within the time required by this section, shall be deemed to be properly given.

#### 154. Resolutions at adjourned meetings.

Where a resolution is passed at an adjourned meeting of a company, of holders of any class of shares or of directors, the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and not on an earlier date.

#### 155. Minutes of meetings.

(1) A company shall cause—

- (a) minutes of all proceedings of general meetings and of meetings of its directors and of its managers (if any) to be entered in books kept for that purpose; and
- (b) the minutes to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next meeting.

(2) A minute entered in accordance with Subsection (1) that purports to be signed in accordance with that subsection is evidence of the proceedings to which it relates.

(3) Where minutes have been entered and signed in accordance with Subsection (1), then until the contrary is proved—

- (a) the meeting shall be deemed to have been duly convened and held; and
- (b) all proceedings had at the meeting shall be deemed to have been duly had; and
- (c) all appointments of officers or liquidators made at the meeting are valid.

(4) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K200.00.

Default penalty: A fine not exceeding K20.00.

#### 156. Inspection of minute books.

(1) The books containing the minutes of proceedings of a general meeting must be kept by the company at the registered office or the principal place of business in the country of the company, and shall be open to the inspection of any member without charge.

(2) A member is entitled to be furnished, within 14 days after he has made a request in writing to the company, with a copy of any minutes specified in Subsection (1), at a charge not exceeding 20¢ for every 100 words required to be copied.

(3) If a copy required under this section is not so furnished, the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K40.00.

Default penalty: A fine not exceeding K20.00.

#### 157. Registration of resolutions, etc.

(1) A printed copy of—

- (a) every special resolution; and



- (b) every resolution or agreement that has been agreed to by all the members of some class of shareholders but that, if not so agreed to, would not have been effective for its purpose unless it had been passed by some particular majority or otherwise in some particular manner,

must, except where otherwise expressly provided by this Act, within one month after its passing or making be lodged by the company with the Registrar together with notice in the prescribed form of the resolution or agreement.

(2) Where articles have not been registered, a printed copy of every resolution or agreement to which this section applies must be forwarded to a member at his request, on payment of 25t or such lesser sum as the company directs.

(3) If default is made in complying with Subsection (1), the company and each officer of the company who is in default is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

(4) If default is made in complying with Subsection (2), the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K10.00 for each copy in respect of which default is made.

*Division 4.—Registers of Members.*

**158. Registers of members.**

(1) A company must keep a register of its members and enter in it—

- (a) the names and addresses of the members and, in the case of a company having a share capital, a statement of the shares held by each member (distinguishing each share by its number (if any) or by the number (if any) of the certificate evidencing the member's holding) and of the amount paid or agreed to be considered as paid on the shares of each member; and
- (b) the date at which the name of each person was entered in the register as a member; and
- (c) the date at which any person who ceased to be a member during the last seven years so ceased to be a member; and
- (d) in the case of a company having a share capital—the date of every allotment of shares to members and the number of shares comprised in each allotment.

(2) Notwithstanding Subsection (1), where a company has converted any of its shares into stock the company must alter the register to show the amount of stock or number of stock units held by each member instead of the number of shares and the particulars relating to shares specified in Subsection (1)(a).

(3) Notwithstanding Subsection (1), a company may keep the names and particulars relating to persons who have ceased to be members of the company separately, and the names and particulars relating to former members need not be supplied to a person who applies for a copy of the register unless he specifically requests the names and particulars of former members.

(4) The register of members is evidence of any matters inserted in it as required or authorized by this Act.

(5) If default is made in complying with this section, the company, and each officer of the company who is in default, is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

**159. Indexes of members.**

(1) Unless the register of members is in such a form as to constitute in itself an index, a company having more than 50 members must keep in a convenient form an index of the names of the members and shall, within 14 days after the date on which an alteration is made in the register of members, make any necessary alteration in the index.

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

(3) If default is made in complying with this section, the company, and each officer of the company who is in default, is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

**160. Keeping of registers.**

(1) The register of members and index (if any) shall be kept at the registered office of the company, but—

- (a) if the work of making them up is done at another office of the company within the country—they may be kept at that other office; or
- (b) if the company arranges with some other person to make up the register and index (if any) on its behalf—they may be kept at the office of that other person at which the work is done if the office is within the country.

(2) A company must, within seven days after the register and index (if any) are first kept at a place other than the registered office, lodge with the Registrar notice in the prescribed form of the place where the register and index (if any) are kept and must, within one month after any change in the place at which the register and index (if any) are kept, lodge with the Registrar notice in the prescribed form of the change.

(3) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

**161. Inspection and closing of registers.**

(1) The register and index shall be open to the inspection of any member without charge, and of any other person on payment for each inspection of 50t or such less sum as the company requires.

(2) Any member or other person may request the company to furnish him with a copy of the register, or of any part of the register, so far as it relates to names, addresses, number of shares held and amounts paid on shares, on payment in advance of 20t or such lesser sum as the company requires for every 100 words or part of 100 words required to be copied, and the company shall cause a copy so requested by a person to be sent to the person within a period of 21 days commencing on the day after the day on which the request is received by the company, or within such further period as the Registrar considers reasonable in the circumstances.

(3) If a copy so requested is not sent within the period prescribed by Subsection (2), the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K40.00.

Default penalty: A fine not exceeding K20.00.

(4) A company may, on giving not less than 14 days' notice by advertisement in a newspaper published in the country not less frequently than once a week, close the register of members or any class of members for any time or times, but so that no part of the register shall be closed for more than 30 days in the aggregate in any calendar year.

#### 162. Defaults by agents.

Where, by virtue of Section 160(1)(b), the register of members is kept at the office of some person other than the company, and by reason of any default of that other person the company fails to comply with Section 160(1) or (2) or Section 161, or with a requirement of this Act as to the production of the register, the other person is liable to the same penalties as if he were an officer of the company who was in default, and the power of the Court under Section 406 extends to the making of orders against that other person and his officers and servants.

#### 163. Rectification of registers.

(1) If—

- (a) the name of a person is without sufficient cause entered in or omitted from the register; or
- (b) default is made or unnecessary delay takes place in entering in the register the fact of any person having ceased to be a member,

the person aggrieved, a member or the company may apply to the Court for rectification of the register, and the Court may refuse the application or may order rectification of the register and payment by the company of any damages sustained by a party to the application.

(2) On an application under Subsection (1), the Court may decide—

- (a) any question relating to the title of a person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members or between members or alleged members on the one hand and the company on the other hand; and
- (b) generally any question necessary or expedient to be decided for the rectification of the register.

(3) Where a company is required by this Act to lodge a return containing a list of its members with the Registrar, the Court, when making an order for rectification of the register, shall by its order direct a notice of the rectification to be so lodged.

#### 164. Branch registers.

(1) A company having a share capital may cause to be kept in a place outside the country a branch register of members which shall be deemed to be part of the company's register of members:

(2) The company must lodge with the Registrar notice in the prescribed form of the situation of the office where a branch register is kept, of any change in its situation and, if it is discontinued, of its discontinuance, and any such notice must be lodged within one

month after the opening of the office, of the change or of the discontinuance, as the case may be.

(3) A branch register shall be kept in the same manner as that in which the principal register is required by this Act to be kept except that the advertisement required before the register is closed must be inserted in a newspaper circulating generally in the area where the branch register is kept.

(4) The company must transmit to the office at which its principal register is kept a copy of every entry in its branch register as soon as may be after the entry is made, and must cause to be kept at that office, duly entered up from time to time, a duplicate of its branch register, which shall, for the purposes of this Act, be deemed to be part of the principal register.

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

(6) A company may discontinue a branch register, and thereupon all entries in that register must be transferred to some other branch register kept by the company in the same place, or to the principal register.

(7) If by virtue of the law in force in any other country a corporation incorporated under that law keeps in the country a branch register of its members, the Minister may, by notice in the National Gazette, declare that the provisions of this Act relating to inspection, place of keeping and rectification of registers of members apply, subject to any modifications specified in the notice, to and in relation to any such branch register kept in the country as they apply to and in relation to the registers of companies under this Act, and thereupon those provisions apply accordingly.

(8) If default is made in complying with this section, the company, each officer of the company who is in default, and each person who, under Section 160, has arranged to make up the principal register and who is in default, is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

#### **165. Liability of trustees, etc., registered as owners.**

(1) A trustee, executor or administrator of the estate of a deceased person who was registered in a register or branch register kept in the country as the holder of a share in a corporation may become registered as the holder of that share as trustee, executor or administrator of the estate, and is, in respect of the share, subject to the same liabilities as those to which he would have been subject if the share had remained registered in the name of the deceased person.

(2) A trustee, executor or administrator of the estate of a deceased person who was equitably entitled to a share in a corporation, being a share registered in a register or branch register kept in the country, may, with the consent of the corporation and of the registered holder of the share, become registered as the holder of the share as trustee, executor or administrator of the estate, and is, in respect of the share, subject to the same liabilities as those to which he would have been subject if the share had been registered in the name of the deceased person.

(3) Shares in a corporation registered in a register or branch register kept in the country and held by a trustee in respect of a particular trust may, with the consent of the

corporation, be marked in the register or branch register in such a way as to identify them as being held in respect of the trust.

(4) Except as provided in this section, no notice of a trust expressed, implied or constructive, shall be entered on the register or be receivable by the Registrar, and no liabilities are affected by anything done under Subsection (1), (2) or (3), and the corporation concerned is not affected with notice of a trust by anything so done.

(5) A person who holds shares in a proprietary company as trustee for, or otherwise on behalf of or on account of, a corporation shall give to the secretary of the proprietary company written notice that he so holds the shares.

*Division 5.—Annual Returns.*

**166. Annual returns by companies having share capital.**

(1) A company having a share capital must make a return containing the particulars referred to in Part I. of Schedule 7 and accompanied by such copies of documents as are required to be included in the return in accordance with Part II. of that Schedule and such of the certificates and other particulars prescribed in that Part as are applicable to the company.

(2) The return must be in the form set out in Part II. of Schedule 7, or as near to that form as circumstances allow, and shall be made up to the date of the annual general meeting of the company in the year, or to a date not later than the fourteenth day after the date of the annual general meeting.

(3) In the case of a company keeping a branch register, the particulars of the entries in the register shall, so far as they relate to matters that are required to be stated in the return, be included in the next return made after copies of them are received at the registered office of the company.

(4) The annual return, signed by a director, manager or secretary of the company, must be lodged with the Registrar within one month, or, in the case of a company keeping in pursuance of its articles a branch register in any place outside the country, within two months, after the annual general meeting.

(5) If a company fails to comply with this section, the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K200.00.

Default penalty: A fine not exceeding K20.00.

**167. Annual returns by companies not having share capital.**

(1) A company not having a share capital must, within one month after each annual general meeting of the company, lodge with the Registrar a return in the prescribed form containing the particulars referred to in Subsection (2) and made up to the date of the annual general meeting, or to a date not later than the fourteenth day after the date of the annual general meeting.

(2) The return must contain—

- (a) the address of the registered office of the company; and
- (b) where the register of members is, under this Act, kept elsewhere than at that office, the address of the place where it is kept; and
- (c) particulars of the total amount of the indebtedness of the company in respect of all charges that are required to be registered with the Registrar; and

- (d) such particulars with respect to the persons who, on the day to which the return is made up, are the directors, managers or secretaries of the company as are required to be contained in the register of directors, managers and secretaries; and
- (e) the name and address of the auditor of the company; and
- (f) such other matters relating to the accounts of the company, and to the unclaimed moneys held by the company, as are prescribed.

(3) If a company fails to comply with this section, the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K20.00.

#### 168. Exemptions.

(1) A public company that—

- (a) has more than 500 members; and
- (b) keeps its principal share register at a place in the town in which is situated the office of the Registrar in which it is registered; and
- (c) provides reasonable accommodation and facilities for persons to inspect and take copies of its list of members and its particulars of shares transferred,

need not comply with such of the provisions of this Division and Schedule 7 as relate to the inclusion in the annual return of a list of members, if there is included in the annual return a certificate in the prescribed form by the secretary that the company is of a kind to which this subsection applies.

(2) The Minister may, by notice in the National Gazette, require a company to which Subsection (1) applies to comply with all or any of the provisions of this Division or of Schedule 7 referred to in that subsection.

(3) If default is made in complying with an order made under Subsection (2), the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K200.00.

Default penalty: A fine not exceeding K20.00.

### PART VII.—ACCOUNTS AND AUDIT.

#### *Division 1.—Accounts.*

#### 169. Accounts to be kept.

(1) A company, and the directors and managers of a company, must cause to be kept in the English language such accounting and other records as will sufficiently explain the transactions and financial position of the company and enable true and fair profit and loss accounts and balance-sheets, and any documents required to be attached to them, to be prepared from time to time, and must cause the records to be kept in such manner as to enable them to be conveniently and properly audited.

(2) The company must retain the records for seven years after the completion of the transactions or operations to which they respectively relate.

(3) The records referred to in Subsection (1) must be kept at the registered office of the company, or at such other place as the directors think proper, and shall at all times be open to inspection by the directors.

(4) If accounting and other records are kept by the company at a place outside the country, there must be sent to and kept at a place in the country, and be at all times open to inspection by the directors, such statements and returns with respect to the business dealt with in the records so kept as will enable true and fair profit and loss accounts and balance-sheets, and any documents required to be attached to them, to be prepared.

(5) The Court may, in any particular case, order that the accounting and other records of a company be open to inspection by a registered company auditor acting for a director, but only on a written undertaking being given to the Court that information acquired by the auditor during his inspection will not be disclosed by him except to the director.

(6) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding three months.

Default penalty: A fine not exceeding K20.00.

#### **170. Accounting periods of groups.**

(1) Subject to Subsections (11) and (12), the directors of every holding company that is not a foreign company must take such steps as are necessary to ensure that, within 12 months after any corporation becomes a subsidiary of the holding company, the financial year of the corporation coincides with the financial year of the holding company.

(2) Where the financial year of a holding company that is not a foreign company and that of each of its subsidiaries coincide, the directors of the holding company shall at all times take such steps as are necessary to ensure that, without the consent of the Registrar, the financial year of the holding company or any of its subsidiaries is not altered so that all such financial years do not coincide.

(3) Where the directors of the holding company are of the opinion that there is good reason why the financial year of any of its subsidiaries should not coincide with the financial year of the holding company, the directors may apply in writing to the Registrar for an order authorizing any subsidiary to continue to have or to adopt (as the case requires) a financial year that does not coincide with that of the holding company.

(4) An application under Subsection (3) shall be supported by a statement by the directors of the holding company of their reasons for seeking the order.

(5) The Registrar may require the directors who make an application under this section to supply such information relating to the operation of the holding company, and of any corporation that is related to the holding company, as he thinks necessary for the purpose of determining the application.

(6) The Registrar may request any registered company auditor to investigate and report, at the expense of the holding company of which the applicants are directors, on the application.

(7) The Registrar may rely on any report obtained under Subsection (6).

(8) The Registrar may make an order granting or refusing the application, or granting the application subject to such limitations, terms or conditions as he thinks proper, and shall serve the order on the holding company.

(9) Where the applicants are aggrieved by an order made by the Registrar under Subsection (8), the applicants may, within two months after the service of the order on the holding company, appeal against the order to the Board.

(10) The Board shall determine the appeal, and in determining the appeal may make any order that the Registrar had power to make on the original application and may exercise any of the powers that the Registrar might have exercised in relation to the original application.

(11) Where the directors of a holding company have applied to the Registrar for an order authorizing a subsidiary to continue to have a financial year that does not coincide with that of the holding company, the operation of Subsection (1) is suspended in relation to the subsidiary until the determination of the application and of any appeal arising out of the application.

(12) Where an order is made authorizing any subsidiary to have a financial year that does not coincide with that of the holding company, compliance with the terms of the order of the Registrar, or where there has been an appeal compliance with the terms of any order on the determination of the appeal, shall be deemed to be compliance with the provisions of Subsection (1) in relation to the subsidiary.

(13) Where an application for an order under Subsection (3) and the appeal (if any) arising out of the application are refused, the time within which the directors of the holding company are required to comply with the provisions of Subsection (1) in relation to the subsidiary shall be deemed to be the period of 12 months after the date on which the order of the Registrar is served on the holding company or the period of 12 months after the determination of the appeal, as the case may be.

(14) Where the directors of a holding company have applied to the Registrar for an order authorizing any of its subsidiaries to continue to have or to adopt a financial year that does not coincide with that of the holding company and the application and the appeal (if any) arising out of the application have been refused, the directors of the holding company may not make a similar application with respect to that subsidiary within three years after—

(a) the refusal of the application; or

(b) where there is an appeal, the determination of the appeal,

unless the Registrar is satisfied that there has been a substantial change in the relevant facts or circumstances since the refusal of the former application or the determination of the appeal, as the case may be.

#### 171. Profit and loss account, balance-sheet and directors' report.

(1) The directors of a company must, at some date not later than 18 months after the incorporation of the company and subsequently once at least in every calendar year at intervals of not more than 15 months, lay before the company in general meeting a profit and loss account for the period since the last account (or, in the case of the first account, since the incorporation of the company) made up to a date not more than six months before the date of the meeting.

(2) Notwithstanding Subsection (1), if for any special reason the Registrar thinks fit to do so he may, on application by the company, extend the periods of 18 months and 15 months referred to in that subsection and, with respect to any year, extend the period of six months referred to in that subsection, notwithstanding that that period is so extended beyond the calendar year.

(3) The directors of a company must cause to be made out, and to be laid before the company in general meeting with the profit and loss account required by Subsection (1), a balance-sheet as at the date to which the profit and loss account is made up.



(4) Where a company is required by Section 174 to appoint an auditor, the profit and loss account and the balance-sheet of the company must be duly audited before they are laid before the company in general meeting as required by this section.

(5) The directors of a company must cause to be attached to every balance-sheet made out under this section a report signed by or on behalf of the directors with respect to the state of the company's affairs.

(6) A report referred to in Subsection (5) must state with appropriate detail—

- (a) whether or not the results of the company's operations in the period covered by the profit and loss account have, in the opinion of the directors, been materially affected by items of an abnormal character; and
- (b) the amount (if any) that has been paid or declared, or that they recommend should be paid, by way of dividend; and
- (c) whether or not in the opinion of the directors any circumstances have arisen that make adherence to the existing method of valuation of assets or liabilities of the company misleading or inappropriate; and
- (d) whether or not any contingent liability has arisen since the balance date of the accounts on which the directors are reporting and that continues to exist at the date of the directors' report and, if so, the amount of the liability; and
- (e) whether or not any contingent liability has become enforceable, or is likely to become enforceable, within the period of 12 months from the date of the directors' report, that will materially affect the company in its ability to meet its obligations as and when they fall due; and
- (f) the amount (if any) that they propose to carry to the reserve fund, general reserve or reserve account shown specifically on the balance-sheet or to a reserve fund, general reserve or reserve account to be shown specifically on a subsequent balance-sheet; and
- (g) where the directors are of the opinion that any current assets would not realize at least the value at which they are shown in the accounts of the company, their opinion as to the amount that those assets might reasonably be expected to realize in the ordinary course of business of the company.

(7) Without limiting the generality of the expression, the reference in Subsection (6) to the expression "items of an abnormal character" includes a reference to—

- (a) any change in accounting principles adopted since the last report; and
- (b) any transfers to or from reserves or provisions; and
- (c) any writing-off of substantial amounts of bad debts; and
- (d) any substantial increase or decrease in the value of trading stock owing to a change in the basis of valuation of the whole or any part of the trading stock; and
- (e) any item of an unusual nature or value that appears in the accounts; and
- (f) any absence from the accounts of any material item usually included in them.

(8) Where an option has been granted, during the period covered by the profit and loss account, to take up unissued shares of a company, the report required by Subsection (5) must state—

- (a) the name of the person to whom the option has been granted; and

- (b) the number and class of shares in respect of which the option has been granted; and
- (c) the date of expiration of the option; and
- (d) the basis on which the option may be exercised; and
- (e) whether the person to whom the option has been granted has any right to participate, by virtue of the option, in any share issue of any other company.

(9) A report required by Subsection (5) must specify—

- (a) particulars of shares issued, during the period to which the report relates, by virtue of the exercise of options to take up unissued shares of the company, whether granted before or during that period; and
- (b) the number and class of unissued shares of the company under option as at the end of that period, the price, or method of fixing the price, of issue of those shares, the date of expiration of the option and the rights (if any) of the persons to whom the options have been granted to participate, by virtue of the options, in any share issue of any other company.

(10) Subsection (8)(a) does not apply where the option to take up shares of the company has been conferred generally on all the holders of a class of shares or debentures of the company.

(11) A balance-sheet referred to in Subsection (3) must give a true and fair view of the state of affairs of the company as at the end of the period to which it relates, and a profit and loss account referred to in Subsection (1) must give a true and fair view of the profit or loss of the company for the period of accounting as shown in the accounting and other records of the company, and, without affecting the generality of the foregoing, every such balance-sheet and profit and loss account must comply with the requirements of Schedule 8 as far as they are applicable.

(12) Notwithstanding Subsection (11), where under the *Banks and Financial Institutions Act* a company is required to prepare a balance-sheet and profit and loss account annually a balance-sheet and a profit and loss account each of which complies with that Act shall be deemed to comply with the provisions of this Act relating to the form and content of balance-sheets and profit and loss accounts, and Subsection (5) does not apply to any such balance-sheet.

(13) A balance-sheet and a profit and loss account of a company must be accompanied by a statement signed on behalf of the directors by two directors of the company, or in the case of a proprietary company having one director only by the director, stating that in their or his opinion—

- (a) the profit and loss account is drawn up so as to give a true and fair view of the results of the business of the company for the period covered by the account; and
- (b) the balance-sheet is drawn up so as to exhibit a true and fair view of the state of affairs of the company as at the end of that period.

(14) A balance-sheet and a profit and loss account laid before a company in general meeting must be accompanied by a statutory declaration by the secretary of the company verifying, to the best of his knowledge and belief, the correctness of the balance-sheet and profit and loss account.

(15) A document (other than a balance-sheet prepared in accordance with this Act) or advertisement published, issued or circulated by or on behalf of a company (other than a

banking corporation) must not contain any direct or indirect representation that the company has any reserve unless the representation is accompanied—

- (a) if the reserve is invested outside the business of the company—by a statement showing the manner in which and the security on which it is invested; or
- (b) if the reserve is being used in the business of the company—by a statement to the effect that the reserve is being so used.

(16) The reference in Subsection (1) to the incorporation of a company shall, in relation to a company that was incorporated before the commencement date and that had held an annual general meeting before that date, be read as a reference to the last annual general meeting of the company so held.

#### 172. Offences against Division 1.

(1) If a director of a company fails to take all reasonable steps to secure compliance by the company with the preceding provisions of this Division or has, by his own wilful act, been the cause of any default by the company under those provisions, he is guilty of an offence.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding six months.

(2) In proceedings against a person for failure to take reasonable steps to secure compliance by a company with the preceding provisions of this Division, it is a defence to prove that he had reasonable ground to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that those provisions were complied with and was in a position to discharge that duty.

(3) A person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

#### 173. Entitlement to balance-sheet, etc.

(1) A copy of every profit and loss account and balance-sheet (including every document required by law to be attached to it) that is to be laid before a company in general meeting (accompanied, if the company is required by this Act to appoint an auditor, by a copy of the auditor's report on it) must, not less than seven days before the date of the meeting, be sent to all persons entitled to receive notice of general meetings of the company.

(2) A member of a company, whether or not he is entitled to have sent to him copies of the profit and loss accounts and balance-sheets, to whom copies have not been sent, and any holder of debentures, must, on a request being made by him to the company, be furnished by the company without charge with a copy of the last profit and loss account and balance-sheet of the company (including every document required by this Act to be attached to it) together with a copy of the auditor's report (if any) on it.

(3) If default is made in complying with Subsection (1) or (2) by reason of a failure to send a copy of a document to a person or to furnish a person with a copy of a document, the company, and each officer of the company who is in default, is guilty of an offence unless it is proved that that person had been furnished with a copy of the document before the commission of the offence.

Penalty: A fine not exceeding K40.00.

Default penalty: A fine not exceeding K20.00.

## Division 2.—Audit.

## 174. Appointment of auditors.

(1) At any time before the first annual general meeting of a company, the directors of the company may appoint, or (if the directors do not make an appointment) the company at a general meeting may appoint, a person or persons to be the auditor or auditors of the company, and an auditor so appointed holds office, subject to this section, until the first annual general meeting.

(2) At each annual general meeting of a company, the company shall appoint a person or persons to be the auditor or auditors of the company, and an auditor so appointed holds office, subject to this section, until the next annual general meeting of the company.

(3) Subject to Subsections (7) and (8), the directors of a company may fill a casual vacancy in the office of auditor of the company but, while such a vacancy continues, the surviving or continuing auditor or auditors (if any) may act.

(4) An auditor of a company may be removed from office only by resolution of the company at a general meeting, of which resolution special notice has been given.

(5) Where special notice of a resolution to remove an auditor is received by a company—

(a) it shall, without delay, send a copy of the notice to the auditor concerned and to the Board; and

(b) the auditor may, within seven days after the receipt by him of the copy of the notice, make written representations (not exceeding a reasonable length) to the company and request that, before the meeting at which the resolution is to be considered, a copy of the representations be sent by the company to every member of the company to whom notice of the meeting is sent.

(6) Unless, on the application of the company, the Board otherwise orders, the company shall send a copy of the representations as requested and the auditor may (without prejudice to his right to be heard orally) require that the representations be read out at the meeting.

(7) Where an auditor of a company is removed from office under Subsection (4)—

(a) the company may, at the meeting, by a resolution passed by a majority of not less than 75% of such members of the company as, being entitled to do so, vote in person or, where proxies are allowed, by proxy, without delay appoint another person nominated at the meeting as auditor; or

(b) the meeting may be adjourned to a date not earlier than 20 days and not later than 30 days after the meeting and the company may, by ordinary resolution, appoint another person as auditor, being a person notice of whose nomination as auditor has, at least 10 days before the adjourned meeting, been received by the company.

(8) A company shall, immediately after the removal of an auditor from office under Subsection (4), give written notice of the removal to the Board, and if the company does not appoint another auditor under Subsection (7) the Board shall appoint an auditor.

(9) An auditor appointed under Subsection (7) or (8) holds office, subject to this section, until the next annual general meeting of the company.

(10) Notwithstanding this section, it is not necessary for an exempt proprietary company to appoint an auditor at a particular annual general meeting of the company if—

- (a) all the members of the company have agreed at or before the meeting that it is not necessary for the company to appoint an auditor at that meeting; and
- (b) the secretary of the company has recorded a minute to that effect in the book containing the minutes of proceedings of general meetings of the company.

(11) If a company required by this section to appoint an auditor or auditors does not do so, the Board may, on the written application of a member of the company, make the appointment.

(12) A person is not capable of being appointed auditor of a company at an annual general meeting unless—

- (a) he held office as an auditor of the company immediately before the meeting; or
- (b) notice of his nomination as auditor was given to the company by a member of the company not less than 21 days before the meeting.

(13) Where notice of nomination of a person as an auditor of a company is received by the company, whether for appointment at an adjourned meeting under Subsection (7) or at an annual general meeting, the company shall, not later than seven days before the adjourned meeting or the annual general meeting, send a copy of the notice to the person nominated, to each auditor (if any) of the company and to each person entitled to receive notice of general meetings of the company.

(14) If, after notice of nomination of a person as an auditor of a company has been given to the company, the annual general meeting of the company is called for a date not more than 21 days after the notice has been given, Subsection (12) does not apply in relation to the person, and if the annual general meeting is called for a date not more than seven days after the notice has been given and a copy of the notice is, at the time when notice of the meeting is given, sent to each person to whom, under Subsection (13), it is required to be sent, the company shall be deemed to have complied with that subsection in relation to the notice.

#### 175. Auditors' remuneration.

(1) The fees and expenses of an auditor of a company—

- (a) in the case of an auditor appointed by the company at a general meeting— shall be fixed by the company in general meeting or, if so authorized by the members at the last annual general meeting, by the directors; and
- (b) in the case of an auditor appointed by the directors or by the Board—may be fixed by the directors or by the Board, as the case may be, and if not so fixed shall be fixed as provided by Paragraph (a) as if the auditor had been appointed by the company.

(2) If a company is served with a notice sent by or on behalf of—

- (a) at least 10% of the total number of members of the company; or
- (b) the holders in aggregate of not less than 10% in nominal value of the company's issued share capital,

requiring particulars of all emoluments paid to or receivable by the auditor of the company, or a person who is a partner, employer or employee of the auditor, by or from the company

or a subsidiary in respect of services (other than auditing services) rendered to the company, the company must without delay—

- (c) prepare or cause to be prepared a statement showing particulars of all emoluments paid to the auditor or other person and of the services in respect of which the payments have been made for the financial year immediately preceding the service of such notice; and
- (d) forward a copy of the statement to all persons entitled to receive notice of general meetings of the company; and
- (e) lay the statement before the company in general meeting.

(3) If default is made in complying with Subsection (2), the company and every director of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K1 000.00.

#### 176. Powers and duties of auditors as to reports on accounts.

(1) An auditor of a company shall report to the members as to every balance-sheet and profit and loss account laid before the company in general meeting during his tenure of office, and shall state in the report whether, in his opinion—

- (a) the balance-sheet and profit and loss account are properly drawn up in accordance with this Act and so as to give a true and fair view of the state of the company's affairs; and
- (b) the accounting and other records (including registers) examined by him are properly kept in accordance with this Act.

(2) An auditor shall, where applicable, state in his report—

- (a) that he has not obtained all the information and explanations that he required; or
- (b) that, in his opinion, proper accounting and other records (including registers) have not been kept by the company; or
- (c) that, in his opinion, the returns submitted from branches not visited by the auditor are inadequate; or
- (d) that, in his opinion, according to the best of his information and the explanations given to him and as shown by the accounting and other records of the company, the profit and loss account is not in agreement with the company's accounting and other records or is not properly drawn up so as to give a true and fair view of the results of the business of the company for the period of accounting; or
- (e) that, in his opinion, according to the best of his information and the explanations given to him and as shown by the accounting and other records of the company, the balance-sheet is not in agreement with the company's accounting and other records or is not properly drawn up so as to give a true and fair view of the state of the company's affairs as at the end of the period of accounting; or
- (f) that, in his opinion, according to the best of his information and the explanations given to him, the accounting and other records (including

registers), the balance-sheet and the profit and loss account do not give the information required by this Act,

and shall give particulars of any failure or shortcoming in respect of any of the matters referred to in this subsection.

(3) An auditor has a right of access at all times to the accounting and other records (including registers) of the company, and is entitled to require from the officers of the company such information and explanation as he desires for the audit.

(4) The auditor's report shall be attached to the balance-sheet and the profit and loss account and shall, if a member so requires, be read before the company in general meeting and be open to inspection by any member.

(5) An auditor is entitled—

- (a) to attend any general meeting of the company; and
- (b) to receive all notices of and other communications relating to any general meeting that any member is entitled to receive; and
- (c) to be heard at any general meeting that he attends on any part of the business of the meeting that concerns him as auditor.

(6) An officer of a company who—

- (a) refuses or fails without lawful justification—
  - (i) to allow an auditor access to accounting and other records (including registers) of the company in his custody or power; or
  - (ii) to give information possessed by him as and when required; or
- (b) otherwise hinders, obstructs or delays an auditor in the performance of his duties or the exercise of his powers,

is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

#### 177. Duties of auditors to trustees for debenture holders.

(1) Within seven days after furnishing the corporation or its members with any report relating to the balance-sheet or profit and loss account, or any report, certificate or other document that he is required by this Act or by the debentures or trust deed to give to the corporation or its members, the auditor of a borrowing corporation must send by post to every trustee for the holders of debentures of the borrowing corporation a copy of it, together with a copy of each document accompanying it.

(2) Where in the performance of his duties as auditor of a borrowing corporation or a guarantor corporation the auditor becomes aware of any matter that is in his opinion relevant to the exercise and performance of the powers and duties imposed by this Act or by any trust deed on any trustee for the holders of debentures of the borrowing corporation, he must, within seven days after becoming aware of the matter, send a written report on the matter, by post, to the corporation and a copy of it to the trustee.

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K20.00.

*Division 3.—Inspection.***178. Interpretation of Division 3.**

In this Division, "officer or agent", in relation to a corporation, includes—

- (a) a director, banker, lawyer or auditor of the corporation; and
- (b) a person who at any time—
  - (i) has been a person referred to in Paragraph (a); or
  - (ii) has been otherwise employed or appointed by the corporation; and
- (c) a person who—
  - (i) has in his possession any property of the corporation; or
  - (ii) is indebted to the corporation; or
  - (iii) is capable of giving information concerning the promotion, formation, trading, dealings, affairs or property of the corporation; and
- (d) a person whom there are reasonable grounds for suspecting or believing to be a person referred to in Paragraph (c).

**179. Investigations at direction of Minister.**

(1) The Minister may appoint one or more inspectors to investigate the affairs of a company or such aspects of the affairs of a company as are specified in the instrument of appointment, and to report on them in such manner as the Minister directs—

- (a) in the case of a company (not being a banking corporation) having a share capital—on the application of not less than 200 members or of members holding not less than 10% of the shares issued, or on the application of holders of debentures holding not less than 20% in nominal value of debentures issued; or
- (b) in the case of a company not having a share capital—on the application of not less than 20% in number of the persons on the company's register of members; or
- (c) in the case of a banking corporation having a share capital—on the application of members holding not less than one-third of the shares issued.

(2) The application shall be supported by such evidence as the Minister requires as to the reasons for the application and the motives of the applicants in requiring the investigation, and the Minister may, before appointing an inspector, require the applicants to give security to such amount as he thinks proper for payment of the costs of the investigation.

(3) An inspector may, and if so directed by the Minister shall, make interim reports to the Principal Legal Adviser and the Public Prosecutor, and on the conclusion of the investigation the inspector shall report his opinion on or in relation to the affairs that he has been appointed to investigate, together with the facts on which his opinion is based, to the Minister, the Principal Legal Adviser and the Public Prosecutor.

(4) On receipt of a report under Subsection (3), the Principal Legal Adviser shall cause a copy of the report to be forwarded to the registered office of the company, and if the applicants so request to them.

(5) The Minister may, if he is of the opinion that it is necessary in the public interest to do so, cause the report to be printed and published.



(6) If, from the report, it appears to the Public Prosecutor that a person has been guilty of an offence in relation to the company and he considers that the case is one in which a prosecution ought to be instituted, he shall cause a prosecution to be instituted accordingly, and all officers and agents of the company (other than the defendant in the proceedings) shall, on being required by the Public Prosecutor to do so, give all assistance in connexion with the prosecution that they are reasonably able to give.

(7) If, from a report under this section, it appears to the Principal Legal Adviser that proceedings ought in the public interest to be brought by a company dealt with by the report for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connexion with the promotion or formation of the company or in the management of its affairs, or for the recovery of any property of the company that has been misapplied or wrongfully retained, he may himself bring proceedings for that purpose in the name of the company.

#### 180. Investigations by resolution of company.

(1) A company (other than a company to which Division 4 applies) may, by special resolution, appoint one or more inspectors to investigate its affairs.

(2) On the conclusion of the investigation, the inspector shall report his opinion in such manner and to such persons as the company in general meeting directs.

(3) The appointment of an inspector or inspectors under this section ceases if the company becomes a company to which Division 4 applies.

#### 181. Procedures, powers, etc., as to investigations.

(1) If an inspector appointed to investigate the affairs of a company thinks it necessary for the purposes of the investigation to investigate also the affairs of any other corporation that is, or has at any relevant time been, a related corporation he may do so, and he shall report on the affairs of the other corporation so far as he thinks that the results of the investigation of them are relevant to the investigation of the affairs of the company.

(2) An officer or agent of a corporation the affairs of which are being investigated under this Division shall, if required by an inspector appointed under this Division, produce to the inspector all books and documents in his custody or power, and give to the inspector all assistance in connexion with the investigation that he is reasonably able to give.

(3) An inspector may, by notice in the prescribed form, require an officer or agent of a corporation whose affairs are being investigated under this Division to appear for examination on oath or affirmation (which he is authorized to administer) in relation to its business, and the notice may require the production of all books and documents in the custody or under the control of the officer or agent.

(4) An inspector who, under this section, requires the production of books and documents in the custody or power or under the control of an officer or agent of a corporation whose affairs are being investigated under this Division—

(a) may take possession of the books and documents; and

(b) may retain the books and documents for such time as he thinks necessary for the purpose of the investigation; and

(c) shall permit the corporation to have access at all reasonable times to the books and documents as long as they are in his possession.

(5) If an officer or agent of a corporation the affairs of which are being investigated under this Division fails to comply with the requirements of a notice issued under Subsection (3), or fails or refuses to answer a question that is put to him by an inspector

with respect to the affairs of the corporation, the inspector may certify the failure or refusal under his hand to the Court, and the Court may thereupon inquire into the case and, after hearing any witnesses against or on behalf of the alleged offender and any statement offered in defence, and on being satisfied that the failure or refusal has occurred, punish the offender in the same manner as if he had been guilty of contempt of the Court.

(6) A person who is or has formerly been an officer or agent of a corporation the affairs of which are being investigated under this Division is not entitled to refuse to answer any question that is relevant or material to the investigation on the ground that his answer might tend to criminate him, but if he claims that the answer to any question might criminate him and but for this subsection he would have been entitled to refuse to answer the question the answer to the question shall not be used in any subsequent criminal proceedings except in the case of a charge against him for or in respect of a false statement made by him in answer to the question.

(7) Except as expressly provided in Subsection (6), a person is entitled to refuse to answer a question on the ground that the answer might tend to criminate him.

(8) An inspector may cause notes of an examination under this Division to be recorded and reduced to writing and to be read to or by and signed by the person examined, and any such signed notes may, except in the case of an answer that the person would not have been required to give but for the provisions of Subsection (6), afterwards be used in evidence in any legal proceedings against the person.

(9) A copy of the report of an inspector appointed under this Division, certified as correct by the Principal Legal Adviser, is admissible in any legal proceedings as evidence of the opinion of the inspector in relation to any matter contained in the report, and of the facts on which his opinion is based.

#### 182. Costs of investigations.

(1) Subject to Subsection (2), the expenses of and incidental to an investigation under this Division (including the costs of any proceedings brought by the Principal Legal Adviser in the name of the company) shall be paid—

- (a) where, as a result of the investigation, a prosecution is instituted—by the State; or
- (b) in any other case—by the company investigated or, if the Minister so directs, by the applicants or in part by the company and in part by the applicants.

(2) Notwithstanding Subsection (1)—

- (a) if the company fails to pay the whole or any part of the sum that it is liable to pay under that subsection, the applicants shall make good the deficiency up to the amount by which the security given by them under this Division exceeds the amount (if any) that they have, under that subsection, been directed to pay; and
- (b) any balance of the expenses not paid either by the company or by the applicants shall be paid by the State.

#### *Division 4.—Special Investigations.*

#### 183. Interpretation of Division 4.

(1) In this Division—

“company to which this Division applies” means a company or foreign company declared under Subsection (2) to be a company to which this Division applies;

"officer or agent", in relation to a corporation, includes—

- (a) a director, banker, solicitor or auditor of the corporation; and
  - (b) a person who at any time—
    - (i) has been a person referred to in Paragraph (a); or
    - (ii) has been otherwise employed or appointed by the corporation; and
  - (c) a person who—
    - (i) has in his possession any property of the corporation; or
    - (ii) is indebted to the corporation; or
    - (iii) is capable of giving information concerning the promotion, formation, trading, dealings, affairs or property of the corporation; and
  - (d) a person whom there are reasonable grounds for suspecting or believing to be a person referred to in Paragraph (c).
- (2) Subject to Subsection (3), the Minister may, by notice in the National Gazette, declare that a company or foreign company is a company to which this Division applies.
- (3) A declaration shall not be made under this section in respect of a company or foreign company unless—
- (a) the Minister is satisfied that a prima facie case has been established that, for the protection of the public, of the holders of interests to which Division V.5 applies or of the shareholders or creditors of the company or foreign company, it is desirable that the affairs of the company or foreign company should be investigated under this Division; or
  - (b) the Head of State, acting on advice, is satisfied that it is in the public interest that allegations of fraud or misfeasance by persons who are or have been concerned with the formation or management of the company or foreign company should be investigated under this Division; or
  - (c) the Head of State, acting on advice, is satisfied that it is in the public interest that the affairs of the company or foreign company should be investigated under this Division; or
  - (d) in the case of a foreign company—the appropriate authority of another country has requested that a declaration be made under this section in respect of the company.

#### 184. Appointment of inspectors.

(1) The Minister may appoint one or more inspectors to investigate the affairs of a company to which this Division applies and to report on them to the Minister, the Principal Legal Adviser and the Public Prosecutor in such manner as the Minister directs.

(2) An appointment under this section has, in all respects, the same force and effect as an appointment of an inspector or inspectors under Division 3 and, for the purposes of this Division, the provisions of and the powers conferred by that Division, with such adaptations as are necessary, extend and apply accordingly, except that the expenses of and incidental to the investigation shall be paid in the first instance by the State.

(3) Where the Minister is of opinion that the whole or any part of the expenses of and incidental to the investigation should be paid by the company or by any person who

requested the appointment of the inspector, the Minister may order that the expenses be so paid.

(4) An order under Subsection (3) may specify the time or times and the manner in which the payment of the expenses shall be made.

(5) Where an order has been made under Subsection (3), the company or person named in the order is, to the extent specified in it, liable to reimburse the State in respect of those expenses.

(6) Any expenses in respect of which a company or any person is liable under Subsection (5) to reimburse the State are recoverable by the State as a debt.

(7) Where an order under Subsection (3) has been made for the payment of the whole or part of the expenses by a company and the company is in liquidation or subsequently goes into liquidation, the expenses so ordered to be paid by the company shall be deemed to be part of the costs and expenses of the winding-up for the purposes of Section 310(1)(a).

(8) The report of the inspector may, if he thinks fit, and shall, if the Minister so directs, include a recommendation as to the terms of the order that he thinks proper, in the light of his investigation, to be made by the Minister under Subsection (3).

(9) An inspector may employ such persons as he thinks necessary, and may, in writing, authorize any such person to do anything he could himself do, except to examine on oath or affirmation.

(10) An officer or agent of a corporation who—

(a) refuses or fails to produce a book or document to a person who produces a written authority of an inspector given under Subsection (9); or

(b) refuses or fails to answer a question lawfully put to him by any such person,

is liable to be dealt with in the same manner as is provided in Section 181(5) for refusing or failing to comply with the request of an inspector appointed under Division 3.

#### 185. Suspension of actions and proceedings.

(1) On and after the appointment of an inspector in respect of a company to which this Division applies and until the expiration of three months after the inspector has presented his final report to the Principal Legal Adviser, no action or proceedings shall, without the consent of the Principal Legal Adviser, be commenced or proceeded with in any court—

(a) by the company on or in respect of a contract, bill of exchange or promissory note; or

(b) by the holder or any other person in respect of a bill of exchange or promissory note made, drawn or accepted by or issued, transferred, negotiated or endorsed by or to the company unless the holder or other person—

(i) at the time of the negotiation, transfer, issue, endorsement or delivery of it to him gave adequate pecuniary consideration for it; and

(ii) was not at the time of the negotiation, transfer, issue, endorsement or delivery of it to him or at any time within three years before that time a shareholder, officer, agent or employee of the company or the wife or husband of a shareholder, officer, agent or employee of the company.

(2) A consent under Subsection (1) may be given generally or in a particular case, and may be given subject to such conditions and limitations as the Principal Legal Adviser thinks proper.

#### 186. Winding-up.

(1) Application to the Court—

- (a) in the case of a company—for the winding-up of the company; or
- (b) in the case of a foreign company—for the winding-up, so far as the assets of the company within Papua New Guinea are concerned, of the affairs of the company,

may be made on the petition of the Principal Legal Adviser at any time after a report has been made in respect of the company by an inspector under this Division, whereupon this Act, with such adaptations as are necessary, applies as if—

- (c) in the case of a company—a winding-up petition had been duly presented to the Court by the company; and
- (d) in the case of a foreign company—a petition for an order for the affairs of the company, so far as assets within Papua New Guinea are concerned, to be wound up within Papua New Guinea had been duly presented to the Court by a creditor or contributory of the company on the liquidation of the company in the place in which it is incorporated.

(2) Where, on a petition under Subsection (1), an order is made for the affairs of a foreign company, so far as assets within Papua New Guinea are concerned, to be wound up within Papua New Guinea, the company shall not carry on business or establish or keep a place of business within Papua New Guinea.

#### 187. Obstruction, etc.

(1) A person who, with intent to defeat the purposes of this Division or to delay or obstruct the carrying out of an investigation under this Division—

- (a) destroys or alters a book, document or record of or relating to a company to which this Division applies; or
- (b) sends or attempts to send, or conspires with any other person to send, out of the country any such book, document or record or any property of any description belonging to or in the disposition or under the control of such a company,

is guilty of an offence.

Penalty: A fine not exceeding K1 000.00 or imprisonment for a term not exceeding two years.

(2) If in a prosecution for an offence against this section it is proved that the person charged with the offence—

- (a) has destroyed or altered a book, document or record of or relating to the company; or
- (b) has sent or attempted to send, or conspired to send, out of the country any such book, document or record or any property of any description belonging to or in the disposition or under the control of the company,

the onus of proving that in doing so he had not acted with intent to defeat the purposes of this Division or to delay or obstruct the carrying out of an investigation under this Division is on him.

**188. Investigation of ownership of corporations.**

(1) Where it appears to the Minister that there is good reason to do so, he may appoint one or more inspectors to investigate and report on the membership of a corporation (whether or not it is a company to which this Division applies) and otherwise with respect to the corporation for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the corporation, or able to control or materially to influence the policy of the corporation.

(2) The appointment of an inspector under this section may define the scope of his investigation, as respects the matters or the period to which it is to extend or otherwise, and, in particular, may limit the investigation to matters connected with particular shares or debentures.

(3) Where an application for an investigation under this section with respect to particular shares or debentures of a corporation is made to the Minister by members of the corporation and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of an inspector under Division 3, the Minister shall appoint an inspector to conduct the investigation unless he is satisfied that the application is vexatious, and the inspector's appointment shall not exclude from the scope of his investigation any matter that the application seeks to have included in it, except so far as the Minister is satisfied that it is unreasonable for that matter to be investigated.

(4) Subject to the terms of an inspector's appointment, his powers extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding that, though not legally binding, is or was observed or likely to be observed in practice and that is relevant to the purposes of his investigation.

(5) For the purposes of an investigation under this section, the provisions of Division 3, with the necessary modifications, apply to the affairs of the corporation or to those of any other corporation, but so that—

- (a) that Division applies in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or to have been, financially interested in the success or failure or the apparent success or failure of the corporation or any other corporation the membership of which is investigated with it, or able to control or materially to influence the policy of either of them (including persons concerned only on behalf of others) as it applies in relation to officers and agents of the corporation or of the other corporation, as the case may be; and
- (b) the Minister is not bound to furnish the corporation or any other person with a copy of a report by an inspector appointed under this section, or with a complete copy of it, if he is of opinion that there is good reason for not divulging the contents of the report or of parts of it, but the Minister shall cause the Registrar to keep a copy of the report or the parts of the report, as the case may be, with respect to which he is not of that opinion.

(6) The expenses of an investigation under this section shall be paid by the State.

**189. Investigation of ownership of shares, etc.**

(1) Where it appears to the Minister that there is good reason to do so, he may appoint one or more inspectors to investigate and report on the ownership of any shares in or debentures of a corporation, or on the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, any shares in or debentures of a corporation.

(2) An inspector appointed under Subsection (1) may, by written notice, require any person whom he has reasonable cause to believe to be capable of giving any information in connexion with an investigation under that subsection to appear for examination before him, and to give to him any information in connexion with the investigation that that person has or can reasonably be expected to obtain.

(3) A notice under Subsection (2) may require the production of all books and documents relevant to the investigation that are in the custody or under the control of the person to whom the notice is addressed.

(4) Any books and documents referred to in Subsection (3) may be retained by any such inspector until the completion of the investigation.

(5) An inspector appointed under Subsection (1) may permit the person to whom notice under Subsection (3) was given, or the corporation in which the shares or debentures are held, to have access at all reasonable times to the books and documents so long as they are in the possession of the inspector.

(6) A person who—

(a) fails to comply with the requirements of a notice under Subsection (2); or

(b) fails to give any information required of him under this section; or

(c) in giving any such information—

(i) makes a statement that he knows to be false in a material particular; or

(ii) recklessly makes a statement that is false in a material particular,

is guilty of an offence.

Penalty: A fine not exceeding K1 000.00 or imprisonment for a term not exceeding six months, or both.

(7) A person to whom a notice is given under Subsection (2) is not entitled to refuse to answer a question that is relevant or material to the investigation on the ground that his answer might tend to criminate him, but if he claims that the answer to a question might criminate him, and but for this subsection he would have been entitled to refuse to answer the question, the answer to the question shall not be used in any subsequent criminal proceedings except in the case of a charge against him for an offence against this section committed by him in answer to that question.

(8) Except as expressly provided in Subsection (7), any person is entitled to refuse to answer a question on the ground that the answer might tend to criminate him.

#### 190. Restrictions on shares.

(1) Where, in connexion with an investigation under Section 188 or 189, it appears to the Minister that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued) and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist the investigation as required by this Act, the Minister may, by notice in the National Gazette, direct that the shares are, until further order, subject to the following restrictions :—

(a) that any transfer of the shares or exercise of the right to acquire or dispose of the shares, or any transfer of the right to be issued with any issue of unissued shares, is void; and

(b) that no voting rights are exercisable in respect of those shares; and

(c) that no further shares may be issued in right of those shares or in pursuance of any offer made to the holder of them; and

(d) that, except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of capital or otherwise.

(2) Where the Minister makes an order directing that shares are subject to the restrictions referred to in Subsection (1), or having made such an order in relation to any shares refuses to make an order directing that the shares have ceased to be subject to those restrictions, a person aggrieved by the order or refusal may apply to the Court, and the Court may, if it thinks fit, direct that the shares have ceased to be subject to those restrictions.

(3) An order of the Minister or of the Court directing that shares have ceased to be subject to the restrictions referred to in Subsection (1) that is expressed to be made with a view to permitting a transfer of those shares may continue the application of the restrictions referred to in Subsections (1)(c) and (d) in relation to those shares, either in whole or in part, so far as those paragraphs relate to any right acquired or offer made before the transfer.

(4) Where any shares are subject to the restrictions referred to in Subsection (1), a person who—

- (a) having knowledge that the shares are subject to the restrictions, exercises or purports to exercise any right to dispose of the shares or of any right to be issued with the shares; or
- (b) votes in respect of the shares, whether as holder or proxy, or appoints a proxy to vote in respect of them; or
- (c) being the holder of any of the shares, fails to notify the fact of their being subject to the restrictions to a person whom he does not know to be aware of that fact but does know to be entitled, apart from the restrictions, to vote in respect of the shares, whether as holder or proxy,

is guilty of an offence.

Penalty: A fine not exceeding K1 000.00 or imprisonment for a term not exceeding six months, or both.

(5) Where shares in a company are issued in contravention of the restrictions referred to in Subsection (1), the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K1 000.00.

(6) A prosecution shall not be instituted under this section except by or with the consent of the Public Prosecutor.

(7) This section applies in relation to debentures as it applies in relation to shares.

#### 191. Inspectors appointed in Australia.

Where—

- (a) under a law of a State or Territory of Australia corresponding with this Division an inspector has been appointed to investigate the affairs of a corporation; and
- (b) the Minister determines that, in connexion with that investigation, it is expedient that an investigation be made in Papua New Guinea,

the Minister may, by notice in the National Gazette, declare that the inspector so appointed shall have the same powers and duties in Papua New Guinea in relation to the investigation



as if the corporation were a company to which this Division applies and the inspector had been appointed under Section 184.

PART VIII.—ARRANGEMENTS AND RECONSTRUCTIONS.

192. Compromises.

(1) In this section—

“arrangement” includes a re-organization 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” means a corporation or society liable to be wound up under this Act.

(2) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application in a summary way of the company or of a creditor or member of the company or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, to be summoned.

(3) If a majority in number representing 75% in value of the creditors or class of creditors or members or class of members present and voting either in person or by proxy at the meeting agrees to any compromise or arrangement, the compromise or arrangement is, if approved by order of the Court, binding on all the creditors or class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(4) The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks just.

(5) An order under Subsection (3) has no effect until an office copy of the order is lodged with the Registrar and, on being so lodged, the order takes effect, or shall be deemed to have taken effect, on and from the date of lodgement or such earlier date as the Court determines and specifies in the order.

(6) Subject to Subsection (7), a copy of an order made under Subsection (3) must be annexed to every copy of the memorandum of the company issued after the order has been made or, in the case of a company not having a memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.

(7) The Court may, by order, exempt a company from compliance with Subsection (6), or determine the period during which the company must comply with it.

(8) Where a compromise or arrangement referred to in Subsection (2) (whether or not for the purposes of or in connexion with a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies) has been proposed, the directors of the company must, if a meeting of the members of the company by resolution so directs—

(a) instruct such accountants or lawyers (or both) as are named in the resolution to report on the proposals and forward their report or reports to the directors as soon as may be; and

(b) make any such report or reports available at the registered office of the company for inspection by the shareholders and creditors of the company at

least seven days before the date of any meeting ordered by the Court to be summoned under Subsection (2).

(9) Where default is made in complying with Subsection (6) or (8), the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(10) Where no order has been made or resolution passed for the winding-up of a company and a compromise or arrangement has been proposed between the company and its creditors or any class of them, the Court may, in addition to any of its other powers, on the application in a summary way of the company or of a member or creditor of the company, restrain further proceedings in any action or proceedings against the company except by leave of the Court and subject to such terms as the Court imposes.

### 193. Information as to compromises.

(1) Where a meeting is summoned under Section 192—

(a) with every notice summoning the meeting that is sent to a creditor or member, there must be sent a statement explaining the effect of the compromise or arrangement and, in particular, stating any material interests of the directors (whether as directors or as members or as creditors of the company or otherwise), and the effect on those interests of the compromise or arrangement so far as it is different from the effect on the similar interests of other persons; and

(b) in every notice summoning the meeting that is given by advertisement, there must be included either such a statement or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement.

(2) Where the compromise or arrangement affects the rights of debenture holders, the statement must give the same explanation with respect to the trustees for the debenture holders as, under Subsection (1), a statement is required to give with respect to the directors.

(3) Where a notice given by advertisement includes a notification that copies of such a statement can be obtained, each creditor or member entitled to attend the meeting must, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

(4) Each director and each trustee for debenture holders must give notice to the company of such matters relating to himself as are necessary for the purposes of this section.

(5) Where default is made in complying with a requirement of this section, the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K1 000.00.

(6) For the purpose of Subsection (5), the liquidator of the company or any trustee for debenture holders shall be deemed to be an officer of the company.

(7) Notwithstanding Subsection (5), a person is not liable under that subsection if he shows that the default was due to the refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to his interests.

**194. Reconstructions and amalgamations.**

(1) In this section—

“liabilities” includes duties;

“property” includes property rights and powers of every description;

“transferee company” means a company referred to in Subsection (3) as a company the whole or part of the undertaking or property of which is to be transferred to another company;

“transferor company” means a company referred to in Subsection (3) as a company to which the whole or part of the undertaking of another company is to be transferred.

(2) Notwithstanding Section 192(1), in this section “company” does not include a company other than a company as defined in Section 1.

(3) Where—

(a) an application is made to the Court under this Part for the approval of a compromise or arrangement; and

(b) it is shown to the Court that—

(i) the compromise or arrangement has been proposed for the purposes of or in connexion with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies; and

(ii) under the scheme, the whole or any part of the undertaking or the property of a company concerned in the scheme is to be transferred to another company,

the Court may, by the order approving the compromise or arrangement or by a subsequent order, provide for all or any of the following matters :—

(c) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of the transferor company; and

(d) the allotting or appropriation by the transferee company of any shares, debentures, policies or other such interests in that company that, under the compromise or arrangement, are to be allotted or appropriated by that company to or for a person; and

(e) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor company; and

(f) the dissolution, without winding-up, of the transferor company; and

(g) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement; and

(h) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.

(4) Where an order made under this section provides for the transfer of property or liabilities, then, by virtue of the order, the property is transferred to and vests in, and the liabilities are transferred to and become the liabilities of, the transferee company, free, if, in the case of any particular property, the order so directs, from any charge that is, by virtue of the compromise or arrangement, to cease to have effect.

(5) Where an order is made under this section, a company in relation to which the order is made must, within seven days of the making of the order—

- (a) lodge an office copy of the order with the Registrar; and
- (b) where the order relates to land—lodge an office copy of the order with the Land Registration Authority,

and any company that makes default in complying with this section, and each officer of the company who is in default, is guilty of an offence.

Penalty: A fine not exceeding K200.00.

Default penalty: A fine not exceeding K20.00.

(6) An order made under this section that relates to land is not effective until all entries that are necessary to give effect to it have been made in the register or record relevant to the land kept by the Land Registration Authority.

#### 195. Take-over offers.

(1) In this section—

“offeree corporation”, in relation to a take-over scheme or a take-over offer, means the corporation to shares in which the scheme or offer relates;

“offeror corporation”, in relation to a take-over scheme or a take-over offer, means the corporation or proposed corporation by or on behalf of which a take-over offer under the scheme, or the take-over offer, is made or to be made;

“take-over offer” means an offer or proposed offer for the acquisition of shares under a take-over scheme;

“take-over scheme” means a scheme involving the making of offers for the acquisition by or on behalf of a corporation or on behalf of a proposed corporation—

- (a) of all the shares in another corporation or of all the shares of a particular class in another corporation; or
- (b) of any shares in another corporation that (together with shares (if any) already held beneficially by the first-mentioned corporation or by any related corporation) carry the right to exercise, or to control the exercise of, not less than one-third of the voting power at any general meeting of the other corporation.

(2) A take-over offer must not be made unless—

(a) the offeror corporation has, not earlier than 28 days and not later than 14 days before the offer is made, given or caused to be given to the offeree corporation written notice of the take-over scheme containing particulars of the terms of the take-over offers to be made under the scheme, together with a statement that complies with the requirements set out in Part B of Schedule 9; and

(b) the offer complies with the requirements set out in Part A of Schedule 9 and there is attached to the offer—

- (i) a copy of the statement given or caused to be given by the offeror corporation to the offeree corporation under Paragraph (a); and

- (ii) if the offeree corporation gives or causes to be given to the offeror corporation a statement under Subsection (3)(a) or under a corresponding enactment of a State or Territory of Australia—a copy of that statement.

(3) Where an offeree corporation receives a notice and statement given under Subsection (2) or under a corresponding enactment of a State or Territory of Australia, the offeree corporation must—

- (a) give or cause to be given to the offeror corporation, within 14 days after the receipt of the notice and statement, a written statement that complies with the requirements set out in Part C of Schedule 9; or
- (b) within 14 days after take-over offers are first made under the take-over scheme, give such a statement, or cause such a statement to be given, to each holder of shares to which the scheme relates, in the offeree corporation.

(4) A statement given or caused to be given by an offeree corporation under Subsection (3) may contain such information in addition to that required by Part C of Schedule 9 as the directors of the offeree corporation think fit.

(5) Where take-over offers are made under a take-over scheme, the offeror corporation must immediately give written notice to the offeree corporation that offers have been made under the scheme and of the date of the offers.

(6) Where a take-over offer is made in contravention of this section, or an offeror corporation fails to comply with Subsection (5), the offeror corporation, and each officer of the corporation who is in default, is guilty of an offence and, where an offeree corporation fails to comply with Subsection (3) the offeree corporation, and each officer of the corporation who is in default, is guilty of an offence.

Penalty: A fine not exceeding K1 000.00 or imprisonment for a term not exceeding three months.

(7) Sections 48 and 49 apply to and in relation to a statement given by an offeror corporation to an offeree corporation under Subsection (2)(a), and to any copy of such a statement, as if—

- (a) each reference in those sections to a prospectus were a reference to such a statement or a copy of such a statement; and
- (b) the reference in Section 48(1) to persons who subscribe for or purchase any shares or debentures were a reference to persons who accept a take-over offer; and
- (c) each reference in those sections to the allotment or sale of shares or debentures were a reference to the acceptance of a take-over offer.

(8) The regulations may vary the requirements set out in any part of Schedule 9, either by omitting or altering any such requirement or by adding additional requirements, and any reference in this section to the requirements of a part of that Schedule shall be read as a reference to those requirements as so varied from time to time.

(9) The regulations may make provision for and in relation to the granting of exemptions from all or any of the provisions of this section or the requirements set out in Schedule 9.

(10) The regulations may require the lodging with the Registrar or a Stock Exchange, or both, of—

- (a) copies of any notice or statement given under this section; or

- (b) notice in the prescribed form and containing such particulars as are prescribed of the giving of such a notice or statement.

#### 196. Dissenting shareholders.

- (1) In this section—

“dissenting shareholder” includes a shareholder who has not assented to the scheme or contract concerned, and a shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract;

“scheme or contract” means a scheme or contract of a kind referred to in Subsection (2) involving the transfer of shares in a company to another company;

“transferee company” means a company referred to in Subsection (2) as a company the transfer to which of shares in another company is involved in a scheme or contract;

“transferor company” means a company referred to in Subsection (2) as a company the transfer of whose shares, or a class of whose shares, to another company is involved in a scheme or contract.

(2) Where a scheme or contract involving the transfer of shares or any class of shares in a company to another company or corporation has, within four months after the making of the relevant offer by the transferee company, been approved as to the shares or as to each class of shares whose transfer is involved by the holders of not less than 90% in nominal value of the shares or of the shares of that class (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary), the transferee company may, at any time within two months after the offer has been so approved, give notice in the prescribed form and manner to a dissenting shareholder that it desires to acquire his shares.

(3) When a notice referred to in Subsection (2) is given, unless, on an application made by the dissenting shareholder within one month from the date on which the notice was given or within seven days of a statement being supplied to a dissenting shareholder under Subsection (5) (whichever is the later), the Court thinks fit to order otherwise, the transferee company is entitled and bound to acquire the shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company.

(4) Notwithstanding Subsection (2) or (3), where shares in the transferor company of the same class or classes as the shares whose transfer is involved are already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary to a nominal value greater than 10% of the aggregate of their nominal value and that of the shares (other than those already so held) whose transfer is involved, those subsections do not apply unless—

- (a) the transferee company offers the same terms to all holders of the shares (other than those already so held) whose transfer is involved or, where those shares include shares of different classes, of each class of them; and
- (b) the holders who approve the scheme or contract, besides holding not less than 90% in nominal value of the shares (other than those already so held) whose transfer is involved, are not less than 75% in number of the holders of those shares.

(5) Where a transferee company has given notice to a dissenting shareholder that it desires to acquire his shares, the dissenting shareholder is entitled, on written demand served on the company within one month after the date on which the notice was given, to be supplied by the company with a written statement of the names and addresses of all other dissenting shareholders as shown in the register of members, and in that case the transferee company is neither entitled nor bound to acquire the shares of the dissenting shareholders until one month after the posting of the statement of those names and addresses to the dissenting shareholder.

(6) Where, under a scheme or contract referred to in Subsection (2), shares in a company are transferred to another company or its nominee and the shares, together with any other shares in the first-mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer, comprise or include 90% in nominal value of the shares in the first-mentioned company or of any class of those shares, then—

- (a) the transferee company shall, within one month after the date of the transfer (unless on a previous transfer under the scheme or contract it has already complied with this requirement) give notice of that fact in the prescribed form and manner to the holders of the remaining shares, or of the remaining shares of that class, who have not assented to the scheme or contract; and
- (b) any such holder may, within three months after the giving of the notice to him, require the transferee company to acquire the shares in question.

(7) Where a shareholder gives notice under Subsection (6)(b) with respect to any shares, the transferee company is entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders were transferred to it or on such other terms as are agreed or as the Court, on the application of the transferee company or the shareholder, thinks fit to order.

(8) Where a notice has been given by the transferee company under Subsection (2) and on an application made by the dissenting shareholder the Court has not ordered to the contrary, the transferee company shall, after the expiration of one month after the date on which the notice has been given, or if an application to the Court by the dissenting shareholder is then pending after that application has been disposed of—

- (a) transmit a copy of the notice to the transferor company together with an instrument of transfer executed, on behalf of the shareholder, by a person appointed by the transferee company and, on its own behalf, by the transferee company; and
- (b) pay, allot or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares that, by virtue of this section, that company is entitled to acquire,

and the transferor company shall thereupon register the transferee company as the holder of those shares.

(9) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by it in trust for the persons entitled to the shares in respect of which they were respectively received.

(10) Where any consideration other than cash is held in trust by a company for a person under this section, it may, after the expiration of two years, and shall, before the expiration of 10 years, from the date on which the consideration was allotted or transferred to it, transfer the consideration to the Secretary for Finance.

(11) The Secretary for Finance shall sell or dispose of any consideration so received in such manner as he thinks fit, and shall pay the proceeds of the sale or disposal into the Consolidated Revenue Fund, but if, after so doing, the Secretary for Finance is satisfied that a person is entitled to the consideration he may pay an amount equal to those proceeds to that person.

#### 197. Oppression.

(1) A member of a company who complains that the affairs of the company are being conducted in a manner oppressive to one or more of the members (including himself) may apply to the Court for an order under this section, and, following on a report by an inspector under this Act, the Principal Legal Adviser may apply for such an order.

(2) If the Court is of opinion that the company's affairs are being conducted in a manner oppressive to one or more of the members, the Court may, with a view to bringing to an end the matters complained of—

(a) except where Paragraph (b) applies—make an order that the company be wound up; or

(b) where it is of opinion that—

(i) to wind up the company would unfairly prejudice that member or those members but otherwise the facts would justify the making of a winding-up order on the grounds that it is just and equitable that the company be wound up; or

(ii) for any other reason, it is just and equitable to make an order (other than a winding-up order) under this section,

make such order as it thinks proper, whether for regulating the conduct of the company's affairs in future or for the purchase of the shares of any member by other members or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital, or otherwise.

(3) Where an order that a company be wound up is made under Subsection (2)(a), the provisions of this Act relating to the winding-up of a company apply, with such adaptations as are necessary, as if the order had been made on a petition duly presented to the Court by the company.

(4) Where an order under this section makes an alteration in or addition to a company's memorandum or articles, then, notwithstanding anything in any other provision of this Act, but subject to the order, the company concerned has no power to make, without the leave of the Court, any further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order, and, subject to this subsection, the alterations or additions made by the order are of the same effect as if duly made by resolution of the company.

(5) An office copy of an order made under this section must be lodged by the applicant with the Registrar within 14 days after the making of the order.

(6) If default is made in complying with Subsection (5), the company and each officer of the company who is in default is guilty of an offence.

Default penalty: A fine not exceeding K20.00.



## PART IX.—RECEIVERS AND MANAGERS.

**198. Disqualification for appointment as receiver.**

(1) The following persons are not qualified to be appointed, and shall not act, as receiver of the property of a company :—

- (a) a corporation; and
- (b) an undischarged bankrupt; and
- (c) a mortgagee of any property of the company, an auditor of the company or an officer of the company or of a corporation that is a mortgagee of the property of the company; and
- (d) a person who is not a registered liquidator.

(2) Nothing in Subsection (1)(a) or (d) applies to a corporation authorized by an Act to act as receiver of the property of a company.

(3) Nothing in this section disqualifies a person from acting as receiver of the property of a company under an appointment made before the commencement date.

**199. Liability of receivers.**

(1) Notwithstanding any agreement to the contrary but without prejudice to his rights against the company or any other person, a receiver or other authorized person entering into possession of any assets of a company for the purpose of enforcing a charge is liable for debts incurred by him in the course of the receivership or possession for services rendered, goods purchased or property hired, leased, used or occupied.

(2) Subsection (1) does not constitute the person entitled to the charge a mortgagee in possession.

(3) A receiver or manager of the property of a company appointed under the powers contained in an instrument may apply to the Court for directions in relation to any matter arising in connexion with the performance of his functions.

**200. Appointment of liquidators as receivers.**

Where an application is made to the Court to appoint a receiver on behalf of the debenture holders or other creditors of a company that is being wound up by the Court, the liquidator may be so appointed.

**201. Notification of appointment of receivers.**

(1) If a person obtains an order for the appointment of a receiver or manager of the property of a company or of the property within the country of any other corporation, or appoints such a receiver or manager under any power contained in an instrument, he must, within seven days after he has obtained the order or made the appointment, lodge with the Registrar notice, in the prescribed form, of the fact.

(2) Where a person appointed as receiver or manager of the property of a company or other corporation under the powers contained in an instrument ceases to act as such, he must, within seven days, lodge with the Registrar notice, in the prescribed form, to that effect.

(3) A person who makes default in complying with the requirements of this section is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

**202. Remuneration of receivers and managers.**

(1) The Court may, on application by the liquidator or the official manager of a company, by order fix the amount to be paid by way of remuneration to a person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company.

(2) Subject to Subsection (3), the power of the Court—

- (a) where no previous order has been made with respect thereto—extends to fixing the remuneration for a period before the making of the order or the application therefor; and
- (b) is exercisable notwithstanding the fact that the receiver or manager has died or ceased to act before the making of the order or the application for the order; and
- (c) where the receiver or manager has been paid, or has retained, for his remuneration for a period before the making of the order an amount in excess of that fixed for that period—extends to requiring him or his personal representatives to account for the excess or such part of the excess as is specified in the order.

(3) The power conferred by Subsection (2)(c) may not be exercised with respect to a period before the making of the application for the order unless, in the opinion of the Court, there are special circumstances making it proper for the power to be so exercised.

(4) On application by the liquidator or the official manager, or by the receiver or manager, the Court may vary or amend an order made under this section.

**203. Documents of companies under receivership.**

(1) Where a receiver or manager of the property of a corporation has been appointed, every invoice, order for goods or business letter on or in which the name of the corporation appears, and which is issued by or on behalf of the corporation or the receiver or manager or the liquidator of the corporation, must contain a statement, immediately following the name of the corporation, that a receiver or manager has been appointed.

(2) If default is made in complying with this section, the corporation, and each officer or liquidator of the corporation, and each receiver or manager who knowingly authorized or permitted the default, is guilty of an offence.

**204. Statements, etc., where receiver or manager appointed.**

(1) Where a receiver or manager of the property of a company is appointed—

- (a) he must immediately send notice to the company of his appointment; and
- (b) there shall, within 14 days after receipt of the notice or such longer period as is allowed by the Court or by the receiver, be made out and submitted to him, in accordance with Section 205, a statement in the prescribed form as to the affairs of the company; and
- (c) he must, within one month after receipt of the statement—
  - (i) lodge with the Registrar a certified copy of the statement and a copy of any comment he thinks proper to make on it; and
  - (ii) send to the company a copy of any such comment or, if he does not think fit to make any comment, a notice to that effect; and

(iii) in the case of a receiver or manager appointed by or on behalf of the holders of debentures of the company—send to the trustees (if any) for the holders a copy of the statement and his comments (if any) on it.

(2) Subsection (1) does not apply in relation to the appointment of a receiver or manager to act with an existing receiver or manager, or in place of a receiver or manager dying or ceasing to act, except that, where that subsection applies to a receiver or manager who dies or ceases to act before that subsection has been fully complied with, the references in Subsection (1)(b) and (c) to the receiver or manager include, subject to Subsection (3), references to his successor and to any continuing receiver or manager.

(3) Where the company is being wound up, this section and Section 205 apply notwithstanding the fact that the receiver or manager and the liquidator are the same person, but they apply with any necessary modifications arising from that fact.

(4) A person who makes default in complying with this section is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

#### 205. Statements for receivers.

(1) References in this section to the successor of a receiver or manager include references to a continuing receiver or manager.

(2) The statement as to the affairs of a company required by Section 204 to be submitted to the receiver or manager must show, as at the date of his appointment, the particulars of the company's assets, debts and liabilities, the names and addresses of its creditors, the securities held by them respectively and the dates when the securities were respectively given, and such further or other information as is required by the regulations.

(3) The statement shall be submitted by, and must be verified by statutory declaration in the prescribed form made by, one or more of the persons who were at the date of the appointment of the receiver or manager the directors of the company and by the person who was at that date the secretary of the company, or by such of the following persons as the receiver requires to submit and verify the statement:—

- (a) persons who are or have been officers; and
- (b) persons who have taken part in the formation of the company at any time within one year before the date of the receiver's appointment; and
- (c) persons who are in the employment of the company, or have been in the employment of the company within that year, and are, in the opinion of the receiver or manager, capable of giving the information required; and
- (d) persons who are or have been within that year officers of or in the employment of a corporation that is, or within that year was, an officer of the company to which the statement relates.

(4) A person making the statement and statutory declaration shall be allowed, and shall be paid by the receiver or manager (or his successor) out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and statutory declaration as the receiver or manager (or his successor) thinks reasonable, subject to an appeal to the Court.

(5) A person who makes default in complying with this section is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

**206. Lodging of accounts of receivers and managers.**

(1) A receiver or manager of the property of a company, or of the property within the country of any other corporation, must—

(a) within one month after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months, and within one month after he ceases to act as receiver or manager, lodge with the Registrar an account in the prescribed form showing—

(i) his receipts and his payments during that period of six months or, where he ceases to act as receiver or manager, during the period from the end of the period to which the last account related or from the date of his appointment, as the case may be, up to the date of his so ceasing; and

(ii) the aggregate amount of his receipts and payments during all preceding periods since his appointment; and

(iii) where he has been appointed under the powers contained in an instrument—the amount owing under that instrument—

(A) in the case of the first account—at the time of his appointment and at the expiration of the period to which the account relates; and

(B) in the case of any other account—at the expiration of the period to which the account relates,

and his estimate of the total value, at the expiration of the period to which the account relates, of the assets of the company or corporation that are subject to the instrument; and

(b) before lodging the account, verify by statutory declaration in the prescribed form all accounts and statements referred to in it.

(2) The Registrar may, of his own motion or on the application of the company or other corporation or a creditor, cause the accounts to be audited by a registered company auditor appointed by the Registrar and, for the purpose of the audit, the receiver or manager must furnish the auditor with such vouchers and information as he requires, and the auditor may at any time require the production of and inspect any books of account kept by the receiver or manager or any documents or other records relating to the books of account.

(3) Where the Registrar causes the accounts to be audited on the application of the company or other corporation or a creditor, he may require the applicant to give security for the payment of the cost of the audit.

(4) A receiver or manager who makes default in complying with this section is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

**207. Priorities as to floating charges.**

(1) Where—

(a) a receiver is appointed on behalf of the holders of any debentures of a company that are secured by a floating charge; or

(b) possession is taken by or on behalf of debenture holders of any property comprised in or subject to a floating charge,

then if the company is not at the time in the course of being wound up, debts that in a winding-up are preferential debts and are due by way of wages, salary, annual leave or long service leave, and any amount that in a winding-up is payable under Section 310(3) or (5)—

(c) shall be paid out of any assets coming to the hands of the receiver or other person taking possession in priority to any claim for principal or interest in respect of the debentures; and

(d) shall be paid in the same order of priority as is prescribed by Section 310 in respect of those debts and amounts.

(2) For the purposes of Subsection (1), a reference in Section 310(1)(d) or (f) to the commencement of the winding-up shall be read as a reference to the date of the appointment of the receiver, or of possession being taken as referred to in Subsection (1), as the case requires.

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

#### 208. Returns, etc., by receiver.

(1) If a receiver or manager of the property of a company—

(a) who has made default in making or lodging a return, account or other document, or in giving a notice required by law, fails to make good the default within 14 days after service on him, by a member or creditor of the company or a trustee for debenture holders, of a notice requiring him to do so; or

(b) who has been appointed under the powers contained in an instrument has, after being required by the liquidator of the company to do so, failed to render proper accounts of his receipts and payments and to vouch the accounts and to pay over to the liquidator the amount properly payable to him,

the Court may, on application made for the purpose, make an order directing him to make good the default within such time as is specified in the order.

(2) In the case of a default referred to in Subsection (1)(a), an application for the purposes of this section may be made by any member or creditor of the company or trustee for debenture holders, and in the case of a default referred to in Subsection (1)(b) the application shall be made by the liquidator.

### PART X.—OFFICIAL MANAGEMENT.

#### 209. Interpretation of Part X.

(1) In this Part—

“special notice”, in relation to a meeting of creditors of a company, means notice of the meeting posted to each of the creditors not less than 14 days nor more than 21 days before the date of the meeting;

“special resolution”, in relation to a meeting of creditors of a company, means a resolution passed by a majority of the creditors voting either in person or by proxy on the resolution, being a majority consisting of creditors representing at least 75% in value and 50% in number of creditors entitled to vote and so

voting on the resolution, every creditor to whom the company owes a debt of less than K20.00 being reckoned in value only for the purpose of calculating the majority.

(2) For the purposes of a special resolution required by this Part to be passed at a meeting of creditors of a company, no related corporation is entitled to vote on the resolution.

(3) Subject to Subsection (2), nothing in this Part prejudices or otherwise affects the rights of any secured creditor of the company.

**210. Meeting of creditors to appoint official manager.**

(1) Where it is resolved, by the majority of the directors of a company present at a meeting of the directors specially called for the purpose, that the company is unable to pay its debts as and when they become due and payable, the company may, and where the company is so requested in writing by a creditor of the company who has a judgement against the company unsatisfied to the extent of not less than K500.00 the company must, by giving notice of the meeting in accordance with Subsection (10), call a meeting of its creditors for the purpose of placing the company under official management and appointing an official manager of the company.

(2) The meeting referred to in Subsection (1) shall be called within 42 days after the passing of the resolution of the directors, or the receipt by the company of the request by the judgement creditor, or where in the opinion of the Registrar the company would not be able properly to comply with these requirements within such further period as the Registrar allows.

(3) If default is made in complying with Subsection (1) or (2), the company and every officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K400.00.

Default penalty: A fine not exceeding K100.00.

(4) The company must prepare a statement in the prescribed form of the affairs of the company, made up to a date not earlier than the date of the passing of the resolution of the directors or the receipt by the company of the request by the judgement creditor under Subsection (1), as the case may be.

(5) Subject to Subsection (8), a company shall be deemed not to have prepared a statement of its affairs in accordance with Subsection (4) unless each director of the company has furnished to the company a certificate under his hand certifying whether the statement does or does not, to the best of his knowledge, information and belief, give a true and fair view of the state of affairs of the company as at the date to which it is made up.

(6) Where a director certifies that the statement does not give a true and fair view of the state of affairs of the company, he must also state in the certificate the grounds on which he formed that opinion.

(7) A director of a company must not furnish a certificate concerning a statement of the affairs of a company for the purpose of Subsection (5) unless he has made such inquiries as are reasonably necessary to determine whether the statement does or does not give a true and fair view of the state of affairs of the company as at the date to which it is made up.

(8) Where the Registrar is satisfied that it is impracticable for a company to obtain the certificate of a director, the Registrar may dispense with the obtaining of the certificate from him.

(9) A company that, and every director who, fails to comply or to take all reasonable steps to secure compliance with any provision of Subsection (4), (6) or (7) is guilty of an offence.

Penalty: A fine not exceeding K400.00.

Default penalty: A fine not exceeding K100.00.

(10) Notice of the meeting must be given to the creditors of the company by means of a notice in the prescribed form—

- (a) posted to each of the creditors; and
- (b) published at least once in a newspaper published in and circulating throughout the country not less frequently than once a week,

not less than 10 days nor more than 21 days before the day fixed for the holding of the meeting.

(11) The company must attach to every notice posted to the creditors under Subsection (10)—

- (a) a summary in the prescribed form of the statement of affairs of the company prepared under Subsection (4); and
- (b) a notice that—
  - (i) the statement of affairs is available at the registered office of the company; and
  - (ii) a copy of the statement will be posted by return mail to any creditor who requests it or will be handed to any creditor who calls at the office and requests it; and
- (c) a copy of the certificate furnished by each director of the company in accordance with Subsection (5).

(12) If default is made in complying with Subsection (11), or with a request made under Subsection (11)(b), the company and every officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K400.00.

Default penalty: A fine not exceeding K100.00.

(13) Notwithstanding Subsection (11), the company may attach to every notice posted to the creditors under Subsection (10) a complete copy of the statement of affairs of the company required to be prepared by the company under Subsection (4), and if the company does so it is not required to comply with Subsection (11)(a) and (b).

(14) The meeting must be called for a time and place convenient to the majority in value of the creditors.

(15) The chairman of the meeting—

- (a) shall be appointed by a resolution of the creditors of the company present at the meeting who are entitled to vote on a special resolution under Section 209; and
- (b) shall at the meeting determine whether the time and place of the meeting are convenient to the majority in value of the creditors,

and his decision is final unless it is shown not to be bona fide.

(16) If the chairman decides that the meeting has not been held at a time and place convenient to the majority, the meeting lapses.

(17) Within seven days after the first notice calling the meeting is posted to any creditor, the company shall lodge a copy of the notice with the Registrar, having attached to it a certified copy of the statement of affairs required to be prepared by the company under Subsection (4) and certified copies of the certificates furnished by the directors under Subsection (5).

#### 211. Submission of statement of affairs to meetings.

(1) At the meeting of creditors of the company called under Section 210, the directors of the company must submit to the meeting the statement of affairs of the company required to be prepared by the company under Section 210(4).

(2) The directors of the company must appoint one of their number to attend the meeting.

(3) The director appointed must attend the meeting and disclose to the meeting the company's affairs and the circumstances leading up to the proposed official management.

(4) If default is made in complying with this section, the company, and every director who is in default, is guilty of an offence.

Penalty: A fine not exceeding K400.00.

#### 212. Adjournment of meetings.

(1) A meeting called under Section 210 may by resolution be adjourned from time to time to a time and date specified in the resolution, but shall not be adjourned to a date later than 30 days after the date for which the meeting was called.

(2) Where a meeting is adjourned, the adjourned meeting shall, unless it is otherwise provided by the resolution by which it is adjourned, be held at the same place as the original meeting.

(3) Where a meeting is adjourned to a date more than eight days after the passing of the resolution by which it is adjourned, the company shall, at least seven days before the date of the resumption, cause notice of the time and place of the resumption to be published at least once in a newspaper published in and circulating throughout the country not less frequently than once a week.

#### 213. Placing companies under official management.

(1) Where at a meeting of creditors of a company called under Section 210 the creditors have passed a resolution to the effect that in their opinion the company is unable to pay its debts as and when they become due and payable but that if the company were placed under official management there would in their opinion be a reasonable probability that it would be able to pay its debts, the creditors may, at the meeting, by special resolution—

- (a) determine that the company be placed under official management for such period, commencing on the date of the passing of the resolution and not exceeding two years from that date, as is specified in the resolution; and
- (b) appoint a person named in the resolution who—
  - (i) has consented in writing to act as official manager of the company; and
  - (ii) is not the auditor of the company; and



(iii) has furnished to the company a certificate under his hand that he is neither an undischarged bankrupt nor a person who has made any arrangement or composition with his creditors generally,

to be the official manager of the company during the period of the official management; and

(c) determine the amount of the salary or remuneration of the official manager, or delegate the fixing of the amount to a committee of management appointed under this Part.

(2) An official manager who furnishes under Subsection (1)(b)(iii) a certificate that is false is guilty of an offence.

Penalty: A fine not exceeding K400.00.

(3) Within seven days after the passing of the resolutions referred to in Subsection (1), the company must—

(a) cause a notice in the prescribed form of the passing of the resolutions to be lodged with the Registrar; and

(b) cause notice that the company has been placed under official management and of the full name of the official manager to be published in a newspaper published in and circulating throughout the country not less frequently than once a week; and

(c) send by post to each of the creditors and members of the company a notice in the prescribed form of—

(i) the resolutions; and

(ii) the right to apply to the Court under Section 228.

(4) If default is made in complying with Subsection (3), the company and every officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K25.00.

(5) A creditor to whom the company owes, or a representative of a group of creditors to whom the company owes collectively, more than 10% of the total unsecured debts of the company may, within 14 days of the appointment of a person as official manager of the company under Subsection (1) or Section 220(3), apply to the Court for the termination of the appointment, and if in the opinion of the Court the person so appointed is not suitable for the position the Court may make an order terminating his appointment and appointing as official manager a registered company auditor (other than the auditor of the company) who has consented in writing to act as official manager.

(6) Where the Court has made an order under Subsection (5) appointing a person to be the official manager of a company, the provisions of this Part apply to that person as if he had been appointed official manager of the company at a meeting of creditors under Subsection (1) as at the date of the order of the Court.

(7) Where the Court makes an order under Subsection (5), the person obtaining the order must—

(a) within seven days after the making of the order, lodge with the Registrar notice in the prescribed form of the making of the order and its date; and

(b) within seven days after the passing and filing of the order, lodge with the Registrar an office copy of the order.

(8) A person who fails to comply with Subsection (7) is guilty of an offence.

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K25.00.

**214. Committees of management.**

(1) At a meeting of the creditors of a company held under this Part the creditors may determine that a committee of management be appointed for the purposes of this Part.

(2) A committee of management of a company shall consist of five natural persons, of whom three are appointed by the creditors of the company by special resolution and two are appointed by the members of the company at a general meeting of the company.

(3) A person is not eligible to be a member of a committee of management of a company appointed by the creditors of the company unless he is—

- (a) a creditor of the company; or
- (b) the attorney of a creditor by virtue of a general power of attorney given by the creditor; or
- (c) a person authorized in writing by a creditor of the company to be a member of the committee of management.

(4) A person is not eligible to be a member of a committee of management of a company appointed by the members of the company unless he is—

- (a) a member of the company; or
- (b) the attorney of a member of the company by virtue of a general power of attorney given by the member; or
- (c) a person authorized in writing by a member of the company to be a member of the committee of management.

**215. Notice of appointment, etc., of official managers.**

(1) A person who has been appointed official manager of a company must within 14 days after his appointment, lodge with the Registrar notice in the prescribed form of his appointment as official manager and of the situation of his office and, in the event of any change in the situation of his office, must, within 14 days after the change, lodge with the Registrar notice in the prescribed form of the change.

(2) A person must, within 14 days after his resignation or removal from office as official manager of a company, lodge with the Registrar notice in the prescribed form of his resignation or removal.

(3) A person who fails to comply with any of the provisions of this section is guilty of an offence.

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K25.00.

**216. Effect of resolutions.**

(1) Where a special resolution placing a company under official management has been passed by the creditors of the company under Section 213(1)—

- (a) the company is under official management for the period specified in the special resolution unless the official management is earlier terminated under this Part; and
- (b) the directors of the company cease to hold office; and

- (c) the person appointed official manager of the company shall assume and is responsible for the management of the company and shall perform all of the duties, and may perform any of the functions and exercise any of the powers, of the directors of the company; and
  - (d) the affairs of the company shall be conducted subject to this Part.
- (2) The official manager shall be the chairman of any meeting or adjourned meeting of the company or its creditors that takes place while he holds office as official manager.

#### 217. Meetings of creditors and members.

- (1) Subject to Subsection (2), within two months after the expiration of—
- (a) the period of six months commencing on the date of his appointment as official manager and of each subsequent period of six months; or
  - (b) if the Registrar, at any time before the expiration of any such period, requires or permits him to do so in respect of a lesser period specified by the Registrar, the period so specified,
- the official manager of a company must—
- (c) prepare a statement showing the assets and liabilities of the company as at the last day of the period and a report containing such other information as he thinks necessary to enable the creditors and members of the company to assess the financial position of the company as at the last day of the period; and
  - (d) call a meeting of the creditors and members of the company to consider the statement and report.
- (2) Where under Subsection (1) the Registrar has required or permitted the preparation of a statement and report at the end of a period of less than six months, the next period of six months commences at the expiration of that lesser period.
- (3) With each statement referred to in Subsection (1), the official manager must furnish statements signed by him and, where the company is required under this Act to appoint a person to be its auditor, by that auditor stating whether or not, in his or their opinion, as the case requires, the statement is drawn up so as to give a true and fair view of the affairs of the company.
- (4) Notice of a meeting called under Subsection (1) must be given to the creditors and the members of the company by advertisement published at least once in a newspaper published in and circulating throughout the country not less frequently than once a week, and the advertisement must specify the time (being a time not less than 14 days after the date of publication of the advertisement), place and object of the meeting and the address at which and the hours between which the statements and report referred to in this section may be inspected.
- (5) Copies of the statements and report referred to in this section must be kept by the official manager of the company, and shall be open to the inspection of any creditor or member of the company at the registered office of the company.
- (6) The official manager must—
- (a) give written notice that the statement under Subsection (1) has been made up to every creditor and member of the company when next forwarding any report, notice of meeting, notice of call or dividend relating to the company; and

(b) in the notice inform creditors and members of the company at what address and between what hours the statement may be inspected.

(7) Within seven days after a meeting is held under Subsection (1), the official manager must lodge with the Registrar a notice in the prescribed form of the holding of the meeting and of its date, with a copy of the statements and report referred to in this section attached to it.

(8) Where the statement referred to in Subsection (1) is not accompanied by a statement signed by a registered company auditor, the Registrar may cause the statement referred to in that subsection to be audited by a registered company auditor appointed by the Registrar, and for the purposes of the audit the official manager must furnish that auditor with such books, vouchers and information as the auditor may require.

(9) The costs of an audit under Subsection (8) shall be fixed by the Board and are part of the costs of the official management.

(10) An official manager who fails to comply with this section, and any auditor of a company who fails to supply to the official manager on request the statement referred to in Subsection (3), is guilty of an offence.

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K25.00.

#### 218. Stay of proceedings.

(1) Where a company is under official management, no action or proceedings in any court shall be commenced or proceeded with against the company, except with the leave of the Court and in accordance with such terms and conditions as the Court imposes.

(2) Where a foreign company incorporated in a State or Territory of Australia is registered in Papua New Guinea and is placed under official management in the State or Territory of its incorporation, no action or proceedings in any court shall be commenced or proceeded with against the company until the company ceases to be under official management in that State or Territory, except with leave of the Court and in accordance with such terms and conditions as the Court imposes.

(3) At any time—

(a) after a company has, in accordance with Section 210, called a meeting of its creditors for the purpose of placing the company under official management; and

(b) before the passing of a special resolution by the creditors under Section 213, determining that the company be placed under official management,

the company or any creditor of the company may, if any action or proceeding against the company is pending, apply to the Court to stay or restrain further proceedings in the action or proceeding, and the Court may stay or restrain the proceedings on such terms and conditions as it thinks proper.

#### 219. Extension of official management.

(1) When the period of official management of a company is due to expire, a meeting of creditors of the company shall be called for a date not earlier than three months, and not later than one month, before the date on which the period is due to expire to consider and, if thought proper, pass a special resolution extending the official management for a further period, not exceeding 12 months, specified in the resolution.

(2) Where a special resolution extending the period of official management of a company is passed at a meeting called in accordance with this section, the company continues under official management during the period specified in the resolution unless the official management is earlier terminated under this Part.

(3) The meeting shall be called by the official manager by—

(a) posting to each of the creditors a notice stating the place, date, time and purpose of the meeting; and

(b) publishing a copy of the notice at least once in a newspaper published in and circulating throughout the country not less frequently than once a week,

not less than seven days nor more than 14 days before the date of the meeting.

(4) Within seven days after the passing of a special resolution under Subsection (1), the official manager shall lodge with the Registrar a copy of the resolution.

#### 220. Termination of appointment.

(1) The appointment of a person as official manager of a company may be determined—

(a) by his written resignation signed by him and tendered to either—

(i) the committee of management appointed under this Part; or

(ii) a meeting of creditors of the company; or

(b) by special resolution of the creditors passed at a meeting of creditors of which special notice stating the purpose of the meeting has been given; or

(c) by an order of the Court.

(2) The appointment of a person as official manager of a company shall be determined by the committee of management, or if there is no committee of management by the Court on the application of a creditor or member of the company, if—

(a) the official manager is bankrupt or has made any arrangement or composition with his creditors generally; or

(b) the official manager is of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or

(c) having been appointed official manager by an order of the Court under Section 213(5) he ceases to be a registered company auditor.

(3) Where a vacancy occurs in the office of official manager of a company, the committee of management may appoint, or if there is no committee of management a meeting of creditors of the company called for that purpose by any two of their number may by special resolution appoint, a person who is qualified under Section 213(1)(b) for appointment to be the official manager.

(4) Section 216(1)(c) applies to a person appointed official manager under Subsection (3).

#### 221. Saving of appointment and duties of auditors.

Notwithstanding the appointment of an official manager of a company and for so long as the company is under official management, the provisions of this Act relating to the appointment and re-appointment of auditors and the rights and duties of auditors apply to and in relation to the company, and in the application of those provisions to and in relation to the company any reference in them to the directors of a company shall be read as a reference to the official manager of the company.

**222. Duties of official manager.**

(1) Subject to this Act, the official manager of a company must—

- (a) as soon as may be after his appointment as the official manager, take into his custody or under his control all the property to which the company is or appears to be entitled; and
- (b) conduct the business and management of the company in such manner as he thinks most economical and most beneficial to the interests of the members and creditors of the company, subject to any directions given under Paragraph (c); and
- (c) comply with any directions of the creditors of the company that are agreed to by special resolution at a meeting of creditors of which the creditors of the company have been given special notice; and
- (d) comply with all requirements of this Act applicable to the company or the directors of the company relating to the keeping of accounts and the lodging of annual returns, and perform all such other duties as are so applicable and are imposed on a company or on the directors of a company by or under this Act; and
- (e) if so directed by—
  - (i) the committee of management of the company acting under Section 232(7); or
  - (ii) a creditor or creditors of the company to whom the company owes not less than 20% in value of the total unsecured debts of the company, call a meeting of creditors of the company by notice posted to each of the creditors; and
- (f) if a meeting of creditors held under Section 219(1) does not resolve to extend the period of the official management, within seven days of the failure to extend the period, call, by notice posted to each of the members of the company, a meeting of the members to be held on a date not later than 21 days after the meeting of creditors under that subsection for the purpose of—
  - (i) reporting to the members accordingly; and
  - (ii) enabling the members, if they think fit, to elect directors of the company to take office on the termination of the period of official management.

(2) A meeting called under Subsection (1)(f) shall be deemed to have been properly called and empowered under the memorandum and articles of the company to appoint or elect directors, and directors so appointed or elected take office on the termination of the period of official management of the company.

(3) If at any time the official manager is of the opinion that the continuance of the official management of the company will not enable the company to pay its debts, he must call a meeting of the members of the company for the purpose of considering and, if thought fit, passing a special resolution that the company be wound up voluntarily.

(4) Where the official manager has called a meeting of the members under Subsection (3), he must—

- (a) cause a meeting of the creditors of the company to be called for the day, or the day after the day, on which the meeting of members is to be held, and cause the notices of the meeting of creditors to be sent by post to the

creditors simultaneously with the sending of the notices of the meeting of the members; and

- (b) call the meeting of creditors at a time and place convenient to the majority in value of the creditors, and give the creditors at least seven clear days' notice by post of the meeting; and
- (c) cause notice of the meeting of the creditors to be advertised at least seven days before the date of the meeting in the National Gazette and in a newspaper published in and circulating throughout the country not less frequently than once a week; and
- (d) cause a full statement of the company's affairs showing in respect of assets the method and manner in which the valuation of the assets was arrived at, together with a list of the creditors and the estimated amount of their claims, to be laid before the meeting of creditors.

(5) Where a meeting of members called under Subsection (3) has passed a special resolution to the effect that the company be wound up voluntarily, the company shall, and the creditors may, at their respective meetings called under Subsection (3) or (4), nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons the person nominated by the creditors is the liquidator, but if no person is nominated by the creditors the person nominated by the company is the liquidator.

(6) Notwithstanding Subsection (5), where different persons are nominated any member or creditor may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order directing that the person nominated as liquidator by the company be liquidator instead of, or jointly with, the person nominated by the creditors.

(7) On the appointment of a liquidator the company ceases to be under official management.

(8) The person who, immediately before the appointment of the liquidator, was the official manager must, within seven days after the holding of the meetings referred to in Subsections (3) and (4), lodge with the Registrar a notice in the prescribed form of the holding of the meetings and the dates of them, with a copy of the statement referred to in Subsection (4)(d) attached to it.

(9) A person who fails to comply with Subsection (1), (3), (4) or (8) is guilty of an offence.

Penalty: A fine not exceeding K400.00.

Default penalty: A fine not exceeding K100.00.

### 223. Undue preferences.

(1) A transfer, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company that, if it had been made or done by or against an individual, would be void or voidable in his bankruptcy, is void or voidable in the same manner if the company is placed under official management.

(2) For the purposes of this section, the date that corresponds with the date of presentation of the bankruptcy petition in the case of an individual is the date of the commencement of the official management of the company.

**224. Application and disposal of assets.**

(1) The official manager may sell or otherwise dispose of any assets of the company if the sale or disposition is in the ordinary course of the business of the company.

(2) The official manager may sell or otherwise dispose of any assets of the company otherwise than in the ordinary course of the business of the company if the value of the assets in question, together with the sale price of any other assets previously sold or disposed of otherwise than in the ordinary course of the business of the company during the period of official management, does not exceed in the aggregate K400.00.

(3) With the consent of the committee of management, the official manager may sell or otherwise dispose of any assets of the company otherwise than in the ordinary course of the business of the company if the value of the assets in question, together with the sale price of any other assets previously sold or disposed of otherwise than in the ordinary course of the business of the company during the period of official management, does not exceed in the aggregate K2 000.00.

(4) With the leave of the Court, the official manager may sell or otherwise dispose of any assets of the company.

(5) The moneys of the company that become available to the official manager during the official management shall be applied by him in the following order :—

(a) firstly, in payment of the costs of the official management including his remuneration, the remuneration of the deputy official manager (if any) and that of an auditor (if any) appointed in accordance with Division VII.2; and

(b) secondly, in payment of the liabilities of the company incurred in the course of the official management; and

(c) thirdly, in payment of any other liabilities of the company.

(6) Subject to Subsection (5), the claims of the creditors of the company referred to in Subsection (5)(c) shall be paid in accordance with Part XI. as if they were claims against a company being wound up, and the provisions of that Part, with any necessary adaptations, apply to and in relation to those claims accordingly.

**225. Application to Court for directions.**

The official manager may apply to the Court for directions in relation to any matter arising out of the exercise of his powers or functions as official manager.

**226. Application of winding-up provisions to official management.**

Where a company is under official management, Sections 236(1)(i), 266, 267 and 317 apply as if the company under official management were a company being wound up and the official manager were the liquidator, and any reference in those sections to contributories shall be read as a reference to members.

**227. Termination of official management.**

(1) If, on the application of the official manager or of any creditor or member of a company, it appears to the Court that the purpose for which the company was placed under official management has been fulfilled, or for any reason it is undesirable that the company should continue to be under official management, the Court may, by order, terminate the official management on the date specified in the order, and on that date the official manager ceases to be the official manager of the company.

(2) On making an order under Subsection (1), the Court may also give such directions as it thinks proper for the resumption of the management and control of the company by



its officers, including directions for the calling of a general meeting of members of the company to elect directors to take office on the termination of the official management.

(3) If the Court so directs, the costs of any proceedings before the Court under this section and the costs incurred in calling a meeting of members of the company under an order of the Court under this section are part of the costs of the official management of the company.

**228. Appeals.**

(1) Notwithstanding that a resolution has been passed under Section 213(1) determining that a company be placed under official management, and notwithstanding Section 216—

- (a) a creditor to whom the company owes, or a representative of a group of creditors to whom collectively the company owes, more than 10% of the total unsecured debts of the company; or
- (b) a member holding, or a representative of a group of members holding collectively, not less than 10% of the paid-up capital of the company; or
- (c) in the case of a company not having a share capital, a member holding, or a representative of a group of members holding collectively, not less than 10% of the total voting rights of all members having a right to vote at general meetings,

may apply to the Court for the variation or cancellation of the resolution at any time within a period of 14 days after the passing of the resolution, and if the Court is of opinion that there is no reasonable prospect of the company being rehabilitated, or that the resolution is not in the interests of the creditors and the members of the company, it may vary or cancel the resolution.

(2) Where the Court makes an order cancelling the resolution under Subsection (1), the Court may give such directions as it thinks necessary for the resumption of the management and control of the company by the persons who were officers of the company immediately before it was placed under official management.

(3) On the cancellation by the Court of the resolution under Subsection (1), the company ceases to be under official management and the person appointed official manager of the company ceases to be the official manager, and on any variation of the resolution by the Court under this section the resolution has effect as so varied, but notwithstanding that the resolution by the Court is so varied or cancelled, the acts of an official manager before any such variation or cancellation are valid and binding on the company and on the members and creditors.

**229. Lodgement of office copies of Court orders.**

(1) Where the Court makes an order under Section 227 or 228, the person obtaining the order must, within seven days after the order is made, lodge with the Registrar notice in the prescribed form of the making of the order and of the date of its making.

(2) The person who obtained the order must, within seven days after the order is filed, lodge with the Registrar an office copy of the order.

(3) Where the Court makes an order under Section 227 or 228 terminating the official management of a company, the person obtaining the order must, within seven days after the filing of the order, publish a copy of the order at least once in a newspaper published in and circulating throughout the country not less frequently than once a week.

(4) A person who fails to comply with this section is guilty of an offence.

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K25.00.

**230. Release of official manager.**

(1) A person who ceases to be official manager of a company—

(a) shall, notwithstanding that cessation, within 14 days prepare a report showing how the official management was conducted by him; and

(b) shall, within 28 days after he ceases to be the official manager, call a meeting of the creditors of the company.

(2) For the purpose of the preparation of a report under Subsection (1)(a), the person concerned shall be given access to the records and books of the company.

(3) Notice of a meeting under Subsection (1)(b) shall be given to the creditors of the company by—

(a) posting to each of the creditors a notice of the meeting, together with a copy of the report referred to in Subsection (1)(a); and

(b) publishing a copy of the notice at least once in a newspaper published in and circulating throughout the country not less frequently than once a week,

not less than seven days nor more than 14 days before the day of the meeting.

(4) At the meeting of creditors called under Subsection (1)(b), the person who was the official manager shall present his report and give such explanations of it as are reasonably requested by any creditor.

(5) Within seven days after the holding of the meeting, the person who was the official manager must lodge with the Registrar a notice of the holding of the meeting and of its date, with a copy of the report prepared by him under Subsection (1).

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K25.00.

(6) The meeting under Subsection (1)(b) shall be called and held at the expense of the company.

(7) Subject to Subsection (8), where a person ceases to be the official manager of a company the adoption by the meeting of creditors of the company of the report prepared by him under Subsection (1)(a) and of his explanations discharges him from all liability in respect of any act or omission by him in the management of the company, or otherwise in relation to his conduct as official manager.

(8) The adoption of the report under Subsection (1)(a) with the explanations of it does not discharge the person who was the official manager if the adoption was obtained by fraud or by suppression or concealment of any material fact, nor discharge him from any liability that by virtue of any enactment or rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he is guilty in relation to the company.

(9) Within seven days after the passing of a resolution adopting the report under Subsection (1)(a), the person who was the official manager must cause a notice in the prescribed form of the resolution to be lodged with the Registrar.

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K25.00.

(10) If the report under Subsection (1)(a) and the explanations of the report are not, within two months after being presented to the meeting of creditors of the company, adopted by a meeting of creditors, the person who was the official manager may apply to the Court for an order of release.

(11) The Court may grant or refuse the application, and may direct that all the expenses and Court costs incurred by the person who was the official manager in connexion with his application for release, and in relation to the calling of meetings following the determination of his appointment, be part of the costs of the official management.

(12) If an order is made under Subsection (10), it has the same effect as if the report and explanations had been adopted by a meeting of creditors of the company.

(13) Where the Court makes an order under Subsection (10), the person who was the official manager must lodge with the Registrar an office copy of the order within seven days after the filing of the order.

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K25.00.

### 231. Documents of companies under official management.

(1) Where a company is under official management, every invoice, order for goods or business letter on or in which the name of the company appears, and which issued by or on behalf of the company or the official manager, must have the words "Under Official Management" immediately following the name of the company where it first appears.

(2) If default is made in complying with Subsection (1), the company and every officer of the company who knowingly and wilfully authorizes or permits the default is guilty of an offence.

Penalty: A fine not exceeding K100.00.

### 232. Functions of committee of management.

(1) A committee of management appointed under this Part shall assist and advise the official manager on any matters relating to the management of the company on which he requests their advice and assistance.

(2) Either a committee of management or a meeting of creditors convened by the official manager—

(a) may appoint a person who—

(i) has consented in writing to act as deputy official manager of the company; and

(ii) is not the auditor of the company; and

(iii) has certified in writing that he is neither an undischarged bankrupt nor a person who has made any arrangement or composition with his creditors generally,

to be a deputy official manager; and

(b) may remove the deputy official manager and may, if it thinks that it is necessary, appoint another person to be deputy official manager in his place; and

(c) may determine the amount of the salary or the remuneration of the deputy official manager.

(3) A deputy official manager shall, in the absence of the official manager, and subject to any written directions given to him by the official manager, act as the official manager, and while so acting has the powers, duties and functions of the official manager.

(4) A deputy official manager who makes a false statement in a certificate under Subsection (2)(a)(iii) is guilty of an offence.

Penalty: A fine not exceeding K400.00.

(5) A person who has been appointed deputy official manager of a company must, within 14 days after his appointment, lodge with the Registrar notice in the prescribed form of his appointment as deputy official manager and of the situation of his office, and in the event of any change in the situation of his office must, within 14 days after the change, lodge with the Registrar notice in the prescribed form of the change.

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K25.00.

(6) Within 14 days after his resignation or removal from office as deputy official manager of a company, the person removed must lodge with the Registrar notice in the prescribed form of his resignation or removal.

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K25.00.

(7) A committee of management may at any time and from time to time direct the official manager of the company to call a meeting of the creditors of the company or the members of the company, or both, and the official manager must give effect to the direction.

(8) Subject to this section and to the regulations, Section 259(2) to (9) (inclusive) applies to and with respect to a committee of management, and the proceedings of and vacancies in a committee of management, and to and with respect to the removal of its members, and for that purpose any reference in those provisions—

(a) to the committee of inspection shall be read as a reference to the committee of management; and

(b) to the liquidator shall be read as a reference to the official manager; and

(c) to a contributory shall be read as a reference to a member of the company.

### 233. Accidental omission to give notice.

The accidental omission to give notice of a meeting held for the purposes of this Part to, or the non-receipt of a notice of the meeting by, any person does not invalidate the meeting or the proceedings at the meeting unless the Court, on the application of a creditor or member of the company, or the official manager of the company, otherwise declares.

## PART XI.—WINDING-UP.

### Division 1.—Preliminary.

### 234. Modes of winding-up.

(1) A company may be wound up—

(a) by the Court; or

(b) voluntarily.

(2) Except where the contrary intention appears, the provisions of this Act with respect to winding up apply to the winding-up of a company in either of those ways.

**235. Application of Part XI. to the State.**

The provisions of this Part relating to the remedies against the property of a company, the priorities of debts and the effect of an arrangement bind the State.

**236. Contributories generally.**

(1) On the winding-up of a company, every present and past member is liable to contribute to the assets of the company to an amount sufficient for—

- (a) payment of its debts and liabilities and the costs, charges and expenses of the winding-up; and
- (b) the adjustment of the rights of the contributories among themselves,

subject to Subsection (2) and to the following qualifications :—

- (c) a past member is not liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding-up; and
- (d) a past member is not liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member; and
- (e) a past member is not liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them under this Act; and
- (f) in the case of a company limited by shares, no contribution is required from a member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member; and
- (g) in the case of a company limited by guarantee, no contribution is, subject to Subsection (4), required from a member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up; and
- (h) this Act does not invalidate any provision in a policy of insurance or other contract by which the liability of individual members on the policy or contract is restricted, or by which the funds of the company are alone made liable in respect of the policy or contract; and
- (i) a sum due to a member as such by way of dividends, profits or otherwise shall not be treated as a debt of the company payable to that member in a case of competition between himself and any other creditor not a member, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding-up of a limited company, a director, whether past or present, whose liability is unlimited is, in addition to his liability (if any) to contribute as an ordinary member, liable to make a further contribution as if he were, at the commencement of the winding-up, a member of an unlimited company.

(3) Notwithstanding anything in Subsection (2)—

- (a) a past director is not liable to make a further contribution if he has not held office during the period of one year before the commencement of the winding-up; and
- (b) a past director is not liable to make a further contribution in respect of any debt or liability of the company contracted after he ceased to hold office; and
- (c) subject to the articles of the company, a director is not liable to make a further contribution unless the Court thinks it necessary to require the

contribution in order to satisfy the debts and liabilities of the company and the costs, charges and expenses of the winding-up.

(4) On the winding-up of a company limited both by shares and by guarantee, every member is liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

#### 237. Contributories in case of death or bankruptcy of member.

(1) If a contributory dies, whether before or after his name has been placed on the list of contributories, his personal representatives are liable in due course of administration to contribute to the assets of the company in discharge of his liability and are contributories accordingly and, if they make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment out of the estate of the money due.

(2) If a contributory becomes bankrupt or assigns his estate for the benefit of his creditors, whether before or after his name has been placed on the list of contributories, his trustee represents him for all the purposes of the winding-up.

#### 238. Liability of contributories.

The liability of a contributory is of the nature of a speciality debt accruing due from him at the time when his liability commenced but payable at the times when calls are made for enforcing the liability.

### Division 2.—Winding-up by the Court.

#### Subdivision A.—General.

#### 239. Application for winding-up.

(1) A company (whether or not it is being wound up voluntarily) may be wound up under an order of the Court on the petition of—

- (a) the company; or
- (b) the Central Bank, in accordance with Section 18 of the *Banks and Financial Institutions Act*; or
- (c) a creditor, including a contingent or prospective creditor, of the company; or
- (d) a contributory; or
- (e) the liquidator; or
- (f) the Principal Legal Adviser, under Section 186; or
- (g) the official manager of the company,

or any of them.

(2) Notwithstanding Subsection (1)—

- (a) a contributory is not entitled to present a petition on a ground specified in Section 240(1)(a), (b), (c), (e), or (h) unless—
  - (i) the number of members is reduced, in the case of a proprietary company (other than a proprietary company the whole of the issued shares in which are held by a holding company that is a public company under this Act or under the law of a State or Territory of Australia), below two or, in the case of any other company, below five; or

- (ii) the shares in respect of which he is a contributory or some of them were originally allotted to him, have been held by him and registered in his name for at least six months during the 18 months before the presentation of the petition or have devolved on him through the death of a former holder; and
- (b) a petition on the ground of a default in lodging the statutory report or in holding the statutory meeting shall not be presented by any person other than a contributory, or be presented before the expiration of 14 days after the last day on which the meeting ought to have been held; and
- (c) the Court shall not hear the petition if it is presented by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and a prima facie case for winding up has been established to the satisfaction of the Court; and
- (d) where a company is being wound up voluntarily, the Court shall not make a winding-up order unless it is satisfied that the voluntary winding-up cannot be continued with due regard to the interests of the creditors or contributories.

#### 240. Grounds of winding-up by Court.

- (1) The Court may order the winding-up of a company if—
  - (a) the company has by special resolution resolved that it be wound up by the Court; or
  - (b) default is made by the company in lodging the statutory report or in holding the statutory meeting; or
  - (c) the company does not commence business within a year after its incorporation, or suspends its business for a whole year; or
  - (d) the number of members is reduced, in the case of a proprietary company (other than a proprietary company the whole of the issued shares in which are held by a holding company that is a public company under this Act or under the law of a State or Territory of Australia), below two or, in the case of any other company, below five; or
  - (e) the company is unable to pay its debts; or
  - (f) directors have acted in the affairs of the company in their own interests rather than in the interests of the members as a whole, or in any other manner that appears to be unfair or unjust to other members; or
  - (g) an inspector appointed under Section 179 or 180 has reported that he is of opinion—
    - (i) that the company cannot pay its debts and should be wound up; or
    - (ii) that it is in the interests of the public or of the shareholders or of the creditors that the company should be wound up; or
  - (h) the Court is of opinion that it is just and equitable that the company be wound up.
- (2) A company shall be deemed to be unable to pay its debts if—
  - (a) a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding K100.00 then due has served on the company, by leaving it at the registered office, a demand under his hand, or under the hand of his agent lawfully authorized for the purpose, requiring the company to pay the sum so

due and the company has, for three weeks afterwards, neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or

- (b) execution or other process issued on a judgement, decree or order of a court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (c) it is proved to the satisfaction of the Court, which shall take into account the contingent and prospective liabilities of the company, that the company is unable to pay its debts.

#### 241. Commencement of winding-up.

(1) Where, before the presentation of the petition, a resolution has been passed by the company for voluntary winding-up, the winding-up of the company shall be deemed to have commenced at the time of the passing of the resolution and, unless the Court on proof of fraud or mistake thinks fit otherwise to direct, all proceedings taken in the voluntary winding-up shall be deemed to have been validly taken.

(2) In any other case the winding-up shall be deemed to have commenced at the time of the presentation of the petition for the winding-up.

#### 242. Preliminary costs, etc.

(1) The persons, other than the company itself or the liquidator, on whose petition a winding-up order is made shall, at their own cost, prosecute all proceedings in the winding-up until a liquidator has been appointed under this Part.

(2) Unless the Court orders otherwise, the liquidator shall reimburse the petitioners out of the assets of the company the taxed costs incurred by the petitioners in any such proceedings.

(3) Where the company has no assets or insufficient assets and, in the opinion of the Principal Legal Adviser, a fraud has been committed by a person in the promotion or formation of the company or by an officer of the company in relation to the company since its formation, the taxed costs or so much of them as is not so reimbursed may, with the approval in writing of the Minister, and to an extent specified by the Minister but not in any case exceeding K300.00, be reimbursed to the petitioner out of moneys provided by the State for the purpose.

(4) Where a winding-up order is made on the petition of the company or the liquidator, the costs incurred shall, subject to any order of the Court, be paid out of the assets of the company in the same manner as if they were the costs of any other petitioner.

#### 243. Powers on hearing of petition.

(1) On hearing a winding-up petition the Court may—

- (a) dismiss it with or without costs; or
- (b) adjourn the hearing, conditionally or unconditionally; or
- (c) make any interim or other order that it thinks fit,

but the Court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.



(2) On the petition coming on for hearing or at any time on the application of the petitioner, the company or a person who has given notice that he intends to appear on the hearing of the petition, the Court may—

- (a) direct that any notices be given or steps taken before or after the hearing of the petition; or
- (b) dispense with the giving of any notices or the taking of any steps that are required by this Act; or
- (c) direct that oral evidence be taken on the petition or any matter relating to the petition; or
- (d) direct a speedy hearing or trial of the petition or any issue or matter; or
- (e) allow the petition to be amended or withdrawn; or
- (f) give such directions as to the proceedings as the Court thinks proper.

(3) Where the petition is presented by members as contributories on the ground that it is just and equitable that the company should be wound up or that the directors have acted in a manner that appears to be unfair or unjust to other members, and the Court is of opinion that—

- (a) the petitioners are entitled to relief either by winding up the company or by some other means; and
- (b) in the absence of any other remedy it would be just and equitable that the company should be wound up,

the Court shall make a winding-up order unless it is also of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(4) Where the petition is presented on the ground of default in lodging the statutory report or in holding the statutory meeting, the Court may, instead of making a winding-up order, direct that the statutory report be lodged or that a meeting be summoned, and may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

#### 244. Staying or restraint of proceedings.

At any time after the presentation of a winding-up petition and before a winding-up order has been made, the company or a creditor or contributory may, where an action or proceeding against the company is pending, apply to the Court to stay or restrain further proceedings in the action or proceeding, and the Court may stay or restrain the proceedings accordingly on such terms as it thinks fit.

#### 245. Avoidance of certain dispositions of property, etc.

(1) Any disposition of the property of the company (including things in action), and any transfer of shares or alteration in the status of the members of the company, made after the commencement of the winding-up by the Court is void, unless the Court otherwise orders.

(2) Any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding-up by the Court is void.

#### 246. Petition as *lis pendens*.

A petition for winding up a company constitutes a *lis pendens* within the meaning of any law relating to the effect of a *lis pendens* on purchasers or mortgagees.

**247. Lodgement of copies of orders, etc.**

(1) Within seven days after the making of a winding-up order, the petitioner must lodge with the Registrar notice in the prescribed form of—

- (a) the order and its date; and
- (b) the name and address of the liquidator.

(2) On the filing of the winding-up order, the petitioner must, within seven days—

- (a) lodge an office copy of the order with the Registrar; and
- (b) cause a copy to be served on the secretary or manager of the company, or on such other person, or in such manner, as the Court directs; and
- (c) deliver a copy to the liquidator with a statement that the requirements of this subsection have been complied with.

(3) When a winding-up order has been made or a provisional liquidator has been appointed, no action or proceedings shall be proceeded with or commenced against the company except—

- (a) by leave of the Court; and
- (b) in accordance with such conditions as the Court imposes.

(4) An order for the winding-up of a company operates in favour of all the creditors and contributories of the company as if it was made on the joint petition of a creditor and of a contributory.

(5) If default is made in complying with Subsection (1) or (2), the petitioner is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

**Subdivision B.—Liquidators.****248. Appointment of official liquidator.**

(1) On an order being made for the winding-up of a company, the Court may appoint an official liquidator to be the liquidator of the company.

(2) The Court may appoint an official liquidator provisionally at any time after the presentation of a winding-up petition and before the making of a winding-up order, and the provisional liquidator has and may exercise all the functions and powers of a liquidator subject to such limitations and restrictions as are prescribed by the *Companies Rules* or as the Court specifies in the order appointing him.

**249. General provisions as to liquidators.**

(1) A liquidator appointed by the Court may resign or, on cause shown, be removed by the Court.

(2) A provisional liquidator is entitled to receive such salary or remuneration by way of percentage or otherwise as is determined by the Court.

(3) A liquidator is entitled to receive such salary or remuneration by way of percentage or otherwise as is determined—

- (a) by agreement between the liquidator and the committee of inspection (if any);  
or
- (b) failing agreement or where there is no committee of inspection, by a resolution passed at a meeting of creditors by a majority of not less than 75%

in value and 50% in number of the creditors present in person or by proxy and voting at the meeting, whose debts have been admitted to proof; or

- (c) failing a determination in a manner referred to in Paragraph (a) or (b), by the Court.

(4) A meeting for the purposes of Subsection (3)(a) shall be convened by the liquidator by a notice to each creditor to which is attached a statement of all receipts and expenditure by the liquidator and the amount of remuneration sought by him, or, failing a determination in a manner referred to in Subsection (3)(a) or (b), by the Court.

(5) Where the salary or remuneration of a liquidator is determined in accordance with Subsection (3)(a), the Court may, on the application of a member or members whose shareholding or shareholdings represents or represent in the aggregate not less than 10% of the issued capital of the company, confirm or vary the determination.

(6) Where the salary or remuneration of a liquidator is determined in accordance with Subsection (3)(b), the Court may, on the application of the liquidator or a member or members referred to in Subsection (5), confirm or vary the determination.

(7) A vacancy in the office of a liquidator appointed by the Court shall be filled by the Court.

(8) If more than one liquidator is appointed by the Court, the Court shall declare whether anything required or authorized by this Act to be done by the liquidator is to be done by all or any of the persons appointed.

(9) Subject to this Act, the acts of a liquidator are valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

#### 250. Custody and vesting of company property.

(1) Where a winding-up order has been made or a provisional liquidator has been appointed, the liquidator or provisional liquidator shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled, and if there is no liquidator all the property of the company is in the custody of the Court.

(2) On application of the liquidator, the Court may, by order, direct that all or any part of the property of any description belonging to the company or held by trustees on its behalf vest in the liquidator, and thereupon—

- (a) the property to which the order relates vests accordingly; and  
(b) the liquidator may, after giving such indemnity (if any) as the Court directs, bring or defend any action or other legal proceeding that relates to that property or that it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

(3) Where an order is made under this section, every liquidator of a company in relation to which the order is made must, within seven days of the making of the order—

- (a) lodge an office copy of the order with the Registrar; and  
(b) where the order relates to land—lodge an office copy of the order with the Land Registration Authority,

and a liquidator who makes default in complying with this section is guilty of an offence.

Penalty: A fine not exceeding K200.00.

Default penalty: A fine not exceeding K20.00.

(4) An order under this section that relates to land is not effective until all entries that are necessary to give effect to it have been made in the register or record relevant to the land kept by the Land Registration Authority.

#### 251. Submission of statements of company's affairs to liquidators.

(1) There shall be made out, verified by statutory declaration in the prescribed form and manner and submitted to the liquidator a statement in the prescribed form as to the affairs of the company as at the date of the winding-up order showing—

- (a) the particulars of its assets, debts and liabilities; and
- (b) the names and addresses of its creditors; and
- (c) the securities held by them respectively; and
- (d) the dates when the securities were respectively given; and
- (e) such further information as is required by the regulations or as the liquidator requires.

(2) The statement must be submitted by one or more of the persons who are, at the date of the winding-up order, directors of the company, and by the secretary of the company, or by such of the following persons as the liquidator, subject to any direction of the Court, requires—

- (a) persons who are or have been officers of the company; and
- (b) persons who have taken part in the formation of the company at any time within one year before the date of the winding-up order; and
- (c) persons who are, or have been within that period, officers of or in the employment of a corporation that is, or within that period was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within 14 days after the date of the winding-up order, or within such extended time as the liquidator or the Court for special reasons specifies, and the liquidator shall, within seven days after its receipt, cause a certified copy of the statement to be filed with the Court and lodged with the Registrar.

(4) A person making or concurring in making the statement required by this section may, subject to the *Companies Rules*, be allowed and be paid by the liquidator, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement as the liquidator thinks reasonable, subject to an appeal to the Court.

(5) A person who, without reasonable excuse, makes default in complying with the requirements of this section is guilty of an offence.

Penalty: A fine not exceeding K1 000.00 or imprisonment for a term not exceeding three months, or both.

Default penalty: A fine not exceeding K20.00.

#### 252. Reports by liquidators.

(1) As soon as practicable after receipt of the statement of affairs, the liquidator shall submit a preliminary report to the Court—

- (a) as to the amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities; and
- (b) if the company has failed, as to the causes of the failure; and

- (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of the business of the company.

(2) The liquidator may also, if he thinks fit, make further reports stating the manner in which the company was formed and whether in his opinion any fraud has been committed or any material fact has been concealed by any person in its promotion or formation or by any officer in relation to the company since its formation, and specifying any other matter that in his opinion it is desirable to bring to the notice of the Court.

### 253. Powers of liquidators.

(1) The liquidator may, with the authority of the Court or of the committee of inspection—

- (a) carry on the business of the company so far as is necessary for the beneficial winding-up of the company, but the authority of the Court or committee is not necessary to so carry on the business during the four weeks after the date of the winding-up order; and
- (b) subject to Section 310, pay any class of creditors in full; and
- (c) make a compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have a claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company or by which the company may be made liable; and
- (d) compromise, on such terms as are agreed—
  - (i) any calls, liabilities to calls, debts, liabilities capable of resulting in debts and any claims (present or future, certain or contingent, ascertained or sounding between the company and a contributory or other debtor only in damages) subsisting or supposed to subsist between the company and a contributory or other debtor or other person apprehending liability to the company; and
  - (ii) all questions in any way relating to or affecting the assets or the winding-up of the company,and take security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect of it.

(2) The liquidator may—

- (a) bring or defend an action or other legal proceeding in the name and on behalf of the company; and
- (b) appoint a lawyer to assist him in his duties; and
- (c) sell the property of the corporation by public auction, public tender or private contract with power to transfer the whole to any person or to sell in parcels; and
- (d) do all acts and execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose use, when necessary, the company's seal; and
- (e) subject to the *Insolvency Act*, prove in the bankruptcy of a contributory or debtor of the company or under a deed executed under that Act; and
- (f) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company; and

- (g) raise on the security of the assets of the company any money needed; and
- (h) take out letters of administration of the estate of a deceased contributory or debtor, and do any other act necessary for obtaining payment of any money due from a contributory or debtor, or his estate, that cannot be conveniently done in the name of the company; and
- (i) compromise a debt due to the company other than—
  - (i) calls and liabilities for calls; or
  - (ii) a debt where the amount claimed by the company to be due to it exceeds K600.00; and
- (j) appoint an agent to do any business that the liquidator is unable to do himself; and
- (k) do all such other things as are necessary for winding up the affairs of the company and distributing its assets.

(3) In a case referred to in Subsection (2)(h) the money due shall, for the purposes of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself.

(4) The exercise by the liquidator of the powers conferred by this section is subject to the control of the Court, and a creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

#### 254. Exercise and control of liquidators' powers.

(1) Subject to this Part, in the administration of the assets of the company and in the distribution of them among its creditors the liquidator shall have regard to any directions given by resolution of the creditors or contributories at a general meeting or by the committee of inspection, and, in case of conflict, any directions so given by the creditors or contributories override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and he shall summon meetings at such times as the creditors or contributories by resolution direct or whenever requested in writing to do so by not less than 10% in value of the creditors or contributories.

(3) The liquidator may apply to the Court for directions in relation to any matter arising under the winding-up.

(4) Subject to this Part, the liquidator shall use his own discretion in the management of the affairs and property of the company and the distribution of its assets.

#### 255. Payment by liquidators into banks.

(1) A liquidator shall, in accordance with the *Companies Rules*, pay the moneys received by him as liquidator into such bank and account as are prescribed by the *Companies Rules* or specified by the Court.

(2) If a liquidator retains for more than two weeks a sum exceeding K50.00, or exceeding such other amount as the Court in a particular case authorizes him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest at the rate of 20% per annum on the amount so retained in excess, computed from the expiration of the 10 days until he has complied with the provisions of Subsection (1), and is liable—

- (a) to disallowance of all or such part of his remuneration as the Court thinks just; and

- (b) to be removed from his office by the Court; and
- (c) to pay any expenses occasioned by reason of his default.

(3) A liquidator who pays any moneys received by him as liquidator into any bank or account other than the bank or account prescribed or specified under Subsection (1) is guilty of an offence.

**256. Release of liquidators and dissolution of company.**

When the liquidator—

- (a) has realized all the property of the company, or so much of it as can in his opinion be realized without needlessly protracting the liquidation, and has distributed a final dividend (if any) to the creditors, adjusted the rights of the contributories among themselves and made a final return (if any) to the contributories; or

- (b) has resigned or has been removed from his office,

he may apply to the Court—

- (c) for an order that he be released; or
- (d) for an order that he be released and that the company be dissolved.

**257. Orders for release or dissolution.**

(1) Where an order is made that the company be dissolved, the company is, from the date of the order, dissolved accordingly.

(2) The Court—

- (a) may cause a report on the accounts of the liquidator to be prepared by the auditor appointed by the Registrar under Section 301 or by some other registered company auditor appointed by the Court; and

- (b) on the liquidator complying with all the requirements of the Court—shall take into consideration the report and any objection that is made by the auditor or by a creditor, contributory or other person interested against the release of the liquidator; and

- (c) shall either grant or withhold the release accordingly.

(3) Where the release of a liquidator is withheld, the Court may, on the application of a creditor, contributory or person interested, make such order as it thinks just charging the liquidator with the consequences of any act or default that he has done or made contrary to his duty.

(4) An order of the Court releasing the liquidator discharges him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of a material fact.

(5) Where the liquidator has not previously resigned or been removed, his release operates as a removal from office.

(6) Where the Court has made—

- (a) an order that the liquidator be released; or

(b) an order that the liquidator be released and that the company be dissolved, an office copy of the order shall, within 14 days after its making, be lodged by the liquidator with the Registrar, and a liquidator who makes default in complying with this subsection is guilty of an offence.

Penalty: A fine not exceeding K200.00.

Default penalty: A fine not exceeding K20.00.

Subdivision C.—Committees of Inspection.

**258. Appointment of committees.**

(1) If requested by a creditor or contributory, the liquidator shall summon separate meetings of the creditors and contributories for the purpose of determining whether or not the creditors or contributories require the appointment of a committee of inspection to act with the liquidator and, if so, who are to be members of the committee.

(2) If there is a difference between the decisions of the meeting of the creditors and the meeting of the contributories, the Court shall decide the difference and make such order as it thinks proper.

**259. Constitution and proceedings of committees.**

(1) The committee of inspection shall consist of creditors and contributories of the company or persons holding—

(a) general powers of attorney from creditors or contributories; or

(b) special authorities from creditors or contributories authorizing the persons respectively named in them to act on such a committee,

appointed by the meetings of creditors and contributories in such proportions as are agreed on or, in case of difference, as are determined by the Court.

(2) The committee of inspection shall meet at such times and places as its members from time to time appoint, and the liquidator or a member of the committee may also call a meeting of the committee as he thinks necessary.

(3) The committee of inspection may act by a majority of its members present at a meeting, but shall not act unless a majority of its members is present.

(4) A member of the committee of inspection may resign by written notice signed by him and delivered to the liquidator.

(5) If a member of a committee of inspection—

(a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or

(b) is absent from five consecutive meetings of the committee without the leave of those members who, together with himself, represent the creditors or contributories, as the case may be,

his office becomes vacant.

(6) A member of the committee of inspection who represents creditors may be removed by an ordinary resolution at a meeting of creditors of which seven days' notice has been given stating the object of the meeting, and a member of the committee who represents contributories may be removed by an ordinary resolution at a meeting of contributories of which such notice has been given.



(7) A vacancy in the committee of inspection may be filled by the appointment by the committee of the same or another creditor or contributory or person holding a general power or special authority referred to in Subsection (1).

(8) The liquidator may of his own motion, and shall within seven days after the request in writing of a creditor or contributory, summon a meeting of creditors or of contributories, as the case requires, to consider any appointment made under Subsection (7), and the meeting may confirm the appointment or revoke the appointment and appoint another creditor or contributory or a person holding a general power or special authority referred to in Subsection (1), as the case requires, in his place.

(9) If the continuing members of the committee of inspection are not less than two in number they may act notwithstanding a vacancy in the committee.

#### 260. Powers of Court.

Where there is no committee of inspection, the Court may, on the application of the liquidator, do any act or thing or give any direction or permission that is authorized or required by this Part to be done or given by the committee.

#### Subdivision D.—General Powers of Court.

#### 261. Staying of winding-up.

(1) At any time after an order for winding up has been made, the Court may, on the application of the liquidator or of a creditor or contributory and on proof to the satisfaction of the Court that all proceedings in relation to the winding-up ought to be stayed, make an order staying the proceedings either altogether or for a limited time and on such terms and conditions as the Court thinks proper.

(2) On an application under Subsection (1), the Court may, before making an order, require the liquidator to furnish a report with respect to any facts or matters that in his opinion are relevant.

(3) An office copy of an order made under this section must be lodged by the company with the Registrar within 14 days after the making of the order.

Default penalty: A fine not exceeding K20.00.

#### 262. Settlement of lists of contributories and application of assets.

(1) As soon as may be after making a winding-up order, the Court—

- (a) shall settle a list of contributories; and
- (b) may rectify the register of members where rectification is required under this Part; and
- (c) shall cause the assets of the company to be collected and applied in discharge of its liabilities.

(2) Notwithstanding Subsection (1), where it appears to the Court that it will not be necessary to make calls on or adjust the rights of contributories the Court may dispense with the settlement of a list of contributories.

(3) In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

(4) When settled, the list of contributories is evidence of the liabilities of the persons named in it as contributories.

**263. Delivery of property to liquidators, etc.**

(1) The Court may require a contributory, trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer to the liquidator or provisional liquidator, immediately or within such time as the Court directs, any money, property, books and papers in his hands to which the company is prima facie entitled.

(2) The Court may make an order directing a contributory who is on the list of contributories to pay to the company, in the manner directed by the order, any money due from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of a call under this Act, and may—

(a) in the case of an unlimited company—allow to the contributory by way of set-off any money due to him or to the estate that he represents from the company on any independent dealing or contract, but not any money due to him as a member of the company in respect of any dividend or profit; and

(b) in the case of a limited company—make to a director whose liability is unlimited, or to his estate, the same allowance,

and, in the case of any company, when all the creditors are paid in full any money due on any account to a contributory from the company may be allowed to him by way of set-off against a subsequent call.

(3) Before or after it has ascertained the sufficiency of the assets of the company, the Court may—

(a) make calls on all or any of the contributories for the time being on the list of contributories, to the extent of their liability, for payment of any money that the Court considers necessary to satisfy the debts and liabilities of the company and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves; and

(b) make an order for payment of any calls so made,

and, in making a call, may take into consideration the probability that some of the contributories may fail, partly or wholly, to pay the call.

(4) The Court may order a contributory, purchaser or other person from whom money is due to the company to pay the amount due into a bank named in the order to the account of the liquidator instead of paying it to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(5) All moneys and securities paid or delivered into a bank under this Division are subject to orders of the Court.

(6) Subject to any right of appeal, an order made by the Court under this section is conclusive evidence that the money (if any) appearing in it to be due or ordered to be paid is due, and all other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

**264. Appointment of special managers.**

(1) If he is satisfied that the nature of the estate or business of the company or the interests of the creditors or contributories generally require the appointment of a special manager of the estate or business of the company other than himself, the liquidator may apply to the Court and the Court may appoint a special manager of the estate or business to act during such time as the Court directs with such powers, including any of the powers of a receiver or manager, as are entrusted to him by the Court.

(2) The special manager—

- (a) shall give such security and account in such manner as the Court directs; and
- (b) shall receive such remuneration as is fixed by the Court; and
- (c) may at any time resign by written notice addressed to the liquidator or, on cause shown, be removed by the Court.

**265. Claims of creditors and distribution of assets.**

(1) The Court may fix a date on or before which creditors are to prove their debts or claims, or after which they will be excluded from the benefit of any distribution made before the debts are proved.

(2) The Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled to it.

(3) In the event of the assets being insufficient to satisfy the liabilities, the Court may make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding-up in such order of priority as the Court thinks just.

**266. Inspection of books by creditors and contributories.**

The Court may make such order for inspection of the books and papers of the company by creditors and contributories as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly but not further or otherwise.

**267. Summoning persons connected with company.**

(1) The Court may summon before it an officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or a person whom the Court thinks capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

(2) The Court may examine the officer or person on oath concerning the matters referred to in Subsection (1), either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them, and any writing so signed may be used in evidence in any legal proceedings against him.

(3) The Court may require him to produce any books and papers in his custody or power relating to the company, but where he claims a lien on books or papers the production is without prejudice to that lien and the Court has jurisdiction to determine all questions relating to the lien.

(4) A person summoned for examination under this section may, at his own cost, employ a solicitor with or without counsel, who may put to him such questions as the Court thinks just for the purpose of enabling him to explain or qualify any answers given by him.

(5) If a person so summoned, after being tendered a reasonable sum for his expenses, fails to come before the Court at the time appointed without a lawful excuse made known to the Court at the time of its sitting and allowed by it, the Court may cause him to be arrested and brought before the Court for examination.

**268. Public examination of promoters, directors, etc.**

(1) Where the liquidator has made a report under this Part stating that, in his opinion—

- (a) a fraud has been committed; or

- (b) any material fact has been concealed by a person in the promotion or formation of the company or by an officer in relation to the company since its formation,

the Court may, after consideration of the report, direct that the person or officer, or any other person who—

- (c) was previously an officer of the company (including a banker, lawyer or auditor); or  
 (d) is known or suspected to have in his possession any property of the company, or is supposed to be indebted to the company; or  
 (e) is a person whom the Court thinks capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company,

attend before the Court on a day appointed and be publicly examined as to the promotion or formation, or the conduct of the business, of the company or, in the case of an officer or former officer, as to his conduct and dealings as an officer of the company.

(2) The liquidator, and any creditor or contributory, may take part in the examination either personally or by a lawyer.

(3) The Court may put, or allow to be put, such questions to the person examined as the Court thinks proper.

(4) The person examined shall be examined on oath and shall answer all such questions as the Court puts or allows to be put to him.

(5) A person ordered to be examined under this section—

- (a) shall, before his examination, be furnished with a copy of the liquidator's report; and  
 (b) may, at his own cost, employ a solicitor with or without counsel, who may put to him such questions as the Court thinks just for the purpose of enabling him to explain or qualify any answers given by him.

(6) Where a person directed to attend before the Court under Subsection (1) applies to the Court to be exculpated from any charges made or suggested against him, the liquidator shall appear on the hearing of the application and call the attention of the Court to any matters that appear to him to be relevant, and if the Court, after hearing any evidence given or witnesses called by the liquidator, grants the application the Court may allow the applicant such costs as in its discretion it thinks proper.

(7) Notes of the examination—

- (a) shall be reduced to writing; and  
 (b) shall be read over to or by and signed by the person examined; and  
 (c) may afterwards be used in evidence in any legal proceedings against him; and  
 (d) are open to the inspection of a creditor or contributory at all reasonable times.

(8) If it thinks fit, the Court may adjourn the examination from time to time.

#### **269. Examinations under Sections 267 and 268.**

An examination under Section 267 or 268 may, if the Court so directs and subject to the *Companies Rules*, be held before a Magistrate Grade IV. named for the purpose by the Court, and the powers of the Court under those sections may be exercised by the Magistrate, and references to the Court in those sections shall be read as references to the Magistrate, accordingly.

**270. Arrest of absconding contributories.**

At any time before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to—

- (a) leave the country or otherwise to abscond; or
- (b) remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company,

the Court may cause the contributory to be arrested and his books and papers and movable personal property to be seized, and him and them to be kept safely until such time as the Court orders.

**271. Delegation to liquidators.**

Provision may be made by order of the Court for enabling or requiring all or any of the powers and duties conferred and imposed on the Court by this Part in respect of—

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories; and
- (b) the settling of lists of contributories, the rectifying of the register of members where required and the collecting and applying of the assets; and
- (c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator; and
- (d) the making of calls and the adjusting of the rights of contributories; and
- (e) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court, but the liquidator shall not, without special leave of the Court, rectify the register of members and shall not make a call without either the special leave of the Court or the sanction of the committee of inspection.

**272. Powers of Court generally.**

Any powers by this Act conferred on the Court are in addition to, and not in derogation of, any existing powers of instituting proceedings against any contributory or debtor of the company or the estate of any contributory or debtor for the recovery of any call or other sums.

*Division 3.—Voluntary Winding-up.**Subdivision A.—Introductory.***273. Resolution for voluntary winding-up.**

(1) A company may be wound up voluntarily if the company so resolves by special resolution.

(2) A company must—

- (a) within seven days after the passing of a resolution for voluntary winding-up, lodge with the Registrar notice in the prescribed form of the passing of the resolution and a printed copy of the resolution; and
- (b) within 14 days after the passing of the resolution give notice of the resolution in the National Gazette.

(3) If the company fails to comply with Subsection (2), the company, and each officer of the company who is in default, is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

#### 274. Commencement of winding-up.

A voluntary winding-up commences at the time of the passing of the resolution for voluntary winding-up.

#### 275. Effect of winding-up.

(1) From the commencement of the winding-up, the company shall cease to carry on its business except so far as is, in the opinion of the liquidator, required for the beneficial winding-up of its business, but the corporate state and corporate powers of the company, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

(2) Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members, made after the commencement of the winding-up is void.

#### 276. Declarations of solvency.

(1) Where it is proposed to wind up a company voluntarily, the directors of the company, or in the case of a company having more than two directors the majority of the directors, may, before the date on which the notices of the meeting at which the resolution for the winding-up of the company is to be proposed are sent out, make a written declaration in the prescribed form to the effect that they have made an inquiry into the affairs of the company and that, at a meeting of directors, have formed the opinion that the company will be able to pay its debts in full within a period not exceeding 12 months after the commencement of the winding-up.

(2) There shall be attached to the declaration a statement of affairs of the company showing, in the prescribed form—

- (a) the assets of the company and the total amount expected to be realized from them; and
- (b) the liabilities of the company; and
- (c) the estimated expenses of winding up,

made up to the latest practicable date before the making of the declaration.

(3) A declaration made in accordance with Subsection (1) has no effect for the purposes of this Act unless it is—

- (a) made at the meeting of directors referred to in Subsection (1); and
- (b) made within the period of five weeks before the passing of the resolution for voluntary winding-up; and
- (c) lodged with the Registrar before the date on which the notices of the meeting at which the resolution for the winding-up of the company is to be proposed are sent out.

(4) A director who makes a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period stated in the declaration is guilty of an offence.

Penalty: A fine not exceeding K1 000.00 or imprisonment for a term not exceeding six months, or both.

(5) If the company is wound up in pursuance of a resolution for voluntary winding-up passed within a period of five weeks after the making of a declaration under this section by a director but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed, until the contrary is shown, that the director did not have reasonable grounds for his opinion.

Subdivision B.—Provisions applicable only to Members' Voluntary Winding-up.

**277. Liquidators.**

(1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(2) On the appointment of a liquidator, all the powers of the directors cease except so far as the liquidator, or the company in general meeting with the consent of the liquidator, approves their continuance.

(3) If a vacancy occurs by death, resignation or otherwise in the office of liquidator, the company in general meeting may fill the vacancy by the appointment of a liquidator and fix the remuneration to be paid to him, and a general meeting for that purpose may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(4) The meeting shall be held in such manner as is provided by this Act or by the articles, or in such manner as is, on application by a contributory or by the continuing liquidators, determined by the Court.

**278. Creditors' meeting in case of insolvency.**

(1) If the liquidator is of opinion that the company will not be able to pay or provide for the payment of its debts in full within the period stated in a declaration made under Section 276, he shall without delay summon a meeting of the creditors by notice in the prescribed form and lay before it a statement of the assets and liabilities of the company.

(2) At a meeting summoned under Subsection (1), the creditors may appoint some other person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company instead of the liquidator appointed by the company.

(3) If the creditors appoint some other person under Subsection (2), the winding-up shall proceed as if the winding-up were a creditors' voluntary winding-up.

(4) A person appointed under Subsection (2) must, within seven days after a meeting has been held under Subsection (1), lodge with the Registrar a notice in the prescribed form.

Penalty: A fine not exceeding K200.00.

Default penalty: A fine not exceeding K20.00.

(5) Where the liquidator has convened a meeting under Subsection (1) and the creditors do not appoint a liquidator instead of the liquidator appointed by the company, the winding-up shall proceed as if the winding-up were a creditors' voluntary winding-up, but the liquidator is not required to summon an annual meeting of creditors at the end of the first year after the commencement of the winding-up if the meeting held under Subsection (1) was held less than three months before the end of that year.

## Subdivision C.—Provisions Applicable only to Creditors' Voluntary Winding-up.

**279. Meetings of creditors.**

(1) The company must cause a meeting of the creditors of the company to be summoned for the day, or the day after the day, on which there is to be held the meeting at which the resolution for the voluntary winding-up is to be proposed, and must cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

(2) The company must convene the meeting at a time and place convenient to the majority in value of the creditors and must—

- (a) give to the creditors at least seven days' notice by post of the meeting; and
- (b) send to each creditor, with the notice, a statement showing the names of all creditors and the amounts of their claims.

(3) The company must cause notice of the meeting of the creditors to be advertised at least seven days before the date of the meeting in the National Gazette and in a newspaper published in the country not less frequently than once a week.

(4) The directors of the company must—

- (a) cause a statement in the prescribed form of the company's affairs (showing in respect of assets the method and manner in which the valuation of the assets was arrived at), together with a list of the creditors and the estimated amount of their claims, to be laid before the meeting of creditors; and
- (b) appoint one of their number to attend the meeting.

(5) The director appointed under Subsection (4)(b) and the secretary must attend the meeting and disclose to the meeting the company's affairs and the circumstances leading to the proposed winding-up.

(6) The creditors may appoint one of their number or the director appointed under Subsection (4)(b) to preside at the meeting.

(7) At the meeting, the chairman shall determine whether the meeting has been held at a time and place convenient to the majority in value of the creditors, and his decision is final.

(8) If the chairman decides that the meeting has not been held at a time and place convenient to the majority in value of the creditors, the meeting lapses and a further meeting shall be summoned by the company as soon as is practicable.

(9) If the meeting of the company is adjourned and the resolution for winding up is passed at an adjourned meeting, any resolution passed at the meeting of the creditors has effect as if it had been passed immediately after the passing of the resolution for winding up.

(10) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K200.00.

**280. Liquidators.**

(1) At their respective meetings, the company shall, and the creditors may, nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons the person nominated by the creditors is the liquidator, but if no person is nominated by the creditors the person nominated by the company is the liquidator.



(2) Notwithstanding Subsection (1), where different persons are nominated any director, member or creditor may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order directing that the person nominated as liquidator by the company be liquidator instead of, or jointly with, the person nominated by the creditors.

(3) The committee of inspection, or if there is no such committee the creditors, may fix the remuneration to be paid to the liquidator.

(4) On the appointment of a liquidator, the powers of the directors cease except so far as the committee of inspection, or if there is no such committee the creditors, approve their continuance.

(5) If a liquidator, other than a liquidator appointed by or by the direction of the Court, dies, resigns or otherwise vacates his office, the creditors may fill the vacancy, and for the purpose of so doing a meeting of the creditors may be summoned by any two of their number.

#### 281. Committees of inspection.

(1) At the meeting summoned under Section 278 or 279, or at a subsequent meeting, the creditors may, if they think fit, appoint a committee of inspection consisting of not more than five persons (whether creditors or not), and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding-up is passed or at any time subsequently in general meeting, appoint such number of persons, not exceeding five, as it thinks proper to act as members of the committee.

(2) Notwithstanding Subsection (1), the creditors may, if they think fit, resolve that all or any of the persons appointed under that subsection by the company ought not to be members of the committee of inspection, and if the creditors so resolve—

- (a) the persons mentioned in the resolution are not, unless the Court otherwise directs, qualified to act as members of the committee; and
- (b) on an application to the Court under this subsection, the Court may, if it thinks fit, appoint other persons to act as members in place of the persons referred to in the resolution.

(3) Subject to this section and the *Companies Rules*, the provisions of Subdivision 2.C relating to the proceedings of and vacancies in committees of inspection apply with respect to a committee of inspection appointed under this section.

#### 282. Transfer of property to liquidator.

The Court may require a contributory, trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer to the liquidator, immediately or within such time as the Court directs, any money, property, books or papers in his hands to which the company is prima facie entitled.

#### 283. Proceedings against companies.

(1) Any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of a creditors' voluntary winding-up is void.

(2) After the commencement of the winding-up, no action or proceeding may be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court imposes.

## Subdivision D.—Provisions Applicable to every Voluntary Winding-up.

**284. Limitation on right to wind up.**

Where a petition has been presented to the Court to wind up a company on the ground that it is unable to pay its debts, the company may not, without the leave of the Court, resolve that it be wound up voluntarily.

**285. Distribution of property.**

Subject to the provisions of this Act as to preferential payments, the property of the company shall, on its winding-up, be applied in satisfaction of its liabilities equally and, subject to that application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

**286. Appointment and removal of liquidators.**

(1) If there is no liquidator acting, the Court may appoint a liquidator.

(2) The Court may, on cause shown, remove a liquidator and appoint another liquidator.

**287. Review of liquidator's remuneration.**

A member or creditor, or the liquidator, may at any time before the dissolution of the company apply to the Court to review the amount of the remuneration of the liquidator, and the decision of the Court is final<sup>1</sup>.

**288. Validity of acts of liquidators.**

(1) In this section, a disposition of property includes a payment of money.

(2) The acts of a liquidator are valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

(3) A conveyance, assignment, transfer, mortgage, charge or other disposition of a company's property made by a liquidator is, notwithstanding any defect or irregularity affecting the validity of the winding-up or the appointment of the liquidator, valid in favour of a person taking the property bona fide and for value, and without notice of the defect or irregularity.

(4) A person making or permitting a disposition of property to a liquidator is protected and indemnified in so doing notwithstanding any defect or irregularity affecting the validity of the winding-up or the appointment of the liquidator not then known to that person.

**289. Powers and duties of liquidator generally.**

(1) The liquidator may—

(a) in the case of a members' voluntary winding-up, with the approval—

(i) of a special resolution of the company; or

(ii) in the case of a creditors' voluntary winding-up—of the Court or the committee of inspection or, if there is no such committee, a meeting of creditors,

exercise any of the powers given by Section 253(1)(b), (c), and (d) to a liquidator in a winding-up by the Court; or

<sup>1</sup> See Constitution, Section 155.

- (b) exercise any of the other powers given by this Act to the liquidator in a winding-up by the Court; or
- (c) exercise the power of the Court under this Act to settle a list of contributories; or
- (d) exercise the power of the Court to make calls; or
- (e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution in respect of any matter or for any other purpose he thinks proper.

(2) A list of contributories settled under Subsection (1)(e) is evidence of the liability of the persons named in it to be contributories.

(3) The liquidator shall pay the debts of the company and adjust the rights of the contributories among themselves.

(4) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as is determined at the time of their appointment or, in default of such a determination, by any two or more of them.

#### 290. Acceptance of shares, etc., as consideration.

(1) Where it is proposed that the whole or part of the business or property of a company be transferred or sold to another corporation, the liquidator of the company may—

- (a) with the sanction of a special resolution of the company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale of shares, debentures, policies or other such interests in the corporation for distribution among the members of the company; or
- (b) enter into any other arrangement by which the members of the company may, instead of or in addition to receiving cash, shares, debentures, policies or other such interests, participate in the profits of or receive any other benefit from the corporation,

and any such transfer, sale or arrangement is binding on the members of the company.

(2) If a member of the company who did not vote in favour of the special resolution expresses his dissent from it in writing addressed to the liquidator and left at the office of the liquidator within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in the manner prescribed by this section.

(3) If the liquidator elects to purchase the member's interest, the purchase money shall be paid before the company is dissolved, and shall be raised by the liquidator in such manner as is determined by special resolution.

(4) A special resolution is not invalid for the purposes of this section by reason of its being passed before or concurrently with a resolution for voluntary winding-up or for appointing liquidators, but if an order for the winding-up of the company by the Court is made within a year after the passing of the resolution the resolution is not valid unless sanctioned by the Court.

(5) For the purposes of an arbitration under this section—

- (a) the *Arbitration Act* applies as if there were a submission for reference to two arbitrators, one to be appointed by each party; and

- (b) the appointment of an arbitrator may be made under the hand of the liquidator, or if there is more than one liquidator under the hands of any two or more of the liquidators; and
- (c) the Court may give any directions necessary for the initiation and conduct of the arbitration.

(6) Any directions given under Subsection (5)(c) are binding on the parties to the arbitration.

(7) In the case of a creditors' voluntary winding-up, the powers of the liquidator under this section may not be exercised except with the approval of the Court or the committee of inspection.

**291. Annual meetings of creditors.**

(1) If the winding-up continues for more than one year, the liquidator must summon a general meeting of the company in the case of a members' voluntary winding-up, and of the company and the creditors in the case of a creditors' voluntary winding-up, at the end of the first year after the commencement of the winding-up and of each succeeding year (or not more than three months after the end of each year) and must lay before the meeting an account of his acts and dealings and of the conduct of the winding-up during the preceding year.

(2) The liquidator shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

(3) A liquidator who fails to comply with this section is guilty of an offence.

Penalty: A fine not exceeding K200.00.

Default penalty: A fine not exceeding K20.00.

**292. Final meeting and dissolution.**

(1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account showing how the winding-up has been conducted and the property of the company has been disposed of, and thereupon he must call a general meeting of the company, or in the case of a creditors' voluntary winding-up a meeting of the company and the creditors, for the purpose of laying before it the account and giving any explanation of it.

(2) The meeting must be called by advertisement in the National Gazette and in a newspaper published in the country not less frequently than once a week, and the advertisement must specify the time, place and object of the meeting and be published one month at least before the meeting.

(3) The liquidator must, within seven days after the meeting, lodge with the Registrar a return in the prescribed form of the holding of the meeting and of its date with a copy of the account attached to the return, and if the return or copy of the account is not so lodged the liquidator is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

(4) At a meeting of the company, two members are a quorum, and at a meeting of the company and of the creditors two members and two creditors are a quorum.

(5) If a quorum is not present at the meeting, the liquidator shall, in place of the return referred to in Subsection (3), lodge a return in the prescribed form (with account attached) that the meeting was duly summoned and that no quorum was present at it, and

on such a return being lodged the provisions of that subsection as to the lodging of the return shall be deemed to have been complied with.

(6) On the expiration of three months after the lodging of the return with the Registrar, the dissolution of the company takes effect.

(7) Notwithstanding Subsection (6), the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring for such time as the Court thinks proper the date at which the dissolution of the company is to take effect.

(8) The person on whose application an order of the Court under this section is made must, within 14 days after the making of the order, lodge with the Registrar an office copy of the order, and if he fails to do so he is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

(9) If the liquidator fails to call a meeting as required by this section, he is guilty of an offence.

Penalty: A fine not exceeding K200.00.

Default penalty: A fine not exceeding K20.00.

### 293. Binding arrangements.

(1) An arrangement entered into between a company that is about to be wound up, or that is in the course of being wound up, and its creditors is, subject to the right of appeal under this section, binding on the company if sanctioned by a special resolution, and on the creditors if acceded to by 75% in value and 50% in number of the creditors (every creditor for under K20.00 being reckoned in value only).

(2) A creditor shall be accounted a creditor for value for such sum as, on an account fairly stated after allowing the value of security or liens held by him and the amount of any debt or set-off owing to him to the debtor, appears to be the balance due to him.

(3) A dispute with regard to the value of any such security or lien, or the amount of any such debt or set-off, may be settled by the Court on the application of the company, the liquidator or the creditor.

(4) A creditor or contributory may, within three weeks after the completion of the arrangement, appeal to the Court against the arrangement, and the Court may thereupon amend, vary or confirm the arrangement as it thinks just.

### 294. Applications to Court.

(1) The liquidator, or a contributory or creditor, may apply to the Court—

(a) to determine any question arising in the winding-up of a company; or

(b) to exercise all or any of the powers that the Court might exercise if the company were being wound up by the Court.

(2) If the Court is satisfied that the determination of the question or the exercise of power will be just and beneficial, it may accede wholly or partly to an application under Subsection (1) on such terms and conditions as it thinks proper, or may make such other order on the application as it thinks just.

### 295. Costs of winding-up.

All proper costs, charges and expenses of and incidental to the winding-up (including the remuneration of the liquidator) are payable out of the assets of the company in priority to all other claims.

*Division 4.—Provisions Applicable to Every Mode of Winding-up.*

Subdivision A.—General.

**296. Documents of companies in liquidation.**

(1) Where a company is being wound up, every invoice, order for goods or business letter on or in which the name of the company appears, and which is issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, must have the words "In liquidation" immediately following the name of the company where it first appears in the document.

(2) If default is made in complying with this section, the company, and each officer of the company, liquidator, receiver or manager who knowingly authorizes or permits the default, is guilty of an offence.

Penalty: A fine not exceeding K40.00.

**297. Control of Court over liquidators.**

(1) The Court shall take cognizance of the conduct of liquidators and if—

(a) a liquidator does not faithfully perform his duties and observe the prescribed requirements, the requirements of the *Companies Rules* and the requirements of the Court; or

(b) a complaint is made to the Court by a creditor or contributory or by the Companies Auditors Board in regard to the conduct of the liquidator in any such respect,

the Court shall inquire into the matter and take such action as it thinks proper.

(2) The Registrar or the Companies Auditors Board may report to the Court any matter that in his or its opinion is a misfeasance, neglect or omission on the part of the liquidator, and the Court may order the liquidator to make good any loss that the estate of the company has sustained by it, and make such other order as it thinks proper.

(3) The Court may—

(a) require a liquidator to answer any inquiry in relation to the winding-up; and

(b) examine him or any other person on oath concerning the winding-up; and

(c) direct an investigation to be made of the books and vouchers of the liquidator.

**298. Making good defaults.**

(1) If a liquidator who has made default in lodging or making an application, return, account or other document, or in giving any notice, that he is by law required to lodge, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the Court may, on the application of a contributory or creditor of the company or the Registrar, make an order directing the liquidator to make good the default within such time as is specified in the order.

(2) An order made under Subsection (1) may provide that all costs of and incidental to the application be borne by the liquidator.

(3) Subsection (1) does not prejudice the operation of any law imposing penalties on a liquidator in respect of a default.

**299. Appeals.**

A person aggrieved by an act or decision of the liquidator may apply to the Court, which may confirm, reverse or modify the act or decision complained of and make such order as it thinks just.

**300. Notice of appointment, etc., of liquidator.**

(1) Within 14 days after his appointment, a liquidator must lodge with the Registrar notice in the prescribed form of his appointment and of the situation of his office, and in the event of any change in the situation of his office must, within 14 days after the change, lodge with the Registrar notice in the prescribed form of the change.

(2) A liquidator must, within 14 days after his resignation or removal from office, lodge with the Registrar notice in the prescribed form of the resignation or removal.

(3) If a liquidator fails to comply with this section, he is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

**301. Liquidators' books and accounts.**

(1) A liquidator must keep proper books in which he must cause to be made entries or minutes of proceedings at meetings and of such other matters as are prescribed, and subject to the control of the Court any creditor or contributory may personally or by his agent inspect them.

(2) A liquidator must, within one month after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months and, in any case, within one month after he ceases to act as liquidator and immediately after obtaining an order of release, lodge with the Registrar, in the prescribed form, an account of his receipts and payments and a statement of the position in the winding-up, together with a statutory declaration by the liquidator in the prescribed form.

Default penalty: A fine not exceeding K20.00.

(3) The Registrar may cause the account to be audited by a registered company auditor, and for the purpose of the audit the liquidator shall furnish the auditor with such vouchers and information as he requires, and the auditor may at any time require the production of, and inspect, any books or accounts kept by the liquidator.

(4) A copy of the account or, if the account is audited, a copy of the audited account shall be kept by the liquidator, and the copy shall be open to the inspection of a creditor or of any person interested at the office of the liquidator.

(5) The liquidator shall—

(a) give notice to every creditor and contributory that the account has been made up when he next forwards any report, notice of meeting, notice of call or dividend; and

(b) in the notice, inform creditors and contributories of the address at which and the hours between which the account may be inspected.

(6) The costs of an audit under this section shall be fixed by the Companies Auditors Board, and are part of the expenses of the winding-up.

**302. Company books.**

(1) Where a company is being wound up, all books and papers of the company and of the liquidator that are relevant to the affairs of the company at or subsequent to the commencement of the winding-up of the company are, as between the contributories of the

company, evidence of the truth of all matters purporting to be recorded in the books or papers.

(2) When a company has been wound up, the liquidator must retain the books and papers referred to in Subsection (1) for a period of five years from the date of dissolution of the company and, at the expiration of that period, may destroy them.

Penalty: A fine not exceeding K200.00.

(3) Notwithstanding Subsection (2), when a company has been wound up, the books and papers referred to in Subsection (1) may be destroyed within a period of five years after the dissolution of the company—

- (a) in the case of a winding-up by the Court—in accordance with the directions of the Court; and
- (b) in the case of a members' voluntary winding-up—as the company by resolution directs; and
- (c) in the case of a creditors' voluntary winding-up—as the committee of inspection directs or, if there is no such committee, as the creditors of the company direct.

(4) No responsibility rests on the company or the liquidator by reason of any such book or paper not being available to a person claiming to be interested in it if the book or paper has been destroyed in accordance with this section.

### 303. Investment of surplus funds on general account.

(1) Whenever the cash balance standing to the credit of a company in liquidation is in excess of the amount that, in the opinion of the committee of inspection, or if there is no committee of inspection of the liquidator, is required for the time being to answer demands in respect of the estate of the company, the liquidator, if so directed in writing by the committee of inspection, or if there is no committee of inspection the liquidator himself, may, unless the Court on application by a creditor thinks fit to direct otherwise and so orders, invest the sum or any part of it—

- (a) in any securities of, or guaranteed by, the State, the Government of Australia or a State or Territory of Australia; or
- (b) on deposit in a bank; or
- (c) in the securities of any money market towards which the Central Bank acts as lender of last resort,

and any interest received in respect of any such investment forms part of the assets of the company.

(2) Whenever any part of the money invested under Subsection (1) is, in the opinion of the committee of inspection, or if there is no committee of inspection of the liquidator, required to answer any demands in respect of the estate of the company, the committee of inspection may direct, or if there is no committee of inspection the liquidator may arrange for, the sale or realization of such part of the securities as is necessary.

### 304. Unclaimed assets.

Where a liquidator has in his hands or under his control—

- (a) any amount being a dividend or money that has remained unclaimed for more than six months from the date when the dividend or money became payable; or



- (b) after making a final distribution, any unclaimed or undistributed amount arising from the property of the company,

the provisions of the *Unclaimed Moneys Act* apply to and in relation to that amount.

### 305. Expenses of winding-up where assets insufficient.

(1) Unless expressly directed to do so by the Registrar, a liquidator is not liable to incur any expense in relation to the winding-up of a company unless there are sufficient available assets.

(2) On the application of a creditor or a contributory, the Registrar may direct a liquidator to incur a particular expense on condition that the creditor or contributory indemnifies the liquidator in respect of the recovery of the amount expended and, if the Registrar so directs, gives such security to secure the amount of the indemnity as the Registrar thinks reasonable.

### 306. Meetings of creditors and contributories.

(1) In all matters relating to the winding-up of a company, the Court may have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence and, if it thinks fit, may, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be summoned, and may appoint a person to act as chairman of any such meeting and to report the result of it to the Court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

### 307. Dates of resolutions.

Subject to Section 279(9), where a resolution is passed at an adjourned meeting of any creditors or contributories of a company the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and not on any earlier date.

### 308. Special commission for receiving evidence.

(1) Each Magistrate Grade IV. is a commissioner for the purpose of taking evidence under this Part, and the Court may refer the whole or any part of the examination of any witness under this Part to such a commissioner.

(2) A commissioner has, for the purposes of—

- (a) summoning and examining witnesses; and
- (b) requiring the production or delivery of documents; and
- (c) punishing defaults by witnesses; and
- (d) allowing costs and expenses to witnesses,

the same powers as a Magistrate Grade IV. exercising the jurisdiction of a District Court.

(3) Unless otherwise ordered by the Court, the taking of evidence by a commissioner shall be open to the public.

(4) The examination shall be returned or reported to the Court in such manner as the Court directs.

## Subdivision B.—Proof and Ranking of Claims.

**309. Proof of debts.**

(1) In every winding-up, subject in the case of insolvent companies to the application in accordance with this Act of the *Insolvency Act*, all debts payable on a contingency and all claims against the company (present or future, certain or contingent, ascertained or sounding only in damages) are admissible to proof against the company, a just estimate being made as far as possible of the value of such debts or claims as are subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

(2) Subject to Section 310, in the winding-up of an insolvent company—

- (a) the same rules shall be observed with regard to the respective rights of secured and unsecured creditors and debts provable, and the valuation of annuities and future and contingent liabilities, as are in force under the *Insolvency Act* in relation to the estates of bankrupt persons; and
- (b) all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding-up and make such claims against the company as they respectively are entitled to make by virtue of this section.

**310. Priorities.**

(1) Subject to this Act, and in particular to Sections 207 and 253, in a winding-up there shall be paid in priority to all other unsecured debts—

- (a) firstly, the costs and expenses of the winding-up, including any taxed costs of a petitioner payable under Section 242, the remuneration of the liquidator and the costs of any audit carried out under Section 301; and
- (b) secondly, where the winding-up of a company commences within two months after the determination of a period of official management of the company, the costs of the official management properly and reasonably incurred by the official manager during that period of official management, including the remuneration of the official manager and the deputy official manager (if any) and that of an auditor (if any) appointed in accordance with Division VII.2; and
- (c) thirdly, where the winding-up of a company commences within two months after the determination of a period of official management of the company, the debts of the company properly and reasonably incurred by the official manager in the conduct by him of the business of the company during the period of official management; and
- (d) fourthly, all wages or salary of an employee (including earnings by way of commission, not being an overriding commission, and any amount payable by way of allowance or reimbursement under a contract of employment or award or agreement regulating conditions of employment) not exceeding K600.00, whether payable for time or piece work, in respect of services rendered by him to the company within four months before the commencement of the winding-up; and
- (e) fifthly, all amounts, not exceeding in any particular case K2 000.00, due in respect of workers' compensation under any law relating to workers' compensation that accrued before the commencement of the winding-up; and

(f) sixthly, all remuneration payable to an employee in respect of annual leave or long service leave, or both, or, in the case of his death, to any other person in his right, accrued in respect of any period before the commencement of the winding-up; and

(g) seventhly—

(i) the amount of all rates that are or are in the nature of municipal or other local rates, due from the company at the date of the commencement of the winding-up and having become due and payable within the 12 months before that date; and

(ii) the amount of assessed income tax, or income tax and social services contribution, being tax or tax and contribution assessed under any Act, Australian Act or Act or Ordinance of a State or Territory of Australia before the date of the commencement of the winding-up and not exceeding in the whole one year's assessment; and

(iii) any amount due and payable by way of repayment of any advance made to the company, or in payment of any amount owing by the company for goods supplied or services rendered to it, under any Act, Australian Act or Act or Ordinance of a State or Territory of Australia relating to or providing for the improvement, development or settlement of land or the aid, development or encouragement of mining.

(2) The debts in each class specified in Subsection (1) rank equally between themselves, and shall be paid in full unless the property of the company is insufficient to meet them in which case they abate in equal proportions between themselves.

(3) Where a payment has been made to an employee of the company on account of wages, salary, annual leave or long service leave out of money advanced by a person for that purpose, the person by whom the money was advanced has, in a winding-up—

(a) a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee would have been entitled to priority in the winding-up has been diminished by reason of the payment; and

(b) the same right of priority in respect of that amount as the employee would have had if the payment had not been made.

(4) So far as the assets of the company available for payment of general creditors are insufficient to meet any preferential debts specified in Subsection (1)(d) and (f) and any amount payable in priority under Subsection (3), those debts have priority over the claims of the holders of debentures under any floating charge created by the company, and shall be paid accordingly out of any property comprised in or subject to the charge.

(5) Where the company is insured under a contract of insurance, entered into before the commencement of the winding-up, against liability to third parties, then, if—

(a) any such liability has been incurred by the company (whether before or after the commencement of the winding-up); and

(b) an amount in respect of that liability is or has been received by the company or the liquidator from the insurer,

the amount shall, after deducting any expenses of or incidental to getting it in, be paid by the liquidator to the third party in respect of whom the liability was incurred to the extent necessary to discharge the liability, or any part of the liability remaining undischarged, in priority to all payments in respect of the debts referred to in Subsection (1).

(6) If the liability of the insurer to the company is less than the liability of the company to the third party, Subsection (5) does not limit the rights of the third party in respect of the balance.

(7) The provisions of Subsections (5) and (6) have effect notwithstanding any agreement to the contrary entered into after the commencement date.

(8) Notwithstanding Subsection (1)—

(a) Subsection (1)(e) does not apply in relation to the winding-up of a company where—

- (i) the company is being wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company; and
- (ii) the right to the compensation has, on the reconstruction or amalgamation, been preserved to the person entitled to it,

or where the company has entered into a contract with an insurer in respect of any liability under any law relating to workers' compensation; and

(b) where a company has given security for the payment or repayment of an amount to which Subsection (1)(g) relates, that paragraph applies only in relation to the balance of any such amount remaining due after deducting from it the net amount realized from the security.

(9) Where, in a winding-up—

- (a) assets have been recovered under an indemnity for costs of litigation given by certain creditors, or have been protected or preserved by the payment of moneys or the giving of indemnity by creditors; or
- (b) expenses in relation to which a creditor has indemnified a liquidator have been recovered,

the Court may make such order as it thinks just with respect to the distribution of the assets and the amount of the expenses recovered with a view to giving to those creditors an advantage over others in consideration of the risk run by them in doing so.

#### Subdivision C.—Effect on Other Transactions.

#### 311. Settlements, preferences, etc.

(1) A settlement, conveyance, transfer, charge, delivery of goods, payment, execution or other act relating to property made or done by or against a company that, if it had been made or done by or against an individual, would be void or voidable in his bankruptcy is void or voidable in the same manner in a winding-up of the company.

(2) For the purposes of this section, the date that corresponds with the date of presentation of the petition in proceedings in bankruptcy in the case of an individual is—

(a) in the case of a winding-up by the Court—

- (i) where before the presentation of the petition for the winding-up a resolution has been passed by the company for winding up the company voluntarily—the date on which the resolution is passed; or
- (ii) where on the presentation of the petition for the winding-up the company is under official management or has been under official management at any time within six months before the presentation of the petition—the date of the commencement of the official management; or

(iii) the date of the presentation of the petition for the winding-up, whichever is the earliest; and

(b) in the case of a voluntary winding-up—

(i) the date on which the resolution to wind up the company voluntarily is passed; or

(ii) where on the date of the passing of the resolution the company is under official management or has been under official management at any time within six months before the passing of the resolution—the date of the commencement of the official management,

whichever is the earlier.

(3) A transfer or assignment by a company of all its property to trustees for the benefit of all its creditors is void.

### 312. Floating charges.

A floating charge on the undertaking or property of the company created within six months before the commencement of the winding-up is, unless it is proved that the company was solvent immediately after the creation of the charge, invalid except as to the amount of any cash paid to the company at the time of or the creation of, and in consideration for, the charge, together with interest on that amount at the rate of 5% per annum.

### 313. Liquidators' right to recover in respect of certain sales.

(1) In this section, "cash consideration" means any consideration payable otherwise than by the issue of shares.

(2) Where any property, business or undertaking has been acquired by a company for a cash consideration, within a period of two years before the commencement of the winding-up of the company, from—

(a) a person who was, at the time of the acquisition, a director of the company; or

(b) a company of which, at the time of the acquisition, a person was a director who was also a director of the first-mentioned company,

the liquidator may recover from the person or company from which the property, business or undertaking was acquired any amount by which the cash consideration for the acquisition exceeded the value of the property, business or undertaking at the time of its acquisition.

(3) Where any property, business or undertaking has been sold by a company for a cash consideration, within a period of two years before the commencement of the winding-up of the company, to—

(a) a person who was, at the time of the sale, a director of the company; or

(b) a company of which, at the time of the sale, a person was a director who was also a director of the first-mentioned company,

the liquidator may recover from the person or company to which the property, business or undertaking was sold any amount by which the value of the property, business or undertaking at the time of the sale exceeded the cash consideration.

(4) For the purposes of this section, the value of the property, business or undertaking includes the value of any goodwill or profits that might have been made from the business or undertaking or similar considerations.

**314. Disclaimer of onerous property.**

(1) Where any part of the property of a company consists of—

- (a) an estate or interest in land that is burdened with onerous covenants; or
- (b) shares or stock in corporations; or
- (c) unprofitable contracts; or
- (d) any other property that is unsaleable, or not readily saleable, by reason of its binding its possessor to the performance of an onerous act or to the payment of a sum of money,

the liquidator of the company, notwithstanding the fact that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation to it, may, with the leave of the Court or the committee of inspection and subject to this section, by writing signed by him, disclaim the property at any time within 12 months after the commencement of the winding-up or such extended period as is allowed by the Court or the committee.

(2) Where any property referred to in Subsection (1) has not come to the knowledge of the liquidator within one month after the commencement of the winding-up, the power of disclaiming may be exercised at any time within 12 months after he has become aware of it, or within such extended period as is allowed by the Court or the committee.

(3) The disclaimer operates to determine, as from the date of disclaimer, the rights, interests and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but does not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(4) Before or on granting leave to disclaim, the Court or committee may require such notices to be given to persons interested, impose such terms as a condition of granting leave and make such other order in the matter as the Court or committee thinks just.

(5) The liquidator is not entitled to disclaim if a written application has been made to him by a person interested in the property requiring him to decide whether he will or will not disclaim and the liquidator has not, within a period of 28 days after the receipt of the application or such further period as is allowed by the Court or the committee, given notice to the applicant that he intends to apply to the Court or the committee for leave to disclaim.

(6) In the case of a contract, if after an application is made under Subsection (5), the liquidator does not within the period or further period referred to in that subsection disclaim the contract, he shall be deemed to have adopted it.

(7) On the application of a person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, the Court may make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as the Court thinks just, and any damages payable under the order to that person may be proved by him as a debt in the winding-up.

(8) On the application of a person who either claims an interest in any disclaimed property or is under a liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, the Court may make an order for the vesting of the property in or the delivery of the property to any person—

- (a) who is entitled to it; or

(b) to whom it seems just that the property should be delivered by way of compensation for any such liability,

or a trustee for him, and on such terms as the Court thinks just.

(9) Notwithstanding Subsection (8), where the property disclaimed is of a leasehold nature the Court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee, except on the terms of making that person—

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the date of commencement of the winding-up; or

(b) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and, in either event, if the case so requires, as if the lease had comprised only the property comprised in the vesting order.

(10) A mortgagee or under-lessee declining to accept a vesting order on the terms to which it was made subject under Subsection (9) is excluded from all interest in and security on the property, and if there is no person claiming under the company who is willing to accept an order on those terms the Court may vest the estate and interest of the company in the property in any person liable personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, freed and discharged from all estates, encumbrances and interests created in it by the company.

(11) A person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may prove the amount as a debt in the winding-up accordingly.

(12) Where a vesting order is made under this section, the property comprised in it vests, subject to Subsection (13), in accordance with the order in the person named for that purpose in the order without any further conveyance, transfer or assignment when an office copy of the order is lodged with the Registrar and, where the order relates to land, with the Land Registration Authority.

(13) A vesting order made under this section that relates to land is not effective until all entries that are necessary to give effect to it have been made in the register or record relevant to the land kept by the Land Registration Authority.

### 315. Restriction of rights of creditors as to execution or attachment.

(1) In this section, "goods" includes chattels personal.

(2) Where a creditor has issued execution against the goods or land of a company or has attached a debt due to the company and the company is subsequently wound up, he is not entitled to retain the benefit of the execution or attachment against the liquidator unless he has completed the execution or attachment before the date of the commencement of the winding-up, but—

(a) where a creditor has had notice of a meeting having been called at which a resolution for voluntary winding-up is to be proposed, the date on which the creditor had notice shall, for the purposes of this section, be substituted for the date of the commencement of the winding-up; and

(b) a person who purchases in good faith under a sale by the Sheriff any goods of a company on which an execution has been levied acquires in all cases a good title to them against the liquidator; and

- (c) the rights conferred by this subsection on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks proper.
- (3) For the purposes of this section—
- (a) an execution against goods is completed by seizure and sale; and
  - (b) an attachment of a debt is completed by receipt of the debt; and
  - (c) an execution against land is completed by sale or, in the case of an equitable interest, by the appointment of a receiver.

### 316. Duties of Sheriff as to goods taken in execution.

(1) In this section, "goods" include chattels personal.

(2) Subject to Subsection (4), where any goods of a company are taken in execution and, before the sale of them or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the Sheriff that a provisional liquidator has been appointed, that a winding-up order has been made or that a resolution for voluntary winding-up has been passed, the Sheriff shall, on being so required, deliver to the liquidator the goods and any money seized or received in part satisfaction of the execution, but the costs of the execution are a first charge on the goods or moneys so delivered and the liquidator may sell the goods, or a sufficient part of them, for the purpose of satisfying the charge.

(3) Subject to Subsection (4), where under an execution in respect of a judgement for a sum exceeding K40.00 the goods of a company are sold or money is paid in order to avoid sale, the Sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for one month, and, if within that time notice is served on him that a petition for the winding-up of the company has been presented or that a meeting has been called at which there is to be proposed a resolution for the voluntary winding-up and an order is made or a resolution is passed for the winding-up, the Sheriff shall pay the balance to the liquidator who is entitled to retain it as against the execution creditor.

(4) The rights conferred by this section on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks proper.

#### Subdivision D.—Offences.

### 317. Delinquent officers and members of company.

(1) If, in the course of a winding-up by the Court, it appears to the Court that a past or present officer, or a member, of the company has been guilty of an offence in relation to the company, the Court may, on the application of a person interested in the winding-up or of its own motion, direct the liquidator to refer the matter to the Public Prosecutor.

(2) If it appears to the liquidator, in the course of a voluntary winding-up, that a past or present officer, or a member, of the company has been guilty of an offence in relation to the company, he shall immediately report the matter to the Public Prosecutor and shall, in respect of information or documents in his possession or under his control relating to the matter in question, furnish the Public Prosecutor with such information, and give to him such access to and facilities for inspecting and taking copies of any documents, as he requires.



(3) If it appears to the liquidator, in the course of a winding-up, that the company that is being wound up will be unable to pay its unsecured creditors more than 50t in the kina, the liquidator shall report the matter in writing to the Registrar without delay and shall furnish the Registrar with such information, and give to him such access to and facilities for inspecting and taking copies of any documents, as the Registrar requires.

(4) Where a report is made under Subsection (2) or (3), the Public Prosecutor may, if he thinks fit, investigate the matter and may, if he thinks it expedient, apply to the Court for an order conferring on him, or a person designated by him for the purpose with respect to the company concerned, all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding-up by the Court.

(5) If it appears to the Public Prosecutor that the case is not one in which proceedings ought to be taken by him he shall inform the liquidator accordingly, and thereupon, subject to the previous approval of the Court, the liquidator may himself take proceedings against the offender, and for that purpose the Public Prosecutor shall be deemed to have given his written consent to the proceedings being taken by the liquidator<sup>1</sup>.

(6) If it appears to the Court in the course of a voluntary winding-up that a past or present officer, or a member, of the company has been guilty of an offence in relation to the company and that no report with respect to the matter has been made by the liquidator to the Public Prosecutor, the Court may, on the application of a person interested in the winding-up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section have effect as though the report had been made under Subsection (2).

(7) If where a matter is reported or referred to the Public Prosecutor or the Registrar under this section he thinks that the case is one in which a prosecution ought to be instituted, he may institute proceedings accordingly, and the liquidator and every officer and agent past and present of the company, other than the defendant in the proceedings, shall give to the Public Prosecutor or Registrar all assistance in connexion with the prosecution that he is reasonably able to give.

(8) For the purpose of Subsection (7), "agent", in relation to a company, includes a banker or lawyer for the company and a person employed by the company as auditor, whether or not he is an officer of the company.

(9) If a person fails or neglects to give assistance as required by Subsection (7), the Court may, on the application of the Public Prosecutor or the Registrar, direct that person to comply with the requirements of that subsection, and where an application is made under this subsection with respect to a liquidator the Court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him to do so, direct that the costs of the application be borne by the liquidator personally.

(10) The Minister may direct that the whole or any part of any costs and expenses properly incurred by the liquidator in proceedings brought by him under this section be defrayed by the State.

(11) Subject to any direction given under Subsection (10), and to any charges on the assets of the company and any debts to which priority is given by this Act, all such costs and expenses are payable out of those assets as part of the costs of the winding-up.

---

<sup>1</sup> But see Constitution, Section 177.

## Subdivision E.—Dissolution and Striking-off.

**318. Avoidance of dissolution.**

(1) Where a company has been dissolved, the Court may within two years after the date of dissolution, on the application of the liquidator of the company or of any other person who appears to the Court to be interested, make an order on such terms as the Court thinks proper declaring the dissolution to have been void, and thereupon any proceedings may be taken that might have been taken if the company had not been dissolved.

(2) The person on whose application the order was made must, within seven days after the making of the order or such further time as the Court allows, lodge with the Registrar an office copy of the order, and if he fails to do so he is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

**319. Striking off defunct companies.**

(1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may send to the company by post a letter to that effect stating that, if an answer showing cause to the contrary is not received within one month from the date of the letter, a notice will be published in the National Gazette with a view to striking the name of the company off the register.

(2) Unless the Registrar receives an answer within one month from the date of the letter to the effect that the company is carrying on business or is in operation, he may publish in the National Gazette and send to the company by registered post a notice that, at the expiration of three months from the date of the notice, the name of the company will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(3) Where a company is being wound up and the Registrar has reasonable cause to believe that—

- (a) no liquidator is acting; or
- (b) the affairs of the company are fully wound up and, for a period of six months, the liquidator has been in default in lodging any return required to be made by him; or
- (c) the affairs of the company have been fully wound up under Division 2 and there are no assets or the assets available are not sufficient to pay the costs of obtaining an order of the Court dissolving the company,

he may publish in the National Gazette and send to the company or the liquidator (if any) a notice to the same effect as that referred to in Subsection (2).

(4) At the expiration of the time specified in a notice given by the Registrar under Subsection (2) or (3), the Registrar may, unless cause to the contrary is previously shown, strike the name of the company off the register, and shall publish notice of the striking off in the National Gazette.

(5) On the publication in the National Gazette of the notice under Subsection (4) the dissolution of the company takes effect, but—

- (a) the liability (if any) of every officer and member of the company continues and may be enforced as if the company had not been dissolved; and
- (b) this subsection does not affect the power of the Court to wind up a company the name of which has been struck off the register.

(6) On application made, within 15 years after the name of the company has been struck off the register, by a person aggrieved by the striking-off, and on being satisfied that the company was, at the time of the striking off, carrying on business or in operation, or otherwise that it is just that the name of the company be restored to the register, the Court may order the name of the company to be restored to the register.

(7) On an office copy of an order under Subsection (6) being lodged with the Registrar, the company shall be deemed to have continued in existence as if its name had not been struck off, and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(8) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last-known place of business, and a letter or notice to be sent under this section to a company may be—

- (a) addressed to the company at its registered office, or if no office has been registered, to the care of some officer of the company; or
- (b) if there is no officer of the company whose name and address are known to the Registrar, sent to each person who subscribed the memorandum of the company, addressed to him at the address shown in the memorandum.

### 320. Registrar as representative of defunct company.

(1) Where, after a company has been dissolved, it is proved to the satisfaction of the Registrar—

- (a) that the company, if it still existed, would be legally or equitably bound to carry out, complete or give effect to some dealing, transaction or matter; and
- (b) that, in order to carry out, complete or give effect to the dealing, transaction or matter, some purely administrative act, not being of a discretionary kind, should have been done by or on behalf of the company, or if the company still existed should be done by or on behalf of the company,

the Registrar may, as representing the company or its liquidator under the provisions of this section, do or cause to be done any such act.

(2) The Registrar may execute or sign any relevant instrument or document adding a memorandum stating that he has done so under this section, and the execution or signature has the same force, validity and effect as if the company, if it still existed, had duly executed the instrument or document.

### 321. Outstanding assets of defunct companies.

(1) Where, after a company has been dissolved, there remains any outstanding property, whether inside or outside the country, that was vested in the company or to which it was entitled, or over which it had a disposing power at the time when it was dissolved, but that was not got in, realized on or otherwise disposed of or dealt with by the company or its liquidator, the property (except called and uncalled capital) is, for the purposes of the succeeding provisions of this Subdivision and notwithstanding any enactment or rule of law to the contrary, vested by virtue of this section in the Registrar for all the estate and interest (legal or equitable) of the company or its liquidator in it at the date when the company was dissolved, together with all claims, rights and remedies that the company or its liquidator then had in respect of it.

(2) Where under this Act a claim, right or remedy of the liquidator may be made, exercised or availed of only with the approval or concurrence of the Court or some other

person, the Registrar may, for the purposes of this section, make, exercise or avail himself of the claim, right or remedy without the approval or concurrence.

### **322. Disposal of outstanding interests in property.**

(1) On proof to the satisfaction of the Registrar that there is vested in him by virtue of Section 321, or by virtue of a law of a State or Territory of Australia corresponding with Section 329, any estate or interest in property, whether solely or together with any other person, of a beneficial nature and not merely held in trust, the Registrar may sell or otherwise dispose of, or deal with, the estate or interest or any part of it as he thinks fit.

(2) The Registrar may sell or otherwise dispose of, or deal with, property referred to in Subsection (1), either solely or in concurrence with any other person, by public auction, public tender or private contract and in such manner, for such consideration and on such terms and conditions as he thinks proper, with power to rescind any contract and resell or otherwise dispose of or deal with the property as he thinks expedient, and may make, execute, sign and give such contracts, instruments and documents as he thinks necessary.

(3) The Registrar shall be remunerated by such commission, whether by way of percentage or otherwise, as is prescribed in respect of the exercise of the powers conferred on him by Subsection (1).

(4) The Registrar shall apply any moneys received by him in the exercise of any power conferred on him by this Subdivision in defraying the costs and expenses of and incidental to the exercise of the power and in making payments authorized by this Subdivision, and shall pay the remainder (if any) of the moneys to the Secretary for Finance.

(5) The Secretary for Finance shall pay all moneys paid to him under this section into the Consolidated Revenue Fund.

(6) A person claiming to be entitled to any money paid to the Secretary for Finance under this section may apply to the Court for an order for payment to him of a sum due to him, and if satisfied that the person claiming is entitled to the payment of that sum the Court shall make an order for payment accordingly.

(7) On the making of an order under Subsection (6) for payment of any money to a person, or where he is otherwise satisfied that a person is entitled to any money paid to the Secretary for Finance under this section, the Secretary for Finance shall pay an amount equal to that money to that person.

(8) This section does not deprive a person of another right or remedy to which he is entitled against the liquidator or another person.

### **323. Government liability as to property vested in Registrar.**

Property vested in the Registrar by virtue of this Subdivision is liable and subject to all charges, claims and liabilities imposed on it or affecting it by reason of any law as to rates, taxes, charges or any other matter or thing to which the property would have been liable or subject had the property continued in the possession, ownership or occupation of the company, but no duty, obligation or liability is imposed on the Registrar or the State to do or suffer any act or thing required by any such statutory provision to be done or suffered by the owner or occupier other than the satisfaction or payment of any such charges, claims or liabilities out of the assets of the company so far as they are, in the opinion of the Registrar, properly available for and applicable to such payment.

**324. Accounts.**

The Registrar shall—

- (a) record in the register of companies a statement of any property coming to his hands or under his control, or to his knowledge vested in him, by virtue of this Subdivision, and of his dealings with any such property; and
- (b) keep accounts of all moneys arising from any such property and of how they have been disposed of; and
- (c) keep all accounts, vouchers, receipts and papers relating to any such property and moneys.

*Division 5.—Winding-up of Unregistered Companies.*

**325. Interpretation of Division 5.**

(1) For the purposes of this Division, "unregistered company" includes a foreign company and a partnership, association or company consisting of more than five members, but does not include a company incorporated under this Act or under any corresponding previous law.

(2) The provisions of this Division have effect in addition to and not in derogation of any provision contained in this or any other Act with respect to the winding-up of companies by the Court, and the Court or liquidator may, in the case of an unregistered company, exercise any powers or do any act that might be exercised or done by it or him in winding-up any other company.

**326. Winding-up of unregistered companies.**

(1) In this section, "carrying on business" includes establishing or using a share transfer or share registration office, or administering, managing or otherwise dealing with property situated in Papua New Guinea as an agent, personal representative or trustee, whether by servants or agents or otherwise.

(2) Subject to this Division, an unregistered company may be wound up under this Part, and this Part applies accordingly in relation to an unregistered company with the following adaptations:—

- (a) the principal place of business of such a company in Papua New Guinea shall, for all the purposes of the winding-up, be deemed to be the registered office of the company; and
  - (b) no such company shall be wound up voluntarily; and
  - (c) such a company may be wound up only if—
    - (i) it is dissolved, has ceased to have a place of business in Papua New Guinea, has a place of business in Papua New Guinea only for the purpose of winding-up its affairs or has ceased to carry on business in Papua New Guinea; or
    - (ii) if it is unable to pay its debts; or
    - (iii) if the Court is of opinion that it is just and equitable that it should be wound up.
- (3) An unregistered company shall be deemed to be unable to pay its debts if—
- (a) a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding K100.00 then due has served on the company, by leaving at its principal place of business in Papua New Guinea or by delivering to the

secretary or a director, manager or principal officer of the company, or by otherwise serving in such manner as the Court approves or directs, a demand under his hand requiring the company to pay the sum so due and the company has, for three weeks after the service of the demand, neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;

or

(b) an action or other proceeding has been instituted against a member for any debt or demand due or claimed to be due from the company or from him as such and—

(i) written notice of the institution of the action or proceeding has been served on the company by leaving it at its principal place of business in the country or by delivering it to the secretary or a director, manager or principal officer of the company, or by otherwise serving it in such manner as the Court approves or directs; and

(ii) the company has not, within two weeks after service of the notice—

(A) paid, secured or compounded for the debt or demand; or

(B) procured the action or proceeding to be stayed; or

(C) indemnified the defendant to his reasonable satisfaction against the action or proceeding and against all costs, damages and expenses to be incurred by him by reason of the action or proceeding; or

(c) execution or other process issued on a judgement, decree or order obtained in a court in favour of a creditor against the company or a member as such, or a person authorized to be sued as nominal defendant on behalf of the company, is returned unsatisfied; or

(d) it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

(4) A company incorporated outside the country may be wound up as an unregistered company under this Division notwithstanding that it is being wound up or has been dissolved or has otherwise ceased to exist as a company under or by virtue of the laws of the place under which it was incorporated.

### 327. Contributories in winding-up of unregistered company.

(1) On the winding-up of an unregistered company, every person—

(a) who is liable to pay or contribute to the payment of—

(i) any debt or liability of the company; or

(ii) any sum for the adjustment of the rights of the members among themselves; or

(iii) the costs and expenses of the winding-up; or

(b) where the company has been dissolved in the place in which it is formed or incorporated, who immediately before the dissolution was so liable,

is a contributory, and every contributory is liable to contribute to the assets of the company all sums due from him in respect of any such liability.

(2) On the death or bankruptcy of a contributory, the provisions of this Act with respect to the personal representatives of deceased contributories and the assignees and trustees of bankrupt contributories, as the case requires, apply.

**328. Staying or restraint of proceedings.**

(1) The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding-up and before the making of a winding-up order extend, in the case of an unregistered company where the application to stay or restrain is by a creditor, to actions and proceedings against a contributory of the company.

(2) Where an order has been made for winding-up an unregistered company, no action or proceedings shall be proceeded with or commenced against a contributory of the company in respect of any debt of the company except by leave of the Court and subject to such conditions as the Court imposes.

**329. Outstanding assets of defunct unregistered companies.**

(1) Where an unregistered company the place of incorporation or origin of which is in a State or Territory of Australia has been dissolved, and there remains in Papua New Guinea any outstanding property that was vested in the company or to which it was entitled, or over which it had a disposing power at the time when it was dissolved, but that was not got in, realized on or otherwise disposed of or dealt with by the company or its liquidator, the property (except called and uncalled capital) is, by virtue of this section, vested, for all the estate and interest (legal or equitable) of the company or its liquidator at the date when the company was dissolved, in such person as is entitled to it according to the law of the place of incorporation or origin of the company.

(2) Where the place of origin of an unregistered company is Papua New Guinea, the provisions of Sections 320 to 324 (inclusive) apply, with such adaptations as are necessary, in respect of the company.

**PART XII.—VARIOUS KINDS OF COMPANIES, ETC.*****Division 1.—No Liability Companies.*****330. Application of Act to no liability companies.**

Subject to this Division and except as otherwise expressly provided in this Act, the provisions of this Act relating to public companies, except Sections 236 to 238 (inclusive), 253 (so far as it relates to calls), 262 and 263(3), apply to no liability companies.

**331. Liability of shareholders.**

The acceptance of a share in a no liability company, whether by original allotment or by transfer, does not constitute a contract on the part of the person accepting it to pay any calls in respect of it or any contribution to the debts and liabilities of the company, and he is not liable to be sued for any calls or contributions, but is not entitled to a dividend on any share on which a call is due and unpaid.

**332. Payment of dividends.**

Subject to any provisions of the articles relating to preferred, deferred or other special classes of shares, dividends that are payable to the shareholders in a no liability company are payable to the persons entitled to them in proportion to the shares held by them, irrespective of the amount paid up or credited as paid up on the shares.

**333. Calls.**

- (1) A call on shares in a no liability company must be so made that they are payable—  
(a) not less than 14 days from the day on which the call is made; and

- (b) on the second Wednesday in a month or, if the Wednesday is a public holiday, on the next weekday that is not a public holiday,

and no subsequent call shall be made until after the expiration of seven days from the day on which the last call is payable.

(2) A notice must be printed on the face of all share certificates stating that the Wednesday or other day referred to in Subsection (1) is the day on which calls are payable.

(3) When a call is made, notice of the amount of the call, of the day when it is payable and of the place for payment must, not less than seven days before that day, be—

- (a) published in a newspaper published in the country not less frequently than once a week; and  
(b) sent by post to each holder of shares on which the call is made.

### 334. Forfeiture of shares.

(1) A share in a no liability company on which a call is unpaid at the expiration of 14 days after the day for its payment is thereupon forfeited without any resolution of directors or other proceedings and, subject to this Division, must be offered for sale by public auction not more than six weeks after the date on which the call is payable.

(2) A sale under Subsection (1) must be advertised, not less than 14 and not more than 21 days before the day appointed for the sale, in a newspaper published in the country not less frequently than once a week.

(3) Where a sale is not held owing to error or inadvertence, it is not invalid if it is held in due course as soon as may be after the discovery of the error or inadvertence.

(4) If there is any failure to comply with the provisions of this section, the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(5) At any such sale, a share forfeited for non-payment of a call may, if the company in accordance with its articles or by ordinary resolution so determines, be offered for sale and sold credited as paid up to the sum of—

- (a) the amount paid up at the time of forfeiture; and  
(b) the amount of the call; and  
(c) the amount of any other calls becoming payable on or before the date of the sale.

(6) The proceeds of the sale shall be applied in payment of—

- (a) firstly, the expenses of the sale; and  
(b) secondly, any expenses necessarily incurred in respect of the forfeiture; and  
(c) thirdly, the calls then due and unpaid,

and the balance (if any) shall be paid to the member whose share has been so sold on his delivering to the company the share certificate that relates to the forfeited share.

### 335. Sale of forfeited shares.

(1) In the case of a share advertised for sale as forfeited for non-payment of a call, the directors may fix a reserve price not exceeding the sum of the amount of the call due and unpaid on the share at the time of forfeiture and the amount of any other calls becoming payable on or before the date of the sale.



(2) If a bid at least equal to the reserve price fixed in accordance with Subsection (1) is not made for the share, the share may be withdrawn from sale.

(3) A share withdrawn from sale in accordance with Subsection (2) and any other share for which no bid is received at the sale shall be held by the directors in trust for the company, and must be disposed of in such manner as the company, in accordance with its articles or by ordinary resolution, determines, but at a meeting of the company no person is entitled to a vote in respect of the shares so held by the directors in trust.

(4) Unless otherwise specifically provided by ordinary resolution, the shares to be so disposed of must first be offered to shareholders for a period of 14 days before being disposed of in any other manner.

### 336. Shares held by or in trust for company.

No call has any effect on a forfeited share that is held by or in trust for the company under this Division, but when such a share is re-issued or sold by the company it may be credited as paid up to such amount as the company, in accordance with its articles or by ordinary resolution, determines.

### 337. Sale of shares for non-payment of calls.

(1) When forfeited shares are sold for non-payment of a call, the sale is valid even if the specific numbers of the shares are not advertised.

(2) In an advertisement, it is sufficient to give notice of the intended sale of forfeited shares by advertising to the effect that all shares on which a call remains unpaid will be sold.

### 338. Postponement of sale.

(1) An intended sale of forfeited shares that has been duly advertised may be postponed for not more than 21 days from the advertised date of sale or from any date to which the sale has been duly postponed, but no such intended sale shall be postponed to a date more than 90 days after the first date fixed for the intended sale.

(2) The date to which the sale is postponed must be advertised in a newspaper published in the country not less frequently than once a week.

### 339. Redemption of forfeited shares.

(1) Notwithstanding this Division, if a share belonging to a person has been forfeited he may, at any time up to or on the day before the day on which it is intended to sell the share, redeem the share by payment to the company of—

(a) all calls due on it; and

(b) if the company so requires—

(i) a portion, calculated on a pro rata basis, of all expenses incurred by the company in respect of the forfeiture; and

(ii) a portion, calculated on a pro rata basis, of all costs and expenses of any proceeding that has been taken in respect of the forfeiture.

(2) On payment in accordance with Subsection (1), the person is entitled to the share as if the forfeiture had not been incurred.

### 340. Office to be open before sale.

On the day before the day on which a forfeited share is to be sold under this Division, the company's office shall be open during the hours for which it is by this Act required to be open and accessible to the public.

**341. Distribution generally.**

(1) If on the winding-up of a no liability company there remains any surplus, the surplus shall be distributed amongst the parties entitled to it in proportion to the shares held by them, irrespective of the amount paid up or credited as paid up on them.

(2) A member who is in arrears in payment of a call, but whose shares have not been actually forfeited, is not entitled to share in a distribution under Subsection (1) until the amount owing in respect of the call has been fully paid and satisfied.

**342. Distribution where cessation of business within 12 months.**

If a no liability company ceases to carry on business within 12 months of its incorporation, shares issued for cash rank on a winding-up, to the extent of the capital contributed by subscribing shareholders, in priority to those issued to vendors or promoters, or both, for a consideration other than cash.

**343. Preference shares issued to promoters.**

Norwithstanding anything in the memorandum or articles of a no liability company, the holders of shares issued to vendors or promoters are not entitled to any preference on the winding-up of the company.

**344. Restrictions on tribute arrangements.**

(1) Without the sanction of a special resolution of the company, the directors of a no liability company must not—

- (a) let the whole or portion of a mine or claim on tribute; or
- (b) make any contract for working any land on tribute.

(2) Subsection (1) does not prevent the directors of a no liability company from letting the whole or portion of a mine or claim on tribute, or making any contract for working any land on tribute, for any period not exceeding three months without the sanction of a special resolution if no such letting or contract has been made within the period of two years before the proposed letting or contract.

*Division 2.—Investment Companies.***345. Interpretation of Division 2.**

(1) In this Division, unless the contrary intention appears—

“investment company” means a corporation declared under Subsection (2) to be an investment company;

“net tangible assets” means tangible assets at book value, less total liability at book value and less any aggregate amount by which the book value of the marketable securities held by the corporation exceeds their market value.

(2) The Minister may, by notice in the National Gazette, declare to be an investment company any corporation that is engaged primarily in the business of investment in marketable securities for the purpose of revenue and for profit and not for the purpose of exercising control.

**346. Special requirements as to articles and prospectus.**

(1) An investment company may not issue a prospectus or permit a prospectus to be issued on its behalf unless the prospectus specifies—

- (a) the type of security in which, in accordance with the objects of the company, the company may invest; and
- (b) whether it is among the objects of the company to invest inside the country or outside it, or both.

(2) After the expiration of three months after a corporation has been declared to be an investment company, it may not borrow or invest any moneys, or underwrite or sub-underwrite an issue of securities, unless the articles of the company specify the matters referred to in Subsection (1)(a) and (b).

**347. Borrowings.**

(1) An investment company may not borrow an amount if the amount, or the sum of the amount and amounts previously borrowed by it and not repaid, exceeds an amount equivalent to 50% of its net tangible assets.

(2) An investment company may not borrow an amount otherwise than by the issue of debentures if the amount, or the sum of the amount and amounts previously borrowed by it (otherwise than by the issue of debentures) and not repaid, exceeds an amount equivalent to 25% of its net tangible assets.

(3) In Subsection (2), "debentures" does not include a debenture—

- (a) that is redeemable, except at the option of the borrower exercised not earlier than 2½ years after the date of issue of the debenture, within less than five years after that date; or
- (b) that is issued to a bank as security for an overdraft.

**348. Investments.**

(1) An investment company may not invest an amount in a corporation if the amount, or the sum of the amount and amounts previously invested by it in that corporation and still so invested, exceeds an amount equivalent to 10% of the net tangible assets of the investment company.

(2) An investment company may not invest an amount in the ordinary shares of a corporation if the amount, or the sum of the amount and amounts previously invested by it in the ordinary shares of that corporation and still so invested, exceeds an amount equivalent to 5% of the subscribed ordinary share capital of the corporation.

**349. Underwritings.**

(1) In this section—

"authorized securities" means securities in which, by any Act, Australian Act, Act or Ordinance of a State or Territory of Australia or Act of New Zealand, trustees are authorized to invest trust funds in their hands;

"non-authorized securities" means securities other than authorized securities.

(2) An investment company may not underwrite an issue of authorized securities to an amount that, when added to the amount or amounts (if any) to which it has previously underwritten a current issue or issues of other authorized securities (not being an amount or amounts in respect of which the underwriting obligation has been discharged), exceeds an amount equivalent to 40% of its net tangible assets.

(3) An investment company may not underwrite an issue of non-authorized securities to an amount that, when added to the amount or amounts (if any) to which it has previously underwritten a current issue or issues of other non-authorized securities (not being an amount or amounts in respect of which the underwriting obligation has been discharged), exceeds an amount equivalent to 20% of its net tangible assets.

(4) Where—

- (a) an investment company has underwritten an issue of securities and, in relation to the underwriting, has not contravened Subsection (2) or (3); and
- (b) the investment company, as a result of the underwriting, invests in a corporation, being an investment contrary to Section 348,

the investment company shall be deemed not to have contravened a provision of that section by reason of so investing in the corporation if, at the expiration of 12 months after so investing—

- (c) the amount invested by it in the corporation does not exceed an amount equivalent to 10% of the net tangible assets of the investment company; and
- (d) it does not hold more than 5% of the subscribed ordinary share capital of the corporation.

(5) This section extends to and in relation to sub-underwriting as if the sub-underwriting were underwriting.

### 350. Holding of shares in other investment companies.

An investment company may not purchase, or (after the expiration of three years after it is declared to be an investment company) hold, any shares in or debentures of—

- (a) any other investment company; or
- (b) a corporation incorporated in a State or Territory of Australia or in New Zealand that is engaged primarily in the business of investment in marketable securities for the purpose of revenue and for profit and not for the purpose of exercising control, and that is declared by the Minister, by notice in the National Gazette, to be a corporation in relation to which this paragraph applies.

### 351. Speculation in commodities.

(1) An investment company may not, for the purpose of profit, buy, sell or deal in any raw materials or manufactured goods, whether in existence or not, otherwise than by investing in companies trading in such materials or goods.

(2) Subsection (1) does not apply to or in relation to—

- (a) any buying, selling or dealing by an investment company in pursuance of a contract entered into by it before it was declared to be an investment company; or
- (b) the selling of or the dealing in raw materials or manufactured goods acquired by the investment company before it was so declared.

**352. Balance-sheets and accounts.**

(1) An investment company must state under separate headings in every balance-sheet of the company, in addition to any other matters required to be stated in the balance-sheet—

- (a) the investments of the company of a kind not referred to in Clause 2(b) of Schedule 8; and
- (b) the manner in which the investments of the company have been valued.

(2) An investment company must attach to every balance-sheet of the company—

- (a) a complete list of all purchases and sales of securities by the company during the period to which the accounts relate, together with a statement of the total amount of brokerage paid or charged by the company during that period and the proportion of that amount paid to any stock broker or share broker, or an employee or nominee of any stock broker or share broker, who is an officer of the company; and
- (b) a complete list of all the investments of the company as at the date of the balance-sheet, showing the descriptions and quantities of the investments.

(3) An investment company must show separately in the profit and loss account, in addition to any other matters required to be shown in it, income from underwriting, including sub-underwriting.

**353. Investment fluctuation reserve.**

(1) The net profits and losses of an investment company from the purchase and sale of securities must be respectively credited and debited by the company to a reserve account to be kept by it and to be called "the investment fluctuation reserve".

(2) The investment fluctuation reserve is not available for the payment of dividends.

(3) The investment fluctuation reserve is available for the payment of income tax payable in respect of profits made on the sale of securities.

**354. Offences against Division 2.**

(1) If default is made by an investment company in complying with this Division, the investment company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K2 000.00.

Default penalty: A fine not exceeding K200.00.

(2) A transaction entered into by the company is not invalid by reason only of a default referred to in Subsection (1).

*Division 3.—Foreign Companies.***355. Interpretation of Division 3.**

(1) In this Division, unless the contrary intention appears—

"agent" means the person named in a memorandum of appointment or power of attorney lodged under Section 358(1)(e) or (8) or the public officer appointed under any corresponding previous law;

"carrying on business" includes establishing or using a share transfer or share registration office, or administering, managing or otherwise dealing with

property situated in the country as an agent, personal representative or trustee, whether by servants or agents or otherwise.

(2) Notwithstanding Subsection (1), a foreign company shall not be regarded as carrying on business within Papua New Guinea for the reason only that, within Papua New Guinea, it—

- (a) is or becomes a party to an action or suit or an administrative or arbitration proceeding, or effects settlement of an action, suit or proceeding or of a claim or dispute; or
- (b) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs; or
- (c) maintains a bank account; or
- (d) effects a sale through an independent contractor; or
- (e) solicits or procures an order that becomes a binding contract only if the order is accepted outside Papua New Guinea; or
- (f) creates evidence of a debt or creates a charge on property; or
- (g) secures or collects any of its debts or enforces its rights in regard to any securities relating to any such debts; or
- (h) conducts an isolated transaction that is completed within a period of 31 days, not being one of a number of similar transactions repeated from time to time; or
- (i) invests any of its funds or holds any property.

### 356. Application of Division 3.

This Division applies to a foreign company only if it has a place of business, or is carrying on business, within Papua New Guinea.

### 357. Holding of land.

Subject to any other Act, a foreign company registered under this Division has power to hold land in Papua New Guinea<sup>1</sup>.

### 358. Lodgement of documents, etc.

(1) A foreign company must, within one month after it establishes a place of business or commences to carry on business within Papua New Guinea, lodge with the Registrar for registration—

- (a) a certified copy of the certificate of its incorporation or registration issued in its place of incorporation or origin, or a document of similar effect; and
- (b) a certified copy of its charter, statute, memorandum, memorandum and articles or other instrument constituting or defining its constitution; and
- (c) a list, in the prescribed form, of its directors, containing similar particulars with respect to its directors as are required by this Act to be contained in the register of the directors, managers and secretaries of a company incorporated under this Act; and
- (d) where the list includes directors resident in Papua New Guinea who are members of the local board of directors, a memorandum duly executed by or

<sup>1</sup> See also Constitution, Section 56; *Aliens Property Act*.

on behalf of the foreign company stating the powers of the local directors;  
and

- (e) a memorandum of appointment or power of attorney under the seal of the foreign company or executed on its behalf in such manner as to be binding on the company and verified by statutory declaration in the prescribed manner, stating the name and address, or names and addresses, of one or more persons (other than foreign companies) resident in Papua New Guinea and authorized to accept on its behalf service of process and any notices required to be served on it; and
- (f) notice in the prescribed form of the situation of its registered office in Papua New Guinea and, unless the office is open and accessible to the public for at least five hours between 10 a.m. and 4 p.m. of each day (Saturdays, Sundays and public holidays excepted), the days and hours during which it is open and accessible to the public; and
- (g) a statutory declaration, in the prescribed form, made by the agent of the company,

and the Registrar shall register the company under this Division by registration of the documents.

(2) Where a memorandum of appointment or power of attorney lodged with the Registrar under Subsection (1)(e) is executed by a person on behalf of the company, a copy of the deed or document by which the person is authorized to execute the memorandum of appointment or power of attorney, verified by statutory declaration in the prescribed manner, must be lodged with the Registrar.

(3) A copy lodged under Subsection (2) shall for all purposes be regarded as an original.

(4) A foreign company must have a registered office within Papua New Guinea to which all communications and notices may be addressed, and which shall be open and accessible to the public for not less than three hours between the hours of 9 a.m. and 5 p.m. of each day (Saturdays, Sundays and public holidays excepted).

(5) Until he ceases to be such in accordance with Subsection (7), an agent—

- (a) continues to be the agent of the company; and
- (b) is answerable for the doing of all acts, matters and things that are required to be done by the company by or under this Act; and
- (c) is personally liable to all penalties imposed on the company for any contravention of this Act unless he satisfies the court hearing the matter that he should be not liable.

(6) A foreign company or its agent may lodge with the Registrar a written notice in the prescribed form, stating that the agent has ceased to be the agent or will cease to be the agent on a date specified in the notice.

(7) The agent in respect of whom the notice has been lodged ceases to be an agent—

- (a) on the expiration of a period of 21 days after the date of lodgement of the notice, or if the notice states a date on which he is to so cease and the date is later than the expiration of that period on that date; or
- (b) on the date of the appointment of another agent the memorandum of whose appointment has been lodged in accordance with Subsection (8),

whichever is the earlier.

## (8) Where—

- (a) an agent ceases to be the agent and the company is then without an agent in Papua New Guinea; and
- (b) the company continues to carry on business or has a place of business in Papua New Guinea,

it must, within 21 days after the agent ceases to be the agent, appoint an agent and lodge—

- (c) a memorandum of his appointment and a statutory declaration in accordance with Subsection (1); and
- (d) if not already lodged under Subsection (2), a copy of the deed, document or power of attorney referred to in that subsection verified in accordance with that subsection.

(9) On the registration of a foreign company under this Division, the lodging with the Registrar of particulars of a change or alteration in a matter referred to in Section 359(1)(c) or (d) or the registration by the Registrar of a change or alteration in the name of a foreign company, the Registrar shall issue a certificate in the prescribed form under his hand and seal, and the certificate is evidence in all courts of the particulars mentioned in the certificate.

**359. Returns as to alterations.**

## (1) Where a change or alteration is made in—

- (a) the charter, statute, memorandum, articles or other instrument a copy of which is lodged by a foreign company with the Registrar under Section 358(1)(b); or
- (b) the directors of a foreign company; or
- (c) the agent or agents of a foreign company or the address of an agent; or
- (d) the situation of the registered office of a foreign company in Papua New Guinea, or of the days or hours during which it is open and accessible to the public; or
- (e) the address of the registered office of a foreign company in its place of incorporation or origin; or
- (f) the name of a foreign company; or
- (g) the powers of any directors resident in Papua New Guinea who are members of the local board of directors of the foreign company,

the foreign company must, within one month or within such further period as the Registrar in special circumstances allows after the change or alteration, lodge with the Registrar notice in the prescribed form of the change or alteration, and such other documents as the regulations require.

(2) If a foreign company increases its authorized share capital, it must, within one month or such further period as the Registrar in special circumstances allows after the increase, lodge with the Registrar notice in the prescribed form of the amount from which, and of the amount to which, it has been so increased.

(3) If a foreign company not having a share capital increases the number of its members beyond the registered number, it must, within one month or such further period as the Registrar in special circumstances allows after the increase was resolved on or took place, lodge with the Registrar notice in the prescribed form of the increase.



**360. Balance-sheets and annual returns.**

(1) Subject to this section, a foreign company must, at least once in every calendar year and at intervals of not more than 15 months, lodge with the Registrar a copy of its balance-sheet made up to the end of its last financial year—

- (a) in such form; and
- (b) containing such particulars; and
- (c) including copies of such documents,

as is required by the law applicable to the company in the place of its incorporation or origin, together with a statutory declaration in the prescribed form verifying that the copies are true copies of the documents so required.

(2) If the Registrar is of the opinion that the balance-sheet and other documents referred to in Subsection (1) do not sufficiently disclose the company's financial position, he may require the company to lodge a balance-sheet—

- (a) within such period; and
- (b) in such form; and
- (c) containing such particulars; and
- (d) including such documents,

as the Registrar by written notice to the company requires, but this subsection does not authorize the Registrar to require a balance-sheet to contain any particulars or include any documents that would not be required to be furnished if the company were a public company incorporated under this Act.

(3) The company must comply with the requirements set out in the notice.

(4) Where a foreign company is not required by the law of the place of its incorporation or origin to prepare a balance-sheet, the company must prepare and lodge with the Registrar a balance-sheet—

- (a) within such period; and
- (b) in such form; and
- (c) containing such particulars; and
- (d) including such documents,

as would be required if the company were a public company incorporated under this Act.

(5) Subject to Subsection (6), this section does not apply to or in relation to a foreign company—

- (a) that is an exempt private company under the law of the United Kingdom relating to companies; or
- (b) that is included in a class of corporations that the Minister has declared, by notice in the National Gazette, to be a class of corporations of a kind the same, or substantially the same, as exempt proprietary companies under this Act; or
- (c) is included in a class of corporations that the Minister has declared, by notice in the National Gazette, to be a class of corporations of a kind the same, or substantially the same, as proprietary companies under this Act, where no beneficial interest in any share in the company is held, directly or indirectly, otherwise than by a natural person; or

- (d) that is a corporation incorporated in the United Kingdom, or in a State or Territory of Australia, and that has, by the law of the place of its incorporation, exemptions and privileges similar to those that are provided for in Section 24; or
- (e) that is an association incorporated in a State or Territory of Australia under a law of the place of its incorporation that makes special provision for the incorporation of associations that are formed for the purpose of providing recreation or amusement, or promoting commerce, industry, art, science, religion, charity, pension or superannuation schemes or any other object useful to the community, and that are by their constitutions prohibited from the payment of dividends to their members.

(6) A foreign company referred to in Subsection (5)(a), (b) or (c) must, at least once in every calendar year, lodge with the Registrar a return in the prescribed form made up to the date of its annual general meeting.

(7) The return must be lodged within a period of one month after the date to which it is made up or within such further period as the Registrar, in special circumstances, allows.

### 361. Fees.

(1) Where, on the registration of a corporation as a foreign company or on the lodging by a foreign company of a notice under Section 359(2), the Registrar certifies in writing that he is satisfied that the company has established in Papua New Guinea a share transfer or share registration office but otherwise has not carried on, is not carrying on and does not propose to carry on business in Papua New Guinea, the liability to pay such part (if any) of the fee payable under Item 17, 18, 19 or 20 of Schedule 1 in respect of the registration or the lodging of the notice as exceeds K1 000.00 is, by force of this section, suspended until the corporation commences otherwise to carry on business in Papua New Guinea or fails to comply with Subsection (2), whichever first occurs, but thereupon the corporation is liable to pay to the Registrar that part of the fee.

(2) So long as a suspension under Subsection (1) of liability to pay a fee in respect of the corporation continues, the corporation must lodge with the Registrar in each year, at the time when a copy of its balance-sheet or a return under Section 360 is lodged with the Registrar, a notice in the prescribed form with respect to the business being carried on in Papua New Guinea by the corporation.

(3) Where a foreign company in respect of which the Registrar has issued a certificate under Subsection (1) commences to carry on business in Papua New Guinea otherwise than by reason of establishing or using a share transfer or share registration office, it must, within 14 days after so commencing, lodge with the Registrar notice in the prescribed form of the commencement of the business.

### 362. Names of foreign companies.

(1) A foreign company must—

(a) except in the case of a banking corporation—

- (i) conspicuously exhibit outside its registered office and every place of business established by it in Papua New Guinea its name and the place where it is formed or incorporated; and
- (ii) cause its name and the place where it is formed or incorporated to be stated in legible characters in all its bill-heads and letter paper and in all its notices, prospectuses and other official publications; and

(b) if the liability of its members is limited (unless the last word of its name is the word "Limited" or the abbreviation "Ltd."), cause notice of that fact—

(i) to be stated in legible characters in every prospectus issued by it and in all its bill-heads, letter paper, notices and other official publications in Papua New Guinea; and

(ii) except in the case of a banking corporation, to be exhibited outside its registered office and every place of business established by it in Papua New Guinea.

(2) If a foreign company incorporated under the law of a State or Territory of Australia—

(a) is placed under official management in its place of incorporation by any law or enactment corresponding to Part X.; or

(b) is being wound up,

every invoice, order for goods or business letter on or in which the name of the company appears, issued by or on behalf of—

(c) the company; or

(d) an official manager or liquidator of the company; or

(e) a receiver or manager of the property of the company,

must have the words "Under Official Management" or "In Liquidation" (whichever is appropriate) immediately after the name of the company where it first appears.

(3) If default is made in complying with Subsection (2), the company, and every officer of the company who knowingly and wilfully authorizes or permits the default, is guilty of an offence.

Penalty: A fine not exceeding K100.00.

(4) Except with the consent of the Minister, a foreign company shall not be registered by a name that is, in the opinion of the Registrar, undesirable or is a name, or a name of a kind, that the Minister has, under Section 22, directed the Registrar not to accept for registration.

(5) Except with the consent of the Minister, a change in the name of a foreign company shall not be registered if the new name of the company is, in the opinion of the Registrar, undesirable or is a name, or a name of a kind, that the Minister has, under Section 22, directed the Registrar not to accept for registration, notwithstanding that particulars of the change have been lodged in accordance with Section 359.

(6) A foreign company to which this Division applies must not use in Papua New Guinea any name other than the name under which it is registered under this Division or under any other Act.

(7) If default is made in complying with Subsection (6), the foreign company, each officer of the company who is in default and each agent of the company who knowingly authorizes or permits the default is guilty of an offence.

Penalty: A fine not exceeding K200.00.

Default penalty: A fine not exceeding K20.00.

**363. Service of documents.**

A document required to be served on a foreign company is sufficiently served—

- (a) if it is addressed to the foreign company and left at or sent by post to its registered office in Papua New Guinea; or
- (b) if it is addressed to an agent of the company and left at or sent by post to his registered address.

**364. Cesser of business, etc.**

(1) If a foreign company ceases to have a place of business or to carry on business in Papua New Guinea it must, within seven days after so ceasing, lodge with the Registrar notice in the prescribed form of that fact.

(2) If a foreign company has ceased both to have a place of business and to carry on business in Papua New Guinea, its obligation to lodge any document (not being a document that ought to have been lodged before the company so ceased) with the Registrar ceases, and the Registrar shall, on the expiration of 12 months after the lodging of the notice, remove the name of the company from the register.

(3) If a foreign company goes into liquidation or is dissolved in its place of incorporation or origin—

- (a) each person who, immediately before the commencement of the liquidation proceedings, was its agent must, within one month after the commencement of the liquidation or the dissolution, as the case may be, or within such further time as the Registrar in special circumstances allows, lodge or cause to be lodged with the Registrar notice in the prescribed form of that fact and, when a liquidator is appointed, notice of the appointment; and
- (b) the liquidator has, until a liquidator for Papua New Guinea is duly appointed by the Court, the powers and functions of a liquidator for Papua New Guinea.

(4) If a foreign company incorporated under the law of a State or Territory of Australia is placed under official management in its place of incorporation by any law or enactment corresponding to Part X., or if the period of official management is terminated, the company must within one month after the commencement or termination or within such further time as the Registrar in special circumstances allows, lodge or cause to be lodged with the Registrar notice in the prescribed form of that fact.

(5) A liquidator of a foreign company appointed for Papua New Guinea by the Court, or a person exercising the powers and functions of such a liquidator—

- (a) must, before any distribution of the foreign company's assets is made, by advertisement in a newspaper circulating generally in each State or Territory of Australia where the foreign company had been carrying on business before the liquidation and for which no liquidator has been appointed, invite all creditors to make their claims against the foreign company within a reasonable time before the distribution; and
- (b) may not, without obtaining an order of the Court, pay out any creditor to the exclusion of any other creditor of the foreign company; and
- (c) may, unless otherwise ordered by the Court, recover and realize only the assets of the foreign company that are in Papua New Guinea and shall pay the net amount so recovered and realized to the liquidator of the foreign company for the place where it was formed or incorporated.

(6) Where a foreign company has been wound up so far as its assets in Papua New Guinea are concerned and there is no liquidator for the place of its incorporation or origin, the liquidator may apply to the Court for directions as to the disposal of the net amount recovered in accordance with Subsection (5).

(7) On receipt of a notice from an agent that the company has been dissolved, the Registrar shall remove the name of the company from the register.

(8) Where the Registrar has reasonable cause to believe that a foreign company has ceased to carry on business or to have a place of business in Papua New Guinea, the provisions of this Act relating to the striking off the register of the names of defunct companies, with such adaptations as are necessary, apply accordingly.

### 365. Branch registers.

(1) Subject to this section, a foreign company that has a share capital must keep at its registered office in Papua New Guinea or at some other place in Papua New Guinea a branch register for the purpose of registering shares of members resident in Papua New Guinea who apply to have the shares registered in it.

(2) A foreign company is not obliged to keep a branch register under Subsection (1) until after the expiration of one month in the case of a foreign company incorporated within Australia, or two months in the case of any other foreign company, from the receipt by it of a written application by a member resident in Papua New Guinea for registration in its branch register in Papua New Guinea of the shares held by him.

(3) If default is made in complying with Subsection (1), the foreign company, each officer of the company who is in default and each agent of the company who knowingly authorizes or permits the default is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

(4) This section does not apply to a foreign company that, by its constitution, prohibits any invitation to the public to subscribe for shares in the company.

(5) Where a register is required to be kept by this section—

- (a) it must be kept in the manner provided by Division VI.4 as though the register were the register of a company; and
- (b) transfers must be effected on that register in the same manner and at the same charges as on the principal register of the company; and
- (c) transfers lodged at its registered office in Papua New Guinea are binding on the company; and
- (d) the Court has the same powers in relation to rectification of the register as it has in respect of the register of a company incorporated in Papua New Guinea.

(6) Where a foreign company opens a branch register in Papua New Guinea, it must, within 14 days after opening the register, lodge with the Registrar notice in the prescribed form of the fact, specifying the address where the register is kept, and where immediately before the commencement date a foreign company was maintaining a branch register in Papua New Guinea and continues to maintain it on and after that date, it shall, for the purposes of this subsection, be deemed to have opened the branch register on that date.

(7) Where a change is made in the place where the register is kept or where the register is discontinued, the company must, within 14 days after the change or discontinuance, lodge with the Registrar notice in the prescribed form of the change or discontinuance.

(8) Where a company or corporation is entitled under a law of the place of incorporation of a foreign company corresponding with Section 196 to give notice to a dissenting shareholder in the foreign company that it desires to acquire any of his shares registered on a branch register kept in Papua New Guinea, this section ceases to apply to the foreign company until—

(a) the shares have been acquired; or

(b) the company or corporation has ceased to be entitled to acquire the shares.

(9) Subject to this Act, on application by a member resident in Papua New Guinea a foreign company must register in a branch register of the company the shares held by a member that are registered in any other register kept by the company.

(10) Subject to this Act, on application by a member holding shares registered in a branch register a foreign company must remove the shares from the branch register and register them in such other register as is specified in the application.

(11) Sections 159, 160 and 161 apply, with such adaptations as are necessary, to the index of persons holding shares in a branch register of a foreign company and to the inspection and closing of the register.

(12) Sections 103, 104 and 105(1), Section 107(1) and (3) and Section 163 apply, with such adaptations as are necessary, with respect to the transfer of shares on and the rectification of the branch register of a foreign company.

(13) A branch register of a foreign company is evidence of any matters directed or authorized by this Division to be inserted in it.

### 366. Certificate re share-holdings.

A certificate under the seal of a foreign company specifying any shares held by a member of that company and registered in the branch register is evidence of the title of the member to the shares and the registration of the shares in the branch register.

### 367. Offences against Division 3.

If default is made by a foreign company in complying with any provision of this Division, other than a provision in which a penalty or punishment is expressly mentioned, the company, each officer of the company who is in default and each agent of the company who knowingly authorizes or permits the default is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

### *Division 4.—Companies in Respect of Which the Provisions of this Act may be Varied.*

### 368. Interpretation of Division 4.

In this Division, unless the contrary intention appears—

“local person” means an aboriginal inhabitant of the country or a person who follows, adheres to or adopts the customs of, or who lives after the manner of, the aboriginal inhabitants of the country<sup>1</sup>;

“the substitute provision”, in relation to any provision of this Act specified in the first column of Schedule 10, means the provision set opposite that provision in the second column of that Schedule.

<sup>1</sup> But see Constitution, Section 68(3).

**369. Application of Division 4.**

- (1) This Division applies to—
  - (a) a company or proposed company the membership of which comprises—
    - (i) local persons; and
    - (ii) companies to which this Division applies; and
    - (iii) business groups incorporated under the *Business Groups Incorporation Act*; and
    - (iv) Local Government Councils; and
    - (v) Local Government Authorities; and
    - (vi) statutory authorities or instrumentalities of the State, or any of them; and
  - (b) a company declared under Subsection (2) to be a company to which this Division applies.
- (2) When the Head of State, acting on advice, is of the opinion that—
  - (a) the membership of a company is substantially composed of persons referred to in Subsection (1)(a); and
  - (b) the management of the company is substantially controlled by local persons, the Head of State, acting on advice, may, by notice in the National Gazette, declare the company to be a company to which this Division applies.
- (3) When the Head of State, acting on advice, is of the opinion that Subsection 2(a) and (b) is no longer applicable to a company declared under that section to be a company to which this Division applies, the Head of State, acting on advice, may, by notice in the National Gazette, revoke the declaration of the company as a company to which this Division applies, and after the date of the notice any provision of this Act from compliance with which the company, an officer of the company or any other person was relieved by virtue of the declaration applies to and in relation to the company.

**370. Relief from statutory requirements.**

- (1) Where the Registrar is satisfied that a company is a company to which this Division applies, he may, by order published in the National Gazette, relieve the company, the officers of the company or any other person from compliance with all or any of the requirements of this Act specified in the first column of Schedule 10.
- (2) Subject to Subsection (3), where the Registrar makes an order under Subsection (1) in relation to a company, the substitute provision (if any) applies in the place of any provision from compliance with which the company, an officer of the company or any other person has been relieved.
- (3) The regulations may amend Schedule 10 in its application to a company to which this Division applies, or to a class of company to which this Division applies, by altering or omitting any provision or substitute provision or inserting a new provision or substitute provision.
- (4) The Registrar may revoke an order made by him under Subsection (1).
- (5) An order under Subsection (1) remains in force until—
  - (a) it is revoked by the Registrar; or
  - (b) it is set aside by order of the National Court; or

(c) the company ceases to be a company to which this Division applies, whichever first happens.

### 371. Appeals.

(1) A member or creditor of a company in respect of which the Registrar has made an order under Section 370(1) may apply to the National Court to have the order set aside on the ground that the company should not be relieved from compliance with any or all of the provisions to which the order relates.

(2) A company in respect of which the Registrar has revoked an order under Section 370(1), or a member or creditor of such a company, may apply to the National Court to have the revocation order set aside on the ground that the revocation of the order is not, in all the circumstances, reasonable or just.

(3) A company or a member or creditor of a company may appeal to the National Court against the failure or refusal of the Registrar to make an order under Section 370(1) on the grounds that—

- (a) the company is a company to which this Division applies; and
- (b) it is reasonable and just that the company, the officers of the company or any other person, be relieved from compliance with all or any of the requirements of this Act specified in the first column of Schedule 10.

### 372. Effect of order of Registrar.

Where the Registrar has made an order under Section 370(1) in relation to a company and the order is still in force—

- (a) compliance with the substitute provision shall be deemed to be compliance with the provision of this Act for which the provision is the substitute; and
- (b) failure to comply with a substitute provision shall be deemed to be a failure to comply with the provision of this Act for which the provision is the substitute.

### *Division 5.—Co-operative Companies<sup>1</sup>.*

### 373. Interpretation of Division 5.

In this Division, unless the contrary intention appears, "co-operative company" means a company limited both by shares and by guarantee whose articles comply with Section 377 and that includes as part of its name the word "co-operative".

### 374. Incorporation of co-operative companies.

(1) A company limited both by shares and guarantee may be incorporated as a co-operative company if its memorandum or articles—

- (a) include the word "co-operative" in the name of the company; and
- (b) contain provisions that comply with Section 377.

(2) A company may convert to a co-operative company by lodging with the Registrar a copy of a special resolution (together with notice of it in the prescribed form)—

- (a) determining to convert to a co-operative company and specifying an appropriate alteration to its name; and

<sup>1</sup> Division XII.5 was inserted (as Division XI.5) by the pre-Independence *Companies (Co-operative Companies) Act 1975*, which was not in force on the effective date. It came into force on 22 January 1976. See Footnote 1 on p.17.



- (b) altering the provisions of its memorandum or articles as far as is necessary—
  - (i) to make the company limited both by shares and guarantee; and
  - (ii) to include provisions that comply with Section 377.

### 375. Loss of co-operative company status.

- (1) A company ceases to be a co-operative company if—
  - (a) it is no longer limited by both shares and guarantee; or
  - (b) its name no longer contains the word "co-operative"; or
  - (c) its articles do not comply with Section 377.
- (2) A company that has ceased to be a co-operative company by virtue of Subsection (1)—
  - (a) is a public or proprietary company, as the case may be, and shall be deemed to have been a public or proprietary company, as the case may be, since the occurrence of the event by which it ceased to be a co-operative company; and
  - (b) shall be deemed to have changed its name, on the date on which it ceased to be a co-operative company, by the omission from its name of the words "co-operative" or "society", or both, as the case requires.

### 376. Issue and redemption of shares.

- Notwithstanding any other provision of this Act, shares in a co-operative company—
- (a) may only be issued as fully paid; and
  - (b) may be redeemed in accordance with Section 63 as if they were redeemable preference shares.

### 377. Articles of association.

- (1) The articles of a co-operative company shall include provision that—
  - (a) membership is open to any individual and any business group incorporated under the *Business Groups Incorporation Act* and to no other person, but the articles, with the approval of the Registrar, may provide that membership is open to such corporations incorporated by or under a law as are specified by name or class in the articles and to no other person; and
  - (b) no person other than a member may own shares in the company, except that the executor or administrator of the estate of a deceased member may be registered as the owner of the shares held by that member at the time of his death; and
  - (c) membership is not transferable, but shares are transferable to any member; and
  - (d) all members holding shares amounting to or exceeding a number specified in the articles have equal voting rights, and no other member has voting rights except in respect of a special resolution; and
  - (e) all shares in the company have equal rights to—
    - (i) such dividends as are declared by the company in general meeting, being limited in any year to a total rate of return on the nominal value of the shares that does not exceed by more than 2% the rate of interest in respect of passbook account deposits offered by the Papua New

Guinea Banking Corporation at the time when the dividend is declared; and

- (ii) in the case of winding-up of the company, repayment of their nominal value,

and the rights have priority over any distribution of profits to members as such but no shareholder has, by virtue of his shareholding, any further or greater rights to share in a distribution of the company's profits or assets; and

- (f) subject to the ability of the company to redeem at their nominal value and in accordance with Section 63 any shares held by the member, a general meeting may resolve to expel a member for any reason other than on account of the member's race, religion or political beliefs, but the company shall, at the time of the expulsion of a member, redeem at their nominal value any shares held by him; and

- (g) subject to Subsection (2), where—

(i) a member who is a shareholder submits his resignation as a member—the company shall redeem all shares held by him before accepting his resignation; and

(ii) the executor or administrator of the estate of a deceased shareholder so requests—the company must redeem the shares in the company that form part of the estate; and

- (h) where the company redeems shares other than shares held by a member being expelled, the shares shall be redeemed in accordance with Section 63, and—

(i) at a price determined by the directors, not exceeding the nominal value of the shares; or

(ii) for no value if the company has no funds out of which shares may be redeemed; and

- (i) each director shall—

(i) be a member of the company; or

(ii) be a member of a corporation that is a member of the company; or

(iii) be a member of a corporation that has an indirect interest in a corporation referred to in Subparagraph (ii).

(2) Nothing in Subsection (1)(g) prevents a shareholder, or the executor or administrator of a shareholder, from selling shares to another member before the shares are redeemed.

### 378. Distribution, etc., of profits.

(1) The net profit of a co-operative company (after setting aside all amounts approved in general meeting for the provision of donations for charitable purposes or community welfare the benefit of which will not accrue primarily to members) made during any accounting period shall be first applied to paying any dividend declared for that period in respect of issued shares.

(2) Any surplus net profit available for distribution after meeting dividend commitments shall be apportioned between a members' distribution fund and a non-distributable reserve fund in proportion to the value of business done by the company with members and with non-members respectively during the accounting period to which the surplus relates.

(3) Subject to Subsections (4) and (7), any profit apportioned to a members' distribution fund in accordance with Subsection (2) may not be distributed, in whole or in part, otherwise than rateably between the members in proportion to the value of business done by the company with each member during the accounting period in which the profit was realized.

(4) The profit distributable to a member who does not hold fully paid shares in the company sufficient to give him full voting rights in accordance with the articles shall, to the extent necessary to pay up that minimum number of shares, not be distributed in cash but shall be attributed toward paying up that number of shares in the name of the member.

(5) Profits apportioned to a non-distributable reserve fund in accordance with Subsection (2) shall be transferred to such a reserve fund and, subject to Subsection (6), shall not be distributed to members.

(6) On a winding-up or when the company ceases to be a co-operative company, money in any non-distributable reserve fund shall not be distributed to members but—

(a) shall be donated to a charity or used for community welfare, the benefit of which will not accrue primarily to members, as determined in general meeting; or

(b) \* \* \* \*

but, where the assets of the company on a winding-up are insufficient to meet the liabilities of the company, the costs of liquidation and the repayment of capital to shareholders, so much of the non-distributable reserve fund as is necessary may be applied by the liquidator toward satisfying those obligations or any of them.

(7) On a winding-up, any distributable surplus remaining after all liabilities (including capital repayment and identifiable rateable distributions to members) have been satisfied shall be distributed equally between all persons who were members of the company at the date of the winding-up.

(8) Where a co-operative company distributes or allocates profits to members otherwise than in accordance with this section, the company and each officer of the company who is in default is guilty of an offence.

Penalty: A fine not exceeding K1 000.00.

(Amended by No. 8 of 1985.)

#### PART XIII.—OFFENCES AND PENALTIES GENERALLY.

##### 379. Interpretation of Part XIII.

(1) In this Part—

“appropriate officer” means—

- (a) in relation to a company that is in course of being wound up—the liquidator; and
- (b) in relation to a company that is under official management—the official manager; and
- (c) in relation to a company in respect of which an inspector has been appointed under Division VII.3 or VII.4—the person nominated as the appropriate officer in the particular case by the Principal Legal Adviser; and
- (d) in relation to a company in respect of which a receiver or manager has been appointed—the receiver or manager; and

(e) in relation to a company that has ceased to carry on business or is unable to pay its debts—the Registrar;

“company to which this section applies” means a company—

- (a) that is in course of being wound up; or
- (b) that is under official management; or
- (c) in respect of which an inspector has been appointed under Division VII.3 or VII.4; or
- (d) in respect of which a receiver or manager has been appointed, whether by the Court or under the powers contained in an instrument; or
- (e) that has ceased to carry on business or is unable to pay its debts;

“the relevant day” means—

- (a) in relation to a company that is in course of being wound up—the day on which under the provisions of this Act the winding-up commenced or is deemed to have commenced; and
- (b) in relation to a company that is under official management—the day on which it was determined that the company should be placed under official management; and
- (c) in relation to a company in respect of which an inspector has been appointed under Division VII.3 or VII.4—the day on which the inspector was appointed; and
- (d) in relation to a company in respect of which a receiver or manager has been appointed—the day on which the receiver or manager was appointed; and
- (e) in relation to a company that is unable to pay its debts—the day on which the execution or other process referred to in Subsection (2)(b) was returned unsatisfied in whole or in part; and
- (f) in relation to a company that has ceased to carry on business—the day on which the last return was lodged by the company under Section 166 or Section 167, as the case may be.

(2) For the purposes of Subsection (1), a company shall be deemed—

- (a) to have ceased to carry on business if the Registrar has—
  - (i) sent to the company by post a letter under Section 319(1); or
  - (ii) published in the National Gazette a notice under Section 319(3); and
- (b) to be unable to pay its debts if execution or other process issued on a judgement, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part.

### 380. Offering shares, debentures, etc.

(1) In this section, “shares” means shares of a corporation (whether a corporation in existence or to be formed), and includes—

- (a) debentures and units and, without affecting the generality of the expression “debentures”, all such documents (including those referred to as “bonds”) as confer or purport to confer on their holder any claim against a corporation, whether that claim is present or future, certain or contingent, or ascertained or sounding only in damages; and

(b) interests to which Division V.5 applies.

(2) In this section, a reference to an offer or offering of shares for subscription or purchase includes an offer of shares by way of barter or exchange, and a reference to a written offer of shares includes an offer by means of broadcasting, television or cinematograph, but where an offer is made by means of broadcasting, television or cinematograph the statement or prospectus by which the offer is required to be accompanied by Subsection (6) shall be deemed to accompany the offer if—

- (a) the statement or prospectus is prepared by the person on whose behalf the offer is made; and
- (b) the public are informed, at the same time as the offer is made and by the same means as that by which the offer is made, that a copy of the statement or prospectus will be supplied on request being made at a specified address; and
- (c) where a request for a copy of a statement or prospectus is made at that address within one month after the offer was made—the person making the request is supplied with a copy within seven days after the request is made.

(3) For the purposes of this section, a person shall not, in relation to a corporation, be regarded as not being a member of the public by reason only that he is a holder of shares in the corporation or a purchaser of goods from the corporation.

(4) A person must not, by appointment or otherwise, go from place to place offering shares for subscription or purchase to the public or a member of the public.

(5) Subsection (4) does not apply in relation to the shares of a corporation where—

- (a) the corporation has given notice in the prescribed form of its intention to apply for exemption from that subsection by advertisement in the National Gazette and in a newspaper published in the country not less frequently than once a week; and
- (b) the Minister has, on the application of the corporation, exempted by notice in the National Gazette, the corporation from the provisions of that subsection.

(6) A person must not make a written offer to a member of the public (not being a person whose ordinary business it is to buy or sell shares, whether as principal or agent) of any shares for purchase unless the offer is accompanied—

- (a) by a written statement (signed by the person making the offer and dated) containing the particulars required by this section to be included in it and otherwise complying with this section; or
- (b) in the case of shares in a corporation formed or incorporated outside the country, by such a statement or by a prospectus that complies with this Act.

(7) Subsection (6) does not apply—

- (a) where the shares to which the offer relates are shares of a class that are quoted on, or in respect of which permission to deal has been granted by, any prescribed Stock Exchange and the offer so states and specifies the Stock Exchange; or
- (b) where the shares to which the offer relates are shares that a corporation has allotted or agreed to allot with a view to their being offered for sale by the public, and the offer is accompanied by a document that complies with all enactments and rules of law as to prospectuses; or

(c) where the offer relates to—

- (i) an interest to which the provisions of Division V.5 apply and is accompanied by a written statement as required by that Division; or
- (ii) deposits or loans to a corporation of the kind referred to in Section 40(6).

(8) The statement referred to in Subsection (6) must not contain any matter other than the particulars required by this section to be included in it, and must not be in characters less large or less legible than any characters used in the offer or in any document sent with it.

(9) The statement referred to in Subsection (6) must contain particulars as to—

- (a) whether the person making the offer is acting as principal or agent, and if as agent—
  - (i) the name of his principal; and
  - (ii) an address in Papua New Guinea where the principal can be served with process; and
  - (iii) particulars as to the remuneration payable by the principal to the agent; and
- (b) the date on which, and the place at which, the corporation was incorporated, and the address of its registered or principal offices in its place of incorporation and in Papua New Guinea; and
- (c) the authorized share capital of the corporation, its issued share capital, its paid-up share capital and the classes into which its share capital is divided, and the rights of each class of shareholders in respect of capital, dividends and voting; and
- (d) the dividends (if any) paid by the corporation in respect of each class of shares during each of the five financial years before the offer, and if no dividend has been paid in respect of shares of any particular class during any of those years a statement to that effect; and
- (e) the total amount of any debentures issued by the corporation and outstanding at the date of the statement, together with the rate of interest payable on them; and
- (f) the names and addresses of the directors; and
- (g) whether or not the shares offered are fully paid up and, if not, to what extent they are paid up; and
- (h) whether or not the shares are quoted on, or permission to deal in them has been granted by, any prescribed Stock Exchange and, if so, the name of each such Stock Exchange; and
- (i) where the offer relates to units—particulars of the names and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which the shares are held and an address in Papua New Guinea where that document or a copy of it can be inspected; and
- (j) the last audited balance-sheet of the corporation.

(10) In Subsection (9), "corporation" means the corporation by which the shares to which the statement relates were or are to be issued.

(11) A person who acts in contravention of this section is guilty of an offence.

Penalty: For a first offence—a fine not exceeding K400.00 or imprisonment for a term not exceeding six months, or both.

For a second or subsequent offence—a fine not exceeding K1 000.00 or imprisonment for a term not exceeding 12 months, or both.

(12) Where a person convicted of an offence against this section is a corporation, each officer concerned in the management of the corporation is guilty of the offence unless he proves that the act constituting the offence took place without his knowledge or consent.

(13) Where a person is convicted of an offence by reason of having made an offer in contravention of this section, the court before which he is convicted may order that any contract made as a result of the offer is void, and may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any shares, but an appeal against the order and any consequential direction lies to the National Court.

### 381. Offences by officers.

(1) Every officer of a company to which this section applies who—

- (a) does not to the best of his knowledge and belief fully and truly discover to the appropriate officer all the property of the company, and how, to whom, for what consideration and when the company disposed of any part of it, except such part as has been disposed of in the ordinary course of the business of the company; or
- (b) does not deliver up to the appropriate officer, or as he directs—
  - (i) all the property of the company that is in his custody or under his control and that he is required by law to deliver up; or
  - (ii) all books and papers in his custody or under his control belonging to the company that he is required by law to deliver up; or
- (c) within five years next before the relevant day or at any time on or after that day—
  - (i) has concealed any part of the property of the company to the value of K100.00 or more, or has concealed any debt due to or from the company; or
  - (ii) has fraudulently removed any part of the property of the company to the value of K100.00 or more; or
  - (iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company; or
  - (iv) has made, or has been privy to the making of, any false entry in any book or paper affecting or relating to the property or affairs of the company; or
  - (v) has fraudulently parted with, altered or made any omission in, or has been privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company; or
  - (vi) by false representation or other fraud, has obtained on credit for or on behalf of the company, any property for which the company has not subsequently paid; or

- (vii) has obtained on credit, for or on behalf of the company, under the false pretence that the company is carrying on its business, any property for which the company has not subsequently paid; or
- (viii) has pawned, pledged or disposed of any property of the company that has been obtained on credit and has not been paid for, unless the pawning, pledging or disposing was in the ordinary course of the business of the company; or
- (d) wilfully makes a material omission in a statement relating to the property or affairs of the company; or
- (e) knowing or believing that a false debt has been proved by any person, fails for a period of one month to inform the appropriate officer of his knowledge or belief; or
- (f) prevents the production of a book or paper affecting or relating to the property or affairs of the company; or
- (g) has, within the period of five years before the relevant day, or at any time on or after that day, attempted to account for any part of the property of the company by making entries in the books of the company showing fictitious losses, expenses or transactions; or
- (h) has, within the period of five years before the relevant day, or at any time on or after that day, been guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding-up,

is guilty of an offence.

Penalty: A fine not exceeding K5 000.00 or imprisonment for a term not exceeding two years.

(2) It is a defence to a charge against Subsection (1)(a), (b), (c)(i), (vii) or (viii) or (d) if the accused proves that he had no intent to defraud, and to a charge against Subsection (1)(c)(iii) or (iv) or Subsection (1)(f) if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(3) Where a person pawns, pledges or disposes of any property in circumstances that amount to an offence against Subsection (1)(c)(viii), a person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances is guilty of an offence.

Penalty: A fine not exceeding K2 500.00 or imprisonment for a term not exceeding one year.

### 382. Keeping of accounts.

(1) Where proper books of account have not been kept by a company to which this section applies throughout the period of two years before the relevant day, or the period between the incorporation of the company and the relevant day, whichever is the shorter, every officer of the company who is in default is, unless he acted honestly and shows that in the circumstances in which the business of the company was carried on the default was excusable, guilty of an offence.

Penalty: A fine not exceeding K2 500.00 or imprisonment for a term not exceeding one year.



(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of a company—

- (a) if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including—
  - (i) books containing entries from day to day in sufficient detail of all cash received and cash paid; and
  - (ii) where the trade or business has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers of them in sufficient detail to enable the goods and the buyers and sellers to be identified; or
- (b) if such books or accounts have not been kept in such manner as to enable them to be conveniently and properly audited, whether or not the company has appointed an auditor.

### 383. Bad debts.

(1) An officer of a company to which this section applies who—

- (a) was knowingly a party to the contracting of a debt by the company; and
- (b) had at the time when the debt was contracted no reasonable or probable grounds of expectation (after taking into consideration the other liabilities (if any) of the company at the time) of the company being able to pay the debt,

is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding three months.

(2) If any business of a company to which this section applies has been carried on with intent to defraud creditors of the company or creditors of any other person or for a fraudulent purpose, any person who was knowingly a party to the carrying on of the business in that manner is guilty of an offence.

Penalty: A fine not exceeding K2 500.00 or imprisonment for a term not exceeding one year.

(3) Where a person has been convicted of an offence against Subsection (1) or (2), the Court, on the application of—

- (a) the appropriate officer; or
- (b) with the consent of the Principal Legal Adviser, any creditor or contributory of the company,

may, if it thinks it proper to do so, declare that the person is personally responsible without any limitation of liability—

- (c) in the case of a conviction for an offence against Subsection (1)—for the payment to the company of an amount equal to the whole, or such part as the Court thinks proper, of the debt in respect of which the conviction was made; and
- (d) in the case of a conviction against Subsection (2)—for the payment to the company of the amount required to satisfy all, or such part as the Court directs, of the debts of the company.

(4) Where the Court makes a declaration under Subsection (3) in relation to a person, it may give such further directions as it thinks proper for the purpose of giving effect to the declaration, and in particular order that the liability of the person under the declaration is a charge on—

- (a) any debt or obligation due from the company to him; or
- (b) any charge or any interest in any charge on any assets of the company held by or vested in—
  - (i) him or any corporation or person on his behalf; or
  - (ii) any person claiming as assignee from or through him or any corporation or person acting on behalf of that person,

and may from time to time make such further order as is necessary for the purpose of enforcing any charge imposed under this subsection.

(5) For the purposes of Subsection (4), "assignee" includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (other than consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the conviction or declaration was made.

(6) This section applies notwithstanding that the person concerned is criminally liable in respect of the matters on the ground of which the declaration is made.

(7) On the hearing of an application under Subsection (3), the appropriate officer may himself give evidence or call witnesses.

#### 384. Inducement to be appointed liquidator, etc.

A person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment, or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator or official manager is guilty of an offence.

Penalty: A fine not exceeding K500.00.

#### 385. Falsification of books.

An officer or contributory of a company who destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company, with intent to defraud or deceive any person is guilty of an offence.

Penalty: A fine not exceeding K5 000.00 or imprisonment for a term not exceeding two years.

#### 386. Frauds by officers.

A person who, while an officer of a company—

- (a) has, by false pretences or by means of any other fraud, induced a person to give credit to the company; or
- (b) has, with intent to defraud creditors of the company, made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company; or
- (c) has, with intent to defraud creditors of the company, concealed or removed any part of the property of the company since, or within the period of two

months before, the date of any unsatisfied judgement or order for payment of money obtained against the company,  
is guilty of an offence.

Penalty: A fine not exceeding K5 000.00 or imprisonment for a term not exceeding two years.

### 387. False and misleading statements.

(1) A corporation that advertises, circulates or publishes a statement of the amount of its capital—

- (a) that is misleading or in which the amount of nominal or authorized capital is stated without the words "nominal" or "authorized"; or
- (b) in which the amount of capital or authorized or subscribed capital is stated but the amount of paid-up capital or the amount of any charge on uncalled capital is not stated,

and each officer of the corporation who knowingly authorizes, directs or consents to such advertising, circulation or publication, is guilty of an offence.

(2) A person who, in a return, report, certificate, balance-sheet or other document required by or for the purposes of this Act, wilfully makes a statement that is false in a material particular, knowing it to be false, is guilty of an offence.

Penalty: On conviction on indictment, a fine not exceeding K1 000.00 or imprisonment for a term not exceeding two years, or both.

On summary conviction, a fine not exceeding K400.00 or imprisonment for a term not exceeding six months, or both.

### 388. Dividends payable from profits only.

(1) In this section, "dividend" includes bonus and payment by way of bonus.

(2) A dividend is not payable to the shareholders of a company except out of profits or in accordance with Section 62.

(3) A director or manager of a company who, except in accordance with Section 62, wilfully pays or permits to be paid any dividend out of what he knows not to be profits—

- (a) is, without prejudice to any other liability, guilty of an offence; and
- (b) is liable to the creditors of the company for the amount of the debts due by the company to them respectively to the extent by which the dividends so paid have exceeded the profits.

Penalty: A fine not exceeding K1 000.00.

(4) The amount referred to in Subsection (3)(b) may be recovered by the creditors or the liquidator suing on behalf of the creditors.

(5) If the whole amount is recovered from one director or from the manager, he may recover contribution against any other person liable who has directed or consented to the payment.

(6) Any liability imposed by this section on a person does not, on the death of that person, extend or pass to his executors or administrators, and the estate of any such person after his decease is not liable under this section.

**389. Use of "limited" and "no liability".**

If a person carries on business under any name or title of which the expression "Limited" or "No Liability" or an abbreviation of one of those expressions is the final word or abbreviation, the person is, unless duly incorporated with limited liability or no liability, as the case may be, guilty of an offence.

Default penalty: A fine not exceeding K20.00.

**390. Use of "proprietary".**

(1) A company must not use the expression "Proprietary" or any abbreviation of that expression as part of its name if it does not fulfil the requirements required by this Act to be fulfilled by proprietary companies.

(2) A company which, and each officer of a company who, commits, causes, directs or authorizes a breach of this section is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

**391. General penalty.**

(1) A person who—

(a) does that which by or under this Act he is forbidden to do; or

(b) does not do that which by or under this Act he is required or directed to do;  
or

(c) otherwise contravenes or fails to comply with any provision of this Act,

is guilty of an offence.

(2) A person who is guilty of an offence for which a penalty (other than a default penalty) is not expressly provided is punishable on conviction by a fine not exceeding K100.00.

**392. Taking of proceedings.**

(1) Except where provision is otherwise made in this Act, proceedings for the summary prosecution of an offence against this Act may be taken by the Registrar or, with the written consent of the Public Prosecutor, by any other person.

(2) Notwithstanding anything in any other law, proceedings for the summary prosecution of an offence against this Act may be brought within the period of three years after the commission of the offence or, with the written consent of the Public Prosecutor, at any later time.

**PART XIV.—MISCELLANEOUS.**

**393. Interpretation of Part XIV.**

(1) In this Part, "company to which this section applies" means a company—

(a) that is in course of being wound up; or

(b) that is under official management; or

(c) in respect of which an inspector has been appointed under Division VII.3 or VII.4; or

(d) in respect of which a receiver or manager has been appointed whether by the Court or under the powers contained in any instrument; or

(e) that has ceased to carry on business or is unable to pay its debts.

- (2) For the purposes of Subsection (1), a company shall be deemed—
- (a) to have ceased to carry on business if the Registrar has—
    - (i) sent to the company by post a letter under Section 319(1); or
    - (ii) published in the National Gazette a notice under Section 319(3); and
  - (b) to be unable to pay its debts if execution or other process issued on a judgement, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part.

**394. Service on companies.**

(1) In addition to any other method of service provided for by or under this Act or any other law, a document may be served on a company by leaving it at, or sending it by post to, the registered office of the company.

(2) Where a Magistrate Grade III. or IV. is satisfied by affidavit that service in the manner prescribed by Subsection (1) cannot be promptly effected for any reason, he may give leave to effect service of a summons on a director or secretary of the company or by advertisement, or in such other manner as in the circumstances appears to him to be sufficient.

**395. Costs in certain cases.**

(1) Where a company is plaintiff in an action or other legal proceedings, a court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if he is successful in his defence, require sufficient security to be given for the costs, and stay all proceedings until the security is given.

(2) The costs of any proceedings before a court under this Act shall be borne by such party to the proceedings as the court, in its discretion, directs.

**396. Disposal of shares of shareholder whose whereabouts unknown.**

(1) Where, after the exercise of reasonable diligence, a company is unable, for a period of not less than 10 years, to discover the whereabouts of a shareholder the company may cause an advertisement to be published in a newspaper published not less frequently than once a week and circulating in the place shown in the register of members as the address of the shareholder stating that the company intends to transfer the shares to the Secretary for Finance after the expiration of one month from the date of the advertisement.

(2) If after the expiration of one month from the date of the advertisement the whereabouts of the shareholder remain unknown, the company may transfer the shares held by the shareholder in the company to the Secretary for Finance, and for that purpose may execute for and on behalf of the owner a transfer of the shares to the Secretary for Finance.

(3) The Secretary for Finance shall sell or dispose of any shares so received in such manner and at such time as he thinks fit, and shall pay the proceeds of the sale into the Consolidated Revenue Fund.

(4) When the Secretary for Finance is satisfied that a person is entitled to the proceeds of the sale of any share transferred to the Secretary for Finance under this section, he shall pay an amount equal to the proceeds of the sale of the share to that person.

**397. Relief to honest defaulter.**

(1) If, in proceedings for negligence, default, breach of duty or breach of trust against a person to whom this section applies, it appears to the court before which the proceedings

are taken that he is or may be liable in respect of the neglect, default or breach but that he has acted honestly and reasonably and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default or breach, the court may relieve him either wholly or partly from his liability on such terms as the court thinks proper.

(2) Where a person to whom this section applies has reason to apprehend that a claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the Court for relief, and the Court has the same power to relieve him as it would have had under this section if it had been a court before which proceedings against him for negligence, default, breach of duty or breach of trust had been brought.

(3) This section applies to a person who is—

- (a) an officer of a corporation; or
- (b) employed by a corporation as auditor, whether or not he is an officer of the corporation; or
- (c) an expert; or
- (d) a receiver, receiver and manager, liquidator or other person appointed or directed by the Court to carry out any duty under this Act in relation to a corporation.

### 398. Irregularities in proceedings.

(1) Proceedings under this Act are not invalidated by reason of any defect, irregularity or deficiency of notice or time unless the Court is of opinion that substantial injustice has been or may be caused by it that cannot be remedied by any order of the Court.

(2) If it thinks fit, the Court may make an order declaring that any such proceedings are valid notwithstanding any such defect, irregularity or deficiency.

(3) Without affecting the generality of Subsection (1) or (2) or of any other provision of this Act, where an omission, defect, error or irregularity (including the absence of a quorum at a meeting of a company or of the directors of the company, or of the creditors of the company, or at a joint meeting of the creditors and members of the company) has occurred in the management or administration of a company by which—

- (a) a breach of this Act has occurred; or
- (b) there has been default in the observance of the memorandum or articles of a company; or
- (c) any proceedings at or in connexion with a meeting of a company or of the directors, or an assemblage purporting to be such a meeting, have been made ineffective, including the failure to make or lodge a declaration of solvency under Section 276,

the Court—

- (d) may, of its own motion or on the application of an interested person, make such order as it thinks proper—
  - (i) to rectify, or cause to be rectified, or to negative or modify, or cause to be modified, the consequences in law of any such omission, defect, error or irregularity; or

- (ii) to validate an act, matter or thing rendered or alleged to have been made invalid by or as a result of any such omission, defect, error or irregularity; and
- (e) shall, before making any such order, satisfy itself that such an order would not do injustice to the company or to any member or creditor of it; and
- (f) where any such order is made, may give such ancillary or consequential directions as it thinks proper; and
- (g) may determine what notice or summons is to be given to other persons of the intention to make such an application, or of the intention to make such an order, and whether and how it should be given or served and whether it should be advertised in a newspaper.

(4) Whether or not the company is in process of being wound up, the Court may enlarge or abridge any time for doing an act or taking proceedings allowed or limited by this Act on such terms (if any) as the justice of the case requires, and such an enlargement may be ordered even if the application for it is not made until after the time originally allowed or limited.

#### 399. Privileged communications.

An inspector appointed under this Act may not require disclosure by a lawyer of a privileged communication made to him as such, except as respects the name and address of his client.

#### 400. Examination of defaulting officers.

(1) Where it appears to the Principal Legal Adviser that an officer or former officer of a company to which this section applies has conducted himself in such a way that the officer or former officer has rendered himself liable to action by the company in relation to the performance of his duties as an officer of the company, the Principal Legal Adviser, or a person authorized by the Principal Legal Adviser, may apply ex parte to the Court for an order that the officer or former officer attend before the Court on a day to be appointed by the Court to be examined as to his conduct and dealings as an officer of the company.

(2) An examination under this section shall not be held in open court unless the court otherwise orders.

(3) On making an order under Subsection (1), or at any subsequent time on the application of any person concerned, the Court may give such directions as to the matters to be inquired into and as to the procedure to be followed in relation to the examination as it thinks proper.

(4) The applicant and, with the leave of the Court, any creditor or member of the company may take part in the examination either personally or by a lawyer.

(5) The person examined shall be examined on oath and shall answer all questions which the Court puts or allows to be put to him.

(6) The person examined is not entitled to refuse to answer any question that is relevant and material to the examination on the ground that his answer might tend to criminate him.

(7) Where the person examined claims that the answer to a question put to him might tend to criminate him, his answer shall not be used in any subsequent criminal proceedings except in the case of a charge of false swearing committed by him in answer to the question.

(8) A person ordered to be examined under this section may be represented by a lawyer, who may put to him questions for the purpose of enabling him to explain or qualify any answer given by him.

(9) Notes of the examination—

(a) shall be reduced to writing; and

(b) shall be read over to or by and signed by the person examined; and

(c) may be inspected and copied by the Principal Legal Adviser, the Registrar, the person examined or the applicant, or, with the consent of the Court, by any creditor or member of the company.

(10) Subsection (9) does not affect the general law as to the admissibility of oral evidence.

(11) If it thinks it proper to do so, the Court may adjourn the examination from time to time.

(12) Where the Court is satisfied that an order for an examination under this section was obtained without reasonable cause, it may order the whole or any part of the costs incurred by the person ordered to be examined to be paid by the applicant or by any other person who, with the consent of the Court, takes part in the examination.

(13) Subject to the *Companies Rules*, on an application under Subsection (1) the Court may direct that the examination under this section be held before a Magistrate Grade IV, appointed by the Court for the purpose, and in that event the powers of the Court under this section in relation to the conduct of the examination may be exercised by the Magistrate so appointed.

#### 401. Damages against delinquent officers.

(1) Where it appears to the Principal Legal Adviser that a person who has taken part in the formation, promotion, administration, management or winding-up of a company to which this section applies has—

(a) misapplied or retained, or become liable or accountable for, any money or property of the company; or

(b) has been guilty of any misfeasance or breach of trust in relation to the company,

the Principal Legal Adviser or a person authorized for the purpose by the Principal Legal Adviser may apply to the Court—

(c) for an examination into the conduct of the person; and

(d) for an order that the person—

(i) repay or restore the money or property, or such part of it as the Court thinks proper, together with interest at such rate as the Court thinks just; or

(ii) pay to the company such sum by way of damages in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

(2) This section extends and applies to the receipt of any money or property, whether by way of salary or otherwise, by any officer or former officer of the company that appears to the Court to have been unfair or unjust to the company or its members.

(3) This section applies notwithstanding that the person concerned is criminally liable in respect of the matters in respect of which the order is sought.



**402. Production and inspection of books where offence suspected.**

If, on an application made to a Judge in chambers by the Public Prosecutor, there is shown to be reasonable cause to believe that a person has, while an officer of a company, committed an offence in connexion with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made—

- (a) authorizing any person named in the order to inspect the books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or
- (b) requiring the secretary or other officer named in the order to produce the books or papers or any of them to a person named in the order at a place so named.

**403. Form of registers, etc.**

(1) For the purposes of this Act, a register, index, minute book or book of account may be kept by making entries in a bound book, or by recording the matters in question in any other manner.

(2) Where a register, index, minute book or book of account required by this Act to be kept is not kept by making entries in a bound book, but by some other means, reasonable precautions must be taken for guarding against falsification and for facilitating its discovery, and where default is made in complying with this subsection the company, and each officer of the company who is in default, is guilty of an offence.

Default penalty: A fine not exceeding K20.00.

**404. Inspection of registers.**

(1) A register, minute book or document of a corporation that is required by this Act to be available for inspection shall, subject to and in accordance with this Act, be available for inspection at the place where, in accordance with this Act, it is kept, during the hours in which the registered office of the corporation in the country is accessible to the public.

(2) A person permitted by this Act to inspect a register, minute book or document of a corporation may make copies of or take extracts from it, and an officer of the corporation who fails to allow a person so permitted to make a copy of or take extracts from the register, minute book or document, as the case may be, is guilty of an offence.

**405. Translations of instruments.**

(1) Where, under this Act, a corporation is required to lodge with the Registrar an instrument, certificate, contract or document, or a certified copy of an instrument, certificate, contract or document, and it is not written in the English language, the corporation shall lodge at the same time with the Registrar a certified translation of it.

(2) Where, under this Act, a corporation is required to make available for public inspection an instrument, certificate, contract or document, and it is not written in the English language, the corporation shall keep at its registered office in the country a certified translation of it and make it so available with it.

**406. Refusal to make books, etc., available.**

If a person in contravention of this Act refuses to permit the inspection of a register, minute book or document or to supply a copy of a register, minute book or document, the Court may, by order, compel an immediate inspection of the register, minute book or document or order the copy to be supplied.

**407. Rule against perpetuities.**

(1) In this section—

“company” includes—

(a) a company or society formed, whether before or after the commencement date, by or under an Act, Australian Act or Imperial Act, or of letters patent or royal charter, or otherwise duly constituted according to law; and

(b) a foreign company;

“employee” includes a director or a person at any time in the employment of a company, and the wife, child, grandchild, parent or dependant of a director or such a person, and any other person entitled to, or capable of receiving, any benefit under a fund or scheme;

“fund or scheme” includes a provident, superannuation, sick, accident, assurance, unemployment, pension, co-operative benefit or other such fund, scheme, arrangement or provision.

(2) The rule of law relating to perpetuities does not apply, and shall be deemed never to have applied, to the trusts of any fund or scheme for the benefit of an employee of a company.

**408. Directions with respect to meetings ordered by Court.**

Where, under this Act, the Court orders a meeting to be summoned, the Court may, subject to this Act, give such directions with respect to the summoning, holding or conduct of the meeting, and such ancillary or consequential directions in relation to the meeting, as it thinks proper.

**409. Statutory declarations.**

Where a statutory declaration is required to be made for the purposes of this Act, a declaration for the purposes of that provision purporting to be made at a place outside Papua New Guinea in accordance with the requirements of the law of that place relating to declarations shall, for the purposes of that provision, be deemed to be a statutory declaration.

**410. Incorporation of business groups as companies.**

(1) Where, immediately before its incorporation under this Act, a company was incorporated as a business group under the *Business Groups Incorporation Act* and a right of any kind was enforceable by or against the group, the right is, on incorporation under this Act, enforceable by or against the business group as incorporated under this Act.

(2) All the estate, right, title and interest, legal and equitable, in and to any property that was vested in a business group referred to in Subsection (1) immediately before its incorporation under this Act is, on that incorporation, and without the necessity of any formal deed of assurance, divested from the group and vested in the corporation as incorporated under this Act.

(3) Where any property vested in a company under this section is land registered under the *Real Property Act*, 1913 of the former Territory of Papua (Adopted) or the *Lands Registration Act* 1924 of the former Territory of New Guinea (Adopted), the Registrar of Titles shall, without formal transfer and without fee, on application by the company, enter or register the company in the appropriate Register, and on the grant, certificate of title,

lease, or other instrument evidencing title to the land, as the owner of the land within the meaning of that Act.

(4) This Act does not prevent proceedings being taken against a person for any act, omission or offence done, suffered or committed by him under the appropriate Act in relation to a business group that is incorporated under this Act as a company.

#### 411. Regulations.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular—

- (a) making provision for or in relation to the keeping of registers by the Registrar and the lodging or registration of documents, including the time for, and the manner of, lodgement or registration; and
- (b) prescribing forms for the purposes of this Act; and
- (c) making provision for or in relation to meetings of creditors, of members and creditors or of contributories of a company, or meetings of debenture holders, not being meetings ordered by the Court; and
- (d) requiring the verification, by statutory declaration, of any statement or information required for the purposes of this Act; and
- (e) for or with respect to—
  - (i) the summoning of, conduct of, and procedure and voting at, meetings of creditors, contributories and holders of debentures, and joint meetings of creditors and members of companies; and
  - (ii) the number of persons that is a quorum at any such meeting; and
  - (iii) the sending of notices of meetings to persons entitled to attend; and
  - (iv) the lodging with the Registrar of copies of notices of meetings and of resolutions passed,  
and generally regulating the conduct of, and procedure at, any such meeting;  
and
- (f) making provision for or in relation to the proof of debts in a winding-up under Division XI.3; and
- (g) prescribing fees, not exceeding K20.00, to be paid to the Registrar for or in respect of matters or things required to be done under or for the purposes of this Act, being fees not provided for in Schedule 1; and
- (h) prescribing penalties of fines not exceeding K40.00 for offences against the regulations.

## SCHEDULES.

## SCHEDULE 1.

## Sec. 6.

## FEES.

K

*To be paid to the Registrar—*

## A—BY A COMPANY HAVING A SHARE CAPITAL.

- |  |        |
|--|--------|
| 1. For registration of a company with a nominal share capital not exceeding K10 000.00   | 200.00 |
| 2. For the registration of a company with a nominal share capital exceeding K10 000.00—  |        |
| (a) for the first K10 000.00 of the nominal share capital  | 200.00 |
| (b) for each K1 000.00 or part of K1 000.00 by which the nominal share capital exceeds K10 000.00 but does not exceed K200 000.00    | 4.00   |
| (c) for each K1 000.00 or part of K1 000.00 by which the nominal share capital exceeds K200 000.00 but does not exceed K1 000 000.00 | 2.00   |
| (d) for each K1 000.00 or part of K1 000.00 by which the nominal share capital exceeds K1 000 000.00                                 | 1.00   |
| 3. On lodging with the Registrar notice of increase of share capital, an amount equal to the difference (if any) between—            |        |
| (a) the amount that would have been payable under this Act on first registration by reference to its capital as increased; and       |        |
| (b) the amount that would have been payable under this Act by reference to its capital immediately before the increase,              |        |

but in the case of a company registered before the commencement date with a share capital of less than K10 000.00 the fee is K10.00 per K1 000.00 or any fractional part of K1 000.00 for any increase up to K10 000.00 and thereafter an amount calculated in accordance with Item 2.

## B—BY A COMPANY NOT HAVING A SHARE CAPITAL.

- |   |        |
|---|--------|
| 4. For the registration of a company—   |        |
| (a) where the number of members with which the company is registered does not exceed 20   | 80.00  |
| (b) where the number of such members exceeds 20 but does not exceed 100   | 80.00  |
| (c) where the number of such members exceeds 100 but is less than 8 100—  |        |
| (i) for the first 100   | 80.00  |
| (ii) for each 50 or part of 50 by which the number of such members exceeds 100  | 2.00   |
| (d) where the number of such members is not less than 8 100   | 400.00 |
| 5. For the registration of a company the number of members of which is stated in the articles of association to be unlimited  | 400.00 |
| 6. On lodging with the Registrar notice of increase in the number of members, a fee equal to the difference between—  |        |
| (a) the registration fee that would be payable if the company were registered with a number of members equal to the number of its registered members immediately before the increase; and |        |
| (b) the registration fee that would be payable if the company were registered with a number of members equal to the number of its registered members after the increase.                  |        |

## C—OTHER FEES.

- |   |       |
|---|-------|
| 7. For an application for the consent of the Minister to the use of a name by a corporation | 20.00 |
| 8. For the consent of the Minister to the use of a name by a corporation                    | 40.00 |

Companies

Ch. No. 146

K

- |   |        |
|---|--------|
| 9. On lodging an application for the approval of the Registrar to the change of name of a company, other than a change of name directed by the Registrar under Section 23(2), or a change of name under Section 24(2)   | 40.00  |
| 10. For every application to the Minister to dispense with the word "Limited" in the name of a company  | 20.00  |
| 11. For every licence by the Minister to dispense with the word "Limited" in the name of a company  | 40.00  |
| 12. For the approval of the Minister to alter the memorandum or articles of a company   | 8.00   |
| 13. On lodging a request for the Registrar to exercise the powers conferred by Section 320 or 322   | 10.00  |
| 14. For every act done by the Registrar as representing a defunct company under Section 320   | 20.00  |
| 15. For every act done by the Registrar as representing a defunct company under Section 322   | 20.00  |
| 16. On late lodging with the Registrar a document required to be lodged within a period prescribed by law, in addition to any other fee—  |        |
| (a) if lodged within one month after the expiration of the prescribed period  | 8.00   |
| (b) if lodged later than one month after the expiration of the prescribed period  | 38.00  |
| If the Registrar is satisfied that just cause existed for the failure to lodge the document within the prescribed period, the Registrar may waive or reduce any fee prescribed by this Item.  |        |
| 17. For the registration of a foreign company (not being a foreign company to which Item 18 applies)—   |        |
| (a) subject to Paragraphs (b) and (c), 50% of the fee that would be payable if the company were being registered under Division IV.1  |        |
| (b) subject to Paragraph (c), where the fee prescribed in Paragraph (a) is not applicable   | 400.00 |
| (c) in the case of a corporation authorized by the law of Papua-New Guinea or of a State or Territory of Australia to take in its own name grant of probate or letters of administration of the estate of a deceased person   | 200.00 |
| 18. For the registration of a foreign company the share capital of which consists wholly or partly of shares having no fixed nominal value, the same fee as would be payable if those shares each had a nominal value being—  |        |
| (a) in the case of shares for which a maximum issue price is fixed by the instrument constituting or defining the constitution of the company—the maximum issue price; and  |        |
| (b) in any other case—K2.00.  |        |
| 19. On the lodging with the Registrar by a foreign company (not being a foreign company to which Item 20 applies) of notice of increase in share capital or, in the case of a foreign company not having a share capital, on the lodging of notice of increase in the number of its members—50% of the fee that would be payable on the lodging of such a notice by the company if it were registered under Division IV.1 |        |
| 20. On lodging by a foreign company, the share capital of which consists wholly or partly of shares having no fixed nominal value, of notice of increase of share capital—the same fee as would be payable if those shares had a nominal value calculated in accordance with Item 18  | 20.00  |
| 21. For registering a charge under Division V.7   | 20.00  |
| 22. For registering particulars of a series of debentures   |        |
| 23. On lodging with the Registrar particulars of each issue of debentures in a series where there is more than one issue in the series  | 10.00  |
| 24. On lodging with the Registrar an application for the reservation of a name  | 12.00  |
| 25. On lodging with the Registrar articles of association of a company  | 8.00   |

K

26. On lodging with the Registrar a copy of a special resolution altering the articles of association of a company	8.00
27. On lodging with the Registrar a copy of a special resolution altering the memorandum of association of a company with respect of its objects	8.00
28. On lodging under Section 89 a deed or a copy of a deed	100.00
29. On lodging a statement in lieu of prospectus or a deed (or copy of a deed) under Section 89 amending a deed lodged under Section 89	100.00
30. On lodging, in relation to a corporation that is a foreign company incorporated in a State or Territory of Australia, a prospectus or statement under Section 93 that is registered or acceptable for registration in that State or Territory	40.00
31. On lodging a prospectus or statement under Section 93, other than a prospectus or statement referred to in Item 30	100.00
32. On a subpoena served on the Registrar to produce a document in his custody And in addition, if the Registrar so requires, such other expenses as, in the opinion of the Registrar, will be reasonably incurred in the production of the document.	8.00
33. On lodging an application under Section 46 or 380	20.00
34. On lodging any other application	8.00
35. On lodging a memorandum under Section 114	10.00
36. For a certificate issued by the Registrar under this Act	4.00
37. For a typewritten copy or extract made and certified by the Registrar of or from any document in his custody And in addition for each page after the first	4.00 2.00
38. For the completion and certification by the Registrar of a copy of or extract from any document in his custody where a printed or typed copy is supplied And in addition for each page after the first	2.00 1.00
39. For the making by the Registrar of a photographic reproduction of a document in his custody And in addition for each page after the first	2.00 1.00
40. For certification by the Registrar of a photographic reproduction of a document in his custody	2.00
41. For a search in the office of the Registrar as to the availability of any name proposed to be adopted by a corporation or proposed corporation—for each name searched	2.00
42. For every search or inspection in relation to a particular corporation of the registers and documents kept by the Registrar under Division V.7	1.00
43. For a search and inspection of the documents filed with the Registrar by or in relation to a corporation	2.00
44. For an inquiry by letter involving a search of a document filed with the Registrar—in addition to the fee payable under Items 41 and 42—for each page of each document searched	1.00
45. For a search in the office of the Registrar for which a fee is not elsewhere prescribed	2.00
46. On lodging with the Registrar an annual return of a corporation	24.00
47. On lodging with the Registrar a balance sheet of a foreign company under Section 360	24.00
48. On lodging, registering, depositing or filing a document with or by the Registrar for the lodging, registering, depositing or filing (as the case may be) for which a fee is not elsewhere prescribed	8.00
49. For an act done by the Registrar that he is required or authorized to do under this Act and for which a fee is not elsewhere prescribed	10.00

(Replaced by Statutory Instrument No. 19 of 1979.)

## SCHEDULE 2.

Sec. 36.

## POWERS.

1. To carry on any other business that seems to the company capable of being conveniently carried on in connexion with its business or calculated directly or indirectly to enhance the value of or render profitable any of the company's property or rights.
2. To acquire and undertake the whole or any part of the business, property and liabilities of any person or company—
  - (a) carrying on any business that the company is authorized to carry on; or
  - (b) possessed of property suitable for the purposes of the company.
3. To—
  - (a) apply for, purchase or otherwise acquire any patents, patent rights, copyrights, trade marks, formulas, licences, concessions and the like conferring any exclusive or non-exclusive or limited right to use, or any secret or other information as to, any invention that seems capable of being used for any of the purposes of the company or the acquisition of which seems calculated directly or indirectly to benefit the company; and
  - (b) use, exercise, develop or grant licences in respect of, or otherwise turn to account, the property, rights or information so acquired.
4. To amalgamate or enter into partnership or into any arrangement for sharing of profits, union of interest, co-operation, joint adventure, reciprocal concession or otherwise with any person or company carrying on or engaged in, or about to carry on or engage in—
  - (a) any business or transaction that the company is authorized to carry on or engage in; or
  - (b) any business or transaction capable of being conducted so as directly or indirectly to benefit the company.
5. To take or otherwise acquire, and hold, shares, debentures or other securities of any other company.
6. To—
  - (a) enter into any arrangements with any Government or authority, municipal, local or otherwise, that seems conducive to the company's objects or any of them; and
  - (b) obtain from any such Government or authority any rights, privileges or concessions that the company thinks it desirable to obtain; and
  - (c) carry out, exercise and comply with any such arrangements, rights, privileges and concessions.
7. To—
  - (a) establish and support, or aid in the establishment and support of, associations, institutions, funds, trusts and conveniences calculated to benefit employees or directors, or past employees or directors, of the company or of its predecessors in business, or the dependants or connexions of any such persons; and
  - (b) grant pensions and allowances; and
  - (c) make payments towards insurance; and
  - (d) subscribe or guarantee money for charitable or benevolent objects, or for any exhibition, or for any public, general or useful object.
8. To promote any other company or companies for the purpose of acquiring or taking over all or any of the property, rights and liabilities of the company, or for any other purpose that seem directly or indirectly calculated to benefit the company.
9. To purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property or any rights or privileges that the company thinks necessary or convenient for the purposes of its business, and, in particular, any land, buildings, easements, machinery, plant or stock in trade.

## 10. To—

- (a) construct, improve, maintain, develop, work, manage, carry out or control buildings, works, factories, mills, roads, ways, tramways, railways, branches or sidings, bridges, reservoirs, watercourses, wharves, warehouses, electric works, shops, stores or other works and conveniences that seem calculated directly or indirectly to advance the company's interests; and
- (b) contribute to, subsidize or otherwise assist or take part in the construction, improvement, maintenance, development, working, management, carrying out, or control of them.

11. To invest and deal with the money of the company not immediately required in such manner as is from time to time thought proper.

## 12. To—

- (a) lend or advance money or give credit to any person or company; and
- (b) guarantee or give guarantees or indemnities for the payment of money or the performance of contracts or obligations by any person or company; and
- (c) secure in any way the repayment of moneys lent or advanced to or the liabilities incurred by any person or company; and
- (d) otherwise to assist any person or company.

## 13. To—

- (a) borrow or raise or secure the payment of money in such manner as the company thinks fit and to secure it or the repayment or performance of any debt, liability, contract, guarantee or other engagement incurred or to be entered into by the company in any way and, in particular, by the issue of debentures, perpetual or otherwise, charged on all or any of the company's property (present and future), including its uncalled capital; and
- (b) purchase, redeem or pay off any such securities.

14. To remunerate any person or company for services rendered, or to be rendered, in placing or assisting to place, or guaranteeing the placing of, any of the shares in the company's capital or any debentures or other securities of the company, or in or about the organization, formation or promotion of the company or the conduct of its business.

15. To draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments.

16. To sell or dispose of the undertaking of the company or any part of it for such consideration as the company thinks fit and, in particular, for shares, debentures or securities of any other company having objects altogether or in part similar to those of the company.

17. To adopt such means of making known and advertising the business and products of the company as seems expedient.

## 18. To—

- (a) apply for, secure, acquire by grant, legislative enactment, assignment, transfer, purchase or otherwise, and to exercise, carry out and enjoy any charter, licence, power, authority, franchise, concession, right or privilege that any Government or authority or any corporation or other public body is empowered to grant; and
- (b) pay for, aid in and contribute towards carrying it into effect, and to appropriate any of the company's shares, debentures or other securities and assets to defray the necessary costs, charges and expenses of so doing.

## 19. To—

- (a) apply for, promote and obtain any statute, order, regulation or other authorization or enactment that seems calculated directly or indirectly to benefit the company; and
- (b) oppose any bills, proceedings or applications that seem calculated directly or indirectly to prejudice the company's interests.

20. To procure the company to be registered or recognized in any country or place outside Papua New Guinea.

21. To sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the company.



22. To issue and allot fully or partly paid shares in the capital of the company in payment or part payment for any real or personal property purchased or otherwise acquired by the company, or any services rendered to the company.

23. To distribute any of the property of the company among the members in kind or otherwise, but so that no distribution amounting to a reduction of capital is made without the sanction required by law.

24. To take or hold mortgages, liens and charges to secure payment of the purchase price, or any unpaid balance of the purchase price, of any part of the company's property sold by the company, or any money due to the company from purchasers and others.

25. To carry out all or any of the objects of the company and do all or any of the above things in any part of the world and either as principal, agent, contractor, or trustee or otherwise, and by or through trustees or agents or otherwise, and either alone or in conjunction with others.

26. To do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the company.

---

### SCHEDULE 3.

---

Secs. 1,31.

#### Table A.

#### REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

##### *Interpretation.*

1. (1) In these regulations—

“the Act” means the *Companies Act*;

“the seal” means the common seal of the company;

“the secretary” means any person appointed to perform the duties of a secretary of the company.

(2) Words or expressions contained in these regulations shall be interpreted in accordance with the provisions of the *Interpretation Act* and of the Act as in force at the date at which these regulations become binding on the company.

##### *Share Capital and Variation of Rights.*

2. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares but subject to the Act, shares in the company may be issued by the directors, and any such share may be issued with such preferred, deferred or other special rights or such restrictions (whether in regard to dividend, voting, return of capital or otherwise) as the directors, subject to any ordinary resolution of the company, determine.

3. Subject to the Act, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the company are, liable to be redeemed.

4. (1) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the company is being wound up, be varied with the consent in writing of the holders of 75% of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class.

(2) To every such separate general meeting the provisions of these regulations relating to general meetings, with the necessary modifications, apply, but so that—

(a) the necessary quorum is two persons at least holding or representing by proxy one third of the issued shares of the class; and

(b) any holder of shares of the class present in person or by proxy may demand a poll.

5. The rights conferred on the holders of the shares of any class issued with preferred or other rights shall, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking equally with them.

6. (1) The company may exercise the powers of paying commissions conferred by the Act, except that—

(a) the rate per centum or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the Act; and

(b) the commission shall not exceed—

(i) the rate of 10% of the price at which the shares in respect of which it is paid are issued; or

(ii) an amount equal to 10% of that price,  
as the case may be.

(2) The commission may be satisfied by the payment of cash or the allotment of fully- or partly-paid shares, or partly in one way and partly in the other, and the company may also pay any lawful brokerage on any issue of shares.

7. Except as required by law, no person shall be recognized by the company as holding any share on any trust, and the company is not bound by and shall not be compelled in any way to recognize (even when having notice), any equitable, contingent, future or partial interest in any share or unit of a share or (except as otherwise provided by these regulations or by law) any other rights in respect of any share except an absolute right to the entirety of it in the registered holder.

8. A person whose name is entered as a member in the register of members is entitled to receive without payment a certificate under the seal of the company in accordance with the Act, but in respect of a share or shares held jointly by several persons—

(a) the company is not bound to issue more than one certificate; and

(b) delivery of a certificate for a share to one of several joint holders is sufficient delivery to all such holders.

#### *Lien.*

9. (1) The company has a first and paramount lien on—

(a) every share (not being a fully-paid share) for all money (whether presently payable or not) called or payable at a fixed time in respect of the share; and

(b) all shares (other than fully-paid shares) registered in the name of a single person for all money presently payable by him or his estate to the company,

but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation.

(2) The company's lien (if any) on a share extends to all dividends payable on the share.

10. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made—

(a) unless a sum in respect of which the lien exists is presently payable; and

(b) until the expiration of 14 days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share or the person entitled to it by reason of the death or bankruptcy of the registered holder.

11. (1) To give effect to a sale under Clause 10, the directors may authorize a person to transfer the shares sold to the purchaser.

(2) The purchaser shall be registered as the holder of the shares comprised in any such transfer, and he is not bound to see to the application of the purchase money, and his title to the shares is not affected by any irregularity or invalidity in the proceedings in reference to the sale.

12. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue (if any) shall (subject to a like lien for sums not presently payable as existed on the shares before the sale) be paid to the person entitled to the share at the date of the sale.

*Calls on Shares.*

13. (1) The directors may from time to time make calls on the members in respect of any money unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not, by the conditions of allotment, made payable at fixed times, except that no call shall exceed 25% of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last call.

(2) Each member shall (subject to receiving at least 14 days' notice specifying the time or times and place of payment) pay to the company at the time or times and place so specified the amount called on his shares.

(3) A call may be revoked or postponed as the directors determine.

14. A call shall be deemed to have been made at the time when the resolution of the directors authorizing the call was passed, and may be required to be paid by instalments.

15. The joint holders of a share are jointly and severally liable to pay all calls in respect of it.

16. (1) If a sum called in respect of a share is not paid before or on the day appointed for payment of it, the person from whom the sum is due shall pay interest on it from the day appointed for payment to the time of actual payment at such rate, not exceeding 8% per annum, as the directors determine.

(2) The directors may waive payment of the interest wholly or in part.

17. (1) Any sum that, by the terms of issue of a share, becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall for the purposes of these regulations be deemed to be a call duly made and payable on the date on which by the terms of issue it becomes payable.

(2) In case of non-payment, all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture and otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

18. On the issue of shares the directors may differentiate between the holders as to the amount of calls to be paid and the times of payment.

19. If they think fit, the directors may receive from any member willing to advance it all or any part of the money uncalled and unpaid on any shares held by him, and on all or any part of the money so advanced may (until it would, but for the advance, become payable) pay interest at such rate, not exceeding (unless the company in general meeting otherwise directs) 8% per annum, as is agreed on between the directors and the member.

*Transfer of Shares.*

20. (1) Subject to these regulations, a member may transfer all or any of his shares by instrument in any usual or common form or in any other form that the directors approve.

(2) The instrument shall be executed by or on behalf of both the transferor and the transferee, and the transferor remains the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of members in respect of the shares.

21. (1) The instrument of transfer must be left for registration at the registered office of the company together with such fee, not exceeding 25t, as the directors from time to time require, accompanied by the certificate of the shares to which it relates and such other evidence as the directors reasonably require to show the right of the transferor to make the transfer.

(2) On compliance with Subclause (1), the company shall, subject to the powers vested in the directors by these regulations, register the transferee as a shareholder and retain the instrument of transfer.

22. The directors may decline to register a transfer of shares, other than fully-paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien.

23. The registration of transfers may be suspended at such times and for such periods as the directors from time to time determine, not exceeding in the whole 30 days in any year.

*Transmission of Shares.*

24. In the case of the death of a member—

- (a) the survivor or survivors, where the deceased was a joint holder; and
- (b) the legal personal representative of the deceased, where he was a sole holder,

shall be the only persons recognized by the company as having any title to his interest in the shares, but nothing in this clause releases the estate of a deceased joint holder from any liability in respect of any share that had been jointly held by him with other persons.

25. Subject to the *Insolvency Act*, a person who becomes entitled to a share in consequence of the death or bankruptcy of a member may, on such evidence being produced as is from time to time properly required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some other person nominated by him registered as the transferee of it, but the directors have, in the case of the nomination of another person, the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the member before his death or bankruptcy.

26. (1) If the person becoming entitled as mentioned in Clause 25 elects to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects.

(2) If he elects to have another person registered, he shall testify his election by executing to that person a transfer of the share.

(3) All the limitations, restrictions and provisions of these regulations relating to the right to transfer and the registration of transfers of shares apply to any such notice or transfer as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

27. (1) Where the registered holder of a share dies or becomes bankrupt, his personal representative or the trustee of his estate, as the case may be, is, on the production of such evidence as is from time to time properly required by the directors for the purpose, entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the company, or to voting or otherwise), as the registered holder would have been entitled to if he had not died or become bankrupt.

(2) Where two or more persons are jointly entitled to any share in consequence of the death of the registered holder they shall, for the purposes of these regulations, be deemed to be joint holders of the share.

*Forfeiture of Shares.*

28. If a member fails to pay any call or instalment of a call on the day appointed for payment of it, the directors may, at any time afterwards during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any accrued interest.

29. The notice shall name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

30. (1) If the requirements of any such notice are not complied with, any share in respect of which the notice has been given may at any time afterwards, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

(2) The forfeiture includes all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

31. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

32. A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares, but remains liable to pay to the company all money that, at the date of forfeiture, was payable by him to the company in respect of the shares (together with interest at the rate of 8% per annum from the date of forfeiture on the money for the time being unpaid if the directors think fit to enforce payment of interest), but his liability ceases if and when the company receives payment in full of all such money in respect of the shares.

33. A statutory declaration in writing that the declarant is a director or the secretary of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share.

34. The company may receive the consideration (if any) given for a forfeited share on any sale or disposition of it, and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of, and he shall thereupon be registered as the holder of the share, and is not bound to see to the application of the purchase money (if any), nor is his title to the share affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

35. The provisions of these regulations as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if it had been payable by virtue of a call duly made and notified.

#### *Conversion of Shares into Stock.*

36. By ordinary resolution passed at a general meeting, the company may convert any paid-up shares into stock, or reconvert any stock into paid-up shares of any denomination.

37. (1) The holders of stock may transfer it or any part of it in the same manner and subject to the same regulations as and subject to which the shares from which the stock arose might previously to conversion have been transferred or as nearly as circumstances admit, but the directors may from time to time fix the minimum amount of stock transferable and restrict or forbid the transfer of fractions of that minimum.

(2) The minimum shall not exceed the nominal amount of the shares from which the stock arose.

38. The holders of stock have, according to the amount of the stock held by them, the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company and in the assets on winding up) is conferred by any such aliquot part of stock that would not if existing in shares have conferred the privilege or advantage.

39. Such of the regulations of the company as are applicable to paid-up shares apply to stock, and references to "share" and "shareholder" in them shall be read as including references to "stock" and "stockholder", respectively.

#### *Alteration of Capital.*

40. The company may from time to time by ordinary resolution—

- (a) increase the share capital by such sum, to be divided into shares of such amount, as the resolution prescribes; or
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares; or
- (c) subdivide its shares or any of them into shares of smaller amount than is fixed by the memorandum, but so that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each reduced share is the same as it was in the case of the share from which the reduced share is derived; or
- (d) cancel shares that at the date of the passing of the resolution have not been taken or agreed to be taken by any person, or that have been forfeited, and diminish the amount of its share capital by the amount of the shares so cancelled.

41. (1) Subject to any direction to the contrary given by the company in general meeting, all new shares shall, before issue, be offered to such persons as are, at the date of the offer, entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled.

(2) The offer shall be made by notice specifying the number of shares offered and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the shares in such manner as they think most beneficial to the company.

(3) The directors may likewise so dispose of any new shares that (by reason of the ratio that the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this regulation.

42. The company may by special resolution reduce its share capital, any capital redemption reserve fund or any share premium account in any manner and with, and subject to, any incident authorized and consent required by law.

#### General Meetings.

43. (1) An annual general meeting of the company shall be held in accordance with the provisions of the Act.

(2) All general meetings, other than annual general meetings, shall be called extraordinary general meetings.

44. A director may whenever he thinks fit, convene an extraordinary general meeting, and extraordinary general meetings shall be convened on such requisition or, in default, may be convened by such requisitionists as is or are provided by the Act.

45. Subject to the provisions of the Act relating to special resolutions and agreements for shorter notice, seven days' notice at least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting, and the general nature of any special business shall be given to such persons as are entitled to receive such notices from the company.

46. All business that is—

(a) transacted at an extraordinary general meeting; or

(b) transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance-sheets and the report of the directors and auditors, the election of directors in the place of those retiring and the appointment and fixing of the remuneration of the auditors,

is special business.

#### Proceedings at General Meetings.

47. (1) In this clause, "member" includes a person attending as a proxy or as representing a corporation that is a member.

(2) No business shall be transacted at a general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

(3) Subject to these regulations, (three members (*in the case of a public company*) or two members (*in the case of a proprietary company*)) present in person are a quorum.

48. If, within 30 minutes after the time appointed for the meeting, a quorum is not present, the meeting, if convened on the requisition of members, is dissolved, and in any other case stands adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the directors determine, and if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting the members present (being not less than two) are a quorum.

49. The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the members present shall elect one of their number to be chairman of the meeting.

50. (1) The chairman may, with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(2) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting, but, except for notice in that case, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

51. (1) At a general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless, before or on the declaration of the result of the show of hands, a poll is demanded—

- (a) by the chairman; or
- (b) by at least three members present in person or by proxy; or
- (c) by any member or members present in person or by proxy and representing not less than 10% of the total voting rights of all the members having the right to vote at the meeting; or
- (d) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than 10% of the total sum paid up on all the shares conferring the right.

(2) Unless a poll is so demanded, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(3) The demand for a poll may be withdrawn.

52. If a poll is duly demanded, it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll is the resolution of the meeting at which the poll was demanded, but a poll demanded on the election of a chairman or on a question of adjournment shall be taken immediately.

53. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded is entitled to a second or casting vote.

54. (1) Subject to any rights or restrictions for the time being attached to any class or classes of shares, at meetings of members or classes of members each member entitled to vote may vote in person or by proxy or by attorney.

(2) On a show of hands, every person present who is a member or a representative of a member has one vote.

(3) On a poll, every member present in person or by proxy or by attorney or other duly authorized representative has one vote for each share that he holds.

55. In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders and, for this purpose, seniority is determined by the order in which the names stand in the register of members.

56. A member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may vote, whether on a show of hands or on a poll, by his committee or trustee or by such other person as properly has the management of his estate, and any such committee, trustee or other person may vote by proxy or attorney.

57. No member is entitled to vote at a general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

58. (1) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at that meeting is valid for all purposes.

(2) Any such objection made in due time shall be referred to the chairman of the meeting, whose decision is final.

59. (1) The instrument appointing a proxy shall be in the common or usual form under the hand of the appointor or of his attorney duly authorized in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorized.

(2) A proxy may, but need not, be a member of the company.

(3) The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

60. Where it is desired to afford members an opportunity of voting for or against a resolution, the instrument appointing a proxy shall be in the following form or a form as near to it as circumstances admit :—

Limited.

I/We, \_\_\_\_\_, of \_\_\_\_\_, being a member/members\* of the above-named company, appoint \_\_\_\_\_ of \_\_\_\_\_, or failing him, \_\_\_\_\_ of \_\_\_\_\_, as my/our\* proxy to vote for me/us\* on my/our\* behalf at the (annual or extraordinary, *as the case may be*) general meeting of the company, to be held on \_\_\_\_\_ 19 \_\_\_\_\_, and at any adjournment of it.

Dated \_\_\_\_\_ 19 \_\_\_\_\_.

This form is to be used in favour of/against\* the resolution.

(Unless otherwise instructed, the proxy may vote as he thinks fit.)

\*Strike out whichever is inapplicable.

61. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy of the power or authority, shall be deposited at the registered office of the company, or at such other place within Papua New Guinea as is specified for the purpose in the notice convening the meeting—

- (a) not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
- (b) in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll,

and, in default, the instrument of proxy shall not be treated as valid.

62. A vote given in accordance with the terms of an instrument of proxy or attorney is valid notwithstanding—

- (a) the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed; or
- (b) the transfer of the share in respect of which the instrument is given,

if no intimation in writing of the death, unsoundness of mind, revocation or transfer has been received by the company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

#### Directors: Appointments, etc.

63. The number of the directors and the names of the first directors are as determined in writing by the subscribers of the memorandum of association or a majority of them.

64. (1) At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

(2) A retiring director is eligible for re-election.

65. The directors to retire in every year are those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

66. At the meeting at which a director retires in accordance with Clause 64 or 65 the company may fill the vacated office by electing a person to it, and, in default, the retiring director shall, if offering himself for re-election and not being disqualified under the Act from holding office as a director, be deemed to have been re-elected unless—

- (a) at that meeting it is expressly resolved not to fill the vacated office; or
- (b) a resolution for the re-election of that director is put to the meeting and lost.

67. The company may from time to time by ordinary resolution passed at a general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.



68. (1) The directors may at any time, and from time to time, appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these regulations.

(2) Any director so appointed holds office only until the next annual general meeting and is then eligible for re-election, but shall not be taken into account in determining the directors who are to retire by rotation at that meeting.

69. (1) The company may by ordinary resolution remove a director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his place.

(2) The person so appointed shall retire at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

70. (1) The remuneration of the directors shall be determined from time to time by the company in general meeting.

(2) The remuneration accrues from day to day.

(3) The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company, or in connexion with the business of the company.

71. The shareholding qualification for directors may be fixed by the company in general meeting and, until so fixed, is one share.

72. The office of director becomes vacant if the director—

- (a) ceases to be a director by virtue of the Act; or
- (b) becomes bankrupt or makes an arrangement or composition with his creditors generally; or
- (c) becomes prohibited from being a director by reason of any order made under the Act; or
- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
- (e) resigns his office by notice in writing to the company; or
- (f) is absent for more than six months, without the permission of the directors, from meetings of the directors held during that period; or
- (g) without the consent of the company in general meeting, holds any other office of profit under the company except that of managing director or manager; or
- (h) is directly or indirectly interested in any contract or proposed contract with the company and fails to declare the nature of his interest as required by the Act.

#### *Powers and Duties of Directors.*

73. (1) Subject to these regulations, to the provisions of the Act and to such regulations, being not inconsistent with these regulations or the Act, as are prescribed by the company in general meeting, the business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Act or by these regulations, required to be exercised by the company in general meeting.

(2) No regulation made by the company in general meeting invalidates any prior act of the directors that would have been valid if the regulation had not been made.

74. The directors may exercise all the powers of the company to borrow money and to mortgage or charge its undertaking, property and uncalled capital, or any part of it, and to issue debentures and other securities, outright or as security for any debt, liability or obligation of the company or of a third party.

75. The directors may exercise all the powers of the company in relation to any official seal for use outside Papua New Guinea and in relation to branch registers.

76. (1) The directors may from time to time by power of attorney appoint any corporation, firm, person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the company—

- (a) for such purposes; and

- (b) with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these regulations); and
- (c) for such period; and
- (d) subject to such conditions,

as they think proper.

(2) The power of attorney may—

- (a) contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors think proper; and
- (b) authorize any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

77. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two directors or in such other manner as the directors from time to time determine.

78. (1) The directors shall cause minutes to be made—

- (a) of all appointments of officers; and
- (b) of the names of directors present at all meetings of the company and of the directors; and
- (c) of all proceedings at all meetings of the company and of the directors.

(2) The minutes shall be signed by the chairman of the meeting at which the proceedings were held or by the chairman of the next meeting.

#### *Proceedings of Directors.*

79. (1) The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.

(2) A director may at any time, and on the requisition of a director the secretary shall, summon a meeting of the directors.

80. (1) Subject to these regulations, questions arising at any meeting of directors shall be decided by a majority of votes and a determination by a majority of directors shall for all purposes be deemed to be a determination of the directors.

(2) In case of an equality of votes, the chairman of the meeting has a second or casting vote.

81. A director shall not vote in respect of any contract or proposed contract with the company in which he is interested, or any matter arising out of such a contract or proposed contract, and if he does so vote his vote shall not be counted.

82. (1) With the approval of the directors, a director may appoint any person (whether a member of the company or not) to be an alternate or substitute director in his place during such period as he thinks proper.

(2) While he so holds office as an alternate or substitute director, a person is entitled—

- (a) to notice of meetings of the directors; and
- (b) to attend and vote at meetings accordingly; and
- (c) to exercise all the powers of the appointor in his place.

(3) An alternate or substitute director shall not be required to have any share qualification, and automatically vacates office if the appointor vacates office as a director or removes the appointee from office.

(4) An appointment or removal under this clause shall be effected by notice in writing under the hand of the director making it.

83. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed is two.

84. The continuing directors may act notwithstanding any vacancy in their body, but if their number is reduced below the number fixed by or under the regulations of the company as the necessary quorum of directors the continuing directors or director may act for the purpose of

increasing the number of directors to that number or of summoning a general meeting of the company, but for no other purpose.

85. The directors may elect a chairman of their meetings and determine the period for which he is to hold office, but if no such chairman is elected, or if at any meeting the chairman is not present within 10 minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting.

86. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think proper, and a committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that are imposed on it by the directors.

87. A committee may elect a chairman of its meetings, but if no such chairman is elected, or if at any meeting the chairman is not present within 10 minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairman of the meeting.

88. (1) A committee may meet and adjourn as it thinks proper.

(2) Questions arising at a meeting shall be determined by a majority of votes of the members present and, in the case of an equality of votes, the chairman has a second or casting vote.

89. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a director or of such a person or that he was disqualified, as valid as if he had been duly appointed and was qualified to be a director.

90. (1) A resolution in writing, signed by all the directors being entitled to receive notice of a meeting of the directors, is as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

(2) The resolution may consist of several documents in like form, each signed by one or more directors.

#### *Managing Directors.*

91. (1) The directors may from time to time appoint one or more of their number to the office of managing director for such period and on such terms as they think proper and, subject to the terms of any agreement entered into in any particular case, may revoke any such appointment.

(2) A director appointed as managing director is not, while holding that office, subject to retirement by rotation, and shall not be taken into account in determining the rotation of retirement of directors, but his appointment automatically determines if he ceases to be a director.

92. Subject to the terms of any agreement entered into in any particular case, a managing director shall receive such remuneration (by way of salary, commission or participation in profits, or partly in one way and partly in another) as the directors determine.

93. The directors may—

(a) entrust to and confer on a managing director any of the powers exercisable by them, on such terms and conditions and with such restrictions as they think proper, collaterally with or to the exclusion of their own powers; and

(b) from time to time revoke, withdraw, alter or vary all or any of those powers.

#### *Associate Directors.*

94. (1) The directors may from time to time appoint any person to be an associate director and may from time to time cancel any such appointment.

(2) The directors may fix, determine and vary the powers, duties and remuneration of any person so appointed.

(3) A person so appointed shall not be required to hold any shares to qualify him for appointment and has no right to attend or vote at any meeting of directors except by the invitation and with the consent of the directors.

*Companies*

*Secretary.*

95. The secretary shall, in accordance with the Act, be appointed by the directors for such term, at such remuneration and on such conditions as they think fit, and a secretary so appointed may be removed by them.

*Seal.*

96. The directors shall provide for the safe custody of the seal, which shall be used only by the authority of the directors or of a committee of the directors authorized by the directors for the purpose, and every instrument to which the seal is affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

*Accounts.*

97. (1) The directors shall—

- (a) cause proper accounting and other records to be kept; and
- (b) distribute copies of balance-sheets as required by the Act; and
- (c) from time to time determine whether and to what extent, and at what times and places and under what conditions or regulations, the accounting and other records of the company or any of them shall be open to the inspection of members other than directors.

(2) No member other than a director has the right of inspecting any account or book or paper of the company except as conferred by law or authorized by the directors or by the company in general meeting.

*Dividends and Reserves.*

98. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

99. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

100. No dividend shall be paid otherwise than out of profits, or bear interest against the company.

101. (1) Before recommending a dividend, the directors may set aside out of the profits of the company such sums as they think proper as reserves.

(2) At the discretion of the directors, the reserves may be applied for any purpose to which the profits of the company may be properly applied, and pending any such application may be employed in the business of the company or invested in such investments (other than shares in the company) as the directors from time to time think proper.

(3) The directors may also, without placing them to reserve, carry forward any profits that they think it prudent not to divide.

102. (1) Subject to the rights of persons (if any) entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid, but no amount paid, or credited as paid, on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share.

(2) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but if any share is issued on terms providing that it ranks for dividend as from a particular date the share ranks for dividend accordingly.

103. The directors may deduct from a dividend payable to a member any sums of money presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

104. (1) Any general meeting declaring a dividend or bonus may direct payment of the dividend or bonus wholly or partly by the distribution of specific assets and, in particular, of paid-up shares, debentures or debenture stock of any other company, or in any one or more of such ways, and the directors shall give effect to the direction.

- (2) Where any difficulty arises in regard to the distribution, the directors may—
- (a) settle it as they think expedient; and
  - (b) fix the value for distribution of the specific assets or any part of them; and
  - (c) determine that cash payments shall be made to any of the members on the footing of the value so fixed in order to adjust the rights of all parties; and
  - (d) vest any such specific assets in trustees, as seems expedient to the directors.

105. (1) Any dividend, interest or other money payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to—

- (a) the registered address of the holder; or
- (b) in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members; or
- (c) such person and to such address as the holder or joint holders in writing direct.

(2) Every such cheque or warrant shall be made payable to the order of the person to whom it is sent.

(3) Any one of two or more joint holders may give effectual receipts for any dividends, bonuses or other money payable in respect of the shares held by them as joint holders.

*Capitalization of Profits.*

106. (1) On the recommendation of the directors, the company in general meeting may resolve that—

- (a) it is desirable to capitalize any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account, or otherwise available for distribution; and
- (b) such sum be set free accordingly for distribution amongst the members who would have been entitled if it was distributed by way of dividend and in the same proportions,

on condition that it be not paid in cash but be applied in or towards—

- (c) paying up any amounts for the time being unpaid on any shares held by such members respectively; or
- (d) paying up in full unissued shares or debentures of the company to be allotted and distributed credited as fully paid-up to and amongst such members in those proportions,

or partly in the one way and partly in the other.

(2) The directors shall give effect to the resolution.

(3) A share premium account and a capital redemption reserve fund may, for the purposes of this clause, be applied only in the paying up of unissued shares to be issued to members of the company as fully-paid bonus shares.

107. (1) Whenever a resolution referred to in Clause 106 is passed, the directors shall make all appropriations and applications of the undivided profits resolved to be capitalized, and all allotments and issues of fully paid shares or debentures (if any), and generally shall do all acts and things required to give effect to it, with full power to the directors—

- (a) to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think proper for the case of shares or debentures becoming distributable in fractions; and
- (b) to authorize any person to enter on behalf of all the members entitled into an agreement with the company providing—
  - (i) for the allotment to them respectively, credited as fully paid-up, of any further shares or debentures to which they may be entitled on such capitalization; or
  - (ii) for the payment up by the company on their behalf, by the application of their respective proportions of the profits resolved to be capitalized, of the

amounts or any part of the amounts remaining unpaid on their existing shares,

as the case requires.

(2) An agreement made under such an authority is effective and binding on all members on whose behalf it is made.

#### Notices.

108. (1) A notice may be given by the company to any member either personally or by sending it by post to him at his registered address, or (if he has no registered address in Papua New Guinea) to the address (if any) in Papua New Guinea supplied by him to the company for the giving of notices to him.

(2) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected, in the case of a notice of a meeting, on the day after the date of its posting, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

109. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.

110. A notice may be given by the company to a person entitled to a share in consequence of the death or bankruptcy of a member—

(a) by sending it through the post in a prepaid letter addressed to him by name, or by the title of representative of the deceased or trustee of the bankrupt, or by any like description, at the address (if any) in Papua New Guinea supplied for the purpose by the person claiming to be so entitled; or

(b) until such an address has been so supplied, by giving the notice in any manner in which it might have been given if the death or bankruptcy had not occurred.

111. (1) Notice of every general meeting shall be given, in any manner authorized by the preceding provisions of these regulations to—

(a) every member except those members who (having no registered address in Papua New Guinea) have not supplied to the company an address in Papua New Guinea for the giving of notices to them; and

(b) every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting; and

(c) the auditor of the company.

(2) No other person is entitled to receive notices of general meetings.

#### Winding-up.

112. (1) If the company is wound up, the liquidator may—

(a) with the sanction of a special resolution of the company, divide amongst the members in kind the whole or any part of the assets of the company (whether they consist of property of the same kind or not); and

(b) for that purpose set such value as he thinks fair on any property to be so divided; and

(c) determine how the division shall be carried out as between the members or different classes of members.

(2) The liquidator may, with the like sanction, vest the whole or any part of any such assets in trustees on such trusts for the benefit of the contributories as the liquidator, with the like sanction, thinks fit, but so that no member shall be compelled to accept any shares or other securities on which there is any liability.

*Indemnity.*

113. Every director, managing director, agent, auditor, secretary and other officer for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted, or in connexion with any application under the Act in which relief is granted to him by the National Court in respect of any negligence, default, breach of duty or breach of trust.

## Table B.

## REGULATIONS FOR MANAGEMENT OF A NO LIABILITY COMPANY.

*Interpretation.*

1. (1) In these regulations—

“the Act” means the *Companies Act*;

“the seal” means the common seal of the company;

“secretary” means any person appointed to perform the duties of a secretary of the company.

(2) Words or expressions contained in these regulations shall be interpreted in accordance with the provisions of the *Interpretation Act* and of the Act as in force at the date at which these regulations become binding on the company.

*Share Capital and Variation of Rights.*

2. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares but subject to the Act, shares in the company may be issued by the directors, and any such share may be issued with such preferred, deferred or other special rights or such restrictions (whether in regard to dividend, voting, return of capital or otherwise) as the directors, subject to any ordinary resolution of the company, determine.

3. Subject to the Act, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the company are, liable to be redeemed.

4. (1) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the company is being wound up, be varied with the consent in writing of the holders of 75% of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class.

(2) To every such separate general meeting the provisions of these regulations relating to general meetings, with the necessary modifications, apply, but so that—

(a) the necessary quorum is two persons at least holding or representing by proxy one-third of the issued shares of the class; and

(b) any holder of shares of the class present in person or by proxy may demand a poll.

5. The rights conferred on the holders of the shares of any class issued with preferred or other rights shall, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking equally with them.

6. (1) The company may exercise the powers of paying commissions conferred by the Act, except that—

(a) the rate per centum or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the Act; and

(b) the commission shall not exceed—

(i) the rate of 10% of the price at which the shares in respect of which it is paid are issued; or

(ii) an amount equal to 10% of that price,

as the case may be.

(2) The commission may be satisfied by the payment of cash or the allotment of fully- or partly-paid shares, or partly in one way and partly in the other, and the company may also pay any lawful brokerage on any issue of shares.

7. Except as required by law, no person shall be recognized by the company as holding any share on any trust, and the company is not bound by, and shall not be compelled in any way to recognize (even when having notice), any equitable, contingent, future or partial interest in any share or unit of a share or (except as otherwise provided by these regulations or by law) any other rights in respect of any share except an absolute right to the entirety of it in the registered holder.

8. A person whose name is entered as a member in the register of members is entitled to receive without payment a certificate under the seal of the company in accordance with the Act but, in respect of a share or shares held jointly by several persons—

- (a) the company is not bound to issue more than one certificate; and
- (b) delivery of a certificate for a share to one of several joint holders is sufficient delivery to all such holders.

#### *Calls on Shares.*

9. (1) The directors may, subject to Section 333 of the Act, from time to time make calls on the members in respect of any money unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not, by the conditions of allotment, made payable at fixed times.

(2) A call may be revoked or postponed as the directors determine.

10. A call shall be deemed to have been made at the time when the resolution of the directors authorizing the call was passed, and may be required to be paid by instalments.

11. At a sale by auction under Section 334 of the Act, a share forfeited for non-payment of any call may, if the directors so determine, be offered for sale and sold credited as paid up to the sum of—

- (a) the amount paid up on it at the time of forfeiture; and
- (b) the amount of the call and the amount of any other call or calls becoming payable on or before the date of sale.

#### *Transfer of Shares.*

12. (1) Subject to these regulations, a member may transfer all or any of his shares by instrument in any usual or common form or in any other form that the directors approve.

(2) The instrument shall be executed by or on behalf of both the transferor and the transferee, and the transferor remains the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of members in respect of the shares.

13. (1) The instrument of transfer must be left for registration at the registered office of the company together with such fee, not exceeding 25¢, as the directors from time to time require, accompanied by the certificate of the shares to which it relates and such other evidence as the directors reasonably require to show the right of the transferor to make the transfer.

(2) On compliance with Subclause (1), the company shall, subject to the powers vested in the directors by these regulations, register the transferee as a shareholder and retain the instrument of transfer.

14. The registration of transfers may be suspended at such times and for such periods as the directors from time to time determine, not exceeding in the whole 30 days in any year.

#### *Transmission of Shares.*

15. In case of the death of a member—

- (a) the survivor or survivors, where the deceased was a joint holder; and
- (b) the legal personal representative of the deceased, where he was a sole holder,

shall be the only persons recognized by the company as having any title to his interest in the shares.

16. Subject to the *Insolvency Act*, a person who becomes entitled to a share in consequence of the death or bankruptcy of a member may, on such evidence being produced as is from time to time properly required by the directors and subject as hereinafter provided, elect either to be registered



himself as holder of the share or to have some other person nominated by him registered as the transferee of it.

17. (1) If the person becoming entitled as mentioned in Clause 16 elects to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects.

(2) If he elects to have another person registered, he shall testify his election by executing to that person a transfer of the share.

(3) All the provisions of these regulations relating to the right to transfer and the registration of transfers of shares apply to any such notice or transfer as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

18. (1) Where the registered holder of a share dies or becomes bankrupt, his personal representative or the trustee of his estate, as the case may be, is, on the production of such evidence as is from time to time properly required by the directors for the purpose, entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the company, or to voting or otherwise), as the registered holder would have been entitled to if he had not died or become bankrupt.

(2) Where two or more persons are jointly entitled to any share in consequence of the death of the registered holder they shall, for the purposes of these regulations, be deemed to be joint holders of the share.

#### *Conversion of Shares into Stock.*

19. By ordinary resolution passed at a general meeting, the company may convert any paid-up shares into stock, or re-convert any stock into paid-up shares of any denomination.

20. (1) The holders of stock may transfer it or any part of it in the same manner and subject to the same regulations as and subject to which the shares from which the stock arose might previous to conversion have been transferred or as nearly as circumstances admit, but the directors may from time to time fix the minimum amount of stock transferable and restrict or forbid the transfer of fractions of that minimum.

(2) The minimum shall not exceed the nominal amount of the shares from which the stock arose.

21. The holders of stock have, according to the amount of the stock held by them, the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage is conferred by any such aliquot part of stock that would not, if existing in shares, have conferred the privilege or advantage.

22. Such of the regulations of the company as are applicable to paid-up shares apply to stock, and references to "share" and "shareholder" in them shall be read as including references to "stock" and "stockholder", respectively.

#### *Alteration of Capital.*

23. The company may from time to time by ordinary resolution—

(a) increase the share capital by such sum, to be divided into shares of such amount, as the resolution prescribes; or

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

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

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

24. (1) Subject to any direction to the contrary given by the company in general meeting, all new shares shall, before issue, be offered to such persons as are, at the date of the offer, entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled.

(2) The offer shall be made by notice specifying the number of shares offered and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered the directors may dispose of the shares in such manner as they think most beneficial to the company.

(3) The directors may likewise so dispose of any new shares that (by reason of the ratio that the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this regulation.

25. The company may by special resolution reduce its share capital, any capital redemption reserve fund or any share premium account in any manner and with, and subject to, any incident authorized and consent required by law.

#### *General Meetings.*

26. (1) An annual general meeting of the company shall be held in accordance with the provisions of the Act.

(2) All general meetings, other than annual general meetings, shall be called extraordinary general meetings.

27. Any director may, whenever he thinks fit, convene an extraordinary general meeting, and extraordinary general meetings shall be convened on such requisition or, in default, may be convened by such requisitionists as is or are provided by the Act.

28. Subject to the provisions of the Act relating to special resolutions and agreements for shorter notice, seven days' notice at least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and the general nature of any special business shall be given to such persons as are entitled to receive such notices from the company.

29. All business that is—

(a) transacted at an extraordinary general meeting; or

(b) transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance-sheets and the report of the directors and auditors, the election of directors in the place of those retiring and the appointment and fixing of the remuneration of the auditors,

is special business.

#### *Proceedings at General Meetings.*

30. (1) In this clause, "member" includes a person attending as a proxy or as representing a corporation that is a member.

(2) No business shall be transacted at a general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

(3) Subject to these regulations, three members present in person constitute a quorum.

31. If, within 30 minutes after the time appointed for the meeting, a quorum is not present, the meeting, if convened on the requisition of members, is dissolved, and in any other case stands adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the directors determine, and if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting the members present (being not less than two) constitute a quorum.

32. The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the members present shall elect one of their number to be chairman of the meeting.

33. (1) The chairman may, with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(2) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting but, except for notice in that case, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

34. (1) At a general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless, before or on the declaration of the result of the show of hands, a poll is demanded—

- (a) by the chairman; or
- (b) by at least three members present in person or by proxy; or
- (c) by any member or members present in person or by proxy and representing not less than 10% of the total voting rights of all the members having the right to vote at the meeting; or
- (d) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than 10% of the total sum paid up on all the shares conferring the right.

(2) Unless a poll is so demanded, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(3) The demand for a poll may be withdrawn.

35. If a poll is duly demanded, it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll is the resolution of the meeting at which the poll was demanded, but a poll demanded on the election of a chairman or on a question of adjournment shall be taken immediately.

36. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded is entitled to a second or casting vote.

37. (1) Subject to any rights or restrictions for the time being attached to any class or classes of shares, at meetings of members or classes of members each member entitled to vote may vote in person or by proxy or by attorney.

(2) On a show of hands every person present who is a member or a representative of a member has one vote.

(3) On a poll, every member present in person or by proxy or by attorney or other duly authorized representative has one vote for each share he holds.

38. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders and, for this purpose, seniority is determined by the order in which the names stand in the register of members.

39. A member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may vote, whether on a show of hands or on a poll, by his committee or trustee or by such other person as properly has the management of his estate, and any such committee, trustee or other person may vote by proxy or attorney.

40. No member is entitled to vote at a general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

41. (1) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at the meeting is valid for all purposes.

(2) Any such objection made in due time shall be referred to the chairman of the meeting, whose decision is final.

42. (1) The instrument appointing a proxy shall be in the common or usual form under the hand of the appointor or of his attorney duly authorized in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorized.

(2) A proxy may, but need not, be a member of the company.

(3) The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

43. Where it is desired to afford members an opportunity of voting for or against a resolution, the instrument appointing a proxy shall be in the following form or a form as near to it as circumstances admit:—

No Liability.

I/We, \_\_\_\_\_, of \_\_\_\_\_, being a member/members\* of the above-named company, appoint \_\_\_\_\_, of \_\_\_\_\_, or failing him \_\_\_\_\_, as my/our\* proxy to vote for me/us\* on my/our\* behalf at the (annual or extraordinary as the case may be) general meeting of the company, to be held on \_\_\_\_\_ 19\_\_\_\_, and at any adjournment of it.

Dated \_\_\_\_\_ 19\_\_\_\_.

This form is to be used in favour of/against\* the resolution.

(Unless otherwise instructed, the proxy may vote as he thinks fit.)

\*Strike out whichever is inapplicable.

44. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy of the power or authority, shall be deposited at the registered office of the company, or at such other place within Papua New Guinea as is specified for the purpose in the notice convening the meeting—

- (a) not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
- (b) in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll,

and, in default, the instrument of proxy shall not be treated as valid.

45. A vote given in accordance with the terms of an instrument of proxy or attorney is valid notwithstanding—

- (a) the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed; or
- (b) the transfer of the share in respect of which the instrument is given,

if no intimation in writing of the death, unsoundness of mind, revocation or transfer has been received by the company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

#### *Directors: Appointment, etc.*

46. The number of the directors and the names of the first directors are as determined in writing by the subscribers of the memorandum of association or a majority of them.

47. (1) At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

(2) A retiring director is eligible for re-election.

48. The directors to retire in every year are those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

49. At the meeting at which a director retires in accordance with Clause 47 or 48 the company may fill the vacated office by electing a person to it and, in default, the retiring director shall, if offering himself for re-election and not being disqualified under the Act from holding office as a director, be deemed to have been re-elected, unless—

- (a) at the meeting it is expressly resolved not to fill the vacated office; or
- (b) a resolution for the re-election of that director is put to the meeting and lost.

50. The company may from time to time by ordinary resolution passed at a general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

51. (1) The directors may at any time, and from time to time, appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these regulations.

(2) Any director so appointed holds office only until the next annual general meeting and is then eligible for re-election, but shall not be taken into account in determining the directors who are to retire by rotation at that meeting.

52. (1) The company may by ordinary resolution remove a director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his place.

(2) The person so appointed shall retire at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

53. (1) The remuneration of the directors shall be determined from time to time by the company in general meeting.

(2) The remuneration accrues from day to day.

(3) The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company, or in connexion with the business of the company.

54. The shareholding qualification for directors may be fixed by the company in general meeting and, until so fixed, is one share.

55. The office of director becomes vacant if the director—

(a) ceases to be a director by virtue of the Act; or

(b) becomes bankrupt or makes an arrangement or composition with his creditors generally; or

(c) becomes prohibited from being a director by reason of any order made under the Act; or

(d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or

(e) resigns his office by notice in writing to the company; or

(f) is absent for more than six months, without the permission of the directors, from meetings of the directors held during that period; or

(g) without the consent of the company in general meeting, holds any other office of profit under the company except that of managing director or manager; or

(h) is directly or indirectly interested in any contract or proposed contract with the company, and fails to declare the nature of his interest as required by the Act.

#### *Powers and Duties of Directors.*

56. (1) Subject to these regulations, to the provisions of the Act and to such regulations, being not inconsistent with these regulations or the Act, as are prescribed by the company in general meeting, the business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Act or by these regulations, required to be exercised by the company in general meeting.

(2) No regulation made by the company in general meeting invalidates any prior act of the directors that would have been valid if the regulation had not been made.

57. The directors may exercise all the powers of the company to borrow money and to mortgage or charge its undertaking, property and uncalled capital, or any part of it, and to issue debentures and other securities, outright or as security for any debt, liability or obligation of the company or of a third party.

58. The directors may exercise all the powers of the company in relation to any official seal for use outside Papua New Guinea and in relation to branch registers.

59. (1) The directors may from time to time by power of attorney appoint any corporation, firm, person, or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the company—

(a) for such purposes; and

- (b) with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these regulations); and
- (c) for such period; and
- (d) subject to such conditions,

as they think proper.

(2) The power of attorney may—

- (a) contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors think proper; and
- (b) authorize any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

60. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two directors or in such other manner as the directors from time to time determine.

61. (1) The directors shall cause minutes to be made—

- (a) of all appointments of officers; and
- (b) of the names of directors present at all meetings of the company and of the directors; and
- (c) of all proceedings at all meetings of the company and of the directors.

(2) The minutes shall be signed by the chairman of the meeting at which the proceedings were held or by the chairman of the next meeting.

#### *Proceedings of Directors.*

62. (1) The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.

(2) A director may at any time, and on the requisition of a director the secretary shall, summon a meeting of the directors.

63. (1) Subject to these regulations, questions arising at any meeting of directors shall be decided by a majority of votes and a determination by a majority of directors shall for all purposes be deemed to be a determination of the directors.

(2) In case of an equality of votes, the chairman of the meeting has a second or casting vote.

64. A director shall not vote in respect of any contract or proposed contract with the company in which he is interested, or any matter arising out of such a contract or proposed contract, and if he does so vote his vote shall not be counted.

65. (1) With the approval of the directors, a director may appoint any person (whether a member of the company or not) to be an alternate or substitute director in his place during such period as he thinks fit.

(2) While he so holds office as an alternate or substitute director a person is entitled—

- (a) to notice of meetings of the directors; and
- (b) to attend and vote at meetings accordingly; and
- (c) to exercise all the powers of the appointor in his place.

(3) An alternate or substitute director shall not be required to have any share qualification, and automatically vacates office if the appointor vacates office as a director or removes the appointee from office.

(4) An appointment or removal under this clause shall be effected by notice in writing under the hand of the director making it.

66. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed is two.

67. The continuing directors may act notwithstanding any vacancy in their body, but if their number is reduced below the number fixed by or under the regulations of the company as the necessary quorum of directors the continuing directors or director may act for the purpose of

increasing the number of directors to that number or of summoning a general meeting of the company, but for no other purpose.

68. The directors may elect a chairman of their meetings and determine the period for which he is to hold office, but if no such chairman is elected, or if at any meeting the chairman is not present within 10 minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting.

69. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think proper, and a committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that are imposed on it by the directors.

70. A committee may elect a chairman of its meetings, but if no such chairman is elected, or if at any meeting the chairman is not present within 10 minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairman of the meeting.

71. (1) A committee may meet and adjourn as it thinks proper.

(2) Questions arising at a meeting shall be determined by a majority of votes of the members present and, in the case of an equality of votes, the chairman has a second or casting vote.

72. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a director or of such a person or that he was disqualified, as valid as if he had been duly appointed and was qualified to be a director.

73. (1) A resolution in writing, signed by all the directors entitled to receive notice of a meeting of the directors, is as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

(2) The resolution may consist of several documents in like form, each signed by one or more directors.

*Managing Directors.*

74. (1) The directors may from time to time appoint one or more of their number to the office of managing director for such period and on such terms as they think proper and, subject to the terms of any agreement entered into in any particular case, may revoke any such appointment.

(2) A director appointed as managing director is not, while holding that office, subject to retirement by rotation, and shall not be taken into account in determining the rotation of retirement of directors, but his appointment automatically determines if he ceases to be a director.

75. Subject to the terms of any agreement entered into in any particular case, a managing director shall receive such remuneration (by way of salary, commission or participation in profits, or partly in one way and partly in another) as the directors determine.

76. The directors may—

(a) entrust to and confer on a managing director any of the powers exercisable by them on such terms and conditions and with such restrictions as they think proper, collaterally with or to the exclusion of their own powers; and

(b) from time to time revoke, withdraw, alter or vary all or any of those powers.

*Associate Directors.*

77. (1) The directors may from time to time appoint any person to be an associate director, and may from time to time cancel any such appointment.

(2) The directors may fix, determine and vary the powers, duties and remuneration of any person so appointed.

(3) A person so appointed shall not be required to hold any shares to qualify him for appointment and has no right to attend or vote at a meeting of directors except by the invitation and with the consent of the directors.

*Companies**Secretary.*

78. The secretary shall, in accordance with the Act, be appointed by the directors for such term, at such remuneration and on such conditions as they think fit, and a secretary so appointed may be removed by them.

*Seal.*

79. The directors shall provide for the safe custody of the seal, which shall be used only by the authority of the directors or of a committee of the directors authorized by the directors for the purpose, and every instrument to which the seal is affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

*Accounts.*

80. (1) The directors shall—

- (a) cause proper accounting and other records to be kept; and
- (b) distribute copies of balance-sheets as required by the Act; and
- (c) from time to time determine whether and to what extent, and at what times and places and under what conditions or regulations, the accounting and other records of the company or any of them shall be open to the inspection of members other than directors.

(2) No member other than a director has the right of inspecting any account or book or paper of the company except as conferred by law or authorized by the directors or by the company in general meeting.

*Dividends and Reserves.*

81. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

82. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

83. No dividend shall be paid otherwise than out of profits, or bear interest against the company.

84. (1) Before recommending a dividend, the directors may set aside out of the profits of the company such sums as they think proper as reserves.

(2) At the discretion of the directors, the reserves may be applied for any purpose to which the profits of the company may be properly applied, and pending any such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares in the company) as the directors from time to time think proper.

(3) The directors may also, without placing them to reserve, carry forward any profits that they think it prudent not to divide.

85. Subject to the rights of persons (if any) entitled to shares with special rights as to dividend, all dividends are divisible among the members in proportion to the shares held by them respectively irrespective of the amount paid-up, or credited as paid-up, on them, but if any share is issued on terms providing that it ranks for dividend as from a particular date, the share ranks for dividend accordingly.

86. (1) Any general meeting declaring a dividend or bonus may direct payment of the dividend or bonus wholly or partly by the distribution of specific assets and, in particular, of paid-up shares, debentures or debenture stock of any other company, or in any one or more of such ways, and the directors shall give effect to the direction.

(2) Where any difficulty arises in regard to the distribution, the directors may—

- (a) settle it as they think expedient; and
- (b) fix the value for distribution of the specific assets or any part of them; and
- (c) determine that cash payments shall be made to any members on the footing of the value so fixed in order to adjust the rights of all parties; and



(d) vest any such specific assets in trustees,  
as seems expedient to the directors.

87. (1) Any dividend, interest or other money payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to—

- (a) the registered address of the holder; or
- (b) in the case of joint holders, the registered address of that one of the joint holders who is first named on the register of members; or
- (c) such person and to such address as the holder or joint holders in writing direct.

(2) Every such cheque or warrant shall be made payable to the order of the person to whom it is sent.

(3) Any one of two or more joint holders may give effectual receipts for any dividends, bonuses or other money payable in respect of the shares held by them as joint holders.

*Capitalization of Profits.*

88. (1) On the recommendation of the directors, the company in general meeting may resolve that—

- (a) it is desirable to capitalize any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account, or otherwise available for distribution; and
- (b) such sum be set free accordingly for distribution amongst the members who would have been entitled if it was distributed by way of dividend and in the same proportions,

on condition that it be not paid in cash but be applied in or towards—

- (c) paying up any amounts for the time being unpaid on any shares held by such members respectively; or
- (d) paying up in full unissued shares or debentures of the company to be allotted and distributed credited as fully paid-up to and amongst such members in those proportions,

or partly in one way and partly in the other.

(2) The directors shall give effect to the resolution.

(3) A share premium account and a capital redemption reserve fund may, for the purposes of this clause, be applied only in the paying up of unissued shares to be issued to members of the company as fully-paid bonus shares.

89. (1) Whenever a resolution referred to in Clause 88 is passed, the directors shall make all appropriations and applications of the undivided profits resolved to be capitalized, and all allotments and issues of fully-paid shares or debentures (if any), and generally shall do all acts and things required to give effect to it, with full power to the directors—

- (a) to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think proper for the case of shares or debentures becoming distributable in fractions; and
- (b) to authorize any person to enter, on behalf of all the members entitled, into an agreement with the company providing—
  - (i) for the allotment to them respectively, credited as fully paid-up, of any further shares or debentures to which they may be entitled on the capitalization; or
  - (ii) the payment up by the company on their behalf, by the application of their respective proportions of the profits resolved to be capitalized, of the amounts or any part of the amounts remaining unpaid on their existing shares,

as the case requires.

(2) An agreement made under any such authority is effective and binding on all members on whose behalf it is made.

## Notices.

90. (1) Subject to the Act, a notice may be given by the company to any member either personally or by sending it by post to him at his registered address, or (if he has no registered address in Papua New Guinea) to the address (if any) in Papua New Guinea supplied by him to the company for the giving of notices to him.

(2) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected, in the case of a notice of a meeting, on the day after the date of its posting, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

91. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.

92. A notice may be given by the company to a person entitled to a share in consequence of the death or bankruptcy of a member—

(a) by sending it through the post in a prepaid letter addressed to him by name, or by the title of representative of the deceased or trustee of the bankrupt, or by any like description, at the address (if any) in Papua New Guinea supplied for the purpose by the person claiming to be so entitled; or

(b) until such an address has been so supplied, by giving the notice in any manner in which it might have been given if the death or bankruptcy had not occurred.

93. (1) Notice of every general meeting shall be given in any manner authorized in these regulations to—

(a) every member except those members who (having no registered address in Papua New Guinea) have not supplied to the company an address in Papua New Guinea for the giving of notices to them; and

(b) every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting; and

(c) the auditor for the time being of the company.

(2) No other person is entitled to receive notices of general meetings.

## Winding-Up.

94. (1) If the company is wound up, the liquidator may—

(a) with the sanction of a special resolution of the company, divide amongst the members in kind the whole or any part of the assets of the company (whether they consist of property of the same kind or not); and

(b) for that purpose set such value as he thinks fair on any property to be so divided; and

(c) determine how the division shall be carried out as between the members or different classes of members.

(2) The liquidator may, with the like sanction, vest the whole or any part of any such assets in trustees on such trusts for the benefit of the contributories as the liquidator, with the like sanction, thinks fit, but so that no member shall be compelled to accept any shares or other securities on which there is any liability.

95. Subject to the rights of persons (if any) entitled to shares with special rights in a winding-up and to Section 341(2) of the Act, all moneys and assets that are legally distributable among members shall be distributed in proportion to the shares held by them respectively irrespective of the amount paid up or credited as paid up on them, but if a company ceases to carry on business within 12 months of its incorporation shares issued for cash rank in the distribution, to the extent of the capital contributed by subscribing shareholders, in priority to those issued to vendors or promoters, or both, for consideration other than cash.

*Indemnity.*

96. Every director, managing director, agent, auditor, secretary and other officer for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgement is given in his favour, or in which he is acquitted, or in connexion with any application under the Act in which relief is granted to him by the National Court in respect of any negligence, default, breach of duty or breach of trust.

## SCHEDULE 4.

Sec. 41.

## PROSPECTUS.

## PART I.

*Matters to be Stated.*

1. The number of founders' or management or deferred shares (if any), and the nature and extent of the interest of the holders of such shares in the property and profits of the company.
2. The number of shares (if any) fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors.
3. The names, descriptions and addresses of all the directors or proposed directors.
4. Where the prospectus relates to shares, particulars as to—
  - (a) the minimum amount that in the opinion of the directors, must be raised by the issue of the shares in order to provide the sums, or if any part of them is to be defrayed in any other manner the balance of them, of—
    - (i) the purchase price of any property purchased or to be purchased that is to be defrayed in whole or in part out of the proceeds of the issue; and
    - (ii) any preliminary expenses payable by the company, and any commission payable by the company to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, shares in the company; and
    - (iii) the repayment of any money borrowed by the company in respect of any of the foregoing matters; and
    - (iv) working capital,required to be provided in respect of each; and
  - (b) the amounts to be provided in respect of those matters otherwise than out of the proceeds of the issue, and the sources out of which the amounts are to be provided.
5. The time of the opening of the subscription lists.
6. The amount payable on application and allotment on each share or, where the amount may vary during the currency of the offer, the basis of calculation of the amount so payable and, in the case of a second or subsequent offer of shares, the number, description and amount offered for subscription on each previous allotment made within the last two years, the number actually allotted and the amount (if any) paid on the shares so allotted.
7. The number, description and amount of any shares in or debentures of the company that any person has, or is entitled to be given, an option to subscribe for, together with the following particulars of the option—
  - (a) the period during which it is exercisable; and
  - (b) the price to be paid for shares or debentures subscribed for under it; and
  - (c) the consideration (if any) given or to be given for it or for the right to it; and

(d) the names and addresses of the persons to whom it or the right to it was given, or, if it was given to existing shareholders or debenture holders as such, the relevant shares or debentures.

8. The number and amount of shares and debentures that, within the last two years, have been issued, or agreed to be issued, as fully or partly paid-up otherwise than in cash, and in the latter case the extent to which they are so paid-up, and in either case the consideration for which the shares or debentures have been issued or are proposed or intended to be issued.

9. (1) The property to which this clause applies is property purchased or acquired by the company or by any subsidiary of the company, or proposed so to be purchased or acquired, being property—

(a) that is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus; or

(b) the purchase or acquisition of which has not been completed at the date of the issue of the prospectus,

other than property the contract for the purchase or acquisition of which was entered into in the ordinary course of the company's or the subsidiary's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract.

(2) With respect to any property to which this clause applies—

(a) the names and addresses of the vendors; and

(b) the amount payable in cash, shares or debentures to the vendor and, where there is more than one separate vendor or the company is a sub-purchaser, the amount so payable to each vendor; and

(c) short particulars of any transaction relating to the property completed within the last two years in which any vendor of the property to the company, or any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the company, had any interest, direct or indirect.

10. The amount (if any) paid or payable as purchase money in cash, shares or debentures for any property to which Clause 9 applies, specifying the amount (if any) payable for goodwill.

11. The amount (if any) paid within the last two years, or payable, as commission (not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in or debentures of the company, or the rate of any such commission, and the names of any directors, promoters, experts or proposed directors who are entitled to receive any such commission and the amount or rate of it.

12. The amount or estimated amount of—

(a) preliminary expenses, and the persons by whom any of those expenses have been paid or are payable; and

(b) the expenses of the issue, and the persons by whom any of those expenses have been paid or are payable.

13. Any amount or benefit paid or given within the last two years, or intended to be paid or given, to any promoter, and the consideration of the payment or the giving of the benefit.

14. The dates of, parties to and general nature of every material contract, not being a contract entered into—

(a) in the ordinary course of the business carried on or intended to be carried on by the company; or

(b) more than two years before the date of issue of the prospectus.

15. The names and addresses of the auditors (if any) of the company.

16. Full particulars of the nature and extent of the interest (if any) of every director and of every expert in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director or such an expert consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person—

(a) in the case of a director, to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connexion with the promotion or formation of the company; or

(b) in the case of an expert, for services rendered by him or the firm in connexion with the promotion or formation of the company.

17. Where the prospectus relates to shares issued and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares.

18. In the case of a company that has been carrying on business, or of a business that has been carried on, for less than three years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

## PART II.

*Reports to be Set Out.*

19. (1) A report by a registered company auditor, who shall be named in the prospectus, with respect to—

- (a) profits and losses and assets and liabilities of the company, and of any guarantor corporation referred to in the prospectus, in accordance with Subclause (2) or (3), as the case requires; and
- (b) the rates of the dividends (if any) paid by the company in respect of each class of shares in respect of each of the five financial years before the issue of the prospectus, giving particulars of each such class of shares on which the dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years,

and, if no accounts have been made up in respect of any part of the period of five years ending on a date three months before the issue of the prospectus, containing a statement of that fact.

(2) If the company or the guarantor corporations have no subsidiaries, the report shall—

- (a) as regards profits and losses, deal with the profits or losses of the company and of the guarantor corporation referred to in the prospectus in respect of each of the five financial years before the last date to which the accounts of the company were made up; and
- (b) as regards assets and liabilities, deal with the assets and liabilities of the company and of the guarantor corporation referred to in the prospectus at the last date to which the accounts of the company and of the guarantor corporations were made up,

which date must not be more than nine months (or, if the Minister having regard to the circumstances of any particular case consents in writing, 12 months) before the issue of the prospectus.

(3) If the company or the guarantor corporations have subsidiaries, the report shall—

- (a) as regards profits and losses—
  - (i) deal separately with the company's and the guarantor corporations' (other than subsidiaries') profits or losses as required by Subclause (2), and in addition deal either—
    - (A) as a whole with the combined profits or losses of their subsidiaries; or
    - (B) individually with the profits or losses of each subsidiary; or
  - (ii) deal as a whole with the profits or losses of the company and of the guarantor corporations and with the combined profits or losses of their subsidiaries; and
- (b) as regards assets and liabilities, deal separately with the company's and the guarantor corporations' (other than subsidiaries') assets and liabilities as required by Subclause (2), and in addition deal either—
  - (i) as a whole with the combined assets and liabilities of its or their subsidiaries, with or without the company's assets and liabilities; or
  - (ii) individually with the assets and liabilities of each subsidiary,

and shall indicate, as respects the profits or losses and assets and liabilities of the subsidiaries, the allowance to be made for persons other than members of the company.

(4) If the prospectus relates to shares in or debentures of a borrowing corporation, the report shall state separately estimates of the amounts of moneys owing and payable to the company and the amounts of all liabilities payable by the company—

- (a) not later than two years; and
- (b) later than two years but not later than five years; and
- (c) later than five years,

from the last date to which the accounts of the company were made up.

20. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are to be applied directly or indirectly in the purchase of any business, a report by a registered company auditor (who shall be named in the prospectus) with respect to—

- (a) the profits or losses of the business in respect of each of the five financial years immediately before the last date to which the accounts of the business were made up; and
- (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up,

which date shall not be more than nine months (or, if the Minister having regard to the circumstances of any particular case consents in writing, 12 months) before the issue of the prospectus.

21. (1) If—

- (a) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other corporation; and
- (b) by reason of the acquisition or anything to be done in consequence of it or in connexion with it the corporation will become a subsidiary of the company,

a report by a registered company auditor (who shall be named in the prospectus) with respect to—

- (c) the profits or losses of the other corporation in respect of each of the five financial years immediately before the last date to which the accounts of the corporation were made up; and
- (d) the assets and liabilities of the other corporation at the last date to which the accounts of the corporation were made up,

which date shall not be more than nine months (or, if the Minister, having regard to the circumstances of the particular case, consents in writing, 12 months) before the issue of the prospectus.

(2) The report shall—

- (a) indicate how the profits or losses of the other corporation dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares if the company had at all material times held the shares to be acquired; and
- (b) where the other corporation has subsidiaries—deal with the profits or losses and the assets and liabilities of the corporation and its subsidiaries in the manner provided by Clause 19(3) in relation to the company and its subsidiaries.

22. A report by the directors as to whether, after due inquiry by them in relation to the interval between the date to which the last accounts have been made up and a date not earlier than 14 days before the issue of the prospectus—

- (a) the business of the company has in their opinion been satisfactorily maintained; and
- (b) there have in their opinion arisen any circumstances adversely affecting the company's trading or the value of its assets; and
- (c) the current assets appear in the books at values that are believed to be realizable in the ordinary course of business; and
- (d) there are any contingent liabilities by reason of any guarantees given by the company or any of its subsidiaries; and
- (e) there are, since the last annual report, any changes in published reserves or any unusual factors affecting the profit of the company and its subsidiaries.

## PART III.

*Provisions Applying to Parts I and II of Schedule 4.*

23. Clauses 2, 12 (so far as it relates to preliminary expenses) and 16 do not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

24. Every person who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company where—

- (a) the purchase money is not fully paid at the date of the issue of the prospectus; or
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or
- (c) the contract depends for its validity or fulfilment on the result of the issue,

shall, for the purposes of this Schedule, be deemed to be a vendor.

25. Where any property to be acquired by the company is to be taken on lease, this Schedule has effect as if—

- (a) the expression "vendor" included the lessor; and
- (b) the expression "purchase money" included the consideration for the lease; and
- (c) the expression "sub-purchaser" included a sub-lessee.

26. References in Clause 7 to an option to subscribe for shares or debentures include references to an option to acquire them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale, but do not include references to an option to subscribe for or acquire shares under a bona fide underwriting or sub-underwriting agreement.

27. For the purposes of Clause 9, where the vendors or any of them are a firm the members of the firm shall not be treated as separate vendors.

28. If, in the case of a company that has been carrying on business, or of a business that has been carried on, for less than five years, the accounts of the company or business have only been made up in respect of four years, three years, two years or one year, Part II. has effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

29. The expression "financial year" in Part II. means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall, for the purposes of that Part, be deemed to be a financial year.

30. Any report required by Part II shall—

- (a) indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report that appear to the persons making the report necessary; or
- (b) make the adjustments and indicate that adjustments have been made.

## PART IV.

*Additional Matters to be included in Prospectus relating to Invitation to the Public to Deposit Money with or Lend Money to a Corporation.*

31. Where Section 40(4) of the Act applies, there shall be included—

(a) a statement to the effect that—

- (i) the repayment of all moneys that have been or may be deposited with or lent to the corporation in response to the invitation is secured by a first mortgage, given to the trustee for the holders of the debentures to be issued in relation to the deposit or loan, over land vested in the corporation or in any of its guarantor corporations; and
- (ii) the mortgage has been duly registered, or is a registrable mortgage that has been lodged for registration, in accordance with the law relating to the registration of mortgages of land in the place where the land is situated; and

- (iii) the aggregate amount of those moneys and of all other liabilities (if any) secured by the mortgage of that land, ranking equally with the liability to repay the moneys, does not exceed 60% of the value of the corporation's interest in the land as shown in the valuation included in the prospectus; and
- (b) a copy of a written valuation of the corporation's interest in the land so mortgaged, showing the nature and extent of the corporation's interest, made not more than six months before the date of the prospectus by a person who—
  - (i) is competent and qualified to make the valuation in the place where the land is situated; and
  - (ii) is not an officer or employee of the corporation or of any of its guarantor corporations or of any related corporation of either the first-mentioned corporation or any of its guarantor corporations.

32. (1) Where Section 40(5) of the Act applies, there shall be included—

- (a) a statement to the effect that—
  - (i) the repayment of all moneys that have been or may be deposited with or lent to the corporation in response to the invitation has been secured by a charge in favour of the trustee for the holders of the debentures over the whole or any part of the tangible assets of the corporation and of any of its guarantor corporations; and
  - (ii) having regard to the particulars in the summary made in accordance with Paragraph (b), tangible assets that constitute the security for the charge are sufficient and are reasonably likely to be sufficient to meet the liability for the repayment of all such moneys and all other liabilities ranking in priority to or equally with, the charge that have been or may be incurred; and
- (b) a summary made by the registered company auditor who has made for inclusion in the prospectus the report required by Part II. with respect to the assets and liabilities of the borrowing corporation, showing in tabular form the aggregate values (based on amounts as disclosed in the statements of the assets and liabilities of the borrowing corporation and its guarantor corporations that have been prepared for the purposes of Clauses 19 and 30) of the tangible assets of the borrowing corporation and of its guarantor corporations that have been charged to secure the repayment of all moneys referred to in Paragraph (a)(i), after making such adjustments as are proper to give a true and fair view of the tangible assets available as security for the charge and, in particular, after making adjustments—
  - (i) to exclude from the aggregate values such part of the value of any shares in or advances to a corporation as is reflected in or depends on the tangible assets of that corporation that are otherwise included in the summary; and
  - (ii) to exclude from the aggregate values such part of the value of any shares in a corporation that is a related corporation of the borrowing corporation or the guarantor corporation (as the case requires) as is properly attributable to intangible assets of the first-mentioned corporation; and
  - (iii) to add to the aggregate values the amount to be raised under the prospectus, including the maximum amount of oversubscriptions that the prospectus, in accordance with Section 43 of the Act specifies may be retained.
- (2) In the summary referred to in Subclause (1)(b), the registered company auditor—
  - (a) shall show the amounts outstanding out of the aggregate amounts borrowed respectively by the borrowing corporation and by its guarantor corporations, distinguishing between those that will rank for repayment in priority to the proposed issue and those that will rank equally with the proposed issue; and
  - (b) shall state, by way of note or otherwise, the total amount of the values of intangible assets excluded in making the adjustments required under Subclause (1)(b)(ii); and
  - (c) where a corporation has given a charge over its assets to secure a liability the amount of which may vary from time to time, may take into account the actual amount of the liability as at the date at which the summary is made up, but in that event shall show by way of note the further amount which may be advanced under that charge; and



- (d) may explain or qualify, by way of note or otherwise, any of the matters set out in the summary; and
  - (e) shall disclose, by way of note or otherwise, the amount of advances by the borrowing corporation to any corporation that is, deemed to be related to the borrowing corporation, distinguishing between advances that are secured and advances that are unsecured.
33. In a prospectus that relates to debentures there shall be included—
- (a) particulars of the limitations on the amount that the corporation may borrow; and
  - (b) a statement as to the amount of subscriptions that are being sought; and
  - (c) a statement as to whether or not the corporation reserves the right to accept or retain oversubscriptions and, if the corporation reserves such a right, the limit on the right so reserved expressed as a sum of money; and
  - (d) where applicable, a statement as to whether or not the corporation has any right to create additional charges over any of the assets charged to secure the repayment of the deposits or loans that will rank in priority to or equally with the charge and, if there is such a right, particulars of its nature and extent.

SCHEDULE 5.

Sec. 53.

STATEMENT IN LIEU OF PROSPECTUS.

PART I.

*Statement in Lieu of Prospectus lodged for Registration by (insert name of the company).*

Nominal share capital of the company	K
Divided into	<ul style="list-style-type: none"> <li>shares of K each: K</li> <li>shares of K each: K</li> <li>shares of K each: K</li> <li>shares of K each: K</li> </ul>
Amount (if any) of above capital that consists of redeemable preference shares	
The date on or before which those shares are, or are liable, to be redeemed	
Names, descriptions and addresses of directors or proposed directors	
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively	
Number and amount of shares and debentures issued within the two years before the date of this statement or proposed or agreed to be issued as fully or partly paid up otherwise than in cash	<ul style="list-style-type: none"> <li>1. shares of K fully paid</li> <li>2. shares on which K per share credited as paid.</li> <li>3. debentures K</li> <li>4. Consideration:</li> </ul>
The consideration for the issue or intended issue of those shares and debentures	
Number, description and amount of any shares or debentures that any person has or is entitled to be given an option to subscribe for, or to acquire from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale	<ul style="list-style-type: none"> <li>1. shares of K and debentures of K</li> <li>2. Until</li> <li>3. K</li> <li>4. Consideration:</li> </ul>
Period during which option is exercisable	
Price to be paid for shares or debentures subscribed for or acquired under option	
Consideration for option or right to option	

Persons to whom option or right to option was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures

Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired, by the company except where the contract for its purchase or acquisition was entered into in the ordinary course of the business intended to be carried on by the company or the amount of the purchase money is not material

Amount (in cash, shares or debentures) payable to each separate vendor

Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill

5. Names and addresses:

Total purchase price	K
Cash	K
Shares	K
Debentures	K
Goodwill	K

Short particulars of any transaction relating to any such property that was completed within the last two years and in which any vendor to the company or any person who is, or was at the time of the transaction, a promoter, director or proposed director of the company had any interest, direct or indirect

Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares or debentures in the company; or

Rate of the commission

Amount or rate of brokerage

The number of shares (if any) for which persons have agreed for a commission to subscribe absolutely

Amount or estimated amount of preliminary expenses

By whom those expenses have been paid or are payable

Amount paid or intended to be paid to any promoter

Consideration for the payment

Any other benefit given or intended to be given to any promoter

Consideration for giving of benefit

Amount paid: K  
Amount payable: K

%

K

Name of promoter;  
Amount: K  
Consideration:  
Name of promoter.  
Nature and value of benefit:  
Consideration:

Dates of, parties to and general nature of every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the delivery of this statement)

Time and place at which the contracts or copies of them or, in the case of a contract not reduced into writing, a memorandum giving full particulars of it, or, in the case of a contract wholly or partly in a foreign language, a copy of a translation of it in English or embodying a translation in English of the parts in a foreign language, as the case may be (being a translation certified in the prescribed manner to be a correct translation), may be inspected

Names and addresses of the auditors of the company (if any)

Full particulars of the nature and extent of the interest of every director, and of every expert, in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director or expert consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise, by any person—

(a) in the case of a payment to a director—to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connexion with the promotion or formation of the company; or

(b) in the case of an expert—for services rendered by him or the firm in connexion with the promotion or formation of the company

*And also, in the case of a statement to be lodged by a proprietary company on becoming a public company, the following items:—*

Rates of the dividends (if any) paid by the company in respect of each class of shares in the company in each of the five financial years before the date of this statement or since the incorporation of the company, whichever period is the shorter

Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of those years

## PART II.

### *Reports to be Set Out.*

1. Where it is proposed to acquire a business, a report by a registered company auditor (who shall be named in the statement) with respect to—

- (a) the profits or losses of the business in respect of each of the five financial years before the lodging of the statement with the Registrar; and
- (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

2. (1) Where it is proposed to acquire shares in a corporation that, by reason of the acquisition or anything to be done in consequence of it or in connexion with it, will become a subsidiary of the company, a report by a registered company auditor (to be named in the statement) with respect to the profits and losses and assets and liabilities of the other corporation in accordance with Subclause (2) or (3), as the case requires, indicating how the profits or losses of the other corporation dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

(2) If the other corporation has no subsidiaries, the report referred to in Subclause (1) shall—

- (a) so far as regards profits and losses, deal with the profits or losses of the other corporation in respect of each of the five financial years immediately before the delivery of the statement to the Registrar; and
- (b) so far as regards assets and liabilities, deal with the assets and liabilities of the other corporation at the last date to which the accounts of the corporation were made up.

(3) If the other corporation has subsidiaries, the report referred to in Subclause (1) shall—

- (a) so far as regards profits and losses, deal separately with the other corporation's profits or losses as provided by Subclause (2), and in addition deal—

- (i) as a whole with the combined profits or losses of its subsidiaries; or
- (ii) individually with the profits or losses of each subsidiary,

or, instead of dealing separately with the other corporation's profits or losses, deal as a whole with the profits or losses of the other corporation and with the combined profits or losses of its subsidiaries; and

- (b) so far as regards assets and liabilities, deal separately with the other corporation's assets and liabilities as provided by Subclause (2), and in addition deal—

- (i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other corporation's assets and liabilities; or
- (ii) individually with the assets and liabilities of each subsidiary,

and shall indicate as respects the profits or losses and the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

Note.—Where a company is not required to furnish any of the reports referred to in this Part, a statement to that effect, giving the reasons, should be furnished.

*Companies*

PART III.

*Provisions Applying to Parts I. and II. of this Schedule.*

1. In this Schedule, "vendor" includes any person who is a vendor for the purposes of Schedule 4 to the Act, and "financial year" has the meaning given to it in Part III. of that Schedule.
2. If, in the case of a business that has been carried on, or of a corporation that has been carrying on business, for less than five years, the accounts of the business or corporation have only been made up in respect of four years, three years, two years or one year, Part II. has effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.
3. Any report required by Part II. shall—
  - (a) indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report that appear to the persons making the report necessary; or
  - (b) make the adjustments and indicate that adjustments have been made.

SCHEDULE 6.

Sec. 93.

STATEMENT REQUIRED UNDER DIVISION V.5.

Note.—Words or expressions contained in this Schedule that are defined in Section 87 of the Act have the same meaning as in that section.

*Matters required to be stated in Statement.*

1. The date of the statement.
2. The date of and parties to the deed referred to in Section 94 of the Act.
3. The date of and parties to any deed or instrument by which any of the provisions of the approved deed relating to the interest has been amended or abrogated.
4. The name of the trustee or representative under any such deed and the address of the trustee's or representative's registered office.
5. A summary of the provisions of the deed regulating the retirement, removal and replacement of the trustee or representative.
6. The name of the management company and the address of its registered office.
7. The names, descriptions and addresses of all the directors of the management company.
8. A summary of the provisions of the deed regulating the retirement, removal and replacement of the management company.
9. The name and address of the auditor of the accounts relating to interests under the deed.
10. A summary of the provisions of the deed regulating the appointment, retirement, removal and replacement of such auditor.
11. The duration, if ascertainable, of the undertaking, scheme, enterprise or investment contract to which the deed relates, or if the duration is not ascertainable that fact.
12. Full particulars with respect to the termination or winding-up of the undertaking, scheme, enterprise or investment contract.
13. Particulars sufficient to disclose the true nature of the undertaking, scheme, enterprise or investment contract in respect of which the interest is to be issued or offered to the public for subscription or purchase, and the property to which the interest relates.
14. The nature of the interest to be so issued or offered and of any units or sub-units into which the interest is divided and the rights in relation to them of the persons who become holders of them.
15. The address where the register of interest holders is or will be kept and the days on, and the hours during, which it is or will be accessible to the public.

16. The method of calculation provided by the deed of the price at which the management company may sell the interest or any right in respect of it, or any unit or sub-unit of the interest.

17. Particulars sufficient to describe the duties and obligations imposed on the trustee or representative appointed by the deed relating to the interest.

18. The name and address of each person or corporation with whom or with which a holder of the interest is required, obliged or entitled, in connexion with the undertaking, scheme, enterprise or investment contract, to enter into a contract, whether by way of lease or otherwise.

19. The full names, descriptions and residential addresses of the directors of each corporation referred to in Clause 18.

20. Whether any real or personal property to which the interest relates is or will become vested in the trustee or representative, the nature and description of the property and the conditions or circumstances under which it is or will become so vested.

21. Where the interest consists of rights or interests in or arising out of an investment relating to property that ordinarily depreciates in value through use or effluxion of time, particulars sufficient to disclose the true particulars of the provision made for the replacement of the property and the source or sources from which the replacement is to be made or from which the cost of such replacement is to be met.

22. The full names and residential addresses of the vendors of any property to which the interest relates, whether the property was purchased or acquired by the management company or by any persons or corporation referred to in Clause 18 or is proposed to be so purchased or acquired, a full and true description of the property and the amount paid or to be paid to each vendor for it.

23. Particulars sufficient to disclose the true nature and extent of the interest (if any) of each director of the management company, whether as a director, shareholder, partner or otherwise, in the business of each such vendor and in the property.

24. The obligations imposed on the management company or any other person to purchase from any holder the interest or any rights in respect of it or the units or sub-units of the interest for which he has subscribed or which he has purchased, and a statement of the method provided by the deed for the calculation of the purchase price.

25. A summary of the rights and obligations of the management company and of the trustee or representative governing the valuation of any investment made or property held in relation to the interest.

26. A summary of the provisions of the deed by which investments or other property comprising or forming part of the interest to which the deed relates may be varied.

27. Full information regarding the remuneration of the trustee or representative and of the management company respectively, the manner in which the remuneration is provided for under the provisions of the deed, and the charges (if any) that will be made by way of remuneration on the sale of or subscription for any such interest and on the distribution of income and capital or otherwise in connexion with the relevant undertaking, scheme, enterprise or investment contract.

28. Whether the interest or any rights in respect of it, or any units or sub-units of the interest, are transferable by the holders, and if so a summary of the provisions of the deed regulating such transfers.

29. A summary of the provisions of the deed relating to the distribution to the holders of the interest, or of units or sub-units of the interest, of the income derived from the undertaking, scheme, enterprise or investment contract.

30. Full information as to whether and to what extent any factor other than cash receipts by way of dividend, interest or bonus has been or will be taken into account in calculating the amount of income that will be payable to an interest holder.

31. If any reference is made to the yield of income obtained or likely to be obtained by the holders of the interest or of units or sub-units of the interest, a statement as to whether and to what extent anything other than cash receipts by way of dividends, interest or bonuses has been taken into account in calculating the yield.

32. A summary of the provisions of the Act and of the deed regulating the convening of meetings of holders of the interest or of units or sub-units of the interest.

33. The name and description and the date of commencement of operation of every other undertaking, scheme, enterprise or investment contract involving the issue of interests to the public conducted by the management company within the five years immediately before the date of the statement.

## 34. A declaration—

- (a) that no units or sub-units of interests purchased or subscribed for in pursuance of the statement will be allotted later than six months after the date of the statement; and
- (b) unless the conditions of issue of the units or sub-units expressly provide that certificates be not issued, that certificates will be issued by the trustee or representative to purchasers of or subscribers for units or sub-units of interests purchased or subscribed for in pursuance of the statement not more than two months after the allotment of the units or sub-units.

## 35. A summary of the provisions of the deed with respect to the undertakings—

- (a) by or on behalf of the management company relating to the allotment of interests, and of units or sub-units of interests, to which the deed relates; and
- (b) by or on behalf of the trustee or representative relating to the issue to holders of interests and of units or sub-units of interests of certificates of title to them.

## PART II.

*Reports to be set out in Statement.*

## 36. A report or reports by a person who at the time of making the report or reports was a registered company auditor, and whose name must appear as such in the statement, setting out—

- (a) information sufficiently disclosing the number of distributions (if any) of income to holders of interests, or of units or sub-units of interests, to which the deed relates in each of the five years immediately before the date of the statement during which the interests had been in existence, the amount of each distribution and the extent to which each distribution consisted of any component other than dividends, interest or bonuses, and, where it consisted of any component other than dividends, interest or bonuses, the nature and value of each of those components; and
- (b) information sufficiently disclosing the selling price and the purchase price, respectively, of those interests, units or sub-units on the date on which each distribution was made; and
- (c) information sufficiently disclosing the selling price and purchase price, respectively, of those interests, units or sub-units on such date, being a date within the period of 14 days before the date of the statement, as is specified in the relevant report; and
- (d) in respect of every issue of interests relating to any other undertaking, scheme, enterprise or investment contract conducted or entered into by the management company within the period of five years before the date of the statement, similar information to that required under Paragraphs (a), (b) and (c); and
- (e) the profits or losses of the management company (and of every corporation with which a holder of the interest is required, obliged or entitled, under the undertaking, scheme, enterprise or investment contract, to enter into any contract) in respect of each of the five years during which the company and corporation, respectively, were carrying on business immediately before the date of the statement, and the rates of dividend (if any) paid by the company and the corporation in respect of each of those years, and the assets and liabilities of the company and of the corporation as at the last date to which its accounts were made up.

37. If, in the case of a company that has been carrying on business, or of a business that has been carried on, for less than five years, the accounts of the company or business have only been made up in respect of four years, three years, two years or one year, this Schedule has effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

## SCHEDULE 7.

Sec. 166, 168.

## ANNUAL RETURN OF A COMPANY HAVING A SHARE CAPITAL.

## PART I.

*Contents of Annual Return.*

1. The address of the registered office of the company.
2. If the register of members is kept elsewhere than at the registered office, the address of the place where it is kept.
3. A summary, distinguishing between shares issued for cash and shares issued as fully or partly paid-up otherwise than in cash, specifying—
  - (a) the amount of the share capital of the company and the number of the shares into which it is divided; and
  - (b) the number of shares taken up from the incorporation of the company to the date of the return; and
  - (c) the amount called up on each share; and
  - (d) the total amount of calls received, including payments on application and allotment; and
  - (e) the total amount (if any) agreed to be considered as paid on shares that have been issued as fully or partly paid-up otherwise than in cash; and
  - (f) the total amount of calls unpaid; and
  - (g) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures since the date of the last return; and
  - (h) particulars of—
    - (i) the discount allowed on the issue of any shares issued at a discount; or
    - (ii) of so much of the discount as has not been written off at the date of the return; and
  - (i) the total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the last return; and
  - (j) the total number of shares forfeited; and
  - (k) the total amount (if any) paid on shares forfeited.
4. Particulars of the total amount of the indebtedness of the company in respect of all charges that are required to be registered with the Registrar.
5. Except in the case of a no liability company or a company exempted under Section 168, a list as at the date of the return or as at such other date as the Registrar, in the case of a particular company, authorizes—
  - (a) containing the names and addresses of all persons who on that date are members of the company; and
  - (b) stating the number of shares held by each member as at the date of the list; and
  - (c) if the names are not arranged in alphabetical order, having annexed an index sufficient to enable the name of any person in the list to be easily found.
6. Where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the list shall give particulars as to the amount of stock or the number of stock units instead of the amount of shares.
7. In the case of a company keeping a branch register—
  - (a) the list referred to in Clause 5 is not required to contain any particulars that are contained in entries in the branch register if copies of the entries are not received at the registered office of the company before the date of the list; and
  - (b) where an annual return or a list of members is dated between the date when any entries are made in the branch register and the date on which copies of the entries are received

at the registered office of the company, the particulars contained in the entries, so far as they are relevant to an annual return, shall be included in the next or a subsequent annual return, as may be appropriate having regard to the particulars included in that return with respect to the company's register of members.

8. All such particulars with respect to the persons who at the date of the return are the directors of the company and any person who at that date is a manager or secretary of the company as are by the Act required to be contained in the register of directors, managers and secretaries.

9. Name and address of the auditor of the company.

10. In the case of a no liability company, particulars of—

- (a) the date when each call made since the date of the last return, or (in the case of a first return) since the date of incorporation, was payable; and
- (b) the dates since the last return, or (in the case of a first return) incorporation, when shares forfeited were offered for sale, and the place of offer; and
- (c) the number of shares sold at each sale of forfeited shares made since the date of the last return, or (in the case of a first return) since the date of incorporation; and
- (d) the number of shares unsold at each offer for sale of forfeited shares made since the date of the last return, or (in the case of a first return) since the date of incorporation; and
- (e) the number of shares disposed of under Section 335(3) of the Act since the date of the last return, or (in the case of a first return) since the date of incorporation, being shares withdrawn from sale or for which no bid was received.

PART II.

*Form of Annual Return of a Company having a Share Capital.*

Annual return of Limited made up to 19 (being the date of  
 or a date not later than the 14th day after the date of the annual general meeting in 19 ).  
 The date of the annual general meeting of the company was 19 .  
 The address of the registered office of the company is  
 The address of the place at which the register of members is kept, if other than the registered office,  
 is

*Summary of Share Capital and Shares.*

Nominal share capital K	divided into <sup>1</sup>				
				shares of K	each.
				shares of K	each.
Total number of shares taken up <sup>1</sup> to				19	(being the date of the return or other authorized date)
Number of shares issued subject to payment wholly in cash					
Number of shares issued as fully paid-up otherwise than in cash					
Number of shares issued as partly paid-up to the extent					
of					
per share otherwise than in cash					
<sup>2</sup> Number of shares (if any) of each class issued at a discount					
Total amount of discount on the issue of shares that has not					
been written off at the date of this return				K.	
<sup>3</sup> There has been called up on each of				shares, K	
<sup>3</sup> There has been called up on each of				shares, K	
<sup>3</sup> There has been called up on each of				shares, K	
<sup>4</sup> Total amount of calls received, including payments on					
application and allotment					
Total amount (if any) agreed to be considered as paid on				shares that have	
been issued as fully paid-up otherwise than in cash					K.



Total amount (if any) agreed to be considered as paid on shares that have been issued as partly paid-up to the extent of _____ per share otherwise than in cash	K.
Total amount of calls unpaid	K.
Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures since the date of the last return	K.
Total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the last return	K.
Total number of shares forfeited	
Total amount paid (if any) on shares forfeited	K.
<sup>5</sup> Total amount of the indebtedness of the company in respect of all charges that are required to be registered with the Registrar	K.
<sup>1</sup> Where there are shares of different kinds or amounts (e.g., preference and ordinary, or K20.00 and K10.00), state the numbers and nominal values separately.	
<sup>2</sup> If the shares are of different kinds, state them separately.	
<sup>3</sup> Where various amounts have been called or there are shares of different kinds, state them separately.	
<sup>4</sup> Include what has been received on forfeited as well as on existing shares.	
<sup>5</sup> State in respect of each charge the registered number, the date of registration and the amount of indebtedness at the date of the return.	

*Copy of last audited Balance-sheet and Profit and Loss Account of the Company.*

(1) Except where the company is an exempt proprietary company on the date of the return and has been an exempt proprietary company since the date of the previous return, the incorporation of the company or 1 July 1964 (being the date of commencement of the pre-Independence *Companies Act* 1963), whichever last occurred, this return must include a copy, certified by a director or by the manager or secretary of the company to be a true copy, of the last balance-sheet and of the last profit and loss account that have respectively been audited by the company's auditors (including every document required by law to be annexed or attached) together with a copy of the report of the auditors on them (also so certified).

(2) If any such balance-sheet or account is in a foreign language, there must also be annexed to it a certified translation.

(3) If the last balance-sheet or profit and loss account did not comply with the requirements of the law as in force at the date of the audit, there must be made such additions to and corrections in the copy of it as would have been required to be made in it in order to make it comply with those requirements, and the fact that the copy has been so amended must be stated on it.

(4) If a company has had more than one such audited balance-sheet or profit and loss account since the date of the last return, every such balance-sheet and profit and loss account must be included.

*Certificate to be Given by all Companies.*

A certificate in the following form must be given by the secretary or a director of every company and, in the case of an exempt proprietary company, by both a director and a secretary:—

*Certificate.*

I/We<sup>1</sup> after having made due inquiries certify—

- (a) that the provisions of the *Unclaimed Moneys Act* have been complied with, so far as they apply to the company; and
- (b) having made an inspection of the share register, that
 

transfers	<i>have</i> <sup>1</sup>	been registered since the date of	<i>the last annual return</i> <sup>1</sup> ;
	<i>have not</i>		<i>the incorporation of the company</i> ; and
- (c) <sup>2</sup>that the company has not, since the date of the last annual return<sup>3</sup>, issued any invitation to the public to subscribe for any shares in or debentures of the company, or to deposit moneys for fixed periods or payable at call; and

- (d) <sup>4</sup>that the excess of members of the company above 50 (counting joint holders of shares as one person) consists wholly of persons who are in the employment of the company or of its subsidiary or persons who, while previously in the employment of the company or of its subsidiary, were and have continued to be members of the company; and
- (e) <sup>5</sup>that, to the best of our knowledge and belief, the company is an exempt proprietary company, and has been an exempt proprietary company, for the purposes of the Companies Act since

*the date of the previous return<sup>6</sup>;*

*the incorporation of the company<sup>6</sup>;*

*1 July 1964 (being the date of commencement of the pre-Independence Companies Act 1963)<sup>6</sup>; and*

- (f) <sup>7</sup>that, on \_\_\_\_\_ 19\_\_\_\_, all the members of the company agreed in accordance with Section 174 of the Act not to appoint an auditor for the financial year 19\_\_\_\_.

*Signature*

*Director<sup>8</sup>*

*Signature*

*Secretary*

<sup>1</sup>Strike out whichever is inapplicable.

<sup>2</sup>Strike out, except in the case of a proprietary company.

<sup>3</sup>In the case of the first annual return of a proprietary company, strike out the words "last annual return" and substitute the words "incorporation of the company".

<sup>4</sup>Strike out, except in the case of a proprietary company whose members exceed 50.

<sup>5</sup>Strike out, except in the case of an exempt proprietary company.

<sup>6</sup>Strike out if not appropriate.

<sup>7</sup>Strike out if inapplicable. Note—this paragraph is applicable only to an exempt proprietary company.

<sup>8</sup>A certificate signed by the same person in the capacity of both director and secretary will not be accepted. See Section 137(5) of the Act.

*Particulars of the Directors, Manager, Secretaries and Auditors of the Annual Return.*

*Limited at the Date*

	Present forename or other name or names and surname*.	Any former forename or other name or names or surname.	Usual address (usual residential address in case of directors).	Other business occupation and, in the case of directors, particulars of other directorships required to be shown by Section 141(2)(d) and (3) of the Act (if none, say so).
Director†				
Managers (if any)				
Secretaries				
Auditors for current financial year.				

\*In the case of a corporation, its corporate name and registered or principal office should be shown.

†"Director" includes any person who occupies the position of a director, and any person in accordance with whose directions or instructions the directors of a company are accustomed to act.

**Companies**

Ch. No. 146

*List of persons holding shares in* \_\_\_\_\_ *Limited on* \_\_\_\_\_ 19\_\_\_\_ (being the date of the return or other authorized date) *and an account of the shares so held.*

Note.—If the names in this list are not arranged in alphabetical order, an index sufficient to enable the name of any person in the list to be readily found must be annexed to this list.

Note.—In the case of a no liability company or a company exempted under Section 168 of the Act, this list is not required to be supplied.

Folio in register ledger containing particulars.	Names and addresses.	*Number of shares held by existing members†.

\*The aggregate number of shares held, and not the distinctive numbers, must be stated, and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.

†When the shares are of different classes, these columns may be subdivided so that the number of each class held may be shown separately. Where any shares have been converted into stock, particulars of the amount of stock must be shown.

*No Liability Companies.*

Particulars as to calls and as to sales of forfeited shares :—

Date when each call made since the date of the last return or (in the case of a first return) since the date of incorporation was payable:

Dates since the last return or (in the case of a first return) incorporation when shares forfeited were offered for sale and the place of offer:

Number of shares sold at each sale of forfeited shares made since the date of the last return or (in the case of a first return) since the date of incorporation:

Number of shares unsold at each offer for sale of forfeited shares made since the date of the last return or (in the case of a first return) since the date of incorporation:

Number of shares disposed of under Section 335(3) of the Act, since the date of the last return, being shares withdrawn from sale or for which no bid was received:

(Signature.)

(State whether director or manager or secretary.)

## SCHEDULE 8.

Sections 171, 352.

## ACCOUNTS.

*Profit and Loss Account.*

1. There shall be shown in respect of the period of accounting—

- (a) the net balance of profit and loss on the company's trading; and
- (b) income from investments in subsidiaries of the company; and
- (c) income from other investments, distinguishing between income received from any shares and debentures that are dealt in on any prescribed Stock Exchange in Papua New Guinea or Australia and income received from other sources; and
- (d) amounts (if any) charged for depreciation or amortization on—
  - (i) investments; and
  - (ii) goodwill; and
  - (iii) fixed assets; and
- (e) the amount of interest on the company's debentures and fixed term loans; and
- (f) any profit or loss arising from a sale or revaluation of fixed or intangible assets if brought into account in determining the company's profit or loss; and
- (g) the amounts (if material) set aside or proposed to be set aside to, or withdrawn from, reserves; and
- (h) the amount (if material) set aside to provisions other than provisions for depreciation, renewals or diminution in value of assets or, as the case may be, the amount (if material) withdrawn from such provisions and not applied for the purposes of them; and
- (i) the amounts respectively provided for redemption of share capital and for redemption of loans; and
- (j) provision made for payment of income tax in respect of the period of accounting; and
- (k) the aggregate amount of the dividends paid and the aggregate amount of the dividends proposed to be paid; and
- (l) the total of the amounts paid to the directors as remuneration for their services, inclusive of—
  - (i) all fees, percentages, bonuses and commissions or other emoluments paid to them by, or receivable by them from, the company, or by or from any subsidiary of the company; and
  - (ii) commission paid or payable for subscribing or agreeing to subscribe, or procuring or agreeing to procure, subscriptions for any shares in or debentures of the company or of its holding company or any subsidiary of the company,
 but the salaries and bonuses and commissions paid by way of salary of directors who are engaged in the full time employment of the company or a subsidiary of the company need not be included in this amount; and
- (m) the total of the amount paid to or receivable by the auditors as remuneration for their services as auditors, inclusive of all fees, percentages or other payments or consideration given, by or from the company or by or from any subsidiary of the company.

*Balance-sheet.*

2. (1) There shall be shown as at the end of the period of accounting—

- (a) the amount of authorized capital and particulars of issued capital—
  - (i) distinguishing between classes of shares; and
  - (ii) specifying by way of note to the balance-sheet any portion of the share capital that has not already been called up and that is not capable of being called up

- except in the event and for the purposes of the winding-up of the company;  
and
- (iii) stating the rates of dividend, and whether participating or cumulative or both, attaching to shares other than ordinary shares; and
  - (iv) stating the amount of calls in arrear in each class; and
- (b) the part of the issued capital that consists of redeemable preference shares, the date on or before which those shares are, or are liable, to be redeemed, the earliest date on which the company has power to redeem the shares, and the amount of the premium (if any) at which the shares are redeemable; and
- (c) so far as the information is not given in the profit and loss account, any share capital on which interest has been paid out of capital during the financial year, and the rate at which interest has been so paid; and
- (d) the amount of the share premium account; and
- (e) particulars of any redeemed debentures that the company has power to re-issue; and
- (f) under separate headings, so far as they are not written off—
- (i) the preliminary expenses; and
  - (ii) any expenses incurred in connexion with any issue of shares or debentures; and
  - (iii) any sums paid by way of commission in respect of any shares or debentures; and
  - (iv) any sums allowed by way of discount in respect of any debentures; and
  - (v) the amount of the discount allowed on any issue of shares at a discount; and
  - (vi) if the amount of the goodwill and of any patents and trade marks, or part of that amount, is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company relating to the stamp duty payable in respect of any such contract or the conveyance of any such property—the amount, or the part of the amount, so shown or ascertained; and
- (g) the reserves, provisions, liabilities, fixed assets and current assets classified separately under headings appropriate to the company's business showing separately the provision for taxation and stating the method used to arrive at the amount of assets under each heading, but—
- (i) where the amount of any class is not material, it may be included under the same heading as some other class; and
  - (ii) where any assets of one class are not separable from assets of another class, those assets may be included under the same heading; and
- (h) under separate headings, stating the methods used to arrive at the amount of the investments under each heading—
- (i) investments in Government, municipal and other public debentures, stock or bonds; and
  - (ii) investments in subsidiaries of the company; and
  - (iii) investments in companies (not being subsidiaries of the company) the shares in or debentures of which are dealt in on any prescribed Stock Exchange in Papua New Guinea or elsewhere; and
  - (iv) investments in any other companies; and
- (i) under separate headings—
- (i) amounts owing by subsidiaries of the company; and
  - (ii) trade debts and bills receivable (other than amounts owing by subsidiaries of the company); and
  - (iii) the amount outstanding of any loan made, guaranteed or secured by the company, being a loan made to a director of the company or of a related company, or a loan made to another company in which a director of the company or of a related company owns a controlling interest; and

(iv) other debts owing to the company,

and where any amounts or debts shown under such a heading include any sums that consist of or are in the nature of interest, accommodation charges, service charges, maintenance charges or insurance premiums, those sums shall, except to the extent that they have become due and payable and have been demanded, be shown as a deduction from the amounts or debts shown under that heading; and

- (j) balance of profit and loss account; and
- (k) debentures, showing separately amounts that are redeemable not later than 12 months after the date to which the accounts are made up and amounts that are redeemable later than 12 months after that date; and
- (l) liabilities (other than debentures, bank loans and overdrafts) secured by charges on the assets whether registered or not, showing separately the aggregate of the amounts that are payable not later than 12 months after the date to which the accounts are made up and the aggregate of the amounts that are payable later than 12 months after that date; and
- (m) bank loans and overdrafts; and
- (n) amounts borrowed without security, showing separately the aggregate of the amounts that are repayable not later than 12 months after the date to which the accounts are made up and the aggregate of the amounts that are repayable later than 12 months after that date; and
- (o) amounts owing to subsidiaries of the company; and
- (p) amounts owing to trade creditors (other than amounts owing to subsidiaries of the company); and
- (q) other amounts owing by the company; and
- (r) under separate headings (to be stated by way of note if not otherwise shown)—
  - (i) contingent liabilities unsecured; and
  - (ii) contingent liabilities secured on the company's assets; and
  - (iii) where practicable, the aggregate amount (if material) of contracts for capital expenditure, so far as that amount has not been provided for; and
- (s) arrears of dividends on preference shares.

(2) For the purposes of this clause, where more than one method is used to arrive at any amount shown in the balance-sheet there shall be shown in the balance-sheet a separate total in respect of each of the methods so used.

(3) In the case of a no liability company, the balance-sheet shall show, in addition to the matters required by the preceding provisions of this clause—

- (a) the total number of shares forfeited; and
- (b) the number of shares forfeited in respect of each call and amount of each of those calls.

(4) There must be shown, by way of note or otherwise, on the balance-sheet of every company that is a borrowing corporation or a guarantor corporation, a schedule setting out separately estimates of the amounts of the liabilities payable by and the debts payable to the company—

- (a) not later than two years; and
- (b) later than two years but not later than five years; and
- (c) later than five years,

from the date to which the balance-sheet of the company was made up.

3. (1) For the purposes of this clause, the net amount at which any assets stand in the company's books at the commencement date (after deduction of the amounts previously provided or written off for depreciation or diminution in value) shall, if the figures relating to the period before that date cannot be obtained without unreasonable expense or delay, be treated as if it were the amount of the valuation of those assets made at that date, and where any of those assets are sold the net amount less the amount of the sales shall be treated as if it were the amount of a valuation so made of the remaining assets.

- (2) The method of arriving at the amount of any investment or fixed asset shall, subject to Subclause (3), be to take the difference between—
- (a) its cost or, if it stands in the company's books at a valuation other than cost, the amount of the valuation; and
  - (b) the aggregate amount provided or written off since the date of acquisition or valuation, as the case may be, for depreciation or diminution in value.
- (3) Subclause (2) does not apply—
- (a) to assets for which the figures relating to the period beginning with the commencement date cannot be obtained without unreasonable expense or delay; or
  - (b) to assets the replacement of which is provided for wholly or partly—
    - (i) by making provision for renewals and charging the cost of replacement against the provision so made; or
    - (ii) by charging the cost of replacement direct to revenue; or
  - (c) to any investments of which the market value (or, in the case of investments not having a market value, their value as estimated by the directors) is shown either as the amount of the investments or by way of note; or
  - (d) to goodwill, patents or trade marks.
- (4) For the assets under each heading whose amount is arrived at in accordance with Subclause (2), there shall be shown—
- (a) the aggregate of the amounts referred to in Subclause (2)(a); and
  - (b) the aggregate of the amounts referred to in Subclause (2)(b).
- (5) As respects the assets under each heading whose amount is not arrived at in accordance with Subclause (2) because their replacement is provided for as mentioned in Subclause (3)(b), there shall be stated—
- (a) the means by which their replacement is provided for; and
  - (b) the aggregate amount of the provisions (if any) made for renewals and not used.

*Holding and Subsidiary Companies.*

4. (1) There shall be annexed to the profit and loss account of every holding company—
- (a) a separate profit and loss account for each subsidiary of the company; or
  - (b) a consolidated profit and loss account of the holding company and of its subsidiaries, eliminating all inter-company transactions.
- (2) There shall be clearly stated (by way of note or otherwise), either in the profit and loss account of the holding company or in a document annexed to it in accordance with Subclause (1), the name and place of incorporation of each subsidiary to which the profit and loss account or other document relates.
- (3) There shall be annexed to the balance-sheet of every holding company—
- (a) a balance-sheet of each subsidiary of the company; or
  - (b) a consolidated balance-sheet of the holding company and of its subsidiaries, eliminating all inter-company balances.
- (4) The profit and loss accounts and balance-sheets shall be in the same form as the profit and loss account and balance-sheet of the holding company, and shall be accompanied by the auditor's report on that profit and loss account and balance-sheet.
- (5) In the case of a subsidiary company incorporated outside Papua New Guinea (whether it has or has not established a place of business in Papua New Guinea), it is sufficient if the separate profit and loss account or balance-sheet (as the case requires) of the subsidiary company is in such form and is so reported on by auditors and contains such particulars and includes such documents (if any) as the company is required to make out and lay before the company in general meeting by the law for the time being applicable to the company in the place where it is incorporated.
- (6) If the auditor's report on the balance-sheet or profit and loss account of a subsidiary company is qualified in any way, the separate balance-sheet of the subsidiary company or the consolidated balance-sheet of the holding company, as the case may be, shall contain particulars of the manner in which the report is qualified.

(7) This clause does not apply to a subsidiary that would not be a subsidiary but for the operation of Section 3(1)(a)(i) or (ii), of the Act.

*General.*

5. (1) All amounts shown in profit and loss accounts and balance-sheets shall be quoted in Papua New Guinea currency.

(2) Except in the case of the first balance-sheet or profit and loss account laid before the company after the commencement date, there shall be shown in every balance-sheet and profit and loss account the corresponding amounts at the end of the immediately preceding financial year for all items shown in the balance-sheet or profit and loss account.

(3) Every profit and loss account or balance-sheet shall state by way of note—

(a) if any conversion into Papua New Guinea currency has been made for the purposes of the profit and loss account and balance-sheet, the basis of the conversion of the other currency into Papua New Guinea currency; and

(b) the aggregate quoted market value of any investment of a kind referred to in Clause 2(1)(b).

---

SCHEDULE 9.

---

Section 195.

TAKE-OVER OFFERS.

PART A.

*Requirements with which Take-over Offers must Comply.*

1. The offer shall—

(a) be dated; and

(b) be dispatched to the offeree within three days of its date; and

(c) state that, except so far as it and all other take-over offers made under the take-over scheme may be totally withdrawn and every person released from any obligation incurred in them, it will remain open for acceptance by the offeree for at least one month from that date.

2. The offer must not be conditional on the offeree approving or consenting to any payment or other benefit being made or given to any director of the offeree corporation or any related corporation as compensation for loss of office or as consideration for, or in connexion with, his retirement from office.

3. The offer shall state—

(a) whether or not the offer is conditional on acceptances of offers made under the take-over scheme being received in respect of a minimum number of shares and, if so, that number; and

(b) if the shares are to be acquired in whole or in part for cash, the period within which payment will be made and the method of payment; and

(c) if the shares are to be acquired for a consideration other than cash, the period within which the offeree will receive the consideration.

4. Where the offer is conditional on acceptances in respect of a minimum number of shares being received, the offer shall specify—

(a) a date as the latest date on which the offeror corporation can declare the offer to have become free from that condition; and

(b) a further period of not less than seven days during which the offer will remain open for acceptance.



## PART B.

*Requirements with which Statement Given by Offeror Corporation must Comply.*

## 1. The statement shall—

- (a) specify the names, descriptions and addresses of all the directors of the offeror corporation; and
- (b) contain a summary of the principal activities of the offeror corporation; and
- (c) specify the number and description and amount of marketable securities in the offeree corporation held by or on behalf of the offeror corporation, or if none are held contain a statement to that effect; and
- (d) if the shares are to be acquired for a consideration other than wholly in cash—
  - (i) set out the reports that if the statement were a prospectus issued on the date on which notice of the take-over scheme is given to the offeree corporation, would be required to be set out in it under Clauses 19 and 22 of Schedule 4 to this Act; and
  - (ii) specify—
    - (A) details of any alterations in the capital structure of the offeror corporation or of any subsidiary of that corporation during the period of five years immediately before the date on which notice of the take-over scheme is given to the offeree corporation; and
    - (B) particulars of the source of any increase in capital.

2. The statement shall contain particulars of any restriction on the right to transfer the shares to which the take-over scheme relates contained in the memorandum or articles or other instrument constituting or defining the constitution of the offeree corporation that has the effect of requiring the holders of the shares, before transferring them, to offer them for purchase to members of the offeree corporation or to any other person and, if there is any such restriction, the arrangements (if any) being made to enable the shares to be transferred in pursuance of the take-over scheme.

3. If the consideration for the acquisition of shares under the take-over scheme is to be satisfied in whole or in part by the payment of cash, the statement shall contain—

- (a) details of the arrangements that have been, or will be, made to secure payment of the cash consideration; or
- (b) if no such arrangements have been or will be made, a statement to that effect.

## 4. The statement shall set out—

- (a) whether or not it is proposed in connexion with the take-over scheme that any payment or other benefit be made or given to any director of the offeree corporation or of a related corporation as compensation for loss of office or as consideration for, or in connexion with, his retirement from office and, if so, particulars of the proposed payment or benefit in respect of each such director; and
- (b) whether or not there is any other agreement or arrangement made between the offeror corporation and any of the directors of the offeree corporation in connexion with or conditional on the outcome of the scheme, and, if so, particulars of any such agreement or arrangement; and
- (c) whether or not there has been within the knowledge of the offeror corporation any material change in the financial position of the offeree corporation since the date of the last balance-sheet laid before the corporation in general meeting, and, if so, particulars of any such change; and
- (d) whether or not there is any agreement or arrangement by which any shares acquired by the offeror corporation in pursuance of the scheme will or may be transferred to any other person, and if so—
  - (i) the names of the persons who are parties to the agreement or arrangement, and the number, description and amount of the shares which will or may be so transferred; and
  - (ii) the number (if any) and description and amount of shares of the offeree corporation held by or on behalf of each of those persons, or if no such shares are so held a statement to that effect.

5. The succeeding provisions of this Part apply only where the consideration to be offered in exchange for shares of the offeree corporation consists in whole or in part of marketable securities issued or to be issued by the offeror corporation or by any other corporation.

6. Where the marketable securities are listed on or dealt in on a Stock Exchange, the statement shall state that fact and specify—

- (a) the Stock Exchanges concerned; and
- (b) the latest available market sale price before the date on which notice of the take-over scheme is given to the offeree corporation; and
- (c) the highest and lowest market sale price during the three months immediately before that date and the respective dates of the relevant sales; and
- (d) where the take-over scheme has been the subject of a public announcement in newspapers or by any other means before notice of the scheme being given to the offeree corporation, the latest market sale price immediately before the public announcement.

7. Where the securities are listed on or dealt in on more than one Stock Exchange, it is sufficient compliance with Clause 6(a) if information with respect to the securities is given in relation to the Stock Exchange at which there have been the greatest number of recorded dealings in the securities in the three months immediately before the date on which notice of the take-over scheme is given to the offeree corporation.

8. Where the take-over scheme relates to securities that are not listed on or dealt in on a Stock Exchange, the statement must contain all the information that the offeror corporation has as to the number, amount and price at which the securities have been sold in the three months immediately before the date on which notice of the scheme is given to the offeree corporation, or if the offeror corporation has no such information a statement to that effect.

#### PART C.

##### *Requirements with which Statement Given by Offeree Corporation must Comply.*

1. The statement shall indicate—

- (a) whether or not the board of directors of the offeree corporation recommends to share holders the acceptance of take-over offers made, or to be made, by the offeror corporation under the take-over scheme; or
- (b) that the board of directors of the offeree corporation does not desire to make a recommendation or considers itself not justified in making a recommendation.

2. The statement shall set out—

- (a) the number, description and amount of marketable securities in the offeree corporation held by or on behalf of each director of the corporation, or in the case of a director where none are so held that fact; and
- (b) in respect of each such director of the offeree corporation by whom, or on whose behalf, shares to which the take-over scheme relates are held—
  - (i) whether or not the present intention of the director is to accept any take-over offer that may be made in pursuance of the take-over scheme in respect of those shares; or
  - (ii) that the director has not decided whether he will accept such a take-over offer; and
- (c) whether or not any marketable securities of the offeror corporation are held by, or on behalf of, any director of the offeree corporation, and if so the number, description and amount of the marketable securities so held; and
- (d) whether or not it is proposed in connexion with the take-over scheme that any payment or other benefit be made or given to any director of the offeree corporation or of any related corporation as compensation for loss of office or as consideration for, or in connexion with, his retirement from office, and if so particulars of the proposed payment or benefit; and
- (e) whether or not there is any other agreement or arrangement made between any director of the offeree corporation and any other person in connexion with or conditional on the outcome of the take-over scheme, and if so particulars of any such agreement or arrangement; and

- (f) whether or not any director of the offeree corporation has any interest in any contract entered into by the offeror corporation, and if so particulars of the nature and extent of such interest; and
- (g) if the shares to which the scheme relates are not listed on or dealt in on a Stock Exchange, all the information that the offeree corporation has as to the number, amount and price at which any such shares have been sold in the six months before the date on which notice of the take-over scheme was given to the offeree corporation; and
- (h) whether or not there has been any material change in the financial position of the offeree corporation since the date of the last balance-sheet laid before the corporation in general meeting, and if so particulars of the change.

---

SCHEDULE 10.

---

Sec. 370.

SUBSTITUTE PROVISIONS IN RESPECT OF CERTAIN COMPANIES.

Substantive Provision.	Substitute Provision.
Section 6(1)	The fees specified in Items 7, 8, 10, 11, 12, 13, 14, 15, 24, 32, 37, 38, 39, 40, 41, 42, 43, 44 and 45 of Schedule 1 shall be paid to the Registrar.
Section 29(2)	The substantive provision applies with the following modification :— Omit "by post, 21 days' written notice", insert "in such manner as the Registrar in writing directs, notice".
Section 39(1)	(1) Unless— (a) a prospectus has been registered by the Registrar; and (b) the contents of the prospectus are brought to the attention of prospective investors in a manner approved by the Registrar in writing, a person who issues, circulates or distributes a form of application for shares in or debentures of a corporation is guilty of an offence. (1A) A person to whom Subsection (1) applies shall— (a) carry and produce on demand evidence under the common seal of the company that he is authorized to collect money on behalf of the company; and (b) issue receipts for all moneys collected by him; and (c) pay all moneys collected by him into the bank account of the company as soon as practicable after it has been collected.
Section 41(1)	To comply with the requirements of this Act, a prospectus must give a true, fair and balanced presentation of all the facts pertinent to an assessment of the worth of the investment being offered or intended to be offered, that are known to the directors or promoters.
Section 50(10)	The substantive provision applies with the following modification:— Omit "after the issue of the prospectus", insert "after the issue of the prospectus unless the Registrar, after being satisfied that the facts stated in the prospectus are still correct, extends the time".
Section 56(1)(d)	(d) subject to Subsection (2), the full name, or the surname and at least one forename or other name and other initials, and the address, of each of the allottees, and the number and class of shares allotted to him, but not including any allottee who after the allotment holds less than 1% of the issued capital of the company and who has fully paid in cash for the shares allotted; and

Substantive Provision.	Substitute Provision
Section 69(1)	<p>(e) whether or not any shares comprised in the allotment have been allotted to persons other than those referred to in Section 369(1)(a)</p> <p>The substantive provision applies with the following modification :—</p> <p>Omit "on its own shares", insert—</p> <p>"on its own shares, except that a company may—</p> <p>(a) purchase fully-paid shares from a member at a price not exceeding their nominal value; or</p> <p>(b) with the written approval of the Registrar, purchase any such shares at a higher price,</p> <p>and may resell any such shares at a price not less than their nominal value if the purchase money is derived from, and the proceeds of resale are contributed to, a surplus arising before the purchase of total assets over total liabilities (including contingent liabilities) of the company, but the company—</p> <p>(c) shall not at any time hold more than 10% of the issued shares of the company; and</p> <p>(d) shall not exercise any rights and is not entitled to any benefits as a shareholder."</p>
Section 143(2)	<p>(2) The directors must—</p> <p>(a) at least seven days before the day on which the meeting is to be held, prepare a report; and</p> <p>(b) cause the contents of the report to be read out to the members at the meeting.</p>
Section 145(2)	<p>The substantive provision applies with the following modification :—</p> <p>Omit "written".</p>
Section 145(4)	<p>The substantive provision applies with the following modification :—</p> <p>Omit "by Table A", insert "by Table A, or in such other manner as the Registrar, in writing, directs".</p>
Section 166(1)	<p>The substantive provision applies with the following modification :—</p> <p>Omit "as are applicable to the company", insert—</p> <p>"as are applicable to the company but—</p> <p>(a) the return need not include—</p> <p>(i) documents already lodged under Section 173; or</p> <p>(ii) in the list of members, details of the individual shareholdings of persons of a kind referred to in Section 368(1)(a) whose respective shareholdings do not exceed 1% of the total issued capital, all of which shareholdings may be aggregated in a single entry in the list; and</p> <p>(b) the return shall include a certificate signed by two directors stating, to the best of their knowledge, the number of shares in the company held by or on behalf of persons other than persons of a kind referred to in Section 368(1)(a), or stating that no shares are so held, as the case may be."</p>
Section 166(2)	<p>The substantive provision applies with the following modification :—</p> <p>Omit "The return shall", insert "Subject to Subsection (1), the return shall".</p>
Section 173(1)	<p>The substantive provision applies with the following modification :—</p> <p>Omit "be sent to all persons entitled to receive notice of general meetings of the company", insert "be lodged with the Registrar, who is</p>

---

Substantive Provision.	Substitute Provision
Section 173(3)	entitled to attend and address the members at the meeting either personally or by his agent". The substantive provision applies with the following modification :— Omit "to send a copy of a document to a person", insert "to lodge a document with the Registrar".

---



INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 146.

*Companies Regulation.*

ARRANGEMENT OF SECTIONS.

PART I.—PRELIMINARY.

1. Interpretation—  
"agent".

PART II.—FEES AND FORMS.

2. Forms.
3. Particulars prescribed by forms.
4. Directions in forms.

PART III.—GENERAL PROVISIONS RELATING TO FORMS AND OTHER DOCUMENTS.

5. Documents lodged with Registrar.
6. Verification and certification of documents.
7. Security by official liquidator.
8. Agents' authorities to be lodged.
9. Matters, etc., to be included in deeds.
10. Signed copies of statutory report and auditor's report to be lodged.
11. Notice, etc., of take-over offers to be lodged with Registrar and Stock Exchanges.
12. Notice to dissenting and non-assenting shareholders.
13. Certified copies of statements of affairs.
14. Documents to be lodged where change or alteration made in foreign company.
15. Translations of documents.
16. Time for lodging documents.
17. Statutory declarations.
18. Signature of documents lodged with Registrar.

PART IV.—MEETINGS.

*Division 1.—Meetings of Creditors and Contributors.*

19. Application of Division 1.
20. Notices of meetings.
21. Quorum.
22. Chairman.
23. Adjournment.
24. Passing of resolutions.
25. Creditors who may vote.
26. Votes of secured creditors.
27. Requirement to creditor to give up security.
28. Admission and rejection of proof for purpose of voting.

- 29. Record of meeting.
- 30. Lodgement of copy of minutes with Registrar.

*Division 2.—Meetings of Debenture-holders.*

- 31. Application of Division 2.
- 32. Quorum.
- 33. Adjournment.
- 34. Passing of resolutions.
- 35. Casting vote.
- 36. Record of meeting.

*Division 3.—Joint Meetings of the Members and Creditors of a Company.*

- 37. Application of Division 3.
- 38. Notices of joint meetings called by official manager.
- 39. Quorum.
- 40. Chairman.
- 41. Adjournment.
- 42. Passing of resolutions.
- 43. Casting vote.
- 44. Record of meeting.

*Division 4.—Proxies of Creditors and Contributories.*

- 45. Appointment of proxies.
- 46. Form of proxies.
- 47. Proxies of disabled persons.
- 48. Proxy forms to accompany notice of meetings.
- 49. General proxy.
- 50. Special proxy.
- 51. Liquidator as proxy.
- 52. Voting by proxy where financially interested.
- 53. Liquidator may appoint deputy.

**PART V.—PROOF OF DEBTS IN VOLUNTARY WINDING-UP.**

- 54. Application of Part V.
- 55. Proof of debt.
- 56. Statutory declaration of proof of debt.
- 57. Notice of day by which debts to be proved.
- 58. Time for liquidator to deal with proofs and notice of rejection of proof.
- 59. Persons who may make statutory declarations.
- 60. Contents of statutory declaration.
- 61. Statement of security.
- 62. Costs of proof.
- 63. Discount.
- 64. Periodical payments.
- 65. Debts payable at future time.
- 66. Production of instrument on which company liable.



PART VI.—MISCELLANEOUS.

- 67. Prescribed bodies.
- 68. Registration fees.
- 69. Commission payable to Registrar.
- 70. Stock Exchanges.
- 71. General penalty.

SCHEDULES.

SCHEDULE 1.—List of Forms.

SCHEDULE 2.—Forms.

- FORM 1.—Declaration to be made by Registrar of Companies and Persons Authorized to Make Inspections.
- FORM 2.—Return of Partners of Firm of Auditors.
- FORM 3.—Notice Requiring a Person to give Evidence before the Companies Auditors Board.
- FORM 4.—Official Liquidator's Bond (with Surety).
- FORM 5.—Statutory Declaration of Compliance.
- FORM 6.—Certificate of Incorporation of Public Company.
- FORM 7.—Certificate of Incorporation of Proprietary Company.
- FORM 8.—Notice of Resolution.
- FORM 9.—Certificate of Registration of Order of National Court affecting Memorandum of Association.
- FORM 10.—Certificate of Incorporation on Change of Name of Company.
- FORM 11.—Application for Reservation of Name.
- FORM 12.—Statutory Declaration of Compliance by Company that has not Issued Prospectus.
- FORM 13.—Certificate of Incorporation on Conversion to a Proprietary Company.
- FORM 14.—Certificate of Incorporation on Conversion to a Public Company.
- FORM 15.—Notice of Increase in Number of Members.
- FORM 16.—Statutory Declaration of Compliance by Company that has Issued Prospectus.
- FORM 17.—Certificate that Company is Entitled to Commence Business and Exercise Borrowing Powers.
- FORM 18.—Return of Allotment of Shares.
- FORM 19.—Statement Containing Particulars of Shares Allotted otherwise than for Cash.
- FORM 20.—Statement of Amount or Rate of Commission and Brokerage.
- FORM 21.—Notice of Redemption of Redeemable Preference Shares.
- FORM 22.—Notice of Increase in Share Capital.
- FORM 23.—Certificate of Lodgement of Order of National Court Confirming Reduction of Share Capital.
- FORM 24.—Notice of Place where Register of Holders of Debentures Kept, or of Change in that Place.
- FORM 25.—Notice of Place where Register of Interest Holders Kept, or of Change in that Place.
- FORM 26.—Return by Management Company.
- FORM 27.—Statement of Particulars to be Lodged with Charge.

- FORM 28.—Statutory Declaration Verifying Execution of Charge Created by Company and Correctness of Copy of Charge.
- FORM 29.—Statement Containing Particulars of a Series of Debentures.
- FORM 30.—Particulars when more than one Issue is Made of Debentures in a Series.
- FORM 31.—Statutory Declaration in Respect of Property Acquired by Company or Foreign Company while Property Subject to a Charge.
- FORM 32.—Statutory Declaration in Respect of Charge Created by Foreign Company, or in Respect of Property Acquired by Foreign Company while Property Subject to a Charge, before Registration of Foreign Company in Papua New Guinea.
- FORM 33.—Register of Charges to be Kept by Registrar of Companies.
- FORM 34.—Certificate of Registration of Charge.
- FORM 35.—Memorandum of Satisfaction of Registered Charge.
- FORM 36.—Memorandum where Property or Undertaking is Released from Registered Charge or has Ceased to form part of Company's Property or Undertaking.
- FORM 37.—Statutory Declaration Verifying Memorandum.
- FORM 38.—Notice of Situation of Registered Office and of Office Hours, and Particulars of Changes.
- FORM 39.—Consent to Act as Director.
- FORM 40.—Undertaking by Director to Take and Pay for Qualification Shares.
- FORM 41.—Statutory Declaration by Director of Registration of Qualification Shares.
- FORM 42.—Statutory Declaration by Director of Entitlement to Qualification Shares.
- FORM 43.—List of Persons who have Consented to be Directors.
- FORM 44.—Return Giving Particulars in Register of Directors, Managers and Secretaries, and Changes of Particulars.
- FORM 45.—Certificate as to Holding of the Office of Director, Manager or Secretary.
- FORM 46.—Statutory Report.
- FORM 47.—Notice of Minute by Representative of Holding Company Relating to Proceedings of Subsidiary Company.
- FORM 48.—Notice of Place where Register of Members and Index Kept, or of Change in that Place.
- FORM 49.—Notice of Situation of Office where Branch Register of Members Kept, or of Change in Situation or Discontinuance.
- FORM 50.—Annual Return of Company not having a Share Capital.
- FORM 51.—Certificate for Inclusion in Public Company's Annual Return that does not Include List of Members.
- FORM 52.—Notice by Inspector.
- FORM 53.—Notice to Dissenting Shareholder.
- FORM 54.—Notice to Non-assenting Shareholder.
- FORM 55.—Notice of Appointment of Receiver or Manager.
- FORM 56.—Notice by Receiver or Manager Ceasing to Act.
- FORM 57.—Statement of Affairs.
- FORM 58.—Statutory Declaration Verifying Statement of Affairs.
- FORM 59.—Account of Receipts and Payments by Receiver or Manager.
- FORM 60.—Notice of Meeting of Creditors.
- FORM 61.—Summary of Affairs.

- FORM 62.—Notice of Special Resolution of Creditors Appointing Official Manager, etc.
- FORM 63.—Notice to Creditors and Members of Placing Company under Official Management and of Rights under Section 228.
- FORM 64.—Notice of Order Terminating Appointment of Official Manager.
- FORM 65.—Notice of Appointment and Situation of Office of Official Manager/Deputy Official Manager.
- FORM 66.—Notice of Change in Situation of Office of Official Manager/Deputy Official Manager.
- FORM 67.—Notice by Official Manager/Deputy Official Manager of Cessation of Office.
- FORM 68.—Notice by Official Manager of Holding of Six-monthly Meeting.
- FORM 69.—Notice of Special Resolution of Creditors Extending Period of Official Management.
- FORM 70.—Notice by Official Manager of Holding of Meetings of Members and Creditors when Company Unable to Pay Debts.
- FORM 71.—Notice of Order Terminating Official Management.
- FORM 72.—Notice of Order Varying or Cancelling Resolution for Official Management.
- FORM 73.—Notice Relating to Meeting of Creditors Called to Receive Report of Official Manager on Termination of Appointment.
- FORM 74.—Notice of Resolution Adopting Report and Discharging Official Manager.
- FORM 75.—Notice of Winding-up Order and Particulars of Liquidator.
- FORM 76.—Declaration of Solvency.
- FORM 77.—Notice of Meeting of Creditors.
- FORM 78.—Notice of Holding of Meeting of Creditors.
- FORM 79.—Return by Liquidator Relating to Final Meeting.
- FORM 80.—Notice of Appointment and Situation of Office of Liquidator (Winding-up by the Court).
- FORM 81.—Notice of Appointment and Situation of Office of Liquidator (Members' Voluntary Winding-up).
- FORM 82.—Notice of Appointment and Situation of Office of Liquidator (Creditors' Voluntary Winding-up).
- FORM 83.—Notice of Change in Situation of Office of Liquidator.
- FORM 84.—Notice by Liquidator of Resignation or Removal from Office.
- FORM 85.—Liquidator's Account of Receipts and Payments and Statement of the Position in the Winding-up.
- FORM 86.—Statutory Declaration Verifying Liquidator's Account and Statement.
- FORM 87.—Proof of Debt: General Form.
- FORM 88.—Proof of Debt: Employees' Group Form.
- FORM 89.—Notice of Rejection of Proof of Debt.
- FORM 90.—Return by Foreign Company Giving Particulars of Directors and Changes of Particulars.
- FORM 91.—Statutory Declaration by Agent of Foreign Company.
- FORM 92.—Notice by Agent of Foreign Company of Cessation of Agency.
- FORM 93.—Notice by Foreign Company of Cessation of Agency.
- FORM 94.—Certificate of Registration of Foreign Company.
- FORM 95.—Notice of Change or Alteration Relating to Foreign Company.

*Companies*

- FORM 96.—Notice of Change or Alteration Relating to Agent of Foreign Company.
- FORM 97.—Notice of Change of Address of Registered Office of Foreign Company in Place of Incorporation or Origin.
- FORM 98.—Statutory Declaration Verifying Balance-sheet of Foreign Company.
- FORM 99.—Annual Return of Foreign Company.
- FORM 100.—Notice by Foreign Company with Respect to Business being Carried on in Papua New Guinea.
- FORM 101.—Notice by Foreign Company of Commencement of Business other than Share Transfer or Share Registration Office.
- FORM 102.—Notice by Foreign Company of Cessation of Business.
- FORM 103.—Notice by Agent of Foreign Company of Liquidation or Dissolution of Company.
- FORM 104.—Notice by Foreign Company of Placing Under Official Management in Place of Incorporation, etc.
- FORM 105.—Notice of Intention to Apply for Exemption from Section 380(4).
- FORM 106.—Notice of Meeting of Creditors or Contributories.
- FORM 107.—Proxy.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 146.

*Companies Regulation.*

MADE under the *Companies Act.*

PART I.—PRELIMINARY.

1. Interpretation.

In this Regulation, unless the contrary intention appears, "agent" means the person named in a memorandum of appointment or power of attorney lodged under Section 358(1)(e) and (8) of the Act, or the public officer appointed under any corresponding previous law.

PART II.—FEES AND FORMS.

2. Forms.

Where a provision of the Act is specified in the first column of Schedule 1, the form in Schedule 2 that is specified in the third column of Schedule 1 in relation to the provision is the form to be used for the purposes of the provision described in the second column of Schedule 1.

3. Particulars prescribed by forms.

Where a form prescribed by this Regulation requires completion by the insertion of, or the attachment to the form of a document containing, particulars or other matters referred to in the form, those particulars or other matters are prescribed as the particulars or other matters required under the provision of the Act or of this Regulation for the purposes of which the form is prescribed.

4. Directions in forms.

A form prescribed by this Regulation shall be completed in accordance with such directions as are specified in the form.

PART III.—GENERAL PROVISIONS RELATING TO FORMS AND OTHER DOCUMENTS.

5. Documents lodged with Registrar.

A document to be lodged with the Registrar under the Act or this Regulation must comply with the following requirements :—

- (a) it must be on paper of medium weight and good quality and—
  - (i) in the case of a memorandum, articles, a prospectus or a statement under Section 93 of the Act—of a size not less than 215 mm deep by 140 mm wide and not more than International A4 size; or
  - (ii) in any other case—of International A4 size or a multiple of that size; and
- (b) subject to the Act, it must be printed or handwritten and be clearly legible; and
- (c) it must not be a carbon copy except with the consent of the Registrar; and

- (d) subject to Paragraph (e), it must have margins of not less than 30 mm on the left-hand side and not less than 10 mm on the right-hand side; and
  - (e) where it comprises two or more sheets—
    - (i) the sheets must be bound together securely; and
    - (ii) each sheet must have a margin of not less than 30 mm on the side on which it is bound in addition to any space required for binding; and
  - (f) where it comprises more than 20 sheets, it must be bound securely inside a durable and flexible cover; and
  - (g) it must have endorsed on the outside—
    - (i) on the upper right-hand corner of the first or last page—the registered number allotted by the Registrar to the corporation to which the document relates; and
    - (ii) the name of the corporation to which the document relates; and
    - (iii) the title of the document (being, if the document is a form prescribed by this Regulation, the same as the heading to the form); and
    - (iv) the name, postal address and telephone number of the lawyer or other person by, or on whose behalf, the document is lodged; and
    - (v) the following words :—

“Lodged in the office of the Registrar of Companies on  
Registrar of Companies”;
- and
- (h) where it is a form relating to a no liability company, it must be completed by inserting the words “No Liability” in place of the word “Limited”.

#### 6. Verification and certification of documents.

(1) For the purposes of Section 41(1)(b) of the Act, a copy of a consent must be verified by a person declaring by statutory declaration that he has compared the copy with the original consent and that it is a true copy of that consent.

(2) For the purposes of Section 44(2)(c) of the Act, a copy of a consent or a material contract must be verified by a person declaring by statutory declaration that he has compared the copy with the original consent or contract and that it is a true copy of that consent or contract.

(3) For the purposes of Section 44(2)(c) of the Act, a memorandum giving particulars of a contract not reduced into writing must be verified by a director, manager or secretary of the corporation concerned declaring by statutory declaration—

(a) that he is familiar with the particulars of the contract; and

(b) that the memorandum contains full and correct particulars of the contract.

(4) For the purposes of Section 56(3) of the Act, a copy of a contract must be verified by a person declaring by statutory declaration that he has compared the copy with the original contract and that it is a true copy of the contract of which it purports to be a copy.

(5) For the purposes of Section 89(3) of the Act, a copy of a deed must be verified by a person declaring by statutory declaration that he has compared the copy with the original deed and that it is a true copy of that deed.

(6) For the purposes of Section 251(1) of the Act, a statement of affairs of a company must be verified by statutory declaration in Form 58 made by the person who submits, or by one of the persons who submit, the statement to the liquidator of the company.

(7) For the purposes of Section 358(1)(a) of the Act, a certified copy of a document referred to in that paragraph is a copy that has been certified, within the period of three months immediately preceding the day on which it is lodged with the Registrar or within such further period as the Registrar permits, to be a true copy by an official holding or purporting to hold an office corresponding to that of the Registrar in the place in which the foreign company concerned is formed or incorporated.

(8) For the purposes of Section 358(1)(b) of the Act, a certified copy of a document referred to in that paragraph is a copy that has been certified, within the period of three months immediately preceding the day on which it is lodged with the Registrar or within such further period as the Registrar permits, to be a true copy—

- (a) by an official holding or purporting to hold an office corresponding to that of the Registrar in the place in which the foreign company concerned is formed or incorporated; or
- (b) by a notary public; or
- (c) by statutory declaration made by a director, manager or secretary of the foreign company.

(9) For the purposes of Section 358(1)(c) of the Act, the manner of verification of a memorandum of appointment or power of attorney is by statutory declaration made by a person declaring that he was present and saw—

- (a) the seal of the foreign company duly affixed to the memorandum of appointment or power of attorney; or
- (b) the memorandum of appointment or power of attorney duly executed on behalf of the foreign company in such manner as to be binding on the company.

(10) For the purposes of Section 358(2) of the Act, the manner of verification by statutory declaration of a copy of the deed or document referred to in that subsection is by statutory declaration made by a director, manager or secretary, or by the agent, of the foreign company declaring that he has compared the copy with the original deed or document and that it is a true copy of that deed or document.

#### 7. Security by official liquidator.

(1) For the purposes of Section 13(1) of the Act, the security for the due fulfilment of the duties of an official liquidator is—

- (a) a bond in Form 4 in the amount of K10 000.00 to the State with an approved surety in the amount of K10 000.00; or
- (b) a deposit with the Secretary for Finance of K10 000.00 in cash or of approved securities to that amount.

(2) For the purposes of Subsection (1)—

- (a) an approved surety is any corporation approved for that purpose by the Companies Auditors Board; and
- (b) an approved security is any security in which trustees are authorized by law to invest.

(3) An approved security deposited with the Secretary for Finance under this section shall be transferred to the Secretary for Finance.

(4) While any cash or approved security is deposited with the Secretary for Finance under this section, the depositor is entitled to any interest accruing from the cash or security.

(5) If the Secretary for Finance is satisfied that an official liquidator who has deposited cash or approved securities with him under this section has not duly fulfilled his duties as an official liquidator, the Secretary for Finance may appropriate the cash or sell the securities and shall apply the cash or the proceeds arising from the sale in the following order :—

- (a) in repaying the costs and expenses occasioned by and arising out of the failure of the official liquidator to fulfil his duties as such; and
- (b) in compensating any person who, in the opinion of the Companies Auditors Board, has suffered loss as a result of the failure of the official liquidator to fulfil his duties as such; and
- (c) in refunding to the official liquidator or his successor in title or nominee any balance remaining after the payment of the costs, expenses and compensation referred to in Paragraphs (a) and (b).

(6) On application being made to the Secretary for Finance to transfer any cash or approved securities deposited with the Secretary for Finance under this section to the person who deposited them or to his successor in title or nominee, the Secretary for Finance shall transfer the cash or securities accordingly if the application is accompanied by a certificate by the Companies Auditors Board that it is satisfied that the person has ceased to be an official liquidator and while he was an official liquidator has duly fulfilled his duties as an official liquidator to the best of the knowledge and belief of the Board.

#### 8. Agents' authorities to be lodged.

(1) Where a copy of a prospectus lodged with the Registrar under Section 44(2)(a) of the Act is signed by an agent of a director or proposed director authorized in writing, the authority or a verified copy of the authority must be annexed to the copy of the prospectus lodged with the Registrar.

(2) Where a statement in lieu of prospectus lodged with the Registrar for registration under Section 52(1) of the Act is, under Section 53(2)(a) of the Act, signed by an agent of a director or proposed director authorized in writing, the authority or a verified copy of the authority must be annexed to the statement in lieu of prospectus lodged with the Registrar.

(3) Where a statement of the amount or rate of commission and brokerage lodged with the Registrar under Section 60(1)(c) of the Act or under Subsection (3) of that section is signed by an agent of a director or proposed director authorized in writing, the authority or a verified copy of the authority must be annexed to the statement lodged with the Registrar.

(4) Where a consent of a person to act as a director lodged with the Registrar under Section 122(1) of the Act is signed by an agent of that person authorized in writing for the purpose, the authority or a verified copy of the authority must be annexed to the consent lodged with the Registrar.

#### 9. Matters, etc., to be included in deeds.

(1) In this section, "company", "interest", "investment contract", "management company" and "proclaimed State" have the same meanings as in Division V.5 of the Act.



(2) For the purposes of Section 89(2)(b) of the Act, the following are the matters and things required to be included in a deed :—

- (a) such particulars as are sufficient to disclose the nature of the undertaking, scheme, enterprise or investment contract, and the nature of the interests, to which the deed relates; and
- (b) a provision expressly appointing a company (being a company that has been approved by the Minister) as trustee for or representative of the holders of the interests to which the deed relates; and
- (c) except where no property is to be vested in the trustee or representative, a provision creating a trust or containing a declaration of trust, and setting out full particulars of the trust, including precise information as to—
  - (i) the circumstances in which the money, marketable securities, investments and other property subject to the trust are or will be vested in the trustee or representative; and
  - (ii) the duties and obligations of the trustee or representative towards the holders of the interests in regard to the property; and
- (d) provision for, and full particulars with respect to—
  - (i) the retirement, removal and replacement of the trustee or representative; and
  - (ii) the retirement, removal and replacement of the management company or, if the management company is not liable to be removed by the trustee or representative or by the interest holders, a statement of that fact; and
  - (iii) the appointment, retirement, removal and replacement of the auditor of the accounts relating to interests under the deed; and
  - (iv) the duration, if ascertainable, of the undertaking, scheme, enterprise or investment contract or, if the duration is not ascertainable, a statement of that fact; and
  - (v) the termination or winding-up of the undertaking, scheme, enterprise or investment contract; and
- (e) provisions binding the management company and the trustee or representative, respectively, that the management company or the trustee or representative, as the case may be, will not—
  - (i) invest any moneys available for investment under the deed in any interest unless a deed approved for the purposes of Division V.5 of the Act, or of a corresponding law of a proclaimed State, relates to that interest; or
  - (ii) vest any property comprising an interest, or part of an interest, to which the deed relates in a trustee or representative other than a trustee or representative appointed by a deed approved for the purposes of Division V.5 of the Act or of a corresponding law of a proclaimed State; and

- (f) where the interests to which the deed relates consist of rights or interests in or arising out of an investment relating to property that tends to depreciate in value through use or effluxion of time, particulars of—
- (i) the provision made or to be made for the replacement of the property; and
  - (ii) the source or sources from which the replacement is to be made or from which the cost of the replacement is to be met,
- or, if no provision is made, a statement of that fact; and
- (g) full particulars of—
- (i) the method of calculation of the highest price at which an interest to which the deed relates may be sold by the management company; and
  - (ii) the circumstances in which the management company or any other person may be required to purchase from the holder of an interest any interest for which the holder has subscribed or which he has acquired, and the method of calculation of the purchase price of the interest; and
  - (iii) the circumstances in which, and methods by which, all or any of the investments or other property comprising or forming part of an interest to which the deed relates may be varied; and
  - (iv) the conditions governing the transfer of the interests to which the deed relates; and
  - (v) the conditions governing the distribution of income to the holders of those interests; and
  - (vi) the remuneration of the trustee or representative and of the management company, respectively, and the manner in which the remuneration is provided for, including the charges (if any) that will be made by way of that remuneration—
    - (A) on the subscription for or sale of an interest to which the deed relates; or
    - (B) on the distribution of income and capital; or
    - (C) otherwise in connexion with the relevant undertaking, scheme, enterprise or investment contract; and
- (h) specific provisions relating to the convening of meetings of interest holders; and
- (i) specific provisions by which the management company undertakes to keep and maintain an up-to-date register of interest holders and to make that register available for inspection, free of charge, to any interest holder at any time when the company's office is required by the Act to be open to the public; and
- (j) where the deed is capable of modification, provisions governing the modification of the deed; and
- (k) a declaration—
- (i) that no units or sub-units of interests purchased or subscribed for in pursuance of the statement issued by the management company under Section 93 of the Act will be allotted later than six months after the date of the statement; and

- (ii) unless the conditions of issue of the units or sub-units expressly provide that certificates will not be issued—that certificates will be issued by the trustee or representative to purchasers of or subscribers for units or sub-units of interests purchased or subscribed for in pursuance of the statement not more than two months after the allotment of the units or sub-units; and
- (l) where the deed requires, or confers a right on, interest holders to enter into an agreement in connexion with the undertaking, scheme, enterprise or investment contract, a provision incorporating, whether by way of annexure or otherwise, the terms and form of the agreement.

#### 10. Signed copies of statutory report and auditor's report to be lodged.

For the purposes of Section 143(5) of the Act—

- (a) the copy of the statutory report of a company to be lodged with the Registrar must be a copy that is certified by the personal signature of not less than two directors; and
- (b) the copy of the auditor's report to be lodged with the Registrar must be a copy that is certified by the personal signature of the auditor or, where the auditor is a firm, of one of the partners of that firm.

#### 11. Notice, etc., of take-over offers to be lodged with Registrar and Stock Exchanges.

(1) In this section, expressions that are defined in Section 195 of the Act have the same meanings as in that section.

(2) A copy of the notice and of the statement referred to in Section 195(2)(a) of the Act and, where a statement given under 195(3)(a) is received by the offeror corporation from the offeree corporation, a copy of the last-mentioned statement, must be lodged by the offeror corporation with the Registrar, and with each Stock Exchange on which the shares of the offeree corporation are listed, on the same day as take-over offers are first made under the take-over scheme by the offeror corporation.

#### 12. Notice to dissenting and non-assenting shareholders.

(1) In this section, "transferor company" has the same meaning as in Section 196 of the Act.

(2) The prescribed manner of giving notice under Section 196(2) of the Act to a dissenting shareholder is by delivering to the shareholder personally, or by sending by post to the shareholder at the address of the shareholder shown in the books of the transferor company, a notice in Form 53.

(3) The prescribed manner of giving notice under Section 196(6) of the Act to a shareholder who has not assented to a scheme or contract is by delivering to the shareholder personally, or by sending by post to the shareholder at the address of the shareholder shown in the books of the transferor company, a notice in Form 54.

#### 13. Certified copies of statements of affairs.

(1) A copy of a statement of affairs of a company to be lodged with the Registrar must be a copy certified in writing to be a true copy of the original statement—

- (a) in the case of a copy lodged for the purposes of Section 204(1)(c)(i) of the Act—by the receiver or manager of the property of the company; and

- (b) in the case of a copy lodged for the purposes of Section 210(17) of the Act—by a director or secretary of the company; and
- (c) in the case of a copy lodged for the purposes of Section 222(8) of the Act—by the person who was the official manager of the company immediately before the appointment of the liquidator; and
- (d) in the case of a copy lodged for the purposes of Section 251(3) of the Act—by the liquidator of the company.

(2) A copy of the report of the person who was the official manager of a company, that is required to be lodged with the Registrar under Section 230(5) of the Act, must be certified in writing by that person to be a true copy of the original report.

(3) Where a statement or report referred to in Subsection (1) or (2) is required to be accompanied by or to have attached to it a copy of a certificate or other document, that copy must be certified in writing, by the person required to lodge the statement or report, to be a true copy of the original certificate or other document.

#### 14. Documents to be lodged where change or alteration made in foreign company.

For the purposes of Section 359(1) of the Act, a foreign company is required to lodge the following documents with the Registrar :—

- (a) where any change or alteration is made in the charter, statute, memorandum, articles or other instrument a copy of which is lodged by the foreign company under Section 358(1)(b) of the Act, the foreign company must lodge with the Registrar, at the time when notice of the change or alteration is lodged with the Registrar or within such further period as the Registrar in special circumstances allows—

- (i) a copy of the instrument effecting the change or alteration; or
- (ii) a copy of the charter, statute, memorandum, articles or other instrument as changed or altered,

certified to be a true copy in the same manner as a certified copy referred to in Section 358(1)(b) of the Act is certified under Section 6(8) to be a true copy; and

- (b) where any change or alteration is made in the name of the foreign company, the foreign company must, if the Registrar so requires, lodge with the Registrar, at the time when notice of the change or alteration is lodged with the Registrar or within such further period as the Registrar in special circumstances allows—

- (i) a copy of the certificate of its incorporation or registration issued in its place of incorporation or origin or a document of similar effect (being a certificate or document evidencing the change or alteration); or
- (ii) where there is no such certificate or document, a copy of the instrument effecting the change or alteration,

certified to be a true copy in the same manner as a certified copy referred to in Section 358(1)(a) of the Act is certified under Section 6(7) to be a true copy; and

- (c) where any change or alteration is made in the powers of directors resident in Papua New Guinea who are members of the local board of directors of the foreign company, the foreign company must lodge with the Registrar, at the time when notice of the change or alteration is lodged with the Registrar or

within such further period as the Registrar in special circumstances allows, a memorandum duly executed by or on behalf of the foreign company stating the powers of the local directors as changed or altered.

#### 15. Translations of documents.

(1) In this section, "diplomatic or consular officer" means a person appointed to hold or act in any of the following offices in a country or place outside Papua New Guinea :—

- (a) Ambassador; and
- (b) High Commissioner; and
- (c) Minister; and
- (d) Head of Mission; and
- (e) Commissioner; and
- (f) Charge d'Affaires; and
- (g) Counsellor, Secretary or Attache at an Embassy, High Commissioner's Office, Legation or other post; and
- (h) Consul-General; and
- (i) Consul; and
- (j) Vice-Consul; and
- (k) Pro-Consul; and
- (l) Trade Commissioner; and
- (m) Consular Agent.

(2) For the purposes of Section 405 of the Act, a certified translation is a translation that—

- (a) in the case of a translation made outside Papua New Guinea—
  - (i) is certified by an official to whom the custody of the original instrument, certificate, contract or document is committed, being an official holding or purporting to hold an office corresponding to that of the Registrar in the place in which the corporation is formed or incorporated; or
  - (ii) is certified by a notary public or a public translator duly admitted and sworn as such in accordance with the law of the place in which the corporation is formed or incorporated; or
  - (iii) is certified by a diplomatic or consular officer of Papua New Guinea, Australia or the United Kingdom in the place in which the corporation is formed or incorporated; or
- (b) in the case of a translation made within Papua New Guinea—is certified by a person approved by the Registrar,

to be a correct translation into the English language.

(3) Before accepting a translation for lodgement, the Registrar may require the person lodging the translation to furnish to him such evidence as the Registrar thinks sufficient of the ability of the person by whom the translation was made to make the translation.

**16. Time for lodging documents.**

Where a document is required by the Act or this Regulation to be lodged with the Registrar but a period of time within which the document is to be lodged is not prescribed, the document must be lodged—

- (a) within one month; or
- (b) in the case of a document required to be lodged by a foreign company, within such further period as the Registrar in special circumstances allows,

after the happening of the event to which the document relates.

**17. Statutory declarations.**

Except as otherwise provided in the Act or in this Regulation (including the forms in Schedule 2), a statutory declaration made for the purposes of the Act or this Regulation on behalf of a corporation must be made by a director or by the secretary of the corporation.

**18. Signature of documents lodged with Registrar.**

Except as otherwise provided in the Act or in this Regulation, a document relating to a corporation lodged with the Registrar under the Act or under this Regulation must be signed or authenticated by—

- (a) a director or by the secretary or manager of the corporation; or
- (b) in the case of a document relating to a foreign company, the agent of the foreign company in Papua New Guinea or, if the agent is a company, the secretary of that company.

**PART IV.—MEETINGS.***Division 1.—Meetings of Creditors and Contributories.***19. Application of Division 1.**

Except as otherwise provided in the Act, this Division applies to and in relation to—

- (a) meetings of the creditors of a company referred to in Section 15(2)(b) of the Act; and
- (b) meetings of the creditors of a company (being meetings relating to the official management of the company) referred to in Section 219(1), 220(1) or (3), 222(1)(c) or (4), 230 or 232(7) of the Act; and
- (c) meetings of creditors or of contributories called by a liquidator under Section 249(3)(b), 254(2), 258(1), 259(8) or 278(1) of the Act; and
- (d) meetings of creditors or of contributories referred to in Section 259(6) of the Act; and
- (e) meetings of the creditors of a company summoned by the company under Section 279(1) or (8) of the Act; and
- (f) meetings of the creditors of a company summoned by any two of those creditors under Section 280(5) of the Act; and
- (g) meetings of the creditors of a company referred to in Section 289(1)(a) of the Act; and
- (h) meetings of the creditors of a company held for the purposes of Section 302(3)(c) of the Act.

**20. Notices of meetings.**

- (1) The person summoning a meeting of creditors or of contributories must—
  - (a) give not less than seven days' notice of the time and place of the meeting by advertisement in a newspaper published in Papua New Guinea not less frequently than once a week; and
  - (b) send notice of the meeting not less than seven days before the day appointed for the meeting by post to every person appearing by the company's books or otherwise to be a creditor of the company or a contributory of the company, as the case may be.
- (2) The notice referred to in Subsection (1) that is to be advertised in a newspaper and sent to a creditor or contributory must—
  - (a) in the case of a notice given by a liquidator under Section 278(1) of the Act—be in Form 77; or
  - (b) in any other case—be in Form 106.
- (3) A notice to a creditor must be sent to the address given in his proof of debt or, if he has not proved, to the address given in the statement of affairs of the company or any other address known to the person summoning the meeting.
- (4) A notice to a contributory must be sent to the address mentioned in the company's books as the address of the contributory or to such other address as may be known to the person summoning the meeting.

**21. Quorum.**

- (1) A meeting of creditors or contributories must not act for any purpose except the election of a chairman, the proving of debts and the adjournment of the meeting, unless there are present or represented—
  - (a) at least two creditors entitled to vote, or two contributories; or
  - (b) if the number of creditors entitled to vote, or the contributories, as the case may be, does not exceed two—all the creditors entitled to vote or all the contributories, as the case may be.
- (2) If within half an hour after the time appointed for the meeting a quorum of creditors or contributories is not present or represented, the meeting stands adjourned to the same day in the next week at the same time and place, or to such other day (not being less than seven or more than 21 days from the day from which the meeting is adjourned) and at such other time and place as the chairman appoints.

**22. Chairman.**

- (1) Subject to Section 216(2) of the Act and Subsection (2), the persons present at a meeting of the creditors or contributories of a company shall elect one of their number to be the chairman of the meeting.
- (2) Where a meeting of creditors or contributories of a company is called by the liquidator of the company, the liquidator or a person nominated by him shall be the chairman of the meeting.

**23. Adjournment.**

The chairman of a meeting of creditors or contributories shall, if so directed by the meeting, or may, with the consent of the meeting, adjourn the meeting from time to time and from place to place, but the adjourned meeting shall be held at the same place as the

original place of meeting unless another place is specified in the resolution for adjournment or the Court otherwise orders.

#### 24. Passing of resolutions.

(1) At a meeting of creditors, a resolution is passed when a majority in number and value of the creditors present, personally or by proxy, have voted in favour of the resolution.

(2) At a meeting of contributories, a resolution is passed when a majority in number and value of the contributories present, personally or by proxy, have voted in favour of the resolution, the value of the contributories being determined according to the number of votes conferred on each contributory by the articles of the company.

#### 25. Creditors who may vote.

(1) Subject to Subsection (2), a person is not entitled to vote as a creditor at a meeting of creditors unless—

- (a) he has lodged with the liquidator a proof of the debt that he claims to be due to him from the company; and
- (b) the proof has been admitted wholly or in part before the date on which the meeting is held.

(2) In the case of a meeting of creditors held under Section 279(1) or (8) of the Act, a person is not entitled to vote as a creditor at the meeting unless he has lodged with the chairman of the meeting a proof of the debt that he claims to be due to him from the company.

(3) A creditor must not vote in respect—

- (a) of any unliquidated or contingent debt; or
- (b) of any debt the value of which is not ascertained; or
- (c) of any debt on or secured by a current bill of exchange or promissory note held by him,

unless he is willing—

- (d) to treat the liability to him of every person who is liable for the debt antecedently to the company, and against whom a sequestration order in bankruptcy has not been made as a security in his hands; and
- (e) to estimate the value of the debt; and
- (f) for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

#### 26. Votes of secured creditors.

(1) For the purpose of voting at a meeting, a secured creditor shall, unless he surrenders his security, state in his proof of debt the particulars of his security, the date when it was given and the value at which he assesses it, and is entitled to vote only in respect of the balance (if any) due to him after deducting the value of his security.

(2) If a secured creditor votes in respect of his whole debt, he shall be deemed to have surrendered his security unless the Court, on application, is satisfied that the omission to value the security has arisen from inadvertence.



**27. Requirement to creditor to give up security.**

(1) Within 28 days after a secured debt is proved in a case where the creditor has stated in his proof of debt the value at which he assesses his security, the liquidator may require the creditor to give up the security for the benefit of the creditors generally on payment of the value at which the creditor assesses it plus 20%.

(2) Where a creditor has assessed the value of his security, he may at any time before being required to give it up correct the valuation by a new proof and deduct the new value from his debt, but in that case the addition of 20% referred to in Subsection (1) shall not be made if the security is required to be given up.

**28. Admission and rejection of proof for purpose of voting.**

(1) The chairman of a meeting of creditors or contributories may admit or reject a proof of debt for the purpose of voting.

(2) If the chairman is in doubt whether a proof of debt should be admitted or rejected, he shall take it as having been objected to and shall allow the creditor to vote subject to the vote being declared invalid if the objection is sustained.

**29. Record of meeting.**

The chairman of a meeting of creditors or contributories shall—

- (a) cause minutes of the proceedings at the meeting to be entered in a book kept for the purpose, and sign the minutes; and
- (b) cause a list of the names of the creditors or contributories present at the meeting to be made and kept.

**30. Lodgement of copy of minutes with Registrar.**

Where a meeting of the creditors or contributories of a company is called by the liquidator of the company, the liquidator must, within a period of seven days after the meeting, lodge with the Registrar a copy of the minutes of the meeting certified by the chairman of the meeting to be a true copy.

*Division 2.—Meetings of Debenture-holders.***31. Application of Division 2.**

Except as otherwise provided in the Act or in the covenants contained in the relevant debentures or trust deed, this Division applies to and in relation to meetings of holders of debentures summoned in pursuance of a covenant contained, or deemed under Section 74 of the Act to be contained, in the debentures or trust deed.

**32. Quorum.**

(1) A meeting of debenture-holders must not act for any purpose except the adjournment of the meeting unless there are present at least two debenture-holders.

(2) If within half an hour after the time appointed for the meeting a quorum of debenture-holders is not present, the meeting stands adjourned to the same day in the next week at the same time and place, or to such other day (not being less than seven or more than 21 days after the day from which the meeting is adjourned) and at such other time and place as the chairman appoints.

**33. Adjournment.**

The chairman of a meeting of debenture-holders must, if so directed by the meeting, and may, with the consent of the meeting, adjourn the meeting from time to time and from place to place, but the adjourned meeting shall be held at the same place as the original place of meeting unless another place is specified in the resolution for adjournment or the Court otherwise orders.

**34. Passing of resolutions.**

At a meeting of debenture-holders, a resolution is passed when a majority in number and value of the debenture-holders present have voted in favour of the resolution.

**35. Casting vote.**

In the case of an equality of votes, the chairman of a meeting of debenture-holders has a casting vote.

**36. Record of meeting.**

The chairman of a meeting of debenture-holders shall—

- (a) cause minutes of the proceedings at the meeting to be entered in a book kept for the purpose, and sign the minutes; and
- (b) cause a list of the names of the debenture-holders present at the meeting to be made and kept.

*Division 3.—Joint Meetings of the Members and Creditors of a Company.*

**37. Application of Division 3.**

Except where it is otherwise provided in the Act, this Division applies to and in relation to—

- (a) joint meetings of the creditors and members of a company called by the official manager of the company under Section 217(1) or 232(7) of the Act; and
- (b) joint meetings of a company and the creditors of the company called in the case of a creditors' voluntary winding-up of the company by the liquidator of the company under Section 291 or 292(1) of the Act.

**38. Notices of joint meetings called by official manager.**

(1) An official manager of a company who is directed by a committee of management of the company to call a joint meeting of the creditors and members of the company under Section 232(7) of the Act shall—

- (a) give not less than seven days' notice of the time and place of the meeting by advertisement in a newspaper published in the country not less frequently than once a week; and
- (b) cause notices of the meeting to be sent by post to the creditors simultaneously with the sending of notices of the meeting to members of the company.

(2) The notice referred to in Subsection (1) that is to be advertised in a newspaper and sent to a creditor shall be in Form 106.

(3) The notice must be sent to every person appearing by the company's books or otherwise to be a creditor of the company, to the address mentioned in the company's books as the address of the creditor or to any other address known to the official manager.

**39. Quorum.**

A joint meeting called under Section 217(1), 232(7) or 291(1) of the Act must not act for any purpose unless there are present or represented at least two persons entitled to vote at the meeting.

**40. Chairman.**

(1) The persons present at a joint meeting called under Section 217(1) or 232(7) of the Act shall elect one of their number to be the chairman of the meeting.

(2) The liquidator or a person nominated by him shall be the chairman of a joint meeting called under Section 291(1) or 292(1) of the Act.

**41. Adjournment.**

The chairman of a joint meeting called under Section 217(1), 232(7) or 291(1) of the Act shall, if so directed by the meeting, and may, with the consent of the meeting, adjourn the meeting from time to time and from place to place, but the adjourned meeting shall be held at the same place as the original place of meeting unless another place is specified in the resolution for adjournment or the Court otherwise orders.

**42. Passing of resolutions.**

A resolution put to the vote at a joint meeting to and in relation to which this Division applies shall be decided on a show of hands.

**43. Casting vote.**

In the case of an equality of votes, the chairman of a joint meeting to and in relation to which this Division applies has a casting vote.

**44. Record of meeting.**

The chairman of a joint meeting called under Section 217(1), 232(7) or 291(1) of the Act shall—

- (a) cause minutes of the proceedings at the meeting to be entered in a book kept for the purpose, and sign the minutes; and
- (b) cause a list of the names of the persons present and entitled to vote at the meeting to be made and kept.

*Division 4.—Proxies of Creditors and Contributories.*

**45. Appointment of proxies.**

(1) A creditor who is entitled to attend and vote at a meeting of creditors, or at a meeting of creditors and contributories, may appoint another person (whether a creditor or not) as his proxy to attend and vote at the meeting in his place.

(2) A contributory who is entitled to attend and vote at a meeting of contributories or at a meeting of creditors and contributories may appoint another person (whether a contributory or not) as his proxy to attend and vote at the meeting in his place.

(3) A proxy who is appointed under this section has the same right to speak at the meeting as the creditor or contributory by whom he is appointed.

**46. Form of proxies.**

(1) The appointment of a person as the proxy of a creditor or contributory shall be made by an instrument of appointment in Form 107.

(2) Subject to Section 47, the instrument appointing a proxy shall be signed by the person appointing the proxy in the presence of a person (not being the person nominated as proxy), who shall sign as witness and add to his signature his description and the address of his place of residence.

**47. Proxies of disabled persons.**

The proxy of a creditor or contributory who is blind or incapable of writing is sufficient for the purposes of this Regulation if the creditor or contributory attached his signature or mark to the instrument appointing the proxy in the presence of a person (not being the person nominated as proxy) who completes the instrument in accordance with Section 46, and also completes the certificate in Form 107.

**48. Proxy forms to accompany notice of meetings.**

The person calling a meeting of creditors or contributories, or a joint meeting of a company and the creditors of the company shall—

- (a) send a form of proxy to each creditor or contributory with the notice summoning the meeting; and
- (b) ensure that neither the name nor the description of the liquidator (if any) or of any other person is printed or inserted in the body of the form of proxy before it is sent.

**49. General proxy.**

A creditor or a contributory may give a general proxy to any person who is not a minor.

**50. Special proxy.**

A creditor or a contributory may give a special proxy to any person to vote at a specified meeting or at an adjournment of a meeting—

- (a) for or against the appointment or continuance in office of a specified person as liquidator or member of the committee of inspection; and
- (b) on all or any questions relating to any matter arising at the meeting or an adjournment of the meeting.

**51. Liquidator as proxy.**

A creditor or a contributory may appoint the liquidator to act as his general or special proxy.

**52. Voting by proxy where financially interested.**

(1) Subject to Subsection (2), a person acting under a general or a special proxy must not vote in favour of a resolution that would directly or indirectly place himself, his partner or his employer in a position to receive any remuneration out of the assets of the company otherwise than as a creditor rateably with the other creditors of the company.

(2) Where a person holds special proxies to vote for an application to the Court in favour of the appointment of himself as liquidator, he may use the proxies and vote accordingly.

**53. Liquidator may appoint deputy.**

Where a liquidator who holds any proxies cannot attend the meeting for which they are given, he may, in writing, appoint some person to use the proxies on his behalf in such manner as he directs.

**PART V.—PROOF OF DEBTS IN VOLUNTARY WINDING-UP.****54. Application of Part V.**

This Part applies to and in relation to the admission to proof of debts and claims under Section 309(1) of the Act in a winding-up under Division XI.3 of the Act.

**55. Proof of debt.**

Every creditor must prove his debt or claim, unless the Court directs that any creditors or class of creditors be admitted without proof.

**56. Statutory declaration of proof of debt.**

(1) A debt or claim may be proved by serving on the liquidator a statutory declaration of proof of debt in Form 87 or Form 88.

(2) Where there are claims for wages by employees of a company, one person may make a statutory declaration in Form 88 proving the claims on behalf of all the employees.

(3) A statutory declaration made under Subsection (2) has effect as if a separate statutory declaration had been made by each employee.

**57. Notice of day by which debts to be proved.**

(1) The liquidator may fix a day, not less than 21 days from—

(a) the date of publication of the notice referred to in Subsection (2); or

(b) the date on which the last such notice is posted under that subsection,

whichever date is the later, on or before which the creditors of the company must prove their debts or claims under Section 309(1) of the Act.

(2) The liquidator shall give notice of the day so fixed by advertisement in a newspaper published in the country not less frequently than once a week, and shall also give notice by post of the day so fixed to every person mentioned in the statement of affairs as a creditor and who has not proved his debt or claim.

**58. Time for liquidator to deal with proofs and notice of rejection of proof.**

(1) Within 21 days after receiving a proof of debt, the liquidator shall, in writing, either admit it or reject it, wholly or in part, or require further evidence in support of it, and if he rejects a proof of debt wholly or in part, he shall state to the creditor the ground of his objections by instrument in Form 89.

(2) Where the liquidator has given notice of his intention to declare a dividend, he shall, within 14 days after the day mentioned in the notice referred to in Section 57(2) as the day on or before which debts or claims are to be proved, in writing either admit or reject, wholly or in part, every proof of debt that he has not already dealt with, or shall require further evidence in support of it, and if he rejects a proof of debt wholly or in part, he shall state to the creditor the ground of his objections by instrument in Form 89.

(3) Where the liquidator has admitted a proof of debt under Subsection (2), the notice of the dividend is a sufficient notification of the admission.

**59. Persons who may make statutory declarations.**

(1) A statutory declaration proving a debt may be made by the creditor or by some person authorized by or on behalf of the creditor.

(2) A person so authorized must state in the statutory declaration his authority and means of knowledge.

**60. Contents of statutory declaration.**

(1) A statutory declaration proving a debt or claim must—

(a) contain or refer to a statement of accounts showing the particulars of the debt or claim; and

(b) specify the vouchers by which the debt or claim can be substantiated.

(2) The liquidator may at any time call for the production of the vouchers.

**61. Statement of security.**

A statutory declaration proving a debt or claim must state whether the creditor is a secured creditor and the nature of the security (if any).

**62. Costs of proof.**

A creditor shall bear his own costs of proving his debt or claim unless the Court in a particular case otherwise orders.

**63. Discount.**

In proving a debt or claim, a creditor must make an allowance for all discounts for which an allowance would have been made if the company were not being wound up.

**64. Periodical payments.**

(1) Where a company that is liable to make any periodical payments (including rent) commences to be wound up on a day other than a day on which such a payment becomes due, the person entitled to the payments may prove for a proportionate part of a payment in respect of the period from the day on which the last payment became due to the day on which the winding-up commences, as if the payment accrued due from day to day.

(2) Where the liquidator remains in occupation of premises demised to a company that is being wound up, this Regulation does not prejudice or affect the right of the landlord of the premises to claim payment by the company or the liquidator of rent during the period of occupation by the company or by the liquidator.

**65. Debts payable at future time.**

A creditor may prove a debt or claim payable after the date of the commencement of the winding-up as if it were payable at that date, and may receive dividends equally with the other creditors, deducting out of each dividend a rebate of interest at the rate of 4% per annum computed from the declaration of the dividend to the time when the debt or claim would have become payable according to the terms on which it was contracted.

**66. Production of instrument on which company liable.**

Where a creditor seeks to prove a debt or claim in respect of a bill of exchange, promissory note or other negotiable instrument or security on which the company is liable, the proof of debt shall not be admitted, subject to any order of the Court to the contrary, unless the bill, note, instrument or security is produced to the liquidator.

PART VI.—MISCELLANEOUS.

**67. Prescribed bodies.**

(1) For the purposes of Section 12(1)(a) of the Act, the following bodies are prescribed bodies :—

- (a) American Association of Certified Public Accountants; and
- (b) Association of Certified and Corporate Accountants; and
- (c) Institute of Chartered Accountants in England and Wales; and
- (d) Institute of Chartered Accountants of Scotland; and
- (e) New Zealand Society of Accountants.

(2) For the purposes of Section 12(1)(d) of the Act—

(a) the following Institutes of Technology in Australia are prescribed Institutes of Technology :—

- (i) Department of Technical Education of New South Wales; and
- (ii) Royal Melbourne Institute of Technology; and
- (iii) South Australian Institute of Technology; and
- (iv) Department of Technical Education of Western Australia; and

(b) the following Technical Colleges in Australia are prescribed Technical Colleges :—

- (i) Ballarat School of Mines; and
- (ii) Box Hill Technical School; and
- (iii) Brighton Technical School; and
- (iv) Castlemaine Technical School; and
- (v) Caulfield Technical College; and
- (vi) Dandenong Technical School; and
- (vii) Echuca Technical School; and
- (viii) Essendon Technical School; and
- (ix) Footscray Technical School; and
- (x) Gordon Institute of Technology; and
- (xi) Heidelberg Technical School; and
- (xii) Jordanville Technical School; and
- (xiii) Oakleigh Technical School; and
- (xiv) Preston Technical School; and
- (xv) Sunshine Technical School; and
- (xvi) Swinburne Technical College; and
- (xvii) Warragul Technical School; and
- (xviii) Warrnambool Technical School; and
- (xix) Williamstown Technical School; and
- (xx) Yallourn Technical College.

**68. Registration fees.**

For the purposes of Section 12(1) and (3) of the Act—

- (a) the prescribed fee payable in respect of the registration of a person as a company auditor, or in respect of the registration of a registered company auditor as a registered liquidator, is K4.00; and
- (b) the prescribed fee payable in respect of the renewal of the registration of a registered company auditor or of a registered liquidator is K2.00.

**69. Commission payable to Registrar.**

For the purposes of Section 322(3) of the Act, commission is prescribed at the rate of 5% of the moneys received by the Registrar in the exercise of the powers conferred on him by that section.

**70. Stock Exchanges.**

(1) For the purposes of Section 380(7)(a) and 9(b) and Section Sch. 8.1(d) of the Act, the following Stock Exchanges are prescribed Stock Exchanges :—

- (a) Hobart Stock Exchange, Tasmania; and
- (b) Launceston Stock Exchange, Tasmania; and
- (c) Stock Exchange of Melbourne, Victoria; and
- (d) Ballarat Stock Exchange, Victoria; and
- (e) Bendigo Stock Exchange, Victoria; and
- (f) Sydney Stock Exchange, New South Wales; and
- (g) Newcastle Stock Exchange, New South Wales; and
- (h) Stock Exchange of Adelaide Limited, South Australia; and
- (i) Brisbane Stock Exchange, Queensland; and
- (j) Stock Exchange of Perth, Western Australia; and
- (k) Rockhampton Stock Exchange Ltd., Queensland.

(2) For the purposes of Section Sch. 8.2(1)(b)(iii) of the Act, the following Stock Exchanges are prescribed Stock Exchanges :—

- (a) Stock Exchange of Adelaide Limited, South Australia; and
- (b) Brisbane Stock Exchange, Queensland; and
- (c) Hobart Stock Exchange, Tasmania; and
- (d) Stock Exchange of Melbourne, Victoria; and
- (e) Stock Exchange of Perth, Western Australia; and
- (f) Sydney Stock Exchange, New South Wales; and
- (g) Auckland Stock Exchange, New Zealand; and
- (h) Christchurch Stock Exchange, New Zealand; and
- (i) Dunedin Stock Exchange, New Zealand; and
- (j) Wellington Stock Exchange, New Zealand; and
- (k) Stock Exchange, London, England; and
- (l) Montreal Stock Exchange, Canada; and
- (m) Toronto Stock Exchange, Canada; and
- (n) Johannesburg Stock Exchange, South Africa; and



- (o) New York Stock Exchange, United States of America; and
- (p) American Stock Exchange, United States of America; and
- (q) Pacific Coast Stock Exchange, United States of America; and
- (r) Mid-West Stock Exchange, United States of America; and
- (s) Paris Bourse, France; and
- (t) Ballarat Stock Exchange, Victoria; and
- (u) Bendigo Stock Exchange, Victoria; and
- (v) Newcastle Stock Exchange, New South Wales; and
- (w) Launceston Stock Exchange, Tasmania; and
- (x) Rockhampton Stock Exchange Ltd., Queensland.

#### 71. General penalty.

A person who contravenes or fails to comply with a provision of this Regulation is guilty of an offence.

Penalty: A fine not exceeding K40.00.

---

### SCHEDULES.

---

#### SCHEDULE 1.

---

#### LIST OF FORMS.

Reg., Sec. 2.

Section of Act or Regulation.	Description.	No. of Form.
Act, Section—		
5(7)	Declaration to be made by Registrar of Companies and persons authorized to make inspections	1
12(6)	Notice requiring a person to give evidence before the Companies Auditors Board	3
13(1)	Official liquidator's bond (with surety)	4
14(4)(d)	Return of partners of firm of auditors	2
17(5)(d)(ii)	Statutory declaration of compliance by company that has not issued prospectus	12
18(2)	Statutory declaration of compliance	5
18(3)	Certificate of incorporation of public company	6
18(3)	Certificate of incorporation of proprietary company	7
22(7)	Application for reservation of name	11
26(1) and (2)	Notice of resolution	8
26(2)(c)	Statutory declaration of compliance by company that has not issued prospectus	12
26(3)	Certificate of incorporation on conversion to a proprietary company	13

Section of Act or Regulation.	Description.	No. of Form.
26(3)	Certificate of incorporation on conversion to a public company	14
28(2)	Notice of resolution	8
28(4)	Certificate of registration of order of National Court affecting memorandum of association	9
28(7)	Certificate of incorporation on change of name of company	10
29(9)	Notice of resolution	8
30(5)	Notice of increase in number of members	15
55(1)(b)(iii)	Statutory declaration of compliance by company that has issued prospectus	16
55(2)(c)	Statutory declaration of compliance by company that has not issued prospectus	12
55(3)	Certificate that company is entitled to commence business and exercise borrowing powers	17
56(1) and (2)(b)	Return of allotment of shares	18
56(5)	Statement containing particulars of shares allotted otherwise than for cash	19
60(1)(c) and (3)	Statement of amount or rate of commission and brokerage	20
63(8)	Notice of redemption of redeemable preference shares	21
65(4)	Notice of increase in share capital	22
66(7)	Certificate of lodgement of order of National Court confirming reduction of share capital	23
72(2)	Notice of place where register of holders of debentures kept, or of change in that place	24
95	Notice of place where register of interest holders kept, or of change in that place	25
96(1)	Return by management company	26
110(1)	Statement of particulars to be lodged with charge	27
110(1)(b)	Statutory declaration verifying execution of charge created by company and correctness of copy of charge	28
110(5), (6) and (7)	Statement containing particulars of a series of debentures	29
110(6) and (7)	Particulars when more than one issue is made of debentures in a series	30
111(1)	Statement of particulars to be lodged with charge	27
111(1)	Statutory declaration in respect of property acquired by company or foreign company while property subject to a charge	31
111(1)	Statutory declaration in respect of charge created by foreign company, or in respect of property acquired by foreign company while property subject to a charge, before registration of foreign company in Papua New Guinea	32
112(1)	Register of charges to be kept by Registrar of Companies	33
112(2)	Certificate of registration of charge	34
114(1)	Memorandum of satisfaction of registered charge	35
114(1)	Memorandum where property or undertaking is released from registered charge or has ceased to form part of company's property or undertaking	36
114(2)	Statutory declaration verifying memorandum	37
119(1)	Notice of situation of registered office and of office hours, and particulars of changes	38
122(1)	Consent to act as director	39
122(1)(b)	Undertaking by director to take and pay for qualification shares	40
122(1)(c)	Statutory declaration by director of registration of qualification shares	41

Companies

Ch. No. 146

Section of Act or Regulation.	Description.	No. of Form.
122(1)(d)	Statutory declaration by director of entitlement to qualification shares	42
123	List of persons who have consented to be directors	43
141(6)	Return giving particulars in register of directors, managers and secretaries, and changes of particulars	44
141(8)	Certificate as to holding of the office of director, manager or secretary	45
143	Statutory report	46
149(7)	Notice of minute by representative of holding company relating to proceedings of subsidiary company	47
157(1)	Notice of resolution	8
160(2)	Notice of place where register of members and index kept, or of change in that place	48
160(2)	Notice of place where register of interest holders kept, or of change in that place	25
164(2)	Notice of situation of office where branch register of members kept, or of change in situation or discontinuance	49
167	Annual return of company not having a share capital	50
168(1)	Certificate for inclusion in public company's annual return that does not include list of members	51
181(3)	Notice by inspector	52
196(2)	Notice to dissenting shareholder	53
196(6)	Notice to non-assenting shareholder	54
201(1)	Notice of appointment of receiver or manager	55
201(2)	Notice by receiver or manager ceasing to act	56
204, 205	Statement of affairs	57
205(3)	Statutory declaration verifying statement of affairs	58
206(1)	Account of receipts and payments by receiver or manager and statutory declaration verifying account	59
210(4)	Statement of affairs	57
210(10)	Notice of meeting of creditors	60
210(11)(a)	Summary of affairs	61
213(3)(a)	Notice of special resolution of creditors appointing official manager, etc.	62
213(3)(d)	Notice to creditors and members of placing company under official management and of rights under Section 228	63
213(7)(a)	Notice of order terminating appointment of official manager	64
215(1)	Notice of appointment and situation of office of official manager	65
215(2)	Notice of change in situation of office of official manager	66
215(2)	Notice by official manager of cessation of office	67
217(7)	Notice by official manager of holding of six-monthly meeting	68
219(4)	Notice of special resolution of creditors extending period of official management	69
222(4)(d)	Statement of affairs	57
222(8)	Notice by official manager of holding of meetings of members and credi- tors when company unable to pay debts	70
229(1)	Notice of order terminating official management	71
229(1)	Notice of order varying or cancelling resolution for official management	72

Section of Act or Regulation.	Description.	No. of Form.
230(5)	Notice relating to meeting of creditors called to receive report of official manager on termination of appointment	73
230(9)	Notice of resolution adopting report and discharging official manager	74
232(5)	Notice of appointment and situation of office of deputy official manager	65
232(5)	Notice of change in situation of office of deputy official manager	66
232(6)	Notice by deputy official manager of cessation of office	67
247(1)	Notice of winding-up order and particulars of liquidator	75
251	Statement of affairs	57
251(1)	Statutory declaration verifying statement of affairs	58
273(2)(d)	Notice of resolution	8
276	Declaration of solvency	76
278(1)	Notice of meeting of creditors	77
278(4)	Notice of holding of meeting of creditors	78
279(4)	Statement of affairs	57
292(3) and (5)	Return by liquidator relating to final meeting	79
300(1)	Notice of appointment and situation of office of liquidator (winding-up by the Court)	80
300(1)	Notice of appointment and situation of office of liquidator (members' voluntary winding-up)	81
300(1)	Notice of appointment and situation of office of liquidator (creditors' voluntary winding-up)	82
300(1)	Notice of change in situation of office of liquidator	83
300(2)	Notice by liquidator of resignation or removal from office	84
301(2)	Liquidator's account of receipts and payments and statement of the position in the winding-up	85
301(2)	Statutory declaration verifying liquidator's account and statement	86
309	Proof of debt: general form	87
309	Proof of debt: employees' group form	88
309	Notice of rejection of proof of debt	89
358(1)(e)	Return by foreign company giving particulars of directors and changes of particulars	90
358(1)(f)	Notice of situation of registered office and of office hours, and particulars of changes	38
358(1)(g)	Statutory declaration by agent of foreign company	91
358(6)	Notice by agent of foreign company of cessation of agency	92
358(6)	Notice by foreign company of cessation of agency	93
358(9)	Certificate of registration of foreign company	94
359(1)(a)	Notice of change or alteration relating to foreign company	95
359(1)(b)	Return by foreign company giving particulars of directors and changes of particulars	90
359(1)(c)	Notice of change or alteration relating to agent of foreign company	96
359(1)(d)	Notice of situation of registered office and of office hours, and particulars of changes	38
359(1)(e)	Notice of change of address of registered office of foreign company in place of incorporation or origin	97
359(1)(f) and (g)	Notice of change or alteration relating to foreign company	95

*Companies*

Ch. No. 146

Section of Act or Regulation.	Description.	No. of Form.
359(2)	Notice of increase in share capital	22
359(3)	Notice of increase in number of members	15
360(1)	Statutory declaration verifying balance-sheet of foreign company	98
360(6)	Annual return of foreign company	99
361(2)	Notice by foreign company with respect to business being carried on in Papua New Guinea	100
361(3)	Notice by foreign company of commencement of business other than share transfer or share registration office	101
364(1)	Notice by foreign company of cessation of business	102
364(3)	Notice by agent of foreign company of liquidation or dissolution of company	103
364(4)	Notice by foreign company of placing under official management in place of incorporation, etc.	104
365(6) and (7)	Notice of situation of office where branch register of members kept, or of change in situation or discontinuance	49
380(5)	Notice of intention to apply for exemption from Section 380(4)	105
Reg., Section—		
6(6)	Statutory declaration verifying statement of affairs	58
7(1)	Official liquidator's bond (with surety)	4
12(2)	Notice to dissenting shareholder	53
12(3)	Notice to non-assenting shareholder	54
14	Notice of change or alteration relating to foreign company	95
20(2)(a)	Notice of meeting of creditors	77
20(2)(b)	Notice of meeting of creditors or contributories	106
38(2)	Notice of meeting of creditors or contributories	106
46 and 47	Proxy	107
56(1)	Proof of debt: general form	87
56(1)	Proof of debt: employees' group form	88
58(1)	Notice of rejection of proof of debt	89

*Companies*  
SCHEDULE 2.

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 5(7).

Form 1.

DECLARATION TO BE MADE BY REGISTRAR OF COMPANIES AND PERSONS  
AUTHORIZED TO MAKE INSPECTIONS.

I, \_\_\_\_\_, of \_\_\_\_\_, declare that I will not, except for the purposes of the *Companies Act*, or in the course of any criminal proceedings, make a record of, or divulge or communicate to any other person, any information that I have acquired by reason of an inspection, made by me for the purpose of ascertaining whether a company is complying with the provisions of that Act, of any books, minute book, register or record required by or under that Act to be kept by the company.

Declared \_\_\_\_\_ 19 .

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 14(4)(d).

Form 2.

RETURN OF PARTNERS OF FIRM OF AUDITORS.

Name of firm:

Address of firm: (*Give the address of each place of business of the firm; if there is more than one place of business, indicate the principal place of business.*)

The full names and addresses of all the partners of the firm are—

Surname.	Other Names in Full.	Address in Full of Usual Residence.

Dated \_\_\_\_\_ 19 .

(*Signature of one of the partners of the firm.*)

*Companies*

Ch. No. 146

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 12(6).

Form 3.

NOTICE REQUIRING A PERSON TO GIVE EVIDENCE BEFORE THE COMPANIES  
AUDITORS BOARD.

To

In pursuance of the power conferred on me by Section 12(6) of the *Companies Act*, I, \_\_\_\_\_, the Chairman of the Companies Auditors Board constituted under that Act, require you to attend the inquiry by the Board concerning \_\_\_\_\_ to be held at \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ a.m./p.m., and to give evidence on oath or affirmation as to any matter in relation to the subject-matter of that inquiry (and then and there to produce all books, documents and writings in your custody or under your control that relate to *(set out particulars of the matters in relation to the subject-matter of the inquiry to which the books, documents and writings are to relate)*) and, in particular, any of the following books, documents and writings that are in your custody or under your control :—

Dated \_\_\_\_\_ 19\_\_\_\_.

Note.—Under Section 391 of the *Companies Act*, a person is guilty of an offence punishable by a fine not exceeding K100.00 if he fails to comply with a requirement under that Act.

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 13(1).

Form 4.

Reg., Sec. 7(1).

OFFICIAL LIQUIDATOR'S BOND (WITH SURETY).

I, *(insert full name of official liquidator)* of \_\_\_\_\_, being an official liquidator for the purposes of the *Companies Act*, and *(insert name of surety corporation)* Limited, of \_\_\_\_\_, jointly and severally bind ourselves to the Independent State of Papua New Guinea for the payment to the Registrar of the National Court of Papua New Guinea of the sum of K10 000.00.

Sealed with our seals \_\_\_\_\_ 19\_\_\_\_.

The condition of this obligation is such that if *(insert full name of official liquidator)* shall duly fulfil his duties as an official liquidator under the *Companies Act*, then this obligation shall be void and of no effect; otherwise this obligation shall remain in full force and effect.

Signed, sealed and delivered by *(insert full name of official liquidator)* in the presence of:

The common seal of *(insert name of surety corporation)* Limited, the abovenamed surety, was affixed to this bond in the presence of:

Ch. No. 146

**Companies**

PAPUA NEW GUINEA.

**Companies Act.**

Act, Sec. 18(2).

Form 5.

**STATUTORY DECLARATION OF COMPLIANCE.**

**LIMITED.**

I, (insert name, address and occupation of person making the declaration) solemnly and sincerely declare as follows:—

1. I am (insert "a qualified legal practitioner engaged in the formation" or "a person named in the articles as a director or secretary") of Limited.

2. All the requirements of the *Companies Act* and of the *Companies Regulation* in respect of matters precedent to the registration of the company and incidental to its registration have been complied with.

And I make this solemn declaration by virtue of the *Oaths, Affirmations and Statutory Declarations Act* and subject to the penalties provided for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

(Signature of Declarant.)

Declared 19 . .

Before me,

(Signature of person before whom the declaration is made.)

(Title of person before whom the declaration is made.)

PAPUA NEW GUINEA.

**Companies Act.**

Act, Sec. 18(3).

Form 6.

No. of Company:

**CERTIFICATE OF INCORPORATION OF PUBLIC COMPANY.**

I certify that is, on and from 19 , incorporated under the *Companies Act* and that the company is

Given under my hand and seal, 19 . .

Registrar of Companies.

PAPUA NEW GUINEA.

**Companies Act.**

Act, Sec. 18(3).

Form 7.

No. of Company:

**CERTIFICATE OF INCORPORATION OF PROPRIETARY COMPANY.**

I certify that is, on and from 19 , incorporated under the *Companies Act*, that the company is and that the company is a proprietary company.

Given under my hand and seal, 19 . .

Registrar of Companies.



**Companies**

Ch. No. 146

**PAPUA NEW GUINEA.**

**Companies Act.**

\*Act, Sec. 26(1) and (2), 28(2), 29(9), 157(1), 273(2)(a).

Form 8.

**NOTICE OF RESOLUTION.**

**LIMITED.**

To the Registrar of Companies.

At a general meeting of the members of Limited duly convened and held at on 19 , the special (or ordinary) resolution set out below (or in the annexure† marked with the letter "A" and signed by me for purposes of identification) was duly passed (or agreed to).

(Set out copy of resolution here if it is not annexed.)

Dated 19 .

Director.\*\*

Secretary.\*\*

\* Strike out whichever references to sections are inapplicable.

† Where the copy of the resolution is annexed, the annexure is to be endorsed as follows —

"This is the annexure marked "A" referred to in the notice of resolution signed by me on 19 ."

\*\* Strike out whichever is inapplicable.

**PAPUA NEW GUINEA.**

**Companies Act.**

Act, Sec. 28(4).

Form 9.

No. of Company:

**CERTIFICATE OF REGISTRATION OF ORDER OF NATIONAL COURT AFFECTING MEMORANDUM OF ASSOCIATION.**

I certify that an order of the National Court made on 19 affecting the memorandum of association of Limited has this day been registered by me.

Given under my hand and seal, 19 .

Registrar of Companies.

**PAPUA NEW GUINEA.**

**Companies Act.**

Act, Sec. 28(7).

Form 10.

No. of Company:

**CERTIFICATE OF INCORPORATION ON CHANGE OF NAME OF COMPANY.**

I certify that , which was, on 19 , incorporated under the company is , did on 19 change its name to , and that the

Given under my hand and seal, 19 .

Registrar of Companies.

Ch. No. 146

**Companies**

PAPUA NEW GUINEA.

**Companies Act.**

Act, Sec. 22(7).

Form 11.

**APPLICATION FOR RESERVATION OF NAME.**

To the Registrar of Companies.

I, \_\_\_\_\_, of \_\_\_\_\_, apply for the reservation of the name  
as —

\*the name of an intended company.

\*the name to which (*insert present name of company*) proposes to change its name.

\*the name under which \_\_\_\_\_, a foreign company, proposes to be registered, either originally or on change of name.

The nature of the business carried on or to be carried on by the company is (*state fully the nature of the business carried on or to be carried on: General descriptive words such as "investing" or "contracting" are insufficient to describe the nature of the business carried on or to be carried on.*)

The company has acquired (*or proposes to acquire*) a business that was (*or is being*) carried on under the name of

\*Single letters included in the name to be reserved —

\*stand for

\*do not stand for anything.

Dated \_\_\_\_\_ 19 \_\_\_\_\_

(Signature)

\*Strike out whichever is inapplicable.

PAPUA NEW GUINEA.

**Companies Act.**

Act, Sec. 17(5)(d)(ii), 26(2)(d), 55(2)(d).

Form 12.

**STATUTORY DECLARATION OF COMPLIANCE BY COMPANY THAT HAS NOT ISSUED PROSPECTUS.**

LIMITED.

I, (*insert name, address and occupation of person making the declaration*), solemnly and sincerely declare as follows:—

1. I am the secretary (*or one of the directors*) of \_\_\_\_\_ Limited.

\*2. Every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash.

\*2. No director of the company has taken or contracted to take any share or shares in the company for which he is liable to pay in cash.

And I make this solemn declaration by virtue of the *Oaths, Affirmations and Statutory Declarations Act*, and subject to the penalties provided for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

(Signature of Declarant.)

Declared \_\_\_\_\_ 19 \_\_\_\_\_

Before me,

(Signature of person before whom the declaration is made).

(Title of person before whom the declaration is made.)

\* Strike out whichever is inapplicable.

*Companies*

Ch. No. 146

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 26(3).

Form 13.

No. of Company:

CERTIFICATE OF INCORPORATION ON CONVERSION TO A PROPRIETARY COMPANY.

I certify that \_\_\_\_\_, which was, on \_\_\_\_\_ 19\_\_\_\_, incorporated under the \_\_\_\_\_  
as a company limited by shares, did on \_\_\_\_\_ 19\_\_\_\_ convert to a  
proprietary company, and that the name of the company now is \_\_\_\_\_

Given under my hand and seal, \_\_\_\_\_ 19\_\_\_\_.

Registrar of Companies.

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 26(3).

Form 14.

No. of Company:

CERTIFICATE OF INCORPORATION ON CONVERSION TO A PUBLIC COMPANY.

I certify that \_\_\_\_\_, which was, on \_\_\_\_\_ 19\_\_\_\_, incorporated under the \_\_\_\_\_  
as a company limited by shares, did on \_\_\_\_\_ 19\_\_\_\_ convert to a public  
company, and that the name of the company now is \_\_\_\_\_

Given under my hand and seal, \_\_\_\_\_ 19\_\_\_\_.

Registrar of Companies.

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 30(5), 359(3).

Form 15.

NOTICE OF INCREASE IN NUMBER OF MEMBERS.  
LIMITED.

To the Registrar of Companies.

\_\_\_\_\_ Limited gives notice that, on \_\_\_\_\_ 19\_\_\_\_, the number of its members was  
increased by the addition of \_\_\_\_\_ members beyond the registered number of \_\_\_\_\_ members.

Dated \_\_\_\_\_ 19\_\_\_\_.

Director\*.

Secretary\*.

Agent in Papua New Guinea\*.

\* Strike out whichever are inapplicable.

Ch. No. 146

**Companies**

PAPUA NEW GUINEA.

**Companies Act.**

Act, Sec. 55(1)(b)(iii).

Form 16.

**STATUTORY DECLARATION OF COMPLIANCE BY COMPANY THAT HAS ISSUED PROSPECTUS.**

**LIMITED.**

I, (*insert name, address and occupation of person making the declaration*), solemnly and sincerely declare as follows:—

1. I am the secretary (*or one of the directors*) of \_\_\_\_\_ Limited.
2. No money is or may become liable to be repaid to the applicants for any shares or debentures offered for public subscription by reason of any failure to apply for or obtain permission for listing for quotation on any Stock Exchange.
3. The minimum amount that, in the opinion of the directors, must be raised by the issue of shares in order to provide for the matters specified in the prospectus dated \_\_\_\_\_ 19\_\_\_\_ by virtue of Clause 4 of Schedule 4 of the *Companies Act* is K\_\_\_\_\_.
4. Shares held subject to the payment of the whole amount in cash have been allotted to an amount not less in the whole than the minimum subscription.
- \*5. Every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription.
- \*6. No director of the company has taken or contracted to take any share or shares in the company for which he is liable to pay in cash.

And I make this solemn declaration by virtue of the *Oaths, Affirmations and Statutory Declarations Act*, and subject to the penalties provided for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

(*Signature of Declarant.*)

Declared \_\_\_\_\_ 19\_\_\_\_  
Before me,

(*Signature of person before whom the declaration is made.*)

(*Title of person before whom the declaration is made.*)

\* Strike out whichever is inapplicable.

PAPUA NEW GUINEA.

**Companies Act.**

Act, Sec. 55(3).

Form 17.

No. of Company:

**CERTIFICATE THAT COMPANY IS ENTITLED TO COMMENCE BUSINESS AND EXERCISE BORROWING POWERS.**

I certify that \_\_\_\_\_ Limited is entitled to commence business and to exercise its borrowing powers.

Given under my hand and seal, \_\_\_\_\_ 19\_\_\_\_

Registrar of Companies.

**Companies**

Ch. No. 146

**PAPUA NEW GUINEA.**

**Companies Act.**

Act, Sec. 56(1) and (2)(b).

Form 18.

**RETURN OF ALLOTMENT OF SHARES.  
LIMITED.**

The shares referred to in this return were allotted, or are deemed to have been allotted under Section 56(6) of the *Companies Act*—

\*between 19 , and 19 .

\*on 19 .

†1. Number of shares allotted payable in cash

Nominal amount of each of the shares so allotted K

Amount paid or due and payable on each of the shares so allotted —

paid K

due and payable on allotment K

Amount of premium paid or payable on each share K

†2. Number of shares allotted for a consideration other than cash

Nominal amount of each of the shares so allotted K

Amount to be treated as paid on each of the shares so allotted K

The consideration for which the shares have been so allotted is as follows :—

†3. The names and addresses of the allottees of shares in the company and the numbers and classes of shares allotted to them are as follows :—

Surname.	Given name or other names**.	Address.	Number of Shares Allotted.						
			Preference.		Ordinary.		Other kinds.		
			Cash.	Other-wise.	Cash.	Other-wise.	Cash.	Other-wise.	

Dated 19 .

Director\*.

Secretary\*.

**CERTIFICATE.††**

I certify, in relation to Limited, that —

(a) the company has more than 500 members; and

(b) the company keeps its principal share register at a place within the town in which is situated the office of the Registrar of Companies in which the company is registered; and

(c) the company provides reasonable accommodation and facilities for persons to inspect and take copies of its list of members and its particulars of shares transferred; and

\*(d) the shares referred to in this return were allotted for cash.

\*(d) the shares referred to in this return were allotted for a consideration other than cash and the number of persons to whom the shares have been allotted exceeds 500.

Dated 19 .

Secretary.

\* Strike out whichever is inapplicable.

† Where the capital of the company is divided into shares of different classes, the class of shares to which each share comprised in the allotment belongs is to be stated. In the case of the first return, shares subscribed for in the memorandum are to be included and identified as such.

‡ Where, by virtue of Section 56(2)(b) of the Companies Act, a company does not include in Paragraph 3 of this form the particulars mentioned in Subsection (1)(d) of that section, the company must complete the certificate set out in this form.

\*\* Insert all given names or other names, or at least one given name or other name and other initials.

†† This certificate is not to be completed if Paragraph 3 of this Form is completed.

PAPUA NEW GUINEA.  
Companies Act.

Act, Sec. 56(5).

Form 19.

STATEMENT CONTAINING PARTICULARS OF SHARES ALLOTTED OTHERWISE THAN FOR CASH.

LIMITED.

1. The allotment of \_\_\_\_\_ shares to \_\_\_\_\_, of \_\_\_\_\_, on \_\_\_\_\_ 19\_\_\_\_, was made —

\*under a contract not reduced to writing.

\*under a provision in the memorandum or articles.

\*in satisfaction of a dividend declared in favour of, but not payable in cash to, the shareholders.

\*2. Particulars sufficient to show the entitlement of the allottees to the allotment of shares where the allotment was made under —

\*a contract not reduced to writing.

\*a provision in the memorandum or articles are as follows:— (Set out nature and date of, and parties to, the contract, or insert "Clause(s) numbered \_\_\_\_\_ in the memorandum." or "Article(s) numbered \_\_\_\_\_").

\*3. The particulars of the resolution or other authority by virtue of which an allotment was made in satisfaction of a dividend declared in favour of, but not payable in cash to, the shareholders are as follows:— (Set out the date and a summary of the provisions of the resolution or other authority).

4. (This paragraph is to be completed if Paragraph 2 is completed; otherwise it is to be struck out.)

The particulars of the consideration in respect of which the allotment of shares was made are as follows:—\*\*

Dated \_\_\_\_\_ 19\_\_\_\_.

Director\*.

Secretary\*.

\* Strike out whichever is inapplicable.

\*\* The particulars to be given are as follows:—

1. If the consideration for the allotment of the shares is services or any consideration other than that mentioned in Paragraph 2 of this footnote, state the nature of that consideration.

2. If the allotment is made in satisfaction or part satisfaction of the purchase price of property, give a brief description of that property and the following particulars of the manner in which the purchase price is to be satisfied:—

Total amount deemed as paid in shares allotted otherwise than in cash	K
Cash	K
Amount of debt released or liabilities assumed (including mortgages on property)	K

Total purchase price K

3. Give full particulars in the form of the following table of the property referred to in Paragraph 2 of this footnote that is the subject of the sale, showing in detail how the total purchase price is apportioned between each item :—

K

Freehold property and fixed plant and machinery and other fixtures on freehold property  
 Leasehold property  
 Fixed plant and machinery on leasehold property (including tenant's, trade and other fixtures)

Equitable interests in freehold or leasehold property  
 Loose plant and machinery, stock in trade, and other chattels  
 Goodwill and benefit of contracts  
 Patents, designs and trade marks, licences, copyrights, etc.  
 Book and other debts  
 Cash in hand and at bank on current account, bills, notes, etc.  
 Cash on deposit at bank and elsewhere  
 Shares, debentures and other investments  
 Other property, viz.

## PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 60(1)(d) and (3).

Form 20.

STATEMENT OF AMOUNT OR RATE OF COMMISSION AND BROKERAGE.  
LIMITED.

## \*PART I.—COMMISSION.

1. The article of association authorizing payment of commission is Article No.
- \*2. The amount agreed to be paid as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares in the company is K
- \*2. The rate of commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares in the company is % of the price at which the shares are issued.
- \*3. The date of the circular or notice (not being a prospectus) inviting subscription for the shares and disclosing the amount or rate of the commission was
4. The date when the commission is payable is
5. The number of shares for which persons have agreed for a commission to subscribe absolutely is

## \*PART II.—BROKERAGE.

- \*6. The amount agreed to be paid as brokerage for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in the company is K
- \*6. The rate of brokerage for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in the company is % of the price at which the shares are issued.
- \*7. The date of the circular or notice (not being a prospectus) inviting subscription for the shares and disclosing the amount or rate of the brokerage was
8. The date when the brokerage is payable is

Dated 19

(Signatures of all the directors or proposed directors or of their agents authorized in writing.)

\* Strike out whichever is inapplicable.

Ch. No. 146

*Companies*

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 63(8).

Form 21.

NOTICE OF REDEMPTION OF REDEEMABLE PREFERENCE SHARES.

LIMITED.

To the Registrar of Companies.

Limited gives notice that, on 19 , (insert number of shares redeemed) redeemable preference shares to the nominal value of K were redeemed out of profits (or out of the proceeds of a fresh issue of shares). The shares redeemed were the shares comprised in share certificate(s) numbered

Dated 19 .

Director.\*

Secretary.\*

\* Strike out whichever is inapplicable.

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 65(4), 359(2).

Form 22.

NOTICE OF INCREASE IN SHARE CAPITAL.

LIMITED.

To the Registrar of Companies.

1. Limited gives notice that, on 19 , the share capital of the company was increased from K to K .\*

2. The additional capital is divided as follows :-

Number of shares.	Class of shares.	Nominal amount of each share*.

Dated 19 .

Director.\*\*

Secretary.\*\*

Agent in Papua New Guinea.\*\*

\* If the amounts inserted are not quoted in Papua New Guinea currency, the currency in which they are quoted is to be specified.

\*\* Strike out whichever are inapplicable.



**Companies**

Ch. No. 146

PAPUA NEW GUINEA.

**Companies Act.**

Act, Sec. 66(7).

Form 23.

No. of Company:

**CERTIFICATE OF LODGEMENT OF ORDER OF NATIONAL COURT CONFIRMING  
REDUCTION OF SHARE CAPITAL.**

I certify that an office copy of an order of the National Court made on 19  
confirming a reduction of the share capital of Limited has this day been lodged with  
me.

Given under my hand and seal, 19 .

Registrar of Companies.

PAPUA NEW GUINEA.

**Companies Act.**

Act, Sec. 72(2).

Form 24.

**NOTICE OF PLACE WHERE REGISTER OF HOLDERS OF DEBENTURES KEPT, OR OF  
CHANGE IN THAT PLACE.**

LIMITED.

To the Registrar of Companies.

Limited gives notice that the register of holders of debentures has, as from  
19 , been kept at (*insert full address. Particulars sufficient to enable the office where the  
register is kept to be readily located should be included in the address.*)

Dated 19 .

Director.\*

Secretary.\*

\* Strike out whichever is inapplicable.

PAPUA NEW GUINEA.

**Companies Act.**

Act, Sec. 95, 160(2).

Form 25.

**NOTICE OF PLACE WHERE REGISTER OF INTEREST HOLDERS KEPT, OR OF CHANGE IN  
THAT PLACE.**

LIMITED.

To the Registrar of Companies.

Limited gives notice that the register of interest holders has, as from  
19 , been kept at (*insert full address. Particulars sufficient to enable the office where the  
register is kept to be readily located should be included in the address.*)

Dated 19 .

Director.\*

Secretary.\*

\* Strike out whichever is inapplicable.

Ch. No. 146

*Companies*

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 96(1).

Form 26.

RETURN BY MANAGEMENT COMPANY.  
LIMITED.

To the Registrar of Companies.

The name (if any) of the scheme is:

The date of the deed to which the scheme relates is:

The names of the parties to the deed are:

The date to which this return is made up (being the last day of the financial year of the scheme to which the deed relates) is:

\*1. The following is a list of the persons who, on the date to which this return is made up, were the holders of the interests to which the deed relates :—

Name.	Address.	Extent of interest held†.	Description and location of property‡.

2. The following is a summary of all purchases and sales of land and marketable securities affecting the interests of the holders during the financial year ending on the date to which this return is made up, and of all other investments affecting the interests of the holders made during that financial year, showing the descriptions and quantities of those investments :—

3. The following is a statement of the total amount of brokerage affecting the interests of the holders paid or charged by the management company during the financial year ending on the date to which this return is made up and the proportion of the brokerage paid to any stock or share broker, or to any partner, employee or nominee of any stock or share broker, who is an officer of the company, and the proportion retained by the company :—

4. The following is a list of all parcels of land and marketable securities, and other investments, held by the trustee or representative in relation to the deed, as at the date to which this return is made up, showing the value of the land, securities or other investments and the basis of valuations :—

Dated 19 .

Director(s).

CERTIFICATE††

I certify, in relation to Limited, that—

(a) the company keeps a register of holders of interests to which this return relates at a place within the town in which is situated the office of the Registrar of Companies in which it is registered; and

(b) the company provides reasonable accommodation and facilities for persons to inspect and take copies of its list of interest holders to which this return relates.

Dated 19 .

Director.\*\*

Secretary.\*\*

\* Where, by virtue of Section 95(3) of the *Companies Act*, a management company does not, in respect of a financial year applicable to the deed with which the company is concerned, include in Paragraph 1 of this Form the list of persons referred to in Section 96(1)(a) of that Act, the management company must complete the certificate set out in this Form.

† The particulars inserted in this column are to indicate clearly the extent of the interest held.

‡ If the interest consists of a specific interest in any property, set out a description of the property and of its location sufficient to identify the property.

†† This certificate is not to be completed if Paragraph 1 of this Form is completed.

\*\* Strike out whichever is inapplicable.

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 110(1), 111(1).

Form 27.

STATEMENT OF PARTICULARS TO BE LODGED WITH CHARGE.

LIMITED.

To the Registrar of Companies.

1. The charge is given by:
2. The date of the creation of the charge is:
3. The description of the instrument creating or evidencing the charge is:
4. The amount secured by the charge is:
5. A short description of the property affected is:
6. The names and addresses of the persons entitled to the charge are:

Dated 19 .

Director.\*

Secretary.\*

Agent in Papua New Guinea.\*

\* Strike out whichever are inapplicable.

PAPUA NEW GUINEA.  
Companies Act.

Act, Sec. 110(1)(b).

Form 28.

STATUTORY DECLARATION VERIFYING EXECUTION OF CHARGE CREATED BY  
COMPANY AND CORRECTNESS OF COPY OF CHARGE.  
LIMITED.

I, (insert name, address and occupation of person making the declaration), solemnly and sincerely declare as follows:—

1. I am (insert "the secretary of", "a director of", "the lawyer for", or as the case may be) Limited.
2. I was present and did see the execution by Limited of (insert description of instrument creating or evidencing the charge, e.g., "a trust deed", "a mortgage", "a debenture") dated 19 in favour of , the seal of the company being duly affixed to it in my presence on 19 .
3. The annexure marked with the letter "A" has been compared by me with the original instrument creating or evidencing the charge and is a true copy of that instrument.\*

And I make this solemn declaration by virtue of the *Oaths, Affirmations and Statutory Declarations Act*, and subject to the penalties provided for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

(Signature of Declarant.)

Declared 19 .  
Before me,

(Signature of person before whom the declaration is made.)  
(Title of person before whom the declaration is made.)

- \* The annexure is to be endorsed by the person before whom the declaration is made as follows:—  
"This is the annexure marked "A" referred to in the statutory declaration of made on 19 .  
Before me, ."

PAPUA NEW GUINEA.  
Companies Act.

Act, Sec. 110(5), (6) and (7).

Form 29.

STATEMENT CONTAINING PARTICULARS OF A SERIES OF DEBENTURES.  
LIMITED.

A series of debentures containing or giving by reference to any other instrument a charge to the benefit of which the debenture holders of that series are entitled equally has been created by Limited.

1. The total amount secured by the whole series is K .
2. The amount of the first (or only) issue of the series is K .
3. The date of the resolution authorizing the issue of the series was 19 .
4. The date of the covering instrument (if any) by which the security is created or defined or, if there is no such instrument, the date of the first execution of debentures of the series was 19 .
5. A general description of the property charged is as follows:—
6. The names of the trustees (if any) for the debenture holders are
7. The amount or rate per cent. of the commission, allowance or discount (if any) paid or made either directly or indirectly by the company to a person in consideration of his either absolutely or conditionally subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, either absolute or conditional, for any of the debentures included in this return is

Dated 19 .

Director.\*  
Secretary.\*  
Agent in Papua New Guinea.\*

\* Strike out whichever are inapplicable.

PAPUA NEW GUINEA.  
Companies Act.

Act, Sec. 110(6) and (7).

Form 30.

PARTICULARS WHEN MORE THAN ONE ISSUE IS MADE OF DEBENTURES IN A SERIES.  
LIMITED.

An issue of debentures in a series of debentures has been made by \_\_\_\_\_ Limited.

1. The total amount secured by the whole series is K \_\_\_\_\_
2. The date of the present issue of the series is \_\_\_\_\_
3. The amount of the present issue of the series is K \_\_\_\_\_
4. The amount or rate per cent. of the commission, allowance or discount (if any) paid or made either directly or indirectly by the company to a person in consideration of his either absolutely or conditionally subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, either absolute or conditional, for any of the debentures included in this return is \_\_\_\_\_

Dated \_\_\_\_\_ 19 \_\_\_\_\_

Director.\*  
Secretary.\*  
Agent in Papua New Guinea.\*

\* Strike out whichever are inapplicable.

PAPUA NEW GUINEA.  
Companies Act.

Act, Sec. 111(1).

Form 31.

STATUTORY DECLARATION IN RESPECT OF PROPERTY ACQUIRED BY COMPANY OR  
FOREIGN COMPANY WHILE PROPERTY SUBJECT TO A CHARGE.  
LIMITED.

I, (*insert name, address and occupation of person making the declaration*), solemnly and sincerely declare as follows:—

1. I am (*insert "the secretary of", "a director of", "the lawyer for", "the agent in Papua New Guinea of", or as the case may be*) Limited.
2. On \_\_\_\_\_ 19 \_\_\_\_\_ Limited acquired (*insert short particulars of the property charged*) \_\_\_\_\_ which is subject to (*insert description of instrument creating or evidencing the charge, e.g., "a trust deed", "a mortgage", "a debenture"*) dated \_\_\_\_\_ 19 \_\_\_\_\_
3. The amount now owing on the security of the charge is K \_\_\_\_\_
4. The names, addresses and descriptions of the persons entitled to the charge are \_\_\_\_\_

5. (*This paragraph is to be struck out where the original instrument creating or evidencing the charge is lodged.*)

The annexure marked with the letter "A" has been compared by me with the original instrument creating or evidencing the charge and is a true copy of that instrument.\*

And I make this solemn declaration by virtue of the *Oaths, Affirmations and Statutory Declarations Act*, and subject to the penalties provided for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

(*Signature of Declarant.*)

Declared \_\_\_\_\_ 19 \_\_\_\_\_  
Before me,

(*Signature of person before whom the declaration is made.*)  
(*Title of person before whom the declaration is made.*)

\* The annexure is to be endorsed by the person before whom the declaration is made as follows:—  
"This is the annexure marked "A" referred to in the statutory declaration of \_\_\_\_\_  
made on \_\_\_\_\_ 19 \_\_\_\_\_

Before me, \_\_\_\_\_

PAPUA NEW GUINEA.

Companies Act.

Act, Sec. 111(1).

Form 32.

STATUTORY DECLARATION IN RESPECT OF CHARGE CREATED BY FOREIGN COMPANY, OR IN RESPECT OF PROPERTY ACQUIRED BY FOREIGN COMPANY WHILE PROPERTY SUBJECT TO A CHARGE, BEFORE REGISTRATION OF FOREIGN COMPANY IN PAPUA NEW GUINEA.

LIMITED.

I, (insert name, address and occupation of person making the declaration), solemnly and sincerely declare as follows :—

- 1. I am (insert "the secretary", "a director", "the agent in Papua New Guinea", or as the case may be), of Limited.
- 2. On (insert the date on which the company became registered in Papua New Guinea) 19 (insert short particulars of the property charged), was the subject of (insert description of instrument creating or evidencing the charge, e.g., "a trust deed", "a mortgage", "a debenture") dated 19
- 3. The amount now owing on the security of the charge is K
- 4. The names, addresses and descriptions of the persons entitled to the charge are

5. (This paragraph is to be struck out where the original instrument creating or evidencing the charge is lodged.)

The annexure marked with the letter "A" has been compared by me with the original instrument creating or evidencing the charge and is a true copy of that instrument.\*

And I make this solemn declaration by virtue of the Oaths, Affirmations and Statutory Declarations Act, and subject to the penalties provided for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

(Signature of Declarant.)

Declared 19 .  
Before me,

(Signature of person before whom the declaration is made.)  
(Title of person before whom the declaration is made.)

\* The annexure is to be endorsed by the person before whom the declaration is made as follows :—  
"This is the annexure marked "A" referred to in the statutory declaration of made on 19 .

Before me, ."

PAPUA NEW GUINEA  
Companies Act.

Form 33.

Act, Sec. 112(1).  
No. of Company:

REGISTER OF CHARGES TO BE KEPT BY REGISTRAR OF COMPANIES.  
LIMITED.

Companies

Ch. No. 146

Number of charge	Date of registration	Date of creation of charge created by company, or date of acquisition by company of property subject to charge, and description of charge	Amount secured by charge	Description sufficient to identify property charge	Name of person entitled to charge	Total amount secured by a series of debentures			Particulars relating to the issue of a series of debentures		Memorandum of Satisfaction		Receiver or Manager				
						Date	Amt.	K	Date and amount of each issue of the series	Dates of resolutions authorizing issue of the series	Date of covering instrument	General description of property charged	Names of trustees for debenture holders	Amount or rate per cent. of commission, allowance or discount	Date entered	Amount	Name and date of appointment

Ch. No. 146

**Companies**

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 112(2).

Form 34.

No. of Company:

**CERTIFICATE OF REGISTRATION OF CHARGE.**

I certify that a \_\_\_\_\_ dated \_\_\_\_\_ 19\_\_\_\_, created by \_\_\_\_\_ in favour of \_\_\_\_\_ to secure \_\_\_\_\_, has this day been registered and numbered \_\_\_\_\_ in the Register of Charges.

Given under my hand and seal, \_\_\_\_\_ 19\_\_\_\_.

Registrar of Companies.

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 114(1).

Form 35.

**MEMORANDUM OF SATISFACTION OF REGISTERED CHARGE.**

LIMITED.

To the Registrar of Companies.

(*Insert name of mortgagor company*) Limited gives notice that the (*insert description of instrument creating or evidencing the charge, e.g., "trust deed", "mortgage", "debenture"*) dated \_\_\_\_\_ 19\_\_\_\_, numbered \_\_\_\_\_ in the Register of Charges, and created by (*insert name of mortgagor company*) Limited in favour of \_\_\_\_\_ for securing \_\_\_\_\_, was on \_\_\_\_\_ 19\_\_\_\_ paid or satisfied in full (*or to the extent of K* \_\_\_\_\_).

Dated \_\_\_\_\_ 19\_\_\_\_.

The common seal of (*insert name of mortgagor company*) Limited was affixed to this memorandum in the presence of—

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 114(1).

Form 36.

**MEMORANDUM WHERE PROPERTY OR UNDERTAKING IS RELEASED FROM REGISTERED CHARGE OR HAS CEASED TO FORM PART OF COMPANY'S PROPERTY OR UNDERTAKING.**

LIMITED.

To the Registrar of Companies.

(*Insert name of mortgagor company*) Limited gives notice, in relation to the (*insert description of instrument creating or evidencing the charge, e.g., "trust deed", "mortgage", "debenture"*) dated \_\_\_\_\_ 19\_\_\_\_, numbered \_\_\_\_\_ in the Register of Charges and created by (*insert name of mortgagor company*) Limited in favour of \_\_\_\_\_ for securing \_\_\_\_\_, that on \_\_\_\_\_ 19\_\_\_\_ the property or undertaking described below—

\*was released from the charge.

\*ceased to form part of the property or undertaking of (*insert name of mortgagor company*) Limited.

Description of property or undertaking:

Dated \_\_\_\_\_ 19\_\_\_\_.

The common seal of (*insert name of mortgagor company*) Limited was affixed to this memorandum in the presence of—

\* Strike out whichever is inapplicable.



*Companies*

Ch. No. 146

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 114(2).

Form 37.

STATUTORY DECLARATION VERIFYING MEMORANDUM.

LIMITED.

We, (*insert name and address*), a director of (*insert name of mortgagor company*) Limited, and (*insert name and address*) the secretary of the company, solemnly and sincerely declare that the particulars contained in the memorandum of satisfaction of registered charge (*or the memorandum where property or undertaking is released from registered charge or has ceased to form part of company's property or undertaking*) dated 19 , and annexed to this declaration and marked with the letter "A", are true to the best of our knowledge, information and belief.

And we make this solemn declaration by virtue of the *Oaths, Affirmations and Statutory Declarations Act*, and subject to the penalties provided for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

Director.

Secretary.

Declared 19 .

Before me,

(*Signature of person before whom the declaration is made.*)

(*Title of person before whom the declaration is made.*)

\* The annexure is to be endorsed by the person before whom the declaration is made as follows:—

"This is the annexure marked "A" referred to in the statutory declaration of made on 19 .

Before me, ."

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 119(1), 358(1)(f), 359(1)(d).

Form 38.

NOTICE OF SITUATION OF REGISTERED OFFICE AND OF OFFICE HOURS, AND PARTICULARS OF CHANGES.

LIMITED.

To the Registrar of Companies.

Limited gives notice that—

As from 19 , the registered office of the company in Papua New Guinea has been situated at (*insert full address*) \*as from 19 , the days and hours during which that office is open and accessible to the public have been as follows:—

Dated 19 .

Director.\*\*

Secretary.\*\*

Agent in Papua New Guinea.\*\*

\* Strike out if inapplicable.

\*\* Strike out whichever are inapplicable.

Ch. No. 146

**Companies**  
PAPUA NEW GUINEA.  
**Companies Act.**

Act, Sec. 122(1).

Form 39.

CONSENT TO ACT AS DIRECTOR.

LIMITED.

To the Registrar of Companies.

I/We, the undermentioned person(s), consent to act as director(s) of \_\_\_\_\_ Limited.

Full Name.	Address.	Description.

Dated                    19 .

(Signature(s))

PAPUA NEW GUINEA.  
**Companies Act.**

Act, Sec. 122(1)(b).

Form 40.

UNDERTAKING BY DIRECTOR TO TAKE AND PAY FOR QUALIFICATION SHARES.

To \_\_\_\_\_ Limited.

I, \_\_\_\_\_, of \_\_\_\_\_, do undertake to take from the company and to pay for \_\_\_\_\_ shares of K \_\_\_\_\_ each in the capital of the company, being the number of shares required by the provisions of the articles of association of the company for the qualification of a director of the company.

Dated                    19 .

(Signature.)

(Signature of witness.)

(Address and description of witness.)

PAPUA NEW GUINEA.  
Companies Act.

Act, Sec. 122(1)(c).

Form 41.

STATUTORY DECLARATION BY DIRECTOR OF REGISTRATION OF QUALIFICATION  
SHARES.

LIMITED.

I, (*insert name, address and occupation of person making the declaration*), solemnly and sincerely declare as follows :—

1. I am a director of \_\_\_\_\_ Limited.
2. The articles of association of the company provide that a director's shareholding qualification is the holding of \_\_\_\_\_ shares in the company.
3. \_\_\_\_\_ shares in the company are registered in my name in the register of members of the company.

And I make this solemn declaration by virtue of the *Oaths, Affirmations and Statutory Declarations Act*, and subject to the penalties provided for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

(*Signature of Declarant.*)

Declared \_\_\_\_\_ 19 .  
Before me,

(*Signature of person before whom the declaration is made.*)  
(*Title of person before whom the declaration is made.*)

PAPUA NEW GUINEA.  
Companies Act.

Act, Sec. 122(1)(d).

Form 42.

STATUTORY DECLARATION BY DIRECTOR OF ENTITLEMENT TO QUALIFICATION  
SHARES.

LIMITED.

I, (*insert name, address and occupation of person making the declaration*) solemnly and sincerely declare as follows :—

1. I am a director of \_\_\_\_\_ Limited.
2. The articles of association of the company provide that a director's shareholding qualification is the holding of \_\_\_\_\_ shares in the company.
3. The company is formed or intended to be formed by way of reconstruction of, or to acquire shares in, (*insert name of other corporation or names of other corporations in group of corporations*).
4. I am a shareholder in (*insert name of other corporation or relevant names of other corporations in group of corporations*).
5. As such a shareholder, I will be entitled to receive \_\_\_\_\_ shares in \_\_\_\_\_ Limited and to have those shares registered in my name in the register of members of the company.

And I make this solemn declaration by virtue of the *Oaths, Affirmations and Statutory Declarations Act*, and subject to the penalties provided for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

(*Signature of Declarant.*)

Declared \_\_\_\_\_ 19 .  
Before me,

(*Signature of person before whom the declaration is made.*)  
(*Title of person before whom the declaration is made.*)

Ch. No. 146

*Companies*

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 123.

Form 43.

LIST OF PERSONS WHO HAVE CONSENTED TO BE DIRECTORS.

LIMITED.

To the Registrar of Companies.

I, (*insert full name, address and description*), one of the persons desiring the incorporation of Limited, certify that the undermentioned persons have consented to be directors of that company.

Full Name.	Address.	Description.

Dated 19 .

(*Signature*)

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 141(6).

Form 44.

RETURN GIVING PARTICULARS IN REGISTER OF DIRECTORS, MANAGERS AND SECRETARIES, AND CHANGES OF PARTICULARS.

LIMITED.

DIRECTORS.\*

Present Name†.	Former Name†.	Address‡.	Business Occupation (if any).	Particulars of Other Directorships**.	Nature of appointment or change and relevant date//.

MANAGERS AND SECRETARIES.\*

Office in Company.	Full Name.	Address.	Other Occupation (if any).	Nature of appointment or change and relevant date//.
Manager—				
Secretary—				

Dated 19 .

Director.††  
Secretary.††

\* This return is to be completed in full except where it relates to a change of particulars of managers and secretaries, when only those particulars are to be given. Where a director is also a manager or secretary, particulars are to be given under each of the headings "Directors" and "Managers and Secretaries".

† Insert in the appropriate columns, in the case of an individual, his present given name or other name and surname and any former given name or other name or surname, or, in the case of a corporation, its corporate name.

‡ Insert, in the case of an individual, his usual residential address, or, in the case of a corporation, the address of its registered or principal office.

\*\* Insert particulars of any other directorships of public companies or companies that are subsidiaries of public companies held by the director, but not particulars of directorships held by a director in a related company within the meaning of the *Companies Act*. Where a person is a director in one or more subsidiaries of the same holding company it is sufficient to disclose that the person is the holder of one or more directorships in that group of companies and the group may be described by the name of the holding company with the addition of the word "Group". If no other directorships state so.

// Insert, in relation to a new officer, "Appointed" or "In place of (*former officer's name*)".

†† Strike out whichever is inapplicable.

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 141(8).

Form 45.

CERTIFICATE AS TO HOLDING OF THE OFFICE OF DIRECTOR, MANAGER OR SECRETARY.

I certify that, from the returns lodged with the Registrar of Companies under Section 141 of the Companies Act, it appears that \_\_\_\_\_ of \_\_\_\_\_, was (*insert whether director, manager or secretary*) of \_\_\_\_\_ Limited from 19 \_\_\_\_\_, to 19 \_\_\_\_\_.

Given under my hand and seal, \_\_\_\_\_ 19 .

Registrar of Companies.

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 143.

Form 46.

STATUTORY REPORT.

LIMITED.

1. The statutory meeting is to be held on \_\_\_\_\_ 19 .
2. The total number of shares allotted is \_\_\_\_\_ .

The number of shares allotted as fully paid up in cash is

The number of shares allotted as subject to the payment of the full nominal amount in cash and that are partly paid up is

The number of shares allotted as fully paid up otherwise than in cash is

The number of shares allotted as partly paid up otherwise than in cash, namely, to the extent of per share, is

3. The consideration for the allotment of shares fully or partly paid up otherwise than in cash is as follows :— (Set out shortly the nature of the consideration.)

4. The total amount of cash received in respect of shares allotted as fully paid up in cash is K

The total amount of cash received in respect of shares allotted as subject to the payment of the full nominal amount in cash and that are partly paid up is K

The total amount of cash received in respect of shares allotted as partly paid up otherwise than in cash is K

5. The receipts and payments of the company up to 19 , being a date within seven days of the date of this report, are as follows :—

Abstract of Receipts.	Abstract of Payments.
K.	K.
Receipts from shares	
Receipts from debentures	
Receipts from (set out other sources)	Balance
Total	Total

6. An account or estimate of the preliminary expenses of the company is as follows :—

K.

7. The names, addresses and descriptions of the directors, trustees for holders of debentures (if any), auditors (if any), managers (if any) and secretary of the company are as follows :—

**DIRECTORS, TRUSTEES FOR HOLDERS OF DEBENTURES AND MANAGERS.**

Office in Company.	Full Name.	Address†.	Description‡.
Directors			
Trustees for holders of debentures (if any)			
Managers (if any)			

**AUDITORS.**

Firm Name or Surname.	Given Names (if applicable).	Address.	Description.

## SECRETARY.

Surname.	Given Names.	Address.	Description.

8. The particulars of any contract the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification, are as follows :—

## CERTIFICATE OF DIRECTORS.

We certify that the above report is correct.

Dated 19 .

Directors.

## REPORT OF AUDITORS.

We, the auditors of the abovenamed company, report that the statements in the above report, as far as it relates to the shares allotted by the company and to the cash received in respect of those shares and to the receipts and payments of the company on capital account, are in accordance with the records of the company and to the best of our knowledge, information and belief are correct.

Dated 19 .

Auditors.

† Insert, in the case of an individual, his usual residential address, in the case of a corporation having a registered office in Papua New Guinea, the address of that registered office, or, in the case of a corporation not having a registered office in Papua New Guinea, the address of its registered office in the place of its incorporation.

† Include in the description, in the case of a corporation, the name of the place of its incorporation.

## PAPUA NEW GUINEA.

## Companies Act.

Act, Sec. 149(7).

Form 47.

## NOTICE OF MINUTE BY REPRESENTATIVE OF HOLDING COMPANY RELATING TO PROCEEDINGS OF SUBSIDIARY COMPANY.

(Insert name of subsidiary company) LIMITED

To the Registrar of Companies.

On 19 , the minute of (insert name of subsidiary company) Limited set out below (or in the annexure\* marked with the letter "A" and signed by me for purposes of identification) was signed by the representative of (insert name of holding company) Limited authorized under Section 149(3) of the Companies Act.

(Set out copy of minute here if it is not annexed.)

Dated 19 .

Director/Secretary† of (insert name of holding company) limited.

\* Where the copy of the minute is annexed, the annexure is to be endorsed as follows :—

"This is the annexure marked "A" referred to in the notice of minute by the representative of the holding company relating to proceedings of the subsidiary company signed by me on 19 ."

† Strike out whichever is inapplicable.

Ch. No. 146

*Companies*

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 160(2).

Form 48.

NOTICE OF PLACE WHERE REGISTER OF MEMBERS AND INDEX KEPT, OR OF CHANGE  
IN THAT PLACE.

LIMITED.

To the Registrar of Companies.

Limited gives notice that the register of members and index (if any) have, as from  
19 , been kept at (*insert full address: Particulars sufficient to enable the office where the  
register and index, if any, are kept to be readily located should be included in the address.*)

Dated 19 .

Director.\*

Secretary.\*

\* Strike out whichever is inapplicable.

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 164(2), 365(6) and (7).

Form 49.

NOTICE OF SITUATION OF OFFICE WHERE BRANCH REGISTER OF MEMBERS KEPT, OR  
OF CHANGE IN SITUATION OR DISCONTINUANCE.

LIMITED.

To the Registrar of Companies.

Limited gives notice that, as from 19 , a branch register of  
members is being kept at†

Dated 19 .

Director.\*

Secretary.\*

Agent in Papua New Guinea.\*

† In case of change, the words "in place of" and the previous address are to be inserted after the  
present address. In case of discontinuance, strike out the words "is being" and insert the words "was  
discontinued" after the address.

\* Strike out whichever are inapplicable.



*Companies*

Ch. No. 146

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 167.

Form 50.

ANNUAL RETURN OF COMPANY NOT HAVING A SHARE CAPITAL.  
LIMITED.

Annual return of Limited made up to 19 (being the date of, or a date not later than 14 days after, the date of the annual general meeting in 19 ).

1. The date of the annual general meeting of the company was 19 .
2. The address of the registered office of the company is
3. The address of the place at which the register of members is kept (if other than the registered office) is
4. The particulars of the total amount of the indebtedness of the company in respect of all charges that are required to be registered with the Registrar of Companies are as follows :—

Registered Number.	Date of Registration.	Amount of Indebtedness at Date to which Return made up.

Total amount of indebtedness K

5. Particulars of the directors,\* managers, secretaries and auditors of the company at the date to which this return is made up are as follows :—

Office in Company.	Present Given Name or Other Name or Names and Surname†.	Any former Given Name or Other Name or Names or Surname.	Usual† Address‡.	Other Business occupation and, in the case of Directors, Particulars of Other Directorships††.
Directors//				
Managers (if any)//				
Secretaries//				
Auditors for current financial year				

6. A copy of the last audited balance-sheet and profit and loss account or income and expenditure account of the company is attached to and forms part of this return.‡‡

Dated 19 .

Director.\*\*

Secretary.\*\*

\* "Director" includes any person who occupies the position of a director by whatever name called and any person in accordance with whose directions or instructions the directors of a company are accustomed to act.

† In the case of a corporation, its corporate name and registered or principal office should be shown.

‡ In the case of directors, the address given must be the usual residential address.

†† Insert particulars of any other directorships of public companies or companies that are subsidiaries of public companies held by the director, but not particulars of directorships held by a director in a

company that is a related company within the meaning of the *Companies Act*. Where a person is a director in one or more subsidiaries of the same holding company it is sufficient to disclose that the person is the holder of one or more directorships in that group of companies and the group may be described by the name of the holding company with the addition of the word "Group". If no other directorships state so.

// Where a director is also a manager or secretary, particulars are to be entered under each of the relevant headings "Directors", "Managers" and "Secretaries".

‡‡ The copy is to be certified by a director or by the manager or secretary of the company to be a true copy of the last balance-sheet and of the last profit and loss account or income and expenditure account that have been audited by the company's auditors (including every document required by law to be annexed or attached to them) and is to be accompanied by a copy of the report of the auditors on them (being a copy certified by a director or by the manager or secretary of the company to be a true copy). If the balance-sheet or account is in a foreign language, a translation into English, certified as prescribed by Section 15 of the *Companies Regulation*, is to be annexed to it. If the balance-sheet or account did not comply with the requirements of the law as in force at the date of the audit, such additions to and corrections in the copy are to be made as would have been required to be made to make it comply with those requirements. The fact that the copy has been so amended is to be stated on the copy. If a company has had more than one audited balance-sheet or profit and loss account or income and expenditure account since the date of the last return, every balance-sheet and profit and loss account or income and expenditure account since that date is to be included.

\*\* Strike out whichever is inapplicable.

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 168(1).

Form 51.

CERTIFICATE FOR INCLUSION IN PUBLIC COMPANY'S ANNUAL RETURN THAT DOES NOT INCLUDE LIST OF MEMBERS.

For the purposes of Section 168(1) of the *Companies Act*, I certify, in relation to Limited, that—

- (a) the company has more than 500 members; and
- (b) the company keeps its principal share register at a place within the town in which is situated the office of the Registrar of Companies in which it is registered; and
- (c) the company provides reasonable accommodation and facilities for persons to inspect and take copies of its list of members and its particulars of shares transferred,

and that accordingly the company is of a kind to which that subsection applies.

Dated 19 .

Secretary.

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 181(3).

Form 52.

NOTICE BY INSPECTOR.

Investigation of the affairs of Limited.

To , of

I, , of , was appointed on 19 —

\*by the Minister under the powers conferred on him by the *Companies Act*

\*by a special resolution passed at a general meeting of the members of Limited

as an inspector to investigate the affairs of \_\_\_\_\_ Limited and to report on those affairs. Under the *Companies Act*, 1, as such an inspector, may require certain persons to appear before me for examination on oath or affirmation in relation to the business of the company, and to produce all books and documents in the custody or under the control of those persons.

You are required to appear before me on \_\_\_\_\_ 19 \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m. at \_\_\_\_\_ for examination on oath or affirmation in relation to the business of the company, and also to bring with you and produce at that time and place for examination the following books and documents:—

Dated \_\_\_\_\_ 19 \_\_\_\_\_

Inspector.

\* Strike out whichever is inapplicable.

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 196(2).

Form 53.

Reg., Sec. 12(2).

NOTICE TO DISSENTING SHAREHOLDER.

To \_\_\_\_\_, of \_\_\_\_\_

In this notice, \_\_\_\_\_ Limited is referred to as "the transferor company", and \_\_\_\_\_ Limited is referred to as "the transferee company".

On \_\_\_\_\_ 19 \_\_\_\_\_, the transferee company made an offer to all the holders of\* \_\_\_\_\_ shares in the transferor company of \_\_\_\_\_ (state shortly the nature of the offer).

Up to \_\_\_\_\_ 19 \_\_\_\_\_ (being a date within four months after the making of the offer in that behalf by the transferee company), the offer was approved by the holders of not less than 90% in nominal value of the\* \_\_\_\_\_ shares (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary).

The transferee company gives you notice, under Section 196 of the *Companies Act*, that it desires to acquire the\* \_\_\_\_\_ shares held by you in the transferor company.

You are entitled within one month after the receipt of this notice to require the transferee company, by written demand served on it, to supply you with a statement of the names and addresses of all other dissenting shareholders, and the transferee company will not be entitled or bound to acquire the shares of those dissenting shareholders until one month after the posting to you of the statement of those names and addresses.

Unless on application made to the National Court by you—

- (a) on or before \_\_\_\_\_ 19 \_\_\_\_\_ (being one month from the date of this notice); or
- (b) on a date within seven days of a statement being supplied to you under Section 196(5) of the *Companies Act*,

whichever is the later date, the National Court orders otherwise, the transferee company will, under those provisions, be entitled and bound to acquire the\* \_\_\_\_\_ shares held by you in the transferor company on the terms which, under the scheme or contract to which the offer relates, the shares of the approving\* \_\_\_\_\_ shareholders in the transferor company are to be transferred to the transferee company.

Dated \_\_\_\_\_ 19 \_\_\_\_\_

(Signature.)

‡ \_\_\_\_\_ of \_\_\_\_\_ Limited.

\* If the offer is limited to a certain class or to certain classes of shareholders, give a description of that class or those classes.

‡ State whether a director or the secretary and insert the name of the transferee company.

PAPUA NEW GUINEA.  
Companies Act.

Act, Sec. 196(6).  
Reg., Sec. 12(3).

Form 54.

NOTICE TO NON-ASSENTING SHAREHOLDER.

To \_\_\_\_\_, of \_\_\_\_\_  
In this notice, \_\_\_\_\_ Limited is referred to as "the transferor company", and \_\_\_\_\_ Limited is referred to as "the transferee company".

A scheme or contract involving the transfer of\* \_\_\_\_\_ shares in the transferor company to the transferee company was, up to \_\_\_\_\_ 19 (being a date within four months after the making of the offer in that behalf by the transferee company), approved by the holders of not less than 90% in nominal value of those shares (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary).

In pursuance of that scheme or contract, (state amount of shares transferred) shares were, on \_\_\_\_\_ 19, transferred to the transferee company or its nominee.

The transferee company gives you notice, under Section 196 of the Companies Act, that those shares together with such other shares in the transferor company as were held by, or by a nominee for, the transferee company or its subsidiary at the last-mentioned date comprise or include 90% in nominal value of the\* \_\_\_\_\_ shares in the transferor company.

In pursuance of those provisions you may, within three months from the giving of this notice, give notice that you require the transferee company to acquire your holding of\* \_\_\_\_\_ shares in the transferor company, and if you give that notice the transferee company will be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders were transferred to it, or on such other terms as are agreed or as the National Court, on application made to it by you or by the transferee company, thinks proper to order.

Dated \_\_\_\_\_ 19 \_\_\_\_\_

(Signature.)

‡ \_\_\_\_\_ of \_\_\_\_\_ Limited.

\* If the offer is limited to a certain class or to certain classes of shareholders, give a description of that class or those classes.

‡ State whether a director or the secretary and insert the name of the transferee company.

PAPUA NEW GUINEA.  
Companies Act.

Act, Sec. 201(1).

Form 55.

NOTICE OF APPOINTMENT OF RECEIVER OR MANAGER.  
LIMITED.

To the Registrar of Companies.

I, \_\_\_\_\_, of \_\_\_\_\_, give notice that—

\*I have obtained an order of the National Court, made on \_\_\_\_\_ 19, for the appointment of \_\_\_\_\_, of \_\_\_\_\_, as receiver (or manager or receiver and manager) of the property of \_\_\_\_\_ Limited.

\*On \_\_\_\_\_ 19 I appointed \_\_\_\_\_, of \_\_\_\_\_, as receiver (or manager or receiver and manager) of the property of \_\_\_\_\_ Limited under the powers contained in an instrument dated ‡

Dated \_\_\_\_\_ 19 \_\_\_\_\_

(Signature.)

\* Strike out whichever paragraph is inapplicable.

‡ Describe fully the instrument under which appointment is made and, if the instrument is registered in the Register of Charges, state its registered number.

**Companies**

Ch. No. 146

PAPUA NEW GUINEA.

**Companies Act.**

Act, Sec. 201(2).

Form 56.

**NOTICE BY RECEIVER OR MANAGER CEASING TO ACT.  
LIMITED.**

To the Registrar of Companies.

I, \_\_\_\_\_, of \_\_\_\_\_, give notice that I ceased to act as receiver (or manager  
or receiver and manager) of the property of \_\_\_\_\_ Limited on \_\_\_\_\_ 19 \_\_\_\_.

Dated \_\_\_\_\_ 19 \_\_\_\_.

(Signature)

PAPUA NEW GUINEA.

**Companies Act.**

Act, Sec. 204, 205, 210(4), 222(4)(d), 251, 279(4).

Form 57.

**STATEMENT OF AFFAIRS.  
LIMITED.**

STATEMENT OF ASSETS AND LIABILITIES AS AT

19 \_\_\_\_.

	Cost or Book Value.	Estimated Realizable Values.
<b>1. ASSETS NOT SPECIFICALLY CHARGED</b>	<b>K</b>	<b>K</b>
(a) Land as detailed in Schedule A†		
(b) Sundry debtors as detailed in Schedule B†		
(c) Cash on hand		
(d) Cash at bank		
(e) Stock as detailed in inventory		
(f) Plant and equipment as detailed in inventory		
(g) Other assets as detailed in Schedule C†		
<b>2. ASSETS SUBJECT TO SPECIFIC CHARGES, LIENS, MORTGAGES, BILLS OF SALE OR HIRE-PURCHASE AGREEMENTS, as detailed in Schedule D†</b>	<b>K</b>	
<i>Less</i> amounts owing as detailed in Schedule D		
<b>TOTAL ASSETS</b>		
<b>TOTAL ESTIMATED REALIZABLE VALUES</b>		<b>K</b>
<b>3. <i>Less</i> PREFERENTIAL CREDITORS ENTITLED TO PRIORITY OVER THE HOLDERS OF DEBENTURES UNDER ANY FLOATING CHARGE, as detailed in Schedule E</b>		
<b>4. <i>Less</i> AMOUNTS OWING AND SECURED BY DEBENTURE OR FLOATING CHARGE OVER COMPANY'S ASSETS TO</b>		
<b>5. <i>Less</i> PREFERENTIAL CREDITORS as detailed in Schedule F</b>		
<b>ESTIMATED AMOUNT AVAILABLE FOR UNSECURED CREDITORS</b>		

Ch. No. 146

*Companies*

6. CREDITORS (UNSECURED) as detailed in Schedule G Amount claimed (K .)	K	K
7. BALANCES OWING TO PARTLY SECURED CREDITORS, as detailed in Schedule H Total claims (K .) Security held (K .)		
8. CONTINGENT ASSETS K Estimated to produce, as detailed in Schedule I		
9. CONTINGENT LIABILITIES K Estimated to rank, as detailed in Schedule J		
ESTIMATED DEFICIENCY/SURPLUS† (Subject to costs of administration/liquidation‡)		
SHARE CAPITAL Issued (K .) Paid up (K .)		

\* Indicate in respect of each entry whether cost or book value.

† Where this statement of affairs is made for the purposes of Section 279(4) of the *Companies Act*, Schedules A,B,C and D are to show the method and manner in which the valuation of the assets was arrived at.

‡ Strike out whichever is inapplicable.

SCHEDULE A.

LAND.

Address and Description of Land.	Cost Price or Book Value.	Estimated Realizable Value.	Valuation for Rating Purposes.	Particulars of Tenancy.	Where possession of Deeds may be obtained.	Short Particulars of Title.
	K	K	K			

SCHEDULE B.

SUNDRY DEBTORS (INCLUDING LOAN DEBTORS).

Name and Address of Debtor.	Amount Owng.	Amount Realizable.	Deficiency.	Particulars of Security (if any) held.	Explanation of, or Reason for, Deficiency.
	K	K	K		

*Companies*

Ch. No. 146

SCHEDULE C.  
OTHER ASSETS.

Description of Deposit or Investment.	Cost.	Amount Realizable.
Deposits—	K	K
Investments—		

SCHEDULE D.  
ASSETS SUBJECT TO SPECIFIC CHARGES, LIENS, MORTGAGES, BILLS OF SALE OR HIRE PURCHASE AGREEMENTS.

Description of Asset.	Date Charge Given.	Description of Charge.	Holder of Charge.	Terms of Repayment.	Cost or Book Value.	Estimated Realizable Value.	Amount Owning Under Charge.
					K	K	K

SCHEDULE E.  
PREFERENTIAL CREDITORS ENTITLED TO PRIORITY OVER THE HOLDERS OF DEBENTURES UNDER ANY FLOATING CHARGE.

Employee's Name and Address.	Wages.	Holiday Pay.	Long Service Leave.	Estimated Liability.
	K	K	K	K

SCHEDULE F.  
PREFERENTIAL CREDITORS (OTHER THAN THOSE DETAILED IN SCHEDULE E).

Name and Address of Preferential Creditor.	Description of Amount Owning.	Amount Owning.
		K

SCHEDULE G.  
UNSECURED CREDITORS.

Name and Address of Creditor.	Amount Claimed by Creditor.	Amount Admitted as Owning.	Reason for Disputed Amount (if any).
	K	K	

**Companies**

**SCHEDULE H.  
PARTLY SECURED CREDITORS.**

Name and Address of Creditor.	Particulars of Security Held.	Nature of Security.	Estimated Value of Security Held.	Amount Owing to Creditor.	Amount Estimated to rank as Unsecured.
			K	K	K

**SCHEDULE I.  
CONTINGENT ASSETS.**

Description of Asset.	Gross Asset.	Estimated to Produce.
	K	K

**SCHEDULE J.  
CONTINGENT LIABILITIES.**

Name and Address of Creditor.	Nature of Liability.	Gross Liability.	Estimated to Rank for—
		K	K

I certify that the particulars contained in this statement of affairs are true to the best of my knowledge and belief.

Dated 19 . . . . .

(Signature)

**PAPUA NEW GUINEA.  
Companies Act.**

Act, Sec. 205(3), 251(1).  
Reg., Sec. 6(6).

Form 58.

**STATUTORY DECLARATION VERIFYING STATEMENT OF AFFAIRS.  
LIMITED.**

I, (insert name, address and occupation of person making the declaration), solemnly and sincerely declare as follows :—

- I am†
- The particulars contained in the statement of affairs relating to Limited dated 19 . . . . . and signed by me are true to the best of my knowledge and belief.

And I make this solemn declaration by virtue of the *Oaths, Affirmations and Statutory Declarations Act*, and subject to the penalties provided for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

(Signature of Declarant.)

Declared 19 . . . . .  
Before me,

(Signature of person before whom the declaration is made.)  
(Title of person before whom the declaration is made.)

† Insert description sufficient to show that the person making the declaration is a person referred to in Section 205(3) or 251(2) (as the case requires) of the *Companies Act*.



PAPUA NEW GUINEA.  
Companies Act.

Act, Sec. 206(1).

Form 59.

ACCOUNT OF RECEIPTS AND PAYMENTS BY RECEIVER OR MANAGER.  
LIMITED.

1. The name and address of the receiver (or manager or receiver and manager) are
2. The date and description of the instrument (if any) containing the powers under which the receiver (or manager or receiver and manager) is appointed are
3. The date of the appointment under the powers contained in any instrument or the date of the Court order for the appointment is
4. The period covered by this account is from 19 to 19
5. The statement of receipts and payments during that period is as follows :—

RECEIPTS.			PAYMENTS.		
Date.	From Whom.	Amount.	Date.	To Whom.	Amount.
		K			K
	Total amount			Total amount	

6. The aggregate amount of receipts during all preceding periods since appointment is K
  7. The aggregate amount of payments during all preceding periods since appointment is K
  8. The amount owing under the instrument (if any)—  
 † at the date of my appointment was K  
 at the expiration of the period covered by this account is K
  9. The estimated value of all assets of the company subject to the instrument (if any) at the expiration of the period covered by this account is K
- Dated 19

Receiver.\*  
 Manager.\*  
 Receiver and Manager.\*

STATUTORY DECLARATION VERIFYING ACCOUNT.

I, (insert name, address and occupation of person making the declaration), do solemnly and sincerely declare as follows :—

1. I am the receiver (or manager or receiver and manager) of the property of Limited.
2. All the accounts and statements set out above are to the best of my knowledge and belief true in every particular.

And I make this solemn declaration by virtue of the *Oaths, Affirmations and Statutory Declarations Act*, and subject to the penalties provided for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

(Signature of Declarant.)

Declared 19  
 Before me,

(Signature of person before whom the declaration is made.)  
 (Title of person before whom the declaration is made.)

\* Strike out whichever are inapplicable.  
 † Strike out in the case of a second or subsequent account.

Ch. No. 146

**Companies**

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 210(10).

Form 60.

**NOTICE OF MEETING OF CREDITORS.**

**LIMITED.**

Notice is given that a meeting of the creditors of \_\_\_\_\_ Limited will be held at (insert full address, including floor and room number, if applicable) on the \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ a.m./p.m. for the purpose of placing the company under official management and appointing an official manager as provided in Part X of the *Companies Act*.

Dated \_\_\_\_\_ 19 \_\_\_\_ .

Director\*.

Secretary\*.

\* Strike out whichever is inapplicable.

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 210(11)(a).

Form 61.

**SUMMARY OF AFFAIRS.\***

**LIMITED.**

**STATEMENT OF ASSETS AND LIABILITIES AS AT**

19 \_\_\_\_ .†

	Cost or Book Value.‡	Estimated Realizable Values.
	K	K
<b>1. ASSETS NOT SPECIFICALLY CHARGED</b>		
(a) Land		
(b) Sundry debtors		
(c) Cash on hand		
(d) Cash at bank		
(e) Stock as detailed in inventory		
(f) Plant and equipment as detailed in inventory		
(g) Other assets		
<b>2. ASSETS SUBJECT TO SPECIFIC CHARGES, LIENS, MORTGAGES, BILLS OF SALE OR HIRE-PURCHASE AGREEMENTS</b>		
Less amounts owing	K	
<b>TOTAL ASSETS</b>		
<b>TOTAL ESTIMATED REALIZABLE VALUES</b>		K
<b>3. Less PREFERENTIAL CREDITORS ENTITLED TO PRIORITY OVER THE HOLDERS OF DEBENTURES UNDER ANY FLOATING CHARGE</b>		
<b>4. Less AMOUNTS OWING AND SECURED BY DEBENTURE OR FLOATING CHARGE OVER COMPANY'S ASSETS TO</b>		
<b>5. Less OTHER PREFERENTIAL CREDITORS</b>		

	Cost or Book Value. ‡	Estimated Realizable Values.
ESTIMATED AMOUNT AVAILABLE FOR UNSECURED CREDITORS		
6. CREDITORS (UNSECURED) Amount claimed (K .)	K	
7. BALANCES OWING TO PARTLY SECURED CREDITORS Total Claims (K .) Security held (K .)		
8. CONTINGENT ASSETS K Estimated to produce		
9. CONTINGENT LIABILITIES K Estimated to rank		
ESTIMATED DEFICIENCY/SURPLUS** (Subject to costs of administration/liquidation**)		
SHARE CAPITAL.		
Issued (K .)		
Paid up (K .)		
Dated 19 .		

Director.\*\*  
Secretary.\*\*

\* Under Section 210(13) of the *Companies Act*, where the complete Statement of Affairs (Form 57) is attached to each notice of meeting posted to creditors under Section 210(10) Form 61 need not be sent out.

† Nor earlier than the date of the passing of the resolution of the directors that the company is unable to pay its debts as and when they become due, or the date of receipt of a request of a judgement creditor (under Section 210(1)) that a meeting of creditors be called for the purpose of putting the company under official management, as the case may be.

‡ Indicate in respect of each entry whether cost or book value.

\*\* Strike out whichever is inapplicable.

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 213(3)(a).

Form 62.

NOTICE OF SPECIAL RESOLUTION OF CREDITORS APPOINTING OFFICIAL MANAGER, ETC.

LIMITED.

I, \_\_\_\_\_, of \_\_\_\_\_, being the official manager (or the secretary) of \_\_\_\_\_ Limited, give notice that at a meeting of creditors of the company duly convened and held on \_\_\_\_\_ 19\_\_\_\_, subsequent to the passing of the resolution set out in Schedule A below (or in the annexure† marked with the letter "A" and signed by me for the purposes of identification) a special resolution within the meaning of Section 209 of the *Companies Act*, a true copy of which is set out in Schedule B below (or in the annexure† marked "B" and signed by me for the purposes of identification), was duly passed.

Schedule A.  
Schedule B.

Dated \_\_\_\_\_ 19 .

Official Manager.\*  
Secretary.\*

† Where the copies of the special resolutions are annexed, the annexure is to be endorsed as follows:—

"This is the annexure marked "A" (or "B", as the case may be) referred to in the notice of special resolutions of creditors signed by me on \_\_\_\_\_ 19 ."

\* Strike out whichever is inapplicable.

Ch. No. 146

*Companies*

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 213(3)(d).

Form 63.

NOTICE TO CREDITORS AND MEMBERS OF PLACING COMPANY UNDER OFFICIAL  
MANAGEMENT AND OF RIGHTS UNDER SECTION 228.

LIMITED.

I, \_\_\_\_\_, of \_\_\_\_\_, being the official manager (or the secretary) of  
\_\_\_\_\_ Limited, certify that at a meeting of creditors of the company duly convened and  
held on \_\_\_\_\_ 19\_\_\_\_ a special resolution within the meaning of Section 209 of the *Companies  
Act*, a true copy of which is set out below (or in the annexure† marked with the letter "A" and signed  
by me for purposes of identification), was duly passed.

(Set out copy of resolution here if it is not annexed.)

Under Section 228 of the Act—

- (a) a creditor to whom the company owes, or a representative of a group of creditors to whom collectively the company owes, more than 10% of the total unsecured debts of the company; or
- (b) a member holding, or a representative of a group of members holding collectively, not less than 10% of the paid-up capital of the company; or
- (c) in the case of a company not having a share capital, a member holding, or a representative of a group of members holding collectively, not less than 10% of the total voting rights of all members having a right to vote at general meetings,

may apply to the National Court for the variation or cancellation of the resolution at any time within a period of 14 days after the passing of the resolution.

Dated \_\_\_\_\_ 19\_\_\_\_ .

Official Manager.\*

Secretary.\*

† Where the copy of the special resolution is annexed, the annexure is to be endorsed as follows :—

"This is the annexure marked "A" referred to in the notice of special resolution of creditors signed by me on \_\_\_\_\_ 19\_\_\_\_ ."

\* Strike out whichever is inapplicable.

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 213(7)(a).

Form 64.

NOTICE OF ORDER TERMINATING APPOINTMENT OF OFFICIAL MANAGER.

LIMITED.

To the Registrar of Companies.

Notice is given that, on \_\_\_\_\_ 19\_\_\_\_, I obtained an order of the National Court terminating the appointment of \_\_\_\_\_ as manager of \_\_\_\_\_ Limited and appointing \_\_\_\_\_ official manager of the company.

Dated \_\_\_\_\_ 19\_\_\_\_ .

(Signature.)

*Companies*

Ch. No. 146

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 215(1), 232(5).

Form 65.

NOTICE OF APPOINTMENT AND SITUATION OF OFFICE OF OFFICIAL  
MANAGER/DEPUTY OFFICIAL MANAGER\*.

LIMITED.

To the Registrar of Companies.

I, \_\_\_\_\_, of \_\_\_\_\_, give notice that—

(a) I was appointed official manager/deputy official manager\* of \_\_\_\_\_ Limited—

\*by the creditors of \_\_\_\_\_ Limited passed on \_\_\_\_\_ 19 ;

\*by an order of the National Court made on \_\_\_\_\_ 19 ;

\*by the committee of management on \_\_\_\_\_ 19 ;

(b) my office is situated at (*insert full address, including floor and room number, if applicable*).

Dated \_\_\_\_\_ 19 .

(*Signature*.)

\* Strike out whichever are inapplicable.

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 215(2), 232(5).

Form 66.

NOTICE OF CHANGE IN SITUATION OF OFFICE OF OFFICIAL MANAGER/DEPUTY  
OFFICIAL MANAGER\*.

LIMITED.

To the Registrar of Companies.

I, \_\_\_\_\_, the official manager/deputy official manager\* of \_\_\_\_\_ Limited,  
give notice that, on \_\_\_\_\_ 19, the situation of my office was changed to (*insert full address,  
including floor and room numbers, if applicable*).

Dated \_\_\_\_\_ 19 .

(*Signature*.)

\* Strike out whichever are inapplicable.

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 215(2), 232(6).

Form 67.

NOTICE BY OFFICIAL MANAGER/DEPUTY OFFICIAL MANAGER\* OF CESSATION OF  
OFFICE.

LIMITED.

To the Registrar of Companies.

I, \_\_\_\_\_, of \_\_\_\_\_, being the person appointed as official manager/deputy  
official manager\* of \_\_\_\_\_ Limited, give notice of my resignation (*or removal*) from the  
office of official manager/deputy official manager\* on \_\_\_\_\_ 19 .

Dated \_\_\_\_\_ 19 .

(*Signature*.)

\* Strike out whichever is inapplicable.

Ch. No. 146

*Companies*

PAPUA NEW GUINEA.  
*Companies Act.*

Act, Sec. 217(7).

Form 68.

NOTICE BY OFFICIAL MANAGER OF HOLDING OF SIX-MONTHLY MEETING.  
LIMITED.

To the Registrar of Companies.

Notice is given that, under Section 217(1) of the *Companies Act*, a meeting of the creditors and members of Limited was called and held on 19 to consider my statement and report prepared under that section. A copy of the statement and report is attached.

Dated 19 .

(Signature.)

PAPUA NEW GUINEA.  
*Companies Act.*

Act, Sec. 219(4).

Form 69.

NOTICE OF SPECIAL RESOLUTION OF CREDITORS EXTENDING PERIOD OF OFFICIAL  
MANAGEMENT.  
LIMITED.

To the Registrar of Companies.

Notice is given that, at a meeting of the creditors of Limited duly convened and held under Section 219(1) of the *Companies Act* at on 19, the special resolution within the meaning of Section 209(1) of that Act set out below was duly passed.

(Set out a copy of the resolution).

Dated 19 .

Official Manager.\*  
Secretary.\*

\* Strike out whichever is inapplicable.

PAPUA NEW GUINEA.  
*Companies Act.*

Act, Sec. 222(8).

Form 70.

NOTICE BY OFFICIAL MANAGER OF HOLDING OF MEETINGS OF MEMBERS AND  
CREDITORS WHEN COMPANY UNABLE TO PAY DEBTS.  
LIMITED.

To the Registrar of Companies.

Notice is given that, under Section 222(3) and (4) of the *Companies Act*, a meeting of members of Limited was called and held on 19 for the purpose of considering a special resolution that the company be wound up voluntarily, and a meeting of the creditors of the company was held on 19 .

At the meeting of creditors the statement of the company's affairs prepared by me was laid before the meeting. A copy of the statement of affairs is attached.

The special resolution was passed/not passed\*.

Dated 19 .

(Signature.)

\* Strike out whichever is inapplicable.

*Companies*

Ch. No. 146

PAPUA NEW GUINEA.  
*Companies Act.*

Act, Sec. 229(1).

Form 71.

NOTICE OF ORDER TERMINATING OFFICIAL MANAGEMENT.  
LIMITED.

To the Registrar of Companies.

Notice is given that on 19 , I obtained an order of the National Court  
terminating the official management of Limited.

Dated 19 .

(Signature.)

PAPUA NEW GUINEA.  
*Companies Act.*

Act, Sec. 229(1).

Form 72.

NOTICE OF ORDER VARYING OR CANCELLING RESOLUTION FOR OFFICIAL  
MANAGEMENT.  
LIMITED.

To the Registrar of Companies.

Notice is given that on 19 , I obtained an order of the National Court—

\*varying the special resolution passed on 19 , by a meeting of creditors of  
Limited placing the company under official management by *(give details of the  
variation, as expressed in the order).*

\*cancelling the special resolution passed on 19 , by a meeting of creditors of  
Limited placing the company under official management.

Dated 19 .

(Signature.)

\* Strike out whichever is inapplicable.

PAPUA NEW GUINEA.  
*Companies Act.*

Act, Sec. 230(5).

Form 73.

NOTICE RELATING TO MEETING OF CREDITORS CALLED TO RECEIVE REPORT OF  
OFFICIAL MANAGER ON TERMINATION OF APPOINTMENT.  
LIMITED.

To the Registrar of Companies.

I, , of , the person whose appointment as official manager of  
Limited was terminated on 19 inform you that a meeting of the  
creditors of the company called for 19 for the purpose of receiving a report  
showing how the official management was conducted by me was duly held on that date (or was not  
attended by the necessary quorum).

A copy of the report is attached.

Dated 19 .

(Signature.)

Ch. No. 146

**Companies**

PAPUA NEW GUINEA.

**Companies Act.**

Act, Sec. 230(9).

Form 74.

**NOTICE OF RESOLUTION ADOPTING REPORT AND DISCHARGING OFFICIAL  
MANAGER.**

LIMITED.

To the Registrar of Companies.

At a meeting of creditors of \_\_\_\_\_ Limited duly convened and held at  
on \_\_\_\_\_ 19\_\_\_\_, a resolution was passed adopting the report prepared by  
me under Section 230(1) of the *Companies Act* (a copy of which was lodged with you under Section  
230(5) on \_\_\_\_\_ 19\_\_\_\_) and my explanations of the report.

Dated \_\_\_\_\_ 19\_\_\_\_.

(Signature of the person who was the Official Manager.)

PAPUA NEW GUINEA.

**Companies Act.**

Act, Sec. 247(1).

Form 75.

**NOTICE OF WINDING-UP ORDER AND PARTICULARS OF LIQUIDATOR.**

LIMITED.

To the Registrar of Companies.

Notice is given that, on \_\_\_\_\_ 19\_\_\_\_, an order of the National Court for the  
winding-up of \_\_\_\_\_ Limited was made and that \_\_\_\_\_, of \_\_\_\_\_,  
was appointed liquidator.

Dated \_\_\_\_\_ 19\_\_\_\_.

(Signature of Petitioner.)

PAPUA NEW GUINEA.

**Companies Act.**

Act, Sec. 276.

Form 76.

**DECLARATION OF SOLVENCY.**

LIMITED.

We, \_\_\_\_\_, of \_\_\_\_\_, and \_\_\_\_\_, of \_\_\_\_\_, being  
(insert "all" or "a majority of") the directors of \_\_\_\_\_ Limited, and being present at a  
meeting of the directors of the company, declare that—

(a) we have made an inquiry into the affairs of the company; and

(b) at this meeting, we have formed the opinion that the company will be able to pay its  
debts in full within a period of (insert a period of months not exceeding 12) months after the  
commencement of the winding-up.

Attached and signed by us is a true and correct statement of the company's assets and liabilities as  
at \_\_\_\_\_ 19\_\_\_\_, being the latest practicable date before the making of this declaration.

Declared at the abovementioned meeting of directors held at \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_.

Directors.



STATEMENT AS AT 19 TO BE ATTACHED TO DECLARATION OF SOLVENCY, SHOWING ASSETS AT ESTIMATED REALIZABLE VALUES AND LIABILITIES EXPECTED TO RANK.

LIMITED.

Assets and Liabilities.	Estimated to Realize or to Rank for Payment (to nearest K.)
<p><b>ASSETS :—</b>                      Balance at bank                      Cash in hand                      Marketable securities                      Bills receivable                      Trade debtors                      Loans and advances                      Unpaid calls                      Stock in trade                      Work in progress                      Freehold property                      Leasehold property                      Plant and machinery                      Furniture, fittings, utensils, etc.                      Patents, trade marks, etc.                      Investments other than marketable securities                      Other property, viz:—                          Estimated realizable value of assets</p>	K
<p><b>LIABILITIES :—</b>                      Secured on specific assets, viz:—                          Secured by floating charges                          Estimated expenses of winding-up                          Other estimated expenses, including interest accruing until payment of debts in full</p>	K.
<p>Unsecured creditors (amounts estimated to rank for payment):—                          Trade accounts                          Bills payable                          Accrued expenses                          Other liabilities:—                          Contingent liabilities:—                              Total</p>	K.
<p>Estimated surplus after paying debts in full</p>	

Remarks

Dated 19 .

Directors.

Ch. No. 146

*Companies*

PAPUA NEW GUINEA.  
*Companies Act.*

Act, Sec. 278(1).  
Reg., Sec. 20(2)(a).

Form 77.

NOTICE OF MEETING OF CREDITORS.  
LIMITED.

Notice is given that, in accordance with Section 278(1) of the *Companies Act*, a meeting of the creditors of Limited will be held at on 19 at a.m./p.m.

The winding up of the company commenced on 19, and I was appointed liquidator by resolution of the members of the company. As the directors declared that the company would be able to pay its debts in full within a period of months after the commencement of the winding-up, the liquidation is proceeding as a members' voluntary winding-up.

I have formed the opinion that the company will not be able to pay or provide for the payment of its debts in full within that period and this meeting is summoned in order that the creditors may, if they so wish, exercise their right under Section 278(2) of the *Companies Act* to appoint some person other than myself to be the liquidator of the company for the purpose of winding-up the affairs and distributing the assets of the company.

A statement of the assets and liabilities of the company will be laid before the meeting.

Dated 19 .

Liquidator.

PAPUA NEW GUINEA.  
*Companies Act.*

Act, Sec. 278(4).

Form 78.

NOTICE OF HOLDING OF MEETING OF CREDITORS.  
LIMITED.

To the Registrar of Companies.

Notice is given that, in accordance with Section 278(1) of the *Companies Act*, a meeting of the creditors of Limited was summoned and held on 19 for the purpose of laying before the meeting a statement of the assets and liabilities of the company and permitting the creditors, if they wished, to appoint a new liquidator of the company under Section 278(2).

Dated 19 .

Liquidator.

PAPUA NEW GUINEA.  
*Companies Act.*

Act, Sec. 292(3) and (5).

Form 79.

RETURN BY LIQUIDATOR RELATING TO FINAL MEETING.  
LIMITED.

To the Registrar of Companies.

I/We, of the liquidator(s) of Limited, inform you that a general meeting of the company (or a meeting of the company and the creditors of the company), summoned for 19, for the purpose of laying before the meeting an account (a copy of which is attached to this return) showing how the winding-up has been conducted and the property of the company has been disposed of and of giving any explanation of the account, was duly held on that date (or was not attended by the necessary quorum).

Dated 19 .

(Signature of each liquidator.)

*Companies*

Ch. No. 146

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 300(1).

Form 80.

NOTICE OF APPOINTMENT AND SITUATION OF OFFICE OF LIQUIDATOR.

(WINDING-UP BY THE COURT.)

LIMITED.

To the Registrar of Companies.

I/We, \_\_\_\_\_, of \_\_\_\_\_, give notice that—

(a) by an order of the National Court made on \_\_\_\_\_ 19 I was (or we were) appointed liquidator(s) (or provisional liquidator(s)) of \_\_\_\_\_ Limited; and

(b) my/our office is situated at \_\_\_\_\_

Dated \_\_\_\_\_ 19 .

(Signature of each liquidator.)

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 300(1).

Form 81.

NOTICE OF APPOINTMENT AND SITUATION OF OFFICE OF LIQUIDATOR.

(MEMBERS' VOLUNTARY WINDING-UP.)

LIMITED.

To the Registrar of Companies.

I/We, \_\_\_\_\_, of \_\_\_\_\_, give notice that—

(a) I was (or we were) appointed liquidator(s) of \_\_\_\_\_ Limited—

\*by a resolution of \_\_\_\_\_ Limited passed on \_\_\_\_\_ 19 ;

\*by an order of the National Court made on \_\_\_\_\_ 19 ;

(b) my/our office is situated at \_\_\_\_\_

Dated \_\_\_\_\_ 19 .

(Signature of each liquidator.)

\* Strike out whichever is inapplicable.

Ch. No. 146

*Companies*

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 300(1).

Form 82.

NOTICE OF APPOINTMENT AND SITUATION OF OFFICE OF LIQUIDATOR.

(CREDITORS' VOLUNTARY WINDING-UP.)

LIMITED.

To the Registrar of Companies.

I/We, \_\_\_\_\_, of \_\_\_\_\_, give notice that—

- (a) I was (*or we were*) appointed liquidator(s) of \_\_\_\_\_ Limited—
  - \*by resolutions of \_\_\_\_\_ Limited passed on \_\_\_\_\_ 19 \_\_\_\_\_, and of \_\_\_\_\_ 19 \_\_\_\_\_;
  - \*by a resolution of the creditors of \_\_\_\_\_ Limited passed on \_\_\_\_\_ 19 \_\_\_\_\_;
  - \*by a resolution of \_\_\_\_\_ Limited passed on \_\_\_\_\_ 19 \_\_\_\_\_;
  - \*by an order of the National Court made on \_\_\_\_\_ 19 \_\_\_\_\_; and

(b) my/our office is situated at \_\_\_\_\_

Dated \_\_\_\_\_ 19 \_\_\_\_\_.

(Signature of each liquidator.)

\* Strike out whichever are inapplicable.

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 300(1).

Form 83.

NOTICE OF CHANGE IN SITUATION OF OFFICE OF LIQUIDATOR.

LIMITED.

To the Registrar of Companies.

I/We, \_\_\_\_\_, the liquidator(s) (*or one of the liquidators*) of \_\_\_\_\_ Limited, give notice that, on \_\_\_\_\_ 19 \_\_\_\_\_, the situation of my/our office was changed to \_\_\_\_\_

Dated \_\_\_\_\_ 19 \_\_\_\_\_.

Liquidator(s).

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 300(2).

Form 84.

NOTICE BY LIQUIDATOR OF RESIGNATION OR REMOVAL FROM OFFICE.

LIMITED.

To the Registrar of Companies.

I, \_\_\_\_\_, of \_\_\_\_\_, give notice that, on \_\_\_\_\_ 19 \_\_\_\_\_, I resigned (*or was removed*) from the office of liquidator of \_\_\_\_\_ Limited.

Dated \_\_\_\_\_ 19 \_\_\_\_\_.

(Signature.)

*Companies*

Ch. No. 146

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 301(2).

Form 85.

LIQUIDATOR'S ACCOUNT OF RECEIPTS AND PAYMENTS AND STATEMENT OF THE POSITION IN THE WINDING-UP.

LIMITED.

Nature of winding-up:

Date of commencement of winding-up:

Date to which the account and statement are made up:

Name and address of liquidator:

ACCOUNT OF RECEIPTS AND PAYMENTS.\*

RECEIPTS.				PAYMENTS.			
Date.	Of Whom Received.	Nature of Receipts.	Amount.	Date.	To Whom Paid.	Nature of Payments.	Amount.
		Brought forward	K			Brought forward	K
		Carried forward†				Carried forward†	
Total receipts				Balance			K
Total payments							

The balance is made up as follows :—

1. Cash in hands of liquidator		K
2. Cash in bank—	K	K
Credit as per bank pass book		
Less unrepresented cheques		
3. Amounts invested by liquidator and not converted into cash*		
Balance as above		

PARTICULARS OF RATES OF DIVIDENDS AND DATES DECLARED.

Dividend of \_\_\_\_\_ in the Kina, paid on \_\_\_\_\_ 19 \_\_\_\_.

Names of Creditors in Alphabetical Order.	Amount of Proof.	Amount of Dividend.	
		Paid.	Unclaimed.
	Total as per previous return— K	K	K
Total			

PARTICULARS OF DATES AND RATE PER SHARE OF RETURN OF SURPLUS ASSETS  
PAYABLE TO CONTRIBUTORIES.

Return of surplus assets to contributories at the rate of \_\_\_\_\_ per share paid on  
19 .

Names of Contributories in Alphabetical Order.	Number of Shares.	Amount Returned on Shares.	
		Paid.	Unclaimed.
		K	K
Total as per Previous return—			
Total			

STATEMENT OF THE POSITION IN THE WINDING-UP.

1. The amount of the estimated assets and liabilities at the date of the commencement of the winding-up	Assets (after deducting amounts charged to secured creditors and debenture-holders) K Liabilities— Secured creditors K Debenture-holders K Unsecured creditors K
2. The total amount of the capital paid up at the date of the commencement of the winding-up	Paid up in cash K Issued as paid up otherwise than for cash K
3. The general description and estimated value of outstanding assets (if any)	
4. Total amount of unsecured debts in respect of which proofs have been admitted	
5. Estimated amount of debts or claims remaining for proof	
6. Details of any arrangement by which assets of the company have been disposed of by the liquidator for a consideration other than cash	
7. The causes that delay the termination of the winding-up	
8. The period within which the winding-up may probably be completed	

Dated 19 .

Liquidator.

\* Full details of investments made by the liquidator and of the realization of the investments are to be given in a separate statement attached to and forming part of this account. Any profit or loss on realization is to appear in the "Account of Receipts and Payments" as a notional receipt or payment, as the case may be, with a reference to the particular investment.

† A balance is not to be shown on this account. Show only the total receipts and payments, which are to be carried forward to the next account.

*Companies*

Ch. No. 146

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 301(2).

Form 86.

STATUTORY DECLARATION VERIFYING LIQUIDATOR'S ACCOUNT AND STATEMENT.  
LIMITED.

I, (*insert name, address and occupation of person making the declaration*), solemnly and sincerely declare as follows :—

1. I am the liquidator of \_\_\_\_\_ Limited.

†2. The account of receipts and payments set out in the Form annexed and marked with the letter "A" ‡ contains a full and true account of my receipts and payments in the winding-up of the company from \_\_\_\_\_ 19\_\_\_\_, to \_\_\_\_\_ 19\_\_\_\_, and during that period I have not, nor has any other person by my order or for my use, received or paid any moneys on account of the company other than the items specified in the account.

†2. During the period from \_\_\_\_\_ 19\_\_\_\_ to \_\_\_\_\_ 19\_\_\_\_, I have not, nor has any other person by my order or for my use, received or paid any moneys on account of the company.

3. The particulars contained in the statement of the position in the winding-up of that company set out in the Form annexed and marked with the letter "A" ‡ are true to the best of my knowledge and belief.

And I make this solemn declaration by virtue of the *Oaths, Affirmations and Statutory Declarations Act*, and subject to the penalties provided for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

(*Signature of Declarant.*)

Declared \_\_\_\_\_ 19\_\_\_\_

Before me,

(*Signature of person before whom the declaration is made.*)

(*Title of person before whom the declaration is made.*)

† Strike out whichever paragraph is inapplicable.

‡ The annexure is to be endorsed by the person before whom the declaration is made as follows :—

"This is the annexure marked "A" referred to in the statutory declaration of \_\_\_\_\_ made on \_\_\_\_\_ 19\_\_\_\_.

Before me,

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 309.

Form 87.

Reg., Sec. 56(1).

PROOF OF DEBT: GENERAL FORM.

LIMITED.

I, (*insert name, address and occupation of person making the declaration*), solemnly and sincerely declare as follows :—

1. The abovenamed company was, at the date of the commencement of the winding-up of the company (namely, \_\_\_\_\_ 19\_\_\_\_), and still is justly and truly indebted to † \_\_\_\_\_ in the amount of K \_\_\_\_\_ for (*state the consideration*) as shown by the account endorsed on this statutory declaration (*or the following account :—*)

2. Neither the abovenamed creditor, nor any person by the order and for the use of him, has to my knowledge and belief received any manner of satisfaction or security for the amount or any part of the amount referred to in Paragraph 1, except—†

††3. I am in the employ of the creditor, I am duly authorized by the creditor to make this statutory declaration, it is within my own knowledge that the debt declared to in this statutory declaration was

incurred for the consideration stated, and the debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

††4. I am duly authorized, under the seal of the company named in this statutory declaration as creditor, to make the proof of debt on its behalf.

And I make this solemn declaration by virtue of the *Oaths, Affirmations and Statutory Declarations Act*, and subject to the penalties provided for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

*(Signature of Declarant.)*

Declared 19 .

Before me,

*(Signature of person before whom the declaration is made.)*

*(Title of person before whom the declaration is made.)*

**PARTICULARS OF ACCOUNT REFERRED TO IN STATUTORY DECLARATION.††**

Date.	Consideration.	Amount.	Remarks. (The vouchers, if any, by which the account can be substantiated should be set out here.)

*(Signature of Declarant.)*

† Insert "me" or "me and to \_\_\_\_\_ and \_\_\_\_\_, my co-partners in trade", or as the case may be, or, if declared by an employee or agent of the creditor, insert the name, address and description of the creditor.

‡ Insert particulars of all securities held. Where the securities are on the property of the company, assess the value of them. If any bills or other negotiable securities are held, specify them in a schedule in the following form :—

Date.	Drawer.	Acceptor.	Amount.	Due Date.
			K	

†† If this proof is made by a creditor, strike out Paragraphs 3 and 4. If it is made on behalf of a company, strike out Paragraph 3. If it is made on behalf of a creditor other than a company, strike out Paragraph 4.

‡‡ Strike out if inapplicable. If applicable, details of the full amount claimed should be given and full particulars of any amount claimed by set-off, counter-claim or otherwise should be shown.



**Companies**

Ch. No. 146

**PAPUA NEW GUINEA.**

**Companies Act.**

Act, Sec. 309.

Form 88.

Reg., Sec. 56(1).

**PROOF OF DEBT: EMPLOYEES' GROUP FORM.**

**LIMITED.**

I, (*insert name, address and occupation of person making the declaration*), solemnly and sincerely declare as follows :—

1. This proof of debt is made on behalf of all the persons specified in the Schedule endorsed on this statutory declaration, being employees of the abovenamed company.

2. The company was, on \_\_\_\_\_ 19\_\_\_\_, and still is justly and truly indebted to each person whose name, address and description appear in the Schedule, in respect of wages due to him as an employee of the company for services rendered by him to the company during the period set out against his name in the Schedule, in the amount set out against his name in the Schedule.

3. None of the persons referred to in the Schedule has to my knowledge and belief received any satisfaction or security for the amount or any part of the amount due in respect of wages set out against his name in the Schedule.

And I make this solemn declaration by virtue of the *Oaths, Affirmations and Statutory Declarations Act*, and subject to the penalties provided for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

(*Signature of Declarant.*)

Declared \_\_\_\_\_ 19\_\_\_\_.

Before me,

(*Signature of person before whom the declaration is made.*)

(*Title of person before whom the declaration is made.*)

**SCHEDULE.**

No.	Full Name.	Address.	Description.	Period for which Wages due.	Amount due.
					K

(*Signature of Declarant.*)

Ch. No. 146

*Companies*

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 309.  
Reg., Sec. 58(2).

Form 89.

NOTICE OF REJECTION OF PROOF OF DEBT.  
LIMITED.

To \_\_\_\_\_, of \_\_\_\_\_

Notice is given that, as liquidator of the abovenamed company, I have this day rejected your claim against the company\* *to the extent of K* on the following grounds:—

Dated \_\_\_\_\_ 19 \_\_\_\_

(Signature of Liquidator.)

(Address of Liquidator.)

\* If proof is wholly rejected, strike out the words in italics.

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 358(1)(a), 359(1)(b).

Form 90.

RETURN BY FOREIGN COMPANY GIVING PARTICULARS OF DIRECTORS AND  
CHANGES OF PARTICULARS.  
LIMITED.

Present Names*.	Former Names*.	Address†.	Business Occupation (if any).	Particulars of other Directorships‡.	Nature of Appointment or Change and Relevant Date††.

Dated \_\_\_\_\_ 19 \_\_\_\_

Agent in Papua New Guinea.

\* Insert in the appropriate columns, in the case of an individual, his present given or other name and surname and any former given or other name or surname, or, in the case of a corporation, its corporate name.

† Insert, in the case of an individual, his usual residential address, or, in the case of a corporation, the address of its registered or principal office.

‡ Insert particulars of any other directorships of public companies or companies that are subsidiaries of public companies held by the director, but not particulars of directorships held by a director in a company that is a related company within the meaning of the *Companies Act*. Where a person is a director in one or more subsidiaries of the same holding company it is sufficient to disclose that the person is the holder of one or more directorships in that group of companies, and the group may be described by the name of the holding company with the addition of the word "Group". If no other directorships, state so.

†† Insert, in relation to a new director, "Appointed" or "In place of (*former director's name*)". Insert, in relation to a former director, "Died", "Resigned", "Removed", or as the case may be.

**Companies**

Ch. No. 146

**PAPUA NEW GUINEA.**

**Companies Act.**

Act, Sec. 358(1)(g).

Form 91.

**STATUTORY DECLARATION BY AGENT OF FOREIGN COMPANY.**

**LIMITED.**

I, (*insert name, address and occupation of person making the declaration*), solemnly and sincerely declare as follows :—

1. (*insert name of foreign company*) Limited is carrying on business (*or has established a place of business*) in Papua New Guinea.

\*2. I am the duly appointed agent of the company in Papua New Guinea under a memorandum of appointment (*or power of attorney*) dated 19 , and I reside at

\*2. I am the secretary of Limited (the address of the registered office of which is ), which is the duly appointed agent of (*insert name of foreign company*) Limited in Papua New Guinea under a memorandum of appointment (*or power of attorney*) dated 19 .

3. (*Insert name of foreign company*) Limited was formed or incorporated in , and the full address of its registered office in the place of incorporation is

\*4. The amount of the authorized capital of the company is

\*4. The company does not have a share capital and its registered number of members is

And I make this solemn declaration by virtue of the *Oaths, Affirmations and Statutory Declarations Act*, and subject to the penalties provided for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

(*Signature of Declarant.*)

Declared 19 .

Before me,

(*Signature of person before whom the declaration is made.*)

(*Title of person before whom the declaration is made.*)

\* Strike out whichever is inapplicable.

**PAPUA NEW GUINEA.**

**Companies Act.**

Act, Sec. 358(6).

Form 92.

**NOTICE BY AGENT OF FOREIGN COMPANY OF CESSATION OF AGENCY.**

**LIMITED.**

To the Registrar of Companies.

I, , of , give notice that—

\*on 19 , I ceased to be the agent of the abovenamed company in Papua New Guinea for the purposes of the *Companies Act*.

\*on 19 , I will cease to be the agent of the abovenamed company in Papua New Guinea for the purposes of the *Companies Act*.

Dated 19 .

(*Signature.*)

\* Strike out whichever is inapplicable.

Ch. No. 146

*Companies*

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 358(6).

Form 93.

NOTICE BY FOREIGN COMPANY OF CESSATION OF AGENCY.

LIMITED.

To the Registrar of Companies.

Limited gives notice that—

\*on 19 , of , ceased to be the agent of the company in Papua New Guinea for the purposes of the *Companies Act*.

\*on 19 , of , will cease to be the agent of the company in Papua New Guinea for the purposes of the *Companies Act*.

Dated 19 .

Director.\*

Secretary.\*

\* Strike out whichever is inapplicable.

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 358(9).

Form 94.

No. of Company:

CERTIFICATE OF REGISTRATION OF FOREIGN COMPANY.

I certify that a company called Limited, which was formed or incorporated in , was duly registered on 19 as a foreign company in Papua New Guinea.

The name and address of the agent appointed in Papua New Guinea by the foreign company are—

The address of the registered office of the foreign company in Papua New Guinea is—

Given under my hand and seal, 19 .

Registrar of Companies.

*Companies*

Ch. No. 146

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 359(1)(a), (f), (g).

Form 95.

Reg., Sec. 14.

NOTICE OF CHANGE OR ALTERATION RELATING TO FOREIGN COMPANY.

LIMITED.

To the Registrar of Companies.

on \_\_\_\_\_ Limited, a foreign company registered in Papua New Guinea, gives notice that, 19\_\_\_\_, a change or alteration was made in—

\*the charter, statute, memorandum or articles of the company or other instrument constituting or defining its constitution.

\*the name of the company.

\*the powers of the directors resident in Papua New Guinea who are members of the local board of directors of the company.

Particulars of the change or alteration are as follows :—

In pursuance of Section 14 of the *Companies Regulation* the following documents are lodged with this form :—

Dated \_\_\_\_\_ 19\_\_\_\_.

Agent in Papua New Guinea.

\* Strike out if inapplicable.

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 359(1)(d).

Form 96.

NOTICE OF CHANGE OR ALTERATION RELATING TO AGENT OF FOREIGN COMPANY.

LIMITED.

To the Registrar of Companies.

\_\_\_\_\_ Limited gives notice that—

\*on \_\_\_\_\_ 19\_\_\_\_, of \_\_\_\_\_, ceased to be the agent of the company in Papua New Guinea.

\*on \_\_\_\_\_ 19\_\_\_\_, of \_\_\_\_\_, became the agent of the company in Papua New Guinea.

\*on \_\_\_\_\_ 19\_\_\_\_, the address of the agent of the company in Papua New Guinea changed to \_\_\_\_\_

Dated \_\_\_\_\_ 19\_\_\_\_.

Agent in Papua New Guinea.

\* Strike out if inapplicable.

Ch. No. 146

**Companies**

PAPUA NEW GUINEA.

**Companies Act.**

Act, Sec. 359(1)(e).

Form 97.

**NOTICE OF CHANGE OF ADDRESS OF REGISTERED OFFICE OF FOREIGN COMPANY IN PLACE OF INCORPORATION OR ORIGIN.**

LIMITED.

To the Registrar of Companies.

Limited gives notice that the address of the registered office of the company in its place of incorporation or origin was, on 19 , changed to

Dated 19 .

Agent in Papua New Guinea.

PAPUA NEW GUINEA.

**Companies Act.**

Act, Sec. 360(1).

Form 98.

**STATUTORY DECLARATION VERIFYING BALANCE-SHEET OF FOREIGN COMPANY.**

LIMITED.

I, (insert name, address and occupation of person making the declaration), solemnly and sincerely declare as follows :—

\*1. I am† of (insert name of foreign company) Limited.

\*1. I am the secretary of Limited (the address of the registered office of which is ), which is the duly appointed agent of (insert name of foreign company) Limited in Papua New Guinea.

2. The copy of the balance-sheet and the copies of the documents annexed to this declaration and marked with the letter "A"‡ are true copies of the balance-sheet made up to 19 and the documents that the company is required to prepare by the law for the time being applicable to the company in (insert name of place of incorporation or origin of company).

And I make this solemn declaration by virtue of the Oaths, Affirmations and Statutory Declarations Act, and subject to the penalties provided for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

(Signature of Declarant.)

Declared 19 .

Before me,

(Signature of person before whom the declaration is made.)

(Title of person before whom the declaration is made.)

\* Strike out whichever is inapplicable.

† Insert "the duly appointed agent in Papua New Guinea", "a director" or "the secretary".

‡ The annexure is to be endorsed by the person before whom the declaration is made as follows :—

"This is the annexure marked "A" referred to in the statutory declaration of made on 19 .

Before me,

*Companies*

Ch. No. 146

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 360(6).

Form 99.

ANNUAL RETURN OF FOREIGN COMPANY.

LIMITED.

Annual return of \_\_\_\_\_ Limited made up to \_\_\_\_\_ 19 \_\_\_\_\_, being the date of the annual general meeting in 19 \_\_\_\_\_.

1. The address of the registered office in Papua New Guinea is
2. The address of the registered office in the place of incorporation is
3. The amount of the authorized share capital of the company is
4. The amount of paid-up capital of the company is
5. Particulars of the directors of the company are as follows :—

Present Given Name or other Name or Names and Surname*.	Usual Residential Address†.

6. The name of the agent in Papua New Guinea is\*
  7. The residential address of the agent in Papua New Guinea is†
- Dated \_\_\_\_\_ 19 \_\_\_\_\_.

Director.‡

Secretary.‡

Agent in Papua New Guinea.‡

**CERTIFICATE RELATING TO EXEMPTION FROM REQUIREMENT TO LODGE BALANCE-SHEET.**

We, after having made due enquiries, certify that \_\_\_\_\_ Limited is, by virtue of Section 360(5) of the *Companies Act*, exempt from the provisions of Subsection (1) of that section requiring the company to lodge with the Registrar of Companies each calendar year a copy of its balance-sheet made up to the end of its last financial year.

Dated \_\_\_\_\_ 19 \_\_\_\_\_.

Director.††

Secretary.††

**CERTIFICATE RELATING TO UNCLAIMED MONEYS.**

I, after having made due enquiries, certify that the provisions of the *Unclaimed Moneys Act* have been complied with by \_\_\_\_\_ Limited.

Dated \_\_\_\_\_ 19 \_\_\_\_\_.

Agent in Papua New Guinea.‡‡

- \* In the case of a corporation, its corporate name is to be shown.
- † In the case of a corporation, the address of its registered or principal office is to be shown.
- ‡ This portion of the return is to be signed by a director or the secretary and by the agent in Papua New Guinea.
- †† This certificate is to be signed by a director and by the secretary.
- ‡‡ This certificate is to be signed by the agent in Papua New Guinea.

Ch. No. 146

*Companies*

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 361(2).

Form 100.

NOTICE BY FOREIGN COMPANY WITH RESPECT TO BUSINESS BEING CARRIED ON IN  
PAPUA NEW GUINEA.

LIMITED.

To the Registrar of Companies.

Limited gives notice that, during the period from 19 to 19 (being the period to which the copy of the company's balance-sheet (or the annual return of foreign company of the company) lodged with this notice relates), the company has not carried on business in Papua New Guinea otherwise than by reason of establishing or using a share transfer or share registration office.

Dated 19 .

Agent in Papua New Guinea.

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 361(3).

Form 101.

NOTICE BY FOREIGN COMPANY OF COMMENCEMENT OF BUSINESS OTHER THAN  
SHARE TRANSFER OR SHARE REGISTRATION OFFICE.

LIMITED.

To the Registrar of Companies.

Limited gives notice that, on 19 , the company commenced to carry on business in Papua New Guinea otherwise than by reason of establishing or using a share transfer or share registration office.

Dated 19 .

Agent in Papua New Guinea.

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 364(1).

Form 102.

NOTICE BY FOREIGN COMPANY OF CESSATION OF BUSINESS.

LIMITED.

To the Registrar of Companies.

Limited, a foreign company registered in Papua New Guinea, gives notice that, on 19 , the company—

\*ceased to have a place of business in Papua New Guinea.

\*ceased to carry on business in Papua New Guinea.

Dated 19 .

Director. †

Secretary. †

Agent in Papua New Guinea. †

\* Strike out if inapplicable.

† Strike out whichever are inapplicable.



*Companies*

Ch. No. 146

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 364(3).

Form 103.

NOTICE BY AGENT OF FOREIGN COMPANY OF LIQUIDATION OR DISSOLUTION OF COMPANY.

LIMITED.

To the Registrar of Companies.

I, \_\_\_\_\_, of \_\_\_\_\_, give notice that, on \_\_\_\_\_ 19 \_\_\_\_\_, \_\_\_\_\_ Limited, a foreign company registered in Papua New Guinea—

\*went into liquidation in (*insert name of place of incorporation or origin of company*) and \_\_\_\_\_, of \_\_\_\_\_ was appointed liquidator.

\*was dissolved in (*insert name of place of incorporation or origin of company*).

I was the agent of the company in Papua New Guinea immediately before the commencement of the liquidation proceedings.

Dated \_\_\_\_\_ 19 \_\_\_\_\_.

(*Signature.*)

\* Strike out whichever is inapplicable.

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 364(4).

Form 104.

NOTICE BY FOREIGN COMPANY OF PLACING UNDER OFFICIAL MANAGEMENT IN PLACE OF INCORPORATION, ETC.

LIMITED.

To the Registrar of Companies.

on \_\_\_\_\_ Limited, a foreign company registered in Papua New Guinea, gives notice that, \_\_\_\_\_ 19 \_\_\_\_\_

\*the company was placed under official management in (*insert name of place of incorporation or origin of company*) by (*give reference to foreign law*), a law or enactment corresponding to Part X of the *Companies Act*, and \_\_\_\_\_ of \_\_\_\_\_ was appointed official manager.

\*the period of official management of the company in \_\_\_\_\_ terminated on \_\_\_\_\_ 19 \_\_\_\_\_, by (*set out method of termination*).

Dated \_\_\_\_\_ 19 \_\_\_\_\_.

(*Signature.*)

(*Designation.*)†

\* Strike out whichever is inapplicable.

† The form may be signed by the agent in Papua New Guinea, the secretary or a director (or a person who immediately prior to the company's being placed under official management was a director). The person signing must indicate in what capacity he signs.

Ch. No. 146

*Companies*

PAPUA NEW GUINEA.

*Companies Act.*

Act, Sec. 380(5).

Form 105.

NOTICE OF INTENTION TO APPLY FOR EXEMPTION FROM SECTION 380(4).

Limited gives notice of its intention to apply to the Minister for exemption in the case of the shares of the company from the provisions of Section 380(4) of the *Companies Act* forbidding persons from going, whether by appointment or otherwise, from place to place offering shares for subscription or purchase to the public or any member of the public.

Dated 19 .

Director.\*

Secretary.\*

\* Strike out whichever is inapplicable.

PAPUA NEW GUINEA.

*Companies Act.*

Reg., Sec. 20(2)(b), 38(2).

Form 106.

NOTICE OF MEETING OF CREDITORS OR CONTRIBUTORIES.

LIMITED.

Notice is given that a meeting of the creditors (or contributories) of Limited will be held at on 19 , at a.m./p.m.

Agenda.\*

Dated 19 .

(Signature.)

\* Set out the purpose for which the meeting is called. If the notice relates to a meeting of creditors called under Section 279(1) or (8) of the *Companies Act*, the notice must state that a person is not entitled to vote as a creditor at the meeting unless he has lodged with the chairman of the meeting a proof of the debt that he claims to be due to him from the company.

PAPUA NEW GUINEA.

*Companies Act.*

Reg., Sec. 46, 47.

Form 107.

PROXY.

I/We,\* of , a creditor (or contributory) of Limited, hereby appoint as my (or our) general (or special) proxy to vote at the meeting of creditors (or contributories) to be held on 19 , or at any adjournment of that meeting.‡

Dated 19 .

(Signature.)

(Signature of witness.)

(Description of witness.)

(Address of place of residence of witness.)

*Companies*

Ch. No. 146

CERTIFICATE.††

I, \_\_\_\_\_, of \_\_\_\_\_, certify that all insertions in the above proxy were made by me at the request and in the presence of the abovenamed \_\_\_\_\_, and that I read over the completed proxy to him, before he attached his signature (or mark) to the proxy.

Dated \_\_\_\_\_ 19 \_\_\_\_ .

(*Signature of Witness.*)

\* Strike out whichever is inapplicable; if a firm, set out the full name of the partners of the firm and the business name (if any) of the firm.

† Insert "the liquidator of the company" or the name, address and description of the person appointed.

‡ If a special proxy, add the words "to vote for" or the words "to vote against" and specify the particular resolution. If a general proxy, this Form requires no addition.

†† This certificate is only to be completed where the person giving the proxy is blind or incapable of writing.



INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 146.

*Companies Rules.*

ARRANGEMENT OF SECTIONS.

PART I.—PRELIMINARY.

1. Interpretation—
  - "the Act"
  - "the Court"
  - "filed"
  - "lawyer"
  - "liquidator"
  - "the list of contributories"
  - "the Registrar"
  - "the Registry".
2. General Rules and practice of National Court to apply.
3. Title of proceedings.
4. Exclusive powers of Registrar.
5. References by Registrar to the Court.
6. Appeals from Registrar.
7. Proceedings attached to office of Registrar.
8. Filing of documents.
9. Preparation of petitions, etc.
10. Service of petition, etc.
11. Mode of service, gazettal, etc.
12. Inquiry and certificate as to meetings ordered by the Court.
13. Forms.

PART II.—PETITIONS.

14. Applications required to be by petition.
15. Presentation of petition.
16. Verification of petition.
17. Endorsement of time and place of hearing.
18. Service of petition.
19. Copy of petition for member or creditor.
20. Notice of intention to appear.
21. List of persons intending to appear.
22. Affidavits opposing the petition, and in reply.
23. Substitution of another person as petitioner.

PART III.—REDUCTION OF CAPITAL.

24. Application of Part III.
25. Application for directions.
26. Powers of Registrar.
27. Filing affidavits verifying lists of creditors.
28. Publication of list of creditors.

29. Notice of petition, order and list of creditors, etc.
30. Barring of late claims.
31. Affidavit verifying list.
32. Settlement of list of creditors.
33. Proof of debt.
34. Adjournment of hearing, etc.
35. Creditors' costs.
36. Creditors wrongly listed as consenting.
37. Registrar's certificate.
38. Date for hearing of petition.
39. Appearance by dissenting creditor.
40. Hearing.
41. Order confirming reduction.

PART IV.—WINDING-UP BY THE COURT AND APPLICATIONS UNDER SECTION 186 OF THE ACT.

42. Application of Part IV.
43. Advertisement of petition.
44. Nomination of official liquidator by Registrar.
45. Attendance on Registrar.
46. Notice of winding-up order.
47. Order appointing provisional liquidator.

PART V.—MOTIONS.

48. Applications required to be by motion.
49. Notice of motion.

PART VI.—SUMMONSES.

50. Applications required to be by summons.
51. Applications to be made to the Registrar.
52. Summonses to be supported by affidavit.
53. Summons for directions by liquidator.

PART VII.—LIQUIDATORS' REPORTS.

54. Contents of liquidators' reports.
55. Reports to be made by liquidators.
56. Consideration of reports under Section 252(2) of the Act.

PART VIII.—EXAMINATIONS.

57. Applications for examinations under Sections 267 and 269 of the Act.
58. Applications for examinations under Section 268 of the Act.
59. Applications for examinations under Section 297 of the Act.
60. Liquidator at examinations under Section 267 and 269 of the Act.
61. Application for appointment.
62. Notice of appointment to creditors and contributories.
63. Examinations under Sections 267, 268 and 269 of the Act.
64. Notes of examinations and powers of Commissioner.
65. Notes of depositions.
66. Failure to attend or absconding.

PART IX.—ORDERS.

67. Settling and issuing orders.
68. Documents required for settling order.
69. Delivery of office copy of order confirming issue of shares at discount to Registrar of Companies.

PART X.—POWERS AND DUTIES OF LIQUIDATOR AND PROCEEDINGS IN WINDING-UP BY THE COURT.

70. Liquidators as officers of Court.
71. Attendance of listed contributories at proceedings.
72. Liquidator's attendance at proceedings.
73. Statement of affairs.
74. Costs of preparing statement of affairs.
75. Liquidator's bank account.
76. Moneys, etc., received to be deposited in trust account.
77. Payment into Court of trust account moneys.
78. Directions as to money.
79. Application for appointment of special manager.
80. Special manager's accounts.
81. Security by special manager.
82. Failure to give or keep up security.

PART XI.—MAKING AND SETTLING LIST OF CONTRIBUTORIES IN A WINDING-UP BY THE COURT.

83. Settlement of provisional list of contributories.
84. Notice of appointment for settlement.
85. Objections to be heard and list settled.
86. Supplementary list.
87. Notice of supplementary list.
88. Objection to list of contributories.

PART XII.—COLLECTION AND DISTRIBUTION OF ASSETS IN A WINDING-UP BY THE COURT.

89. Duties of liquidator.
90. Transfer of property.
91. Calls by liquidator.
92. Application to Court for leave to make a call.
93. Notice of call.
94. Enforcement of call.

PART XIII.—FIXING TIME WITHIN WHICH DEBTS, CLAIMS AND LIABILITIES MUST BE PROVED.

95. Notice as to date by which debts to be proved.
96. Time for dealing with proofs by liquidator.
97. Proof admitted improperly.
98. Expunging of proof on application by creditor or contributory.
99. Administration of oaths, etc.
100. Monthly list of proofs.
101. Procedure where creditor appeals.
102. Costs of appeal.

PART XIV.—RELEASE AND RESIGNATION OF LIQUIDATOR.

- 103. Notice of liquidator's intention to apply for release.
- 104. Meeting of creditors and contributories to consider resignation of liquidator.

PART XV.—TRANSFERS OF ACTIONS AND PROCEEDINGS.

- 105. Orders for transfer of proceedings.

PART XVI.—COSTS.

- 106. Submission of bill of costs by employees to liquidator for taxation.
- 107. Notice of appointment to tax.
- 108. Supply of copy of bill of costs to liquidator.
- 109. Issue of allowance or certificate of taxation.
- 110. Liquidator's certificate as to special terms of remuneration to employee.
- 111. Allowances for performance by other persons of liquidators' and special managers' duties.
- 112. Application for costs after proceedings concluded.
- 113. Dispensing with taxation of small bills.

SCHEDULES.

SCHEDULE 1.—List of Forms.

SCHEDULE 2.—Forms.

- FORM 1.—Title of proceedings.
- FORM 2.—Petition.
- FORM 3.—Affidavit verifying petition.
- FORM 4.—Affidavit of service of petition on company.
- FORM 5.—Notice of intention to appear on petition.
- FORM 6.—List of persons attending the hearing of a petition.
- FORM 7.—Order on summons for directions in relation to a petition to confirm a reduction of capital.
- FORM 8.—Affidavit verifying list of creditors.
- FORM 9.—Advertisement of petition and list of creditors.
- FORM 10.—Notice to creditors.
- FORM 11.—Affidavit as to claims.
- FORM 12.—Notice to creditors to come in and prove.
- FORM 13.—Advertisement of hearing of petition.
- FORM 14.—Advertisement of petition.
- FORM 15.—Order for winding-up by the Court.
- FORM 16.—Notice of winding-up order.
- FORM 17.—Order appointing provisional liquidator after presentation of petition and before winding-up order.
- FORM 18.—Notification to provisional liquidator of order appointing him provisional liquidator before winding-up order.
- FORM 19.—Notice of appointment of provisional liquidator.
- FORM 20.—Form of summons (general).
- FORM 21.—Order directing a public examination.
- FORM 22.—Order appointing a time for public examination.
- FORM 23.—Notice to attend public examination.



- FORM 24.—Order to attend at chambers to be examined.
- FORM 25.—Application for appointment of shorthand writer to take down notes of public examination, etc.
- FORM 26.—Declaration by shorthand writer.
- FORM 27.—Notes of public examination taken in shorthand or recorded by mechanical means.
- FORM 28.—Notes of public examination not taken in shorthand or recorded by mechanical means.
- FORM 29.—Warrant against person who fails to attend examination.
- FORM 30.—Statutory declaration by special manager verifying account.
- FORM 31.—Certificate that special manager has given security.
- FORM 32.—Provisional list of contributories to be made out by liquidator.
- FORM 33.—Notice to contributories of appointment to settle list of contributories.
- FORM 34.—Affidavit of postage of notices of appointment to settle list of contributories.
- FORM 35.—Certificate of liquidator of settlement of list of contributories.
- FORM 36.—Notice to contributory of final settlement of list of contributories and of inclusion of his name.
- FORM 37.—Certificate of liquidator of settlement of supplementary list of contributories.
- FORM 38.—Provisional supplementary list of contributories.
- FORM 39.—Notice to contributory of variation or addition to list of contributories.
- FORM 40.—Affidavit of service of notice to contributory.
- FORM 41.—Order on application to vary list of contributories.
- FORM 42.—Notice by liquidator requiring payment of money or delivery of books, etc., to liquidator.
- FORM 43.—Notice to members of committee of inspection of meeting for sanction to proposed call.
- FORM 44.—Advertisement of meeting of committee of inspection to sanction proposed call.
- FORM 45.—Resolution of committee of inspection sanctioning call.
- FORM 46.—Summons for leave to make a call.
- FORM 47.—Affidavit of liquidator in support of proposal for call.
- FORM 48.—Advertisement of intended call.
- FORM 49.—Order giving leave to make a call.
- FORM 50.—Document making a call.
- FORM 51.—Notice of call sanctioned by committee of inspection to be sent to contributory.
- FORM 52.—Notice to be served with the order sanctioning a call.
- FORM 53.—Affidavit in support of application for order for payment of call.
- FORM 54.—Affidavit of service of order for payment of call.
- FORM 55.—Order for payment of call due from contributory.
- FORM 56.—List of proofs to be filed under Section 100.

*Companies*

FORM 57.—Notice to creditors and contributories of intention to apply for release.

FORM 58.—Application by liquidator to Court for release.

FORM 59.—Statement to accompany notice of application for release.

FORM 60.—Request to deliver bill for taxation.

FORM 61.—Certificate of taxation.

FORM 62.—Register to be kept by taxing officer.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 146.

*Companies Rules.*<sup>1</sup>

PART I.—PRELIMINARY.

**1. Interpretation.**

(1) In these Rules, unless the contrary intention appears—

“the Act” means the *Companies Act* and the regulations made under that Act;

“the Court” means the National Court;

“filed” means filed in the Registry;

“lawyer”, in relation to any party to proceedings under these Rules, includes any lawyer acting as agent for the lawyer in the proceedings;

“liquidator” includes a provisional liquidator;

“the list of contributories”, in relation to a company, means the list settled and certified under Section 85;

“the Registrar” means the Registrar or a Deputy Registrar of the National Court;

“the Registry” means the Registry of the National Court.

(2) Subject to Subsection (1), except where the contrary intention appears, words and expressions used in these Rules have the same respective meanings as in the Act.

**2. General Rules and practice of National Court to apply.**

Subject to the *Companies Act* and these Rules, the Rules of Court of the National Court and the general practice of that Court, including the course of procedure and practice in chambers, apply in relation to proceedings to which these Rules relate as far as is practicable.

**3. Title of proceedings.**

Every petition, notice of motion and summons and all notices, affidavits and other documents in any proceedings under the Act shall be entitled “In the National Court of Papua New Guinea, in the matter of the *Companies Act*, and in the matter of ” (the company to which the proceeding relates) with the addition of the words “in liquidation” where the company is in liquidation.

**4. Exclusive powers of Registrar.<sup>2</sup>**

No matter that is authorized by or under these Rules to be heard and determined by the Registrar may be brought before the Court or a Judge except—

(a) on a reference from the Registrar; or

(b) on an appeal under Section 6; or

(c) by special leave of the Court or Judge.

<sup>1</sup> The original rules were made under the *Papua and New Guinea Act 1949-1968* of Australia, Section 62A. They were “adopted as Rules of Court” of the National Court by Section 14 of the *National Court Act 1975*, and presumably are in force as if made under Constitution, Section 184.

<sup>2</sup> But see Constitution, Section 155.

**5. References by Registrar to the Court.**

If any matter brought before the Registrar appears to him proper for the decision of a Judge, the Registrar may, and when required by any party shall, refer the matter to a Judge, and the Judge may dispose of the matter or refer it back to the Registrar with such directions as he thinks proper.

**6. Appeals from Registrar.**

(1) A person affected by an order or decision of the Registrar may appeal to a Judge in chambers.

(2) An appeal shall be by written notice to attend before the Judge, without fresh summons, within five days after the decision complained of or such further time as is allowed by a Judge or the Registrar.

(3) Unless otherwise ordered, there must be at least one clear day between service of the notice of appeal and the day of hearing.

(4) An appeal from the decision of the Registrar does not operate as a stay of proceedings unless so ordered by a Judge or the Registrar.

(5) The appeal shall be by a rehearing de novo of the application but each party, subject to any proper objections to admissibility, may rely on any affidavit used before the Registrar and on any evidence given orally before him, but if any other party desires the production of the deponent or witness for examination before the Judge the affidavit or oral evidence may not be relied on without production of the deponent or witness, except by leave of the Judge.

**7. Proceedings attached to office of Registrar.**

All proceedings under the Act or these Rules shall be attached to the office of the Registrar.

**8. Filing of documents.**

All petitions, notices of motion, summonses, affidavits, orders, certificates, proofs of debts, notices, depositions, bills of costs and other documents in proceedings under the Act or under these Rules shall be filed within the time fixed by these Rules, and where no time is expressly fixed they shall be filed before the hearing of the application to which they relate commences unless the Court, Judge or Registrar otherwise permits.

**9. Preparation of petitions, etc.**

A petition, notice of motion and summons to which these Rules relate shall be prepared by the applicant or his lawyer.

**10. Service of petition, etc.**

(1) Subject to any order to the contrary, a petition, notice of motion and summons shall be served on every person against whom any order or other relief is sought, but the Court or a Judge may at any time—

(a) direct that service be effected or notice of proceedings given to any person who may be affected by the order or other relief sought; and

(b) direct how the service is to be effected or the notice given,

and any person so served or notified is entitled to be heard.

(2) A document referred to as an exhibit in an affidavit must be made available for inspection by any person on whom service of the affidavit is required.

## 11. Mode of service, gazettal, etc.

(1) Except as otherwise provided by the Act, these Rules or an order—

- (a) a notice, summons or other document (except where personal service is required) is sufficiently served if left at, or sent by pre-paid post to, the last-known address of the person to be served or the address (if any) at which that person has authorized service on him to be effected, and the notice, summons or document, if so sent by pre-paid post, shall be deemed to have been served at the time that it ought to be delivered in the ordinary course of post and notwithstanding it is returned by the postal authorities; and
- (b) no service is invalid by reason of the fact that the name or any of the names other than the surname (if any) of the person to be served has been omitted from the document containing the person's name if the Court is satisfied that in other respects the service of the document has been sufficient; and
- (c) when the lawyer for a party to be served accepts service of a document on behalf of that party and endorses the original or a copy of it to that effect that service is sufficient.

(2) Unless otherwise expressly provided in these Rules or expressly ordered—

- (a) all matters that are required to be gazetted shall be published once in the National Gazette; and
- (b) all matters that are required to be advertised shall be published once in a newspaper published in and circulated throughout the country not less frequently than once a week; and
- (c) all matters that require to be gazetted subsequent to a winding-up order shall be gazetted by the liquidator; and
- (d) where—
  - (i) a winding-up order is amended; or
  - (ii) a matter that has been gazetted has been amended or altered; or
  - (iii) a matter has been wrongly or inaccurately gazetted or advertised,the matter must be re-gazetted or re-advertised with the necessary amendments and alterations.

(3) Unless otherwise expressly provided in these Rules or expressly ordered, where any matter is gazetted or advertised for or in connexion with any proceedings under the Act or these Rules—

- (a) a memorandum referring to and giving the date of the gazettal or advertisement, signed by the person responsible for the gazettal or advertisement or his lawyer, shall be filed—
  - (i) if the advertisement relates to proceedings for or in connexion with a winding-up by the Court—by the liquidator; or
  - (ii) in any other case—by the party responsible for publishing the advertisement; and
- (b) in the case of an advertisement for or in connexion with a winding-up by the Court, a copy of the National Gazette or newspaper in which the advertisement appeared shall be delivered to the liquidator by the party responsible for publishing the advertisement; and

- (c) a memorandum under Paragraph (a) is prima facie evidence that the advertisement to which it refers was published in the National Gazette or in the issue of the newspaper mentioned in it.

#### 12. Inquiry and certificate as to meetings ordered by the Court.

- (1) Where an order is made for the convening of a meeting to consider a resolution, the party obtaining the order or his lawyer shall, after the meeting has been held, attend before the Registrar on a day to be appointed by the Registrar.
- (2) The Registrar shall inquire whether—
- (a) the meeting was duly convened; and
  - (b) the resolution was duly passed at the meeting in accordance with the terms of the order under which it was held.
- (3) The Registrar shall certify to the Court or the Judge—
- (a) whether the meeting was duly convened and the resolution was duly passed; and
  - (b) if in his opinion any irregularities occurred in the convening of the meeting or in the passing of the resolution, the nature and extent of the irregularities.
- (4) No order based on any such resolution shall be made by the Court or a Judge until a certificate of the Registrar under Subsection (3) has been filed.

#### 13. Forms.

Subject to these Rules, where a provision of these Rules is specified in the first column of Schedule 1 the form in Schedule 2 that is specified in the third column of Schedule 1 in relation to the provision is the form to be used for the purposes of the provision in relation to the matter or thing described in the second column of Schedule 1 in reference to it.

### PART II.—PETITIONS.

#### 14. Applications required to be by petition.

Applications under the following provisions of the Act shall be made by petition, and shall be heard and determined in open court :—

- (a) Section 66 (application to confirm a reduction of capital); and
- (b) Section 186 (application by the Principal Legal Adviser for the winding-up of a company or a foreign company after a report has been presented by an inspector appointed under Division VII.4); and
- (c) Section 197 (application for relief against oppression); and
- (d) Section 239 (application for the winding-up of a company by the Court); and
- (e) Section 326 (application for the winding-up of an unregistered company).

#### 15. Presentation of petition.

- (1) Presentation of a petition shall be effected by filing the petition in the Registry.
- (2) The date and time of the presentation shall be endorsed on the petition by the Registrar.
- (3) Except in the case of a petition to confirm a reduction of capital, the Registrar, on the presentation of the petition, shall appoint a time and place for the hearing.

**16. Verification of petition.**

(1) A petition shall—

- (a) set out in the prayer the nature of the relief sought; and
- (b) contain all the allegations necessary in support of it; and
- (c) be verified by affidavit.

(2) The affidavit verifying the petition shall be made—

- (a) by the petitioner or by one of the petitioners, if more than one; or
- (b) where the petition is presented by a corporation—by a director, secretary or other principal officer of the corporation,

and shall be filed with the petition, and the affidavit is prima facie evidence of the statements in the petition.

(3) When a petition is required to be served, a copy of the verifying affidavit shall be served with the petition.

**17. Endorsement of time and place of hearing.**

When a time has been appointed for the hearing of the petition, notice of the time and place appointed for hearing the petition shall be written on the petition and on the copies of it by the officer of the Court authorized by these Rules to fix the time and place for the hearing, and that officer may at any time before the petition has been advertised alter the time appointed and fix another time.

**18. Service of petition.**

(1) A petition shall, unless presented by the company, be served on the company.

(2) If there is no registered office, the petition may be served on the company—

- (a) at the principal or last-known principal place of business of the company—
  - (i) by leaving a copy with any member, officer or servant of the company there; or
  - (ii) if no such member, officer or servant can be found there—by leaving a copy at the principal or last-known principal place of business; or
- (b) by serving it on such member, officer or servant of the company as the Court directs.

(3) Where a petition in relation to a company in the course of being wound up is presented by a person other than the liquidator of the company, the petition shall be served personally on the liquidator.

**19. Copy of petition for member or creditor.**

Each member or creditor of the company is entitled to be furnished by the petitioner or his lawyer with a copy of the petition within 48 hours after requiring it, on payment at the rate of 14t per folio of the copy.

**20. Notice of intention to appear.**

(1) A person who intends to appear on the hearing of a petition shall serve on the petitioner or his lawyer notice of his intention.

(2) The notice shall—

- (a) be signed by the person or by his lawyer; and
- (b) give the address of the person signing it; and

(c) be served, or (if sent by post) posted in such time as in the ordinary course of post to reach the address of the petitioner as shown in the petition—

(i) not later than 4 p.m. of the day before the day appointed for the hearing of the petition; or

(ii) if that day be a Monday, or a Tuesday following a public holiday, not later than 4 p.m. of the Friday before that day.

(3) A person who has failed to comply with this section shall not be allowed to appear on the hearing of the petition without the special leave of the Court.

**21. List of persons intending to appear.**

(1) The petitioner or his lawyer shall prepare a list of the names and addresses of the persons who have given notice of their intention to appear on the hearing of the petition and of their respective lawyers.

(2) On the day appointed for hearing the petition, a copy of the list referred to in Subsection (1), or if no notice of intention to appear has been given a statement to that effect, shall be filed by the petitioner or his lawyer, before the hearing of the petition.

**22. Affidavits opposing the petition, and in reply.**

(1) Affidavits in opposition to a petition shall be filed and a copy of them served on the petitioner or his lawyer at least seven clear days before the time appointed for the hearing of the petition.

(2) Any affidavit in reply to an affidavit filed in opposition to a petition (including a further affidavit in support of any of the facts alleged in the petition) shall be filed within three days after the date of service on the petitioner of the affidavit in opposition, and a copy of the affidavit in reply shall be served on the petitioner or his lawyer without delay.

**23. Substitution of another person as petitioner.**

(1) Where a petitioner is not entitled to present a petition or, whether he is so entitled or not, where he—

(a) fails to take all the steps prescribed by these Rules preliminary to the hearing of the petition; or

(b) consents to withdraw his petition or to allow it to be dismissed or the hearing to be adjourned; or

(c) fails to appear in support of his petition when it is called on in court on the day originally fixed for the hearing or any day to which the hearing has been adjourned, or appears and does not apply for an order in the terms of the prayer of his petition,

the Court, on such terms as it thinks just, may substitute as petitioner any person who, in the opinion of the Court, would have a right to present the petition and who wishes to proceed with the petition.

(2) Where a petitioner fails to advertise his petition within the time prescribed by or under these Rules or consents to withdraw his petition, an order to substitute a petitioner may be made by the Registrar at any time before the date fixed for the hearing.



## PART III.—REDUCTION OF CAPITAL.

**24. Application of Part III.**

This Part applies only to a petition by a company to the Court for the confirmation of a resolution to reduce its share capital.

**25. Application for directions.**

After the petition has been presented, an application for directions as to the proceedings to be taken and the inquiry to be made shall be made without delay by summons returnable before the Registrar.

**26. Powers of Registrar.**

On the hearing of the summons or on any adjourned hearing or hearings of the summons or any subsequent application, the Registrar may make such orders and such directions as he thinks proper as to all proceedings to be taken, and more particularly—

- (a) directing the petition to be heard by the Court on a date and place to be fixed by the Registrar; or
- (b) directing that, having regard to any special circumstances, all or any of the provisions of Section 66(2) of the Act shall not apply as regards any specified class of creditors; or
- (c) to the publication of notices; or
- (d) where the settlement of a list of creditors is ordered, fixing the date with reference to which the list of creditors is to be made out and generally fixing a time for and giving directions as to all other necessary or proper steps in the matter, whether expressly mentioned in the succeeding provisions of these Rules or not.

**27. Filing affidavits verifying lists of creditors.**

(1) Within seven days after the date with reference to which the list of creditors is to be made out or within such other time as the Registrar orders, the company shall file an affidavit made by some officer or officers of the company competent to make it verifying a list containing, as far as possible, the names and addresses of the creditors of the company to whom the inquiry extends.

(2) The list shall also contain the amounts due to the creditors named in it in respect of any debts, claims or liabilities to which the inquiry extends, or in the case of any such debt payable on a contingency or not ascertained, or of any such claim or liability, the value as far as can be justly estimated of the debt, claim or liability.

(3) The list shall be filed with the affidavit.

(4) The person making the affidavit shall state in it his belief that the list verified by the affidavit is correct and that there was not at the date with reference to which the list of creditors is to be made out any debt, claim or liability that, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company except—

- (a) such debts, claims and liabilities as are set out in the list; and
- (b) any debts, claims or liabilities to which the inquiry does not extend.

**28. Publication of list of creditors.**

Copies of the list containing the names and addresses of the creditors and the total amount due to them (including the value of any debts, claims or liabilities estimated in accordance with Section 27 but omitting the amounts due to them respectively), or if the Registrar so directs complete copies of the list, shall be kept at the registered office of the company and at the office of the lawyer to the company, and any person wishing to inspect the list may at any time during the ordinary hours of business inspect and take extracts from the list on payment of the sum of 20t.

**29. Notice of petition, order and list of creditors, etc.**

(1) Within seven days after the filing of the affidavit under Section 27, or at such other time and in such manner as the Registrar orders, the company shall gazette and advertise notice of the presentation of the petition.

(2) A notice shall state—

- (a) the amount of the proposed reduction of capital; and
- (b) the places where the list of creditors may be inspected; and
- (c) the time fixed by the Registrar within which creditors of the company, who are not in, but are entitled to be entered in, the list and wish to be entered in it, must send to the company or its lawyer—
  - (i) their names and addresses; and
  - (ii) the particulars of their debts or claims or the liabilities of the company to them; and
  - (iii) the names and addresses of their lawyers (if any).

(3) The company shall send to each creditor whose name is entered in the list a notice stating—

- (a) the amount of the proposed reduction of capital; and
- (b) the effect of the order directing the inquiry; and
- (c) the amount or estimated value of the debt or the contingent debt, or of the claim or liability, (or both) for which the creditor is entered in the list; and
- (d) the time fixed by the Registrar within which, if he claims to be entitled to be entered in the list as a creditor for a larger amount, he must send to the lawyer for the company—
  - (i) his name and address; and
  - (ii) the particulars of his debt or claim or the liability of the company to him; and
  - (iii) the name and address of his lawyer (if any).

**30. Barring of late claims.**

(1) After the time fixed to send in particulars of his claim, no claim by any person to be a creditor, or to be a creditor for an amount larger than that for which he is entered on the list, shall be received without special leave by the Registrar and on such terms and conditions as to costs and otherwise as the Registrar thinks proper.

(2) On an application for special leave under Subsection (1), the summons shall be served on the company, and shall be supported by an affidavit setting out the facts on which the creditor relies.

**31. Affidavit verifying list.**

(1) Within seven days after the expiration of the time fixed by the Registrar for creditors to send in particulars of their claims or within such other time as the Registrar directs, the company shall file with the Registrar an affidavit made by the company's lawyer stating the results of the notices gazetted, advertised or sent under Section 29 and verifying a list (to be filed with the affidavit) containing—

- (a) the names, in alphabetical order, and addresses of the persons who have sent in the particulars of their debts or claims or the liabilities of the company to them in pursuance of the respective notices; and
- (b) the amounts, or estimated amounts, of the debts, claims or liabilities.

(2) Some competent officer or officers of the company shall join in the affidavit and shall in the list distinguish which (if any) of the debts, claims and liabilities—

- (a) are wholly or partly admitted by the company; and
- (b) are wholly or partly disputed by the company; and
- (c) are alleged by the company to be wholly or partly excluded from the inquiry.

(3) The company shall, at the same time, file with the Registrar the following lists of creditors made out in alphabetical order and showing the address of each creditor and the amount or estimated amount of the debt, claim or liability for which each is entered in the list kept under Section 28 or filed under Subsection (1) :—

- (a) a list of all creditors who have been paid or who have consented to the proposed reduction of the company's capital, verified by an affidavit made by some competent officer or officers of the company exhibiting the receipts, and, where necessary, the invoices showing the payments made, and in the case of each consenting creditor a written consent signed—
  - (i) by him; or
  - (ii) by a member of the firm, if the creditor is a firm; or
  - (iii) under the seal of the company, if the creditor is a company; and
- (b) a list of all creditors whose debts or claims the company does not admit at their full amounts but is willing to appropriate in such manner as the Registrar directs.

**32. Settlement of list of creditors.**

(1) Where—

- (a) the company has filed a list of creditors consenting to the proposed reduction or of creditors whose debts or claims, or the liabilities of the company to whom, the company is willing to appropriate as the Registrar directs; or
- (b) any debt, claim or liability, the particulars of which have been sent in in accordance with the preceding provisions of this Part, has not been admitted by the company at its full amount or estimated amount and the company is not willing to appropriate its full amount as the Registrar directs; or
- (c) any such debt, claim or liability is alleged by the company to be not wholly included in the inquiry,

the company shall without delay apply ex parte to the Registrar for directions.

(2) On the application the Registrar may—

- (a) order that the affidavit verifying the consent is sufficient proof of the consent, or may require any further proof; and
- (b) give such directions as he thinks proper for securing, in accordance with Section 66(2) of the Act, the payment of the debt or claim of, or the discharge of the liability of the company to, any creditor who does not consent to the proposed reduction,

and for that purpose may require such evidence and give such directions as are necessary and may give such further or other directions as appear to him desirable.

(3) Where—

- (a) the company contends that a person is not entitled to be entered in the list of creditors in respect of any debt, claim or liability, whether admitted or not; or
- (b) any debt, claim or liability the particulars of which have been sent in are not admitted by the company at its full amount or estimated amount,

then unless the company is willing to appropriate in such manner as the Registrar directs the full amount of the debt, claim or liability the company shall, if the Registrar so directs, serve on the creditor a notice that he is required—

- (c) to come in and establish his title to be entered on the list; or
- (d) to come in and prove the debt, claim or liability or such part of it as is not admitted by the company,

as the case may be, by a day and time specified in the notice, being a day not less than four clear days after the notice, and being the time appointed by the Registrar for adjudication on the titles, debts, claims and liabilities.

### 33. Proof of debt.

A creditor who has received notice that he is required to come in and prove his title shall file an affidavit verifying his debt or claim or the liability of the company to him, and shall on the day fixed appear before the Registrar and there produce all deeds and documents necessary to prove his debt or substantiate the claim or liability.

### 34. Adjournment of hearing, etc.

The Registrar may adjourn the hearing of the proofs of debts, claims and liabilities as often as he thinks proper, and may on the hearing or any adjourned hearing—

- (a) direct such investigation of all or any of the claims; and
- (b) require such further particulars, information or evidence relating to the claims,

as he thinks proper, and may hear evidence and disallow any claim or any part of a claim or fix the amount at which any debt, claim or liability is to be allowed.

### 35. Creditors' costs.

(1) A creditor who has come in and established his debt or claim or the liability of the company to him is entitled to costs unless the Registrar is of opinion that in the circumstances costs ought not be allowed.

(2) The Registrar shall fix the costs unless he thinks fit to direct them to be taxed, and the amount of the costs so fixed or taxed shall be added to the debt, claim or liability so established.

**36. Creditors wrongly listed as consenting.**

On the application of a creditor appearing on any list as having consented to the proposed reduction of the company's capital, the Registrar may before, or the Court may on, the hearing of the petition—

- (a) if he or it is satisfied that the creditor has not consented or that the circumstances of his consent were such as to make it proper to do so, order that the creditor be at liberty to appear on the hearing of the petition and oppose the proposed reduction of capital; and
- (b) for that purpose, direct any investigation, and require such particulars or information or hear such evidence as he or it thinks fit to require.

**37. Registrar's certificate.**

(1) The result of the settlement of the list of creditors shall be stated in a certificate to be settled and signed by the Registrar and filed without delay.

(2) The certificate shall state—

- (a) the debts, claims or liabilities admitted at their full amount by the company; and
- (b) the debts, claims or liabilities the full amount of which the company is willing to appropriate; and
- (c) the names of the creditors who have come in under Section 33 and sought to establish their title to be entered in the list of creditors, distinguishing—
  - (i) those whose debts or claims, or the liabilities of the company to whom, have been disallowed by the Registrar; and
  - (ii) those the amounts of whose debts or claims, or the liabilities of the company to whom, have been fixed by the Registrar,and showing the amounts so fixed; and
- (d) the debts, claims or liabilities the full amount of which the company does not admit or is not willing to appropriate, or such as have been disallowed or the amounts of which have not been fixed by the Registrar; and
- (e) the names of the creditors appearing on the list filed by the company as consenting to the proposed reduction of capital and the total amount of the debts due to them; and
- (f) the total amount of the debts or claims the payment of which has been secured as provided by Section 66(2) of the Act and the persons to or by whom they are due or claimed.

(3) No reference need be made in the certificate to any debts, claims or liabilities to which the inquiry does not extend.

**38. Date for hearing of petition.**

(1) Where a list of creditors has been settled, the Registrar shall on settling and signing his certificate fix the time and place for the hearing of the petition, which time shall not be less than 14 days after the filing of his certificate.

(2) When a time is fixed under Subsection (1), the company shall, not less than five days before the day so fixed, gazette and advertise a notice, in the prescribed form, of the day fixed for the hearing.

**39. Appearance by dissenting creditor.**

(1) A person appearing on the Registrar's certificate to be a creditor of the company who has not consented to the proposed reduction of capital and whose debt or claim, or the liability of the company to whom, has not been secured in full may appear on the hearing of the petition and oppose the application unless—

- (a) the company is willing to appropriate his debt or claim, or the liability of the company to him, in such manner as the Court directs; or
- (b) his debt or claim, or the liability of the company to him, has been discharged or determined.

(2) A dissenting creditor who appears at the hearing of an application under Section 66 of the Act is entitled to costs unless the Court is of the opinion that in the circumstances his costs are not to be allowed.

**40. Hearing.**

(1) The Court may adjourn the hearing of the petition from time to time as it thinks fit.

(2) On the hearing of the petition, the Court may give such directions as it thinks proper for securing, in accordance with Section 66(2) of the Act, the payment of the debts or claims of any creditors who do not consent to the proposed reduction, and for that or any other purpose may require such evidence and give such further directions as are necessary.

**41. Order confirming reduction.**

An order confirming a reduction shall show the particulars required to be shown by Section 66(5) of the Act, and shall contain directions—

- (a) as to the time within which an office copy of the order shall be lodged with the Registrar of Companies; and
- (b) as to the manner and mode in which notice of the order is to be gazetted and advertised after the office copy of the order has been lodged with the Registrar of Companies.

**PART IV.—WINDING-UP BY THE COURT AND APPLICATIONS UNDER SECTION 186 OF THE ACT.**

**42. Application of Part IV.**

This Part applies only to petitions for winding-up and petitions under Section 186 of the Act.

**43. Advertisement of petition.**

(1) A petition shall be gazetted and advertised not less than 14 days before the hearing.

(2) The advertisement shall state—

- (a) the day on which the petition was presented; and
- (b) the date and place appointed for the hearing of the petition; and

- (c) the name and address of the petitioner and of his lawyer and town agent (if any),

and shall contain a note at its foot stating that any person who intends to appear at the hearing of the petition, either to oppose or support, must send notice of his intention to the petitioner or to his lawyer within the time and in the manner specified in Section 20.

- (3) An advertisement of a petition that does not contain a note required by Subsection (2) shall be deemed to be irregular.

**44. Nomination of official liquidator by Registrar.**

(1) On the application of the petitioner, the Registrar shall nominate in writing the official liquidator who is entitled to be appointed as liquidator if an order for the winding-up of the company is made by the Court.

- (2) The Registrar may, as circumstances require, make further nominations.

(3) Before the hearing of the petition the petitioner or his lawyer shall obtain and file the written consent of the official liquidator nominated by the Registrar.

**45. Attendance on Registrar.**

(1) After a petition has been presented, the petitioner or his lawyer shall, on a day appointed by the Registrar, attend before the Registrar and satisfy him that—

- (a) the petition has been duly gazetted and advertised; and
- (b) the prescribed affidavit verifying the statements in the petition and the affidavit of service (if any) have been duly filed; and
- (c) the written consent of the liquidator nominated by the Registrar has been obtained and filed; and
- (d) the provisions of these Rules as to petitions have been duly complied with by the petitioner,

and a certificate under the hand of the Registrar is evidence that the provisions of this section have been complied with.

(2) No order other than an order for the dismissal or adjournment of the petition shall be made on the petition of a petitioner who has not, before the hearing of the petition, attended before the Registrar at the time appointed and satisfied him as required by this section.

**46. Notice of winding-up order.**

(1) Where an order is made for the winding-up of a company, the petitioner shall inform the liquidator without delay, and shall, within 14 days of the pronouncement of the order—

- (a) gazette and advertise a notice of the making of the order; and
- (b) serve on the liquidator a copy of the order.

(2) The copy of the winding-up order required by Section 247(2) of the Act to be served on the secretary or manager of the company may be served either personally or by pre-paid post addressed to the secretary or manager at the registered office of the company (if any), or if there is no such registered office at its principal or last-known place of business.

(3) Unless the Court otherwise directs, an order for the winding-up of a company by the Court shall contain at its foot a note stating that it is the duty of such of the persons who are liable to make out, or concur in making out, the company's statement of affairs as the

liquidator requires to attend on the liquidator at such time and place as he appoints and give him all the information that he may require.

**47. Order appointing provisional liquidator.**

(1) At any time after the presentation of a petition, on application by a creditor or contributory or by the company and on proof by affidavit of sufficient grounds for the appointment of a provisional liquidator, the Court may make the appointment on such terms as the Court thinks just or necessary.

(2) An order appointing a provisional liquidator shall state the nature and give a short description of the property of which the provisional liquidator is ordered to take possession, and the duties to be performed by him.

(3) On the pronouncement of the order the party obtaining the order shall without delay file a notice of the making of the order with the Registrar of Companies, and cause the notice to be gazetted and advertised.

(4) Unless the Court otherwise orders, the expense of complying with Subsection (3) is a charge on the assets of the company.

(5) Within seven days after the order is issued the party obtaining the order shall file with the Registrar of Companies an office copy of the order and serve a copy of it on the company and on any other person on whom the Court directs service to be made.

(6) On the completion of his term of office, a provisional liquidator is, on accounting to the liquidator (if any), entitled to be paid out of the property of the company all costs, charges and expenses properly incurred by him and such remuneration as is authorized by the order appointing him or any subsequent order, and may retain out of the property the amount of such costs, charges, expenses and remuneration.

**PART V.—MOTIONS.**

**48. Applications required to be by motion.**

Applications under the following provisions of the Act shall be made by motion, and shall be heard and determined in open court :—

- (a) Section 12(10) (appeal from decision of the Companies Auditors Board); and
- (b) Section 29(5) (application to cancel alteration in objects of company); and
- (c) Section 61 (application to confirm the issue of shares at a discount); and
- (d) Section 64 (application to validate the issue or allotment of shares invalidly issued or created or to confirm the terms of issue or allotment of such shares); and
- (e) Section 67 (application to set aside a proposed variation or abrogation of rights attached to shares); and
- (f) Section 91(5) (application by trustee or representative to confirm, set aside or vary a direction of the interest holders); and
- (g) Section 97(4) (application to confirm resolution to wind up scheme relating to interests other than shares or debentures); and
- (h) Section 125 (application by an undischarged bankrupt for leave to act in the management of a corporation); and
- (i) Section 142 (application by certain convicted persons for leave to engage in the management of a company); and



- (j) Section 181(5) (application for Court to inquire into case of offending officer or agent); and
- (k) Section 184(10) (application for Court to inquire into case of offending officer or agent); and
- (l) Section 190(2) (application as to removal of restrictions on shares); and
- (m) Section 249(1) (application to remove liquidator appointed by the Court); and
- (n) Section 261 (application to stay proceedings in a winding-up); and
- (o) Section 383(3) (application for the repayment of moneys to a company); and
- (p) Section 284 (application for leave to wind up voluntarily when a petition for winding-up by the Court has been presented); and
- (q) Section 286(2) (application to remove a liquidator and appoint another in his place); and
- (r) Section 397(2) (application for relief in respect of any default or breach of trust); and
- (s) Section 401 (application for assessment of damages against delinquent officers).

#### 49. Notice of motion.

- (1) A notice of motion shall state the nature and the grounds of the application.
- (2) Where a notice of motion is required by these Rules to be served, the notice shall be served not less than two clear days before the day named in the notice for hearing the motion.
- (3) Every motion shall be supported by an affidavit, and a copy of any affidavit in support of the motion shall be served on the respondent.

#### PART VI.—SUMMONSES.

#### 50. Applications required to be by summons:

- (1) Applications under the following provisions of the Act shall be made by summons, and shall be heard and determined by a Judge in chambers :—
  - (a) Section 13(2) (application for order that Registrar assign bond); and
  - (b) Section 17 (application in relation to proprietary companies); and
  - (c) Section 71 (application for approval of payment of interest out of capital); and
  - (d) Section 75(5) (application for substitution of corporate trustee); and
  - (e) Section 80(1) (application for direction that security for certain debentures be enforceable); and
  - (f) Section 81(3) or (4) (application for order for directions as to protection of interests of debenture holders); and
  - (g) Section 82(1) (application by trustee for debenture holders for directions or to determine questions); and
  - (h) Section 104(4) (applications for order for delivery up of documents to company); and
  - (i) Section 115 (application to extend time for filing charges and to rectify register of charges); and

- (j) Section 147(1) (application for order that a meeting be called other than in accordance with the articles or the Act); and
- (k) Section 151(6) (application to dispense with circulation of statement); and
- (l) Section 162 (application for order on default in relation to production of register of members); and
- (m) Section 163 (application to rectify register of members); and
- (n) Section 169(5) (application for order that company records be available for inspection); and
- (o) Section 192 (application for order for meetings in relation to a compromise or arrangement); and
- (p) Section 192(3), (4) and (10) (application to sanction compromise or arrangement with creditors or members or to restrain proceedings against the company); and
- (q) Section 194 (application for order facilitating compromise or arrangement); and
- (r) Section 196 (application for order as to acquisition of shares of dissenting share-holders); and
- (s) Section 197(4) (application for leave to make alteration to memorandum or articles inconsistent with a court order); and
- (t) Section 213(5) or 220 (application to determine appointment as official manager); and
- (u) Section 218 (application to proceed or stay proceedings when company under official management); and
- (v) Section 222(6) (application for appointment of liquidator nominated by company); and
- (w) Section 224(4) (application for leave to dispose of company's assets); and
- (x) Section 225 (application for directions in an official management); and
- (y) Section 227 (application to determine all proceedings relating to official management); and
- (z) Section 228(1) (application to Court for variation or cancellation of resolution appointing official manager); and
- (za) Section 230(10) (application for release of official manager); and
- (zb) Section 233 (application to invalidate meeting); and
- (zc) Section 241 (application for order that proceedings be deemed not validly taken); and
- (zd) Section 245(1) (application to validate disposition of property after commencement of Court winding-up); and
- (ze) Section 250(2) (application to vest company property in liquidator); and
- (zf) Sections 256 and 257 (applications with respect to release or resignation of liquidator); and
- (zg) Section 263(1) (application for direction that property be delivered to liquidator); and
- (zh) Section 263(2) (application to direct payment of money due from a contributory); and

- (zi) Section 263(3) and (4) (application for order for calls and payment of calls); and
- (zj) Section 265(3) (application for order as to priorities in payment of costs, charges and expenses in a winding-up); and
- (zk) Section 267 (application for order summoning persons for examination); and
- (zl) Section 268 (application for order summoning persons for public examination); and
- (zm) Section 270 (application for order for arrest of absconding contributory); and
- (zn) Section 271 (application for leave to rectify register or make call); and
- (zo) Section 282 (application for direction that company property be delivered to liquidator); and
- (zp) Section 290(4) (application to sanction resolution transferring company's business or property where company later wound up by Court); and
- (zq) Section 290(5) (application for directions as to arbitration); and
- (zr) Section 290(7) (application for approval of exercise of certain powers by liquidator in creditors' voluntary winding-up); and
- (zs) Section 293(3) (application for settlement of dispute as to value in an arrangement with creditors); and
- (zt) Section 293(4) (application to amend, vary or confirm an arrangement); and
- (zu) Section 294 (application for determination of a question or for exercise by Court of powers in a voluntary winding-up); and
- (zv) Section 297 (application relating to the control and conduct of a liquidator in a winding-up); and
- (zw) Section 299 (application for order in respect of decision of the liquidator); and
- (zx) Section 310(9) (application for order as to distribution of assets where there have been indemnifying creditors); and
- (zy) Section 315(2) (application to set aside rights of liquidator in favour of an executing or attaching creditor); and
- (zz) Section 316(4) (application to set aside rights of liquidator where Sheriff executing judgement on behalf of a creditor); and
- (zza) Section 317(1) (application for reference to the Principal Legal Adviser of question of prosecution of delinquent officer or member); and
- (zzb) Section 317(4) (application for order conferring power to investigate the affairs of the company); and
- (zzc) Section 317(5) (application to approve liquidator proceeding against delinquent officer or member); and
- (zzd) Section 317(6) (application to direct liquidator to report delinquent officer or member); and
- (zze) Section 317(9) (application to direct that persons concerned in company's affairs assist prosecution); and
- (zzf) Section 318(1) (application to declare dissolution void); and
- (zzg) Section 319(6) (application for order that name of a company be restored to the register); and

- (zzh) Section 364(6) (application for direction as to disposal of net assets in the country of a foreign company); and
- (zzi) Section 398(4) (application with respect to enlargement or abridgement of time); and
- (zzj) Section 400 (application to examine defaulting officers); and
- (zzk) Section 402 (application for authority to inspect or to require production of books of a company); and
- (zzl) Section 406 (application for order that document be made available for inspection).

(2) An application under Subsection (1)(zk), (zl), (zm), (zn), (zo), (zp), (zq), (zv), (zxc), (zxcg), or (zzl) may be made *ex parte*, and an application under Subsection (1)(zz) shall be made on notice to the Sheriff, who is entitled to be heard on the application.

(3) An application under Subsection (1)(o) shall be supported by an affidavit exhibiting a copy of the proposed compromise or arrangement, which shall be filed.

(4) After the holding of a meeting ordered under Section 192(2) of the Act, the lawyer for the applicant shall attend before the Registrar on a day to be appointed by the Registrar, and the Registrar shall inquire whether—

- (a) the meeting was duly summoned and held in the manner directed by the Court or Judge; and
- (b) a compromise or arrangement was agreed to by the necessary majority of creditors or members,

as the case may be.

(5) The Registrar shall certify to the Court or Judge—

- (a) whether—
  - (i) the meeting was duly summoned and held; and
  - (ii) the compromise or arrangement was agreed to by the necessary majority; and
- (b) if in his opinion any irregularities occurred in the summoning of the meeting or in the proceedings of the meeting, the nature and extent of the irregularities.

(6) Application for the approval of a compromise or arrangement shall not be made until a certificate of the Registrar in accordance with this section has been obtained and filed.

#### 51. Applications to be made to the Registrar.

(1) All applications required or authorized by the Act or these Rules (other than those referred to in Sections 14, 48 and 50) shall be made on summons, and shall be heard and determined by the Registrar who may exercise in respect of every such application any of the powers conferred on the Court or a Judge in relation to such application.

(2) With the consent of all parties, an application under Section 50 may be heard by the Registrar, but the failure of any party to seek or give consent does not prejudice his right to costs on a summons before a Judge.

**52. Summonses to be supported by affidavit.**

(1) A summons, where necessary, shall be supported by affidavit, and—

- (a) where the summons is required to be served, a copy of the affidavit shall be served with the summons; and
- (b) an affidavit in support on an ex parte summons shall show the parties interested and their interests.

(2) On the hearing of the summons, the Judge or Registrar shall give such directions as he thinks proper, and in particular directions as to notices to be given to any of the parties interested, and may—

- (a) adjourn the application to enable such parties to attend; and
- (b) if he thinks it proper in the circumstances to do so, adjourn into court the hearing or the further hearing of the summons.

**53. Summons for directions by liquidator.**

(1) Where—

- (a) a liquidator desires to obtain directions as to any matter in relation to a winding-up; or
- (b) an applicant in any proceedings under these Rules desires to obtain directions as to the proceedings to be taken in relation to the application,

he may take out a summons for directions and apply ex parte to the Registrar for directions in relation to the matter or proceedings.

(2) On an application for directions, the Registrar may adjourn the application and direct that notice by advertisement or otherwise of the application be given to such persons or classes of persons as he directs.

**PART VII.—LIQUIDATORS' REPORTS.****54. Contents of liquidators' reports.**

A report made by the liquidator under Section 252 of the Act shall state in narrative form the facts and matters that the liquidator is required or desires to bring to the notice of the Court and his opinion as required by that section.

**55. Reports to be made by liquidators.**

(1) The reports under the following provisions of the Act to be made by the liquidator shall be made by being filed in the Registry :—

- (a) Section 252(1) (preliminary report in a winding-up by the Court); and
- (b) Section 252(2) (further reports in a winding-up by the Court); and
- (c) Section 261(2) (report in relation to application to stay winding-up proceedings).

(2) A further report made under Section 252(2) of the Act is not open to the inspection of a creditor, contributory or other person, except the liquidator or his lawyer, unless the Court so directs.

**56. Consideration of reports under Section 252(2) of the Act.**

(1) A further report under Section 252(2) of the Act shall be considered by the Judge in chambers on the application of the liquidator or the Registrar of Companies made by summons ex parte.

(2) The Judge may direct service of the summons on any other person concerned.

(3) The liquidator shall, personally or by his lawyer, attend on the consideration of the report and give to the Judge any further information or explanation with reference to the matters stated in the report that the Judge requires.

PART VIII.—EXAMINATIONS.

**57. Applications for examinations under Sections 267 and 269 of the Act.**

(1) An application to the Court to summon persons for examination under Sections 267 and 269 of the Act shall be made *ex parte*, and may be made by the liquidator or a creditor or contributory.

(2) If the application is made by a creditor or contributory, it shall be made by summons served on the liquidator and supported by affidavit.

**58. Applications for examinations under Section 268 of the Act.**

(1) An application for an order for a public examination under Section 268 of the Act may be made *ex parte* by the liquidator or by the Registrar of Companies.

(2) If an application is made by the Registrar of Companies notice of it shall be given to the liquidator.

**59. Applications for examinations under Section 297 of the Act.**

An application for an order for the examination of the liquidator or other person under Section 297 of the Act may be made *ex parte* by the Registrar of Companies or a creditor or contributory to a Judge in chambers, and shall be supported by affidavit.

**60. Liquidator at examinations under Sections 267 and 269 of the Act.**

The liquidator may attend in person or by a lawyer at any examination of a witness under Sections 267 and 269 of the Act, and he or his lawyer may take notes of the examination for his use, and put such questions to the persons examined as the Court allows.

**61. Application for appointment.**

(1) On an order being made under Section 268 of the Act directing a person to attend for public examination, the liquidator shall apply *ex parte* to the Registrar for the appointment of a day on which the public examination is to be held.

(2) The liquidator or his lawyer shall cause a notice of the day and place appointed under Subsection (1) for holding the public examination to be served on the person to be examined.

**62. Notice of appointment to creditors and contributories.**

(1) The liquidator shall give notice of the public examination to the creditors and contributories by the gazettal and advertising of a notice of the time and place appointed for holding the examination.

(2) Where an adjournment of the public examination has been directed notice of the adjournment shall not, unless otherwise directed by the Court, be advertised or gazetted.

**63. Examinations under Sections 267, 268 and 269 of the Act.**

Where an order has been made for a private examination under Sections 267 and 269, or for a public examination under Section 268, of the Act—

- (a) the examination shall be held either in chambers or before a Magistrate Grade IV, as the Judge in chambers directs, and in the case of an examination under Sections 267 and 269 of the Act the Judge may order that the examination be not held in open court and be not open to the public; and
- (b) in the order for examination or in a subsequent order the Judge may give directions as to the matters on which any person is to be examined; and
- (c) if a person examined before a Magistrate fails or refuses to answer to the satisfaction of the Magistrate any question that he allows to be put, the Magistrate may exercise, in respect of the failure or refusal, any powers that the Court might have exercised had the failure or refusal been made in an examination before the Court; and
- (d) where on an examination held before a Magistrate he thinks that the examination is unnecessarily protracted, or for any other sufficient cause, he may adjourn the examination of any person so that it may be held before the Court.

**64. Notes of examinations and powers of Commissioner.**

(1) If the Court or person before whom any examination under the Act or these Rules is directed to be held thinks that a person, other than the person before whom an examination is taken, should be appointed to take down in shorthand or otherwise record the evidence of any person examined, the Court or person before whom the examination is taken may make the appointment.

(2) The person at whose instance the examination is taken shall nominate a person for the purpose of Subsection (1), and the person so nominated shall be appointed unless the Court or person holding the examination otherwise orders.

(3) A person appointed under Subsection (2) shall be paid either by the person at whose instance the appointment was made or out of the assets of the company, whichever is directed by the Court.

**65. Notes of depositions.**

(1) The notes of the depositions of a person examined under Sections 267 and 269 of the Act or under an order of the Court, whether before the Court or before a person appointed to take the examination (other than the notes of the depositions of a person examined at a public examination under Section 268 of the Act), shall be filed but shall not be open to the inspection of any creditor, contributory or other person, except the liquidator or his lawyer, unless the Court so directs, and the Court may give such general or special directions as it thinks expedient as to the custody and inspection of the notes and the furnishing of copies of or extracts from them.

(2) After being signed as required by Section 268(7) of the Act, the notes of the depositions of a person examined under that section shall be filed, and shall be open to the inspection of the liquidator and of any creditor or contributory.

**66. Failure to attend or absconding.**

If—

- (a) a person who has been directed by the Court to attend for public examination fails to attend at the time and place appointed and no good cause is shown by him for the failure; or
- (b) before the day appointed for the examination the liquidator satisfies the Court that any such person has absconded, or that there is reason for believing that he is about to abscond, with a view to avoiding examination,

the Court, on proof to its satisfaction that notice of the order and of the time and place appointed for attendance at the public examination was duly served, may without any further notice issue a warrant for the arrest of the person, or make such other order as the Court thinks just.

## PART IX.—ORDERS.

**67. Settling and issuing orders.**

(1) Every order made by the Court on petition or motion shall be settled by the Registrar and issued from the office of the Registrar, unless the Judge making the order directs that no order need be drawn up.

(2) Where a direction is given that no order need be drawn up, the note or memorandum of the order signed or initialled by the Judge making the order is sufficient evidence of the order having been made.

**68. Documents required for settling order.**

(1) Subject to any direction to the contrary, every order shall be passed and entered without delay, and the petitioner or his lawyer, the applicant or his lawyer and all other persons who have appeared on the hearing of a petition or motion shall, not later than the day after the order is pronounced in Court, leave at the office of the Registrar all the documents required for the purpose of enabling the Registrar to settle the order without delay.

(2) It is not necessary for the Registrar to make an appointment to settle the order unless in any particular case the special circumstances make an appointment necessary.

**69. Delivery of office copy of order confirming issue of shares at discount to Registrar of Companies.**

Unless the Court otherwise directs, an order confirming the issue of shares at a discount shall contain a direction that an office copy of the order be delivered to the Registrar of Companies for registration within seven days from the date of the order, or within such time as the Court allows, and that the order not take effect until after the office copy has been so delivered.

## PART X.—POWERS AND DUTIES OF LIQUIDATOR AND PROCEEDINGS IN WINDING-UP BY THE COURT.

**70. Liquidators as officers of Court.**

(1) All official liquidators are officers of the Court.

(2) Judicial notice shall be taken of the appointment of any person as an official liquidator.



**71. Attendance of listed contributories at proceedings.**

(1) Every person for the time being on the list of contributories of the company, and every person whose proof has been admitted, may at his own expense attend proceedings in relation to the winding-up of a company by the Court, and is entitled on payment of the costs of the notice to have notice of such of those proceedings as he requests in writing.

(2) If the Court is of the opinion that the attendance of any person referred to in Subsection (1) on any proceedings has occasioned additional costs that ought not be borne by the funds of the company, it may direct the costs or a gross sum in place of them to be paid by him, and he is not entitled to attend any further such proceedings until he has paid the costs.

(3) The Court may appoint any one or more of the creditors or contributories to represent before the Court, at the expense of the company, all or any class of the creditors or contributories on any question or in relation to any proceedings before the Court, and may remove the person so appointed.

(4) If more than one person is appointed under Subsection (3) to represent one class of creditors or contributories, the persons appointed shall employ the same lawyer to represent them.

**72. Liquidator's attendance at proceedings.**

Where the attendance of the liquidator's lawyer is required on any proceedings in court or chambers, the liquidator need not attend in person except where his presence is necessary or the Court directs him to attend.

**73. Statement of affairs.**

(1) A person who has been required under Section 251 of the Act by the liquidator to submit and verify a statement as to the affairs of the company shall be furnished by the liquidator with forms and instructions for the preparation of the statement.

(2) The liquidator may from time to time hold personal interviews with any person referred to in Section 251(2) of the Act for the purpose of investigating the company's affairs, and every such person shall attend at such time and place as the liquidator appoints and shall give to the liquidator all information that he requires.

(3) When any person requires an extension of time for submitting the statement of affairs, he shall apply to the liquidator who may, for special reasons, give a written certificate extending the time, which shall be filed with the proceedings in the winding-up and makes an application to the Court unnecessary.

(4) After the statement of affairs of a company has been submitted to the liquidator, each person who has made or concurred in making the statement shall attend (if required) and answer all questions put to him by the liquidator, and shall give all further information required of him in relation to the statement of affairs.

(5) Any default in complying with the requirements of Section 251 of the Act shall be reported by the liquidator to the Court.

**74. Costs of preparing statement of affairs.**

Before incurring any costs or expenses in and about the preparation and making of the statement, a person who is required to make or concur in making any statement of affairs of a company shall apply to the liquidator for his sanction and submit a statement of the estimated costs and expenses that it is intended to incur, and except by order of the Court

no person shall be allowed, out of the assets of the company, any such costs or expenses that have not been sanctioned by the liquidator before being incurred.

#### 75. Liquidator's bank account.

(1) Unless otherwise directed by the Court, a liquidator of a company that is being wound up by the Court shall—

- (a) open in a bank to be named in the winding-up order a trust account to be known as the liquidator's General Account, in the name of the company being wound up together with the words "in liquidation"; and
- (b) pay all moneys received by him into that account immediately after receipt.

(2) Subject to any order to the contrary, all payments out of an account referred to in Subsection (1) shall be made by cheque payable to order, and there must be marked or written on the face of every such cheque the name of the company, and the cheque shall be countersigned—

- (a) where there is a committee of inspection—by at least one member of the committee or by such other person (if any) as the committee of inspection appoints; and
- (b) where there is no committee of inspection—by such person or persons (if any) as the Court directs.

#### 76. Moneys, etc., received to be deposited in trust account.

(1) As soon as a bill of exchange, promissory note or other security payable to the company or to the liquidator comes into the hands of the liquidator it shall be deposited by him in the bank named in the winding-up order, for the purpose of being presented by the bank for acceptance and payment or for payment only, as the case requires.

(2) As they come into his hands, all marketable securities shall be deposited by the liquidator, for the purpose of safe custody, with the bank named in the winding-up order.

(3) A bill, note or marketable or other security deposited with the bank named in the winding-up order shall be delivered out only on a request signed—

- (a) by the liquidator and, if there is a committee of inspection, by at least one member of the committee or by such other person (if any) as the committee appoints; or
- (b) if there is no committee of inspection, by the liquidator and such person or persons (if any) as the Court directs.

#### 77. Payment into Court of trust account moneys.

All or any part of the money for the time being standing to the credit of the account of the liquidator at the bank named in the winding-up order and not immediately required for the purposes of the winding-up may be paid into Court to the credit of an account intitled in the matter of the company in liquidation.

#### 78. Directions as to money.

(1) The Registrar may give special directions with respect to the payment, deposit or custody of moneys or securities payable to or coming into the possession of a liquidator.

(2) Where application is made to the Registrar to authorize the liquidator in a winding-up by the Court to make his payments into and out of a special bank account, the Registrar may—

- (a) grant the authorization for such time and on such terms as he thinks proper; and
- (b) at any time order the account to be closed if he is of opinion that the account is no longer required.

(3) An office copy of every order of the Registrar giving special directions with respect to the payment, deposit or custody of moneys or securities shall be served on the bank concerned.

#### 79. Application for appointment of special manager.

(1) An application by the liquidator for the appointment of a special manager shall be supported by a report of the liquidator, which shall be placed on the file of proceedings, and the report shall state the powers that, in the liquidator's opinion, should be entrusted to the special manager and—

- (a) the amount of remuneration that in the opinion of the liquidator ought to be allowed to the special manager; or
- (b) that in the opinion of the liquidator it is desirable that the fixing of the remuneration should be deferred.

(2) Unless the Registrar otherwise directs, the remuneration of a special manager shall be stated in the order appointing him, but the Registrar may, for good cause shown, make an order increasing, reducing or otherwise altering the remuneration of the special manager.

#### 80. Special manager's accounts.

A special manager shall account to the liquidator and his accounts shall be verified by statutory declaration, and when approved by the liquidator the totals of the receipts and payments shown in the accounts shall be added by the liquidator to his accounts.

#### 81. Security by special manager.

In the case of a special manager—

- (a) security shall be given to the satisfaction of the Registrar, or in such other manner as the Court from time to time directs; and
- (b) it is not necessary that security be given in each separate winding-up, but security may be given specially for a particular winding-up, or generally, to be available for any winding-up in which the person giving security is appointed special manager; and
- (c) the Registrar shall fix the amount and nature of the security, and may, as he thinks fit, either increase or diminish the amount of special or general security that any person has given, in which case the special manager shall give additional security accordingly within such time as the Registrar prescribes or may reduce the amount of his security, as the case may be; and
- (d) the certificate of the Registrar that a special manager has given security to his satisfaction shall be lodged with the Registrar of Companies; and
- (e) the cost of furnishing the required security by a special manager (including any premiums that he may pay for the security) shall be borne by him

personally and shall not be charged against the assets of the company as an expense incurred in the winding-up.

### 82. Failure to give or keep up security.

(1) If a special manager fails to give the required security or additional security within the required time, the liquidator shall report the failure to the Registrar and the Registrar may thereupon rescind the order appointing the special manager.

(2) If a special manager fails to keep up his security, the liquidator shall report the failure to the Registrar and the Registrar may thereupon remove the special manager and make such order as to costs as he thinks proper.

(3) On application made *ex parte* and on being satisfied that the condition of any bond given as security has been broken, the Registrar may order the bond to be assigned to some person to be named in the order, and the person, his executors or administrators—

- (a) are entitled to sue on the bond in his or their own name or names as if the bond had been originally given to him; and
- (b) are entitled to recover on the bond, as trustee or trustees for all persons interested, the full amount recoverable in respect of any breach of the condition of the bond.

## PART XI.—MAKING AND SETTLING LIST OF CONTRIBUTORIES IN A WINDING-UP BY THE COURT.

### 83. Settlement of provisional list of contributories.

(1) Unless the Registrar dispenses with the settlement of a list of contributories, the liquidator shall, with all convenient speed after his appointment, make out a provisional list of contributories.

(2) The list shall—

- (a) contain a statement of the address of, and the number of shares or extent of interest to be attributed to, each contributory and the amount called up and the amount paid up in respect of the shares or interest; and
- (b) set out the several classes of contributories, distinguishing between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

### 84. Notice of appointment for settlement.

The liquidator shall—

- (a) appoint a time and place for settling the provisional list of contributories; and
- (b) give not less than 14 days' written notice of the time and place appointed to each person whom he proposes to include in the list as settled; and
- (c) state in the notice to each person—
  - (i) in what character, and for what number of shares or for what interest, he proposes to include the person in the list; and
  - (ii) what amount has been called up and what amount paid up in respect of the shares or interest.

**85. Objections to be heard and list settled.**

On the day appointed for settlement of the provisional list of contributories, the liquidator shall hear any person included in the list who objects, and after the hearing shall settle and certify the list, which, when so settled and certified, is the list of contributories of the company.

**86. Supplementary list.**

The liquidator may from time to time make out and settle a supplementary list varying or adding to the list of contributories, but in doing so he shall, as far as circumstances permit, give the same notices and follow the same procedure as in making out and settling the original list.

**87. Notice of supplementary list.**

Within 14 days after the settlement of a list of contributories of the company or any supplementary list, the liquidator shall give written notice to every person whom he has placed on the list or supplementary list—

(a) stating—

- (i) in what character, and for what number of shares or for what interest, that person has been placed on the list or supplementary list; and
- (ii) what amount has been called up and what amount paid up in respect of the shares or interest; and

(b) informing the person to whom the notice is given that any application for the removal of his name from the list or supplementary list, or for the variation of the list or supplementary list, must be made to the Court by summons within 21 days after the date of the service of the notice on him.

**88. Objection to list of contributories.**

(1) Subject to the powers of the Court to extend the time or to allow an application to be made notwithstanding the expiration of the time limited for that purpose, no application to the Court by any person who objects to the list of contributories or to any supplementary list shall be entertained after the expiration of 21 days after the date of the service on the person of the notice required by Section 87.

(2) Unless the Court otherwise orders, the liquidator is not personally liable to pay any costs of or in relation to an application to set aside or vary his act or decision settling the name of a person on the list of contributories of a company.

**PART XII.—COLLECTION AND DISTRIBUTION OF ASSETS IN A WINDING-UP BY THE COURT.**

**89. Duties of liquidator.**

(1) The duties imposed on the Court by Section 262 of the Act with regard to the collection of the assets of a company and the application of the assets in discharge of the company's liabilities shall be discharged by the liquidator.

(2) In the discharge of the duties referred to in Subsection (1), the liquidator is in the same position, for the purpose of acquiring or retaining possession of the property of the company, as if he were a receiver of the property appointed by the Court, and the Registrar may on his application enforce the acquisition or retention accordingly.

**90. Transfer of property.**

(1) The powers conferred on the Court by Section 263(1) of the Act shall be exercised by the liquidator.

(2) On notice from the liquidator and within such time as he, by written notice, requires, any contributory on the list of contributories and any trustee, receiver, banker, agent or officer of a company that is being wound up shall pay, deliver, convey, surrender or transfer to or into the hands of the liquidator any money, property, books or papers that are in his hands and to which the company is prima facie entitled, and the Court may, on the application of the liquidator, order payment, delivery, conveyance, surrender or transfer accordingly.

**91. Calls by liquidator.**

The powers and duties of the Court conferred and imposed by Section 263(3) of the Act in relation to making calls on contributories shall be exercised by the liquidator as an officer of the Court subject to the following provisions :—

- (a) where there is a committee of inspection and the liquidator desires to make a call for a purpose authorized by the Act—
- (i) the liquidator shall summon a meeting of the committee for the purpose of obtaining its sanction to the intended call; and
  - (ii) the notice of the meeting shall—
    - (A) be sent to each member of the committee in sufficient time to reach him not less than seven days before the day appointed for holding the meeting; and
    - (B) contain a statement of the proposed amount of the call and the purpose for which it is intended; and
  - (iii) notice of the intended call and of the intended meeting of the committee shall be gazetted and advertised, stating the time and place of the intended meeting of the committee and that each contributory may—
    - (A) attend the meeting and be heard; or
    - (B) make any written communication to the liquidator or members of the committee in reference to the intended call; and
  - (iv) at the meeting of the committee, any such statements or representations—
    - (A) made to the meeting personally; or
    - (B) addressed in writing to the liquidator or members of the committee,shall be considered before the intended call is sanctioned; and
  - (v) the sanction of the committee shall be given by resolution passed by a majority of the members present; and
- (b) where there is no committee of inspection—the liquidator shall not make a call without obtaining the leave of the Court.

**92. Application to Court for leave to make a call.**

(1) An application to the Court for leave to make a call for a purpose authorized by the Act shall be made by summons stating the proposed amount of the call, which summons

shall be served, at least four clear days before the day appointed for making the call, on every contributory proposed to be included in the call, or if the Court so directs notice of the intended call may be given by advertisement without a separate notice to each contributory.

(2) The copy of the summons served on each contributory shall contain a statement of the amount claimed as due from the contributory served, and if notice is given by advertisement under a direction under Subsection (1) the notice shall contain a statement of the amount due from every contributory proposed to be included in the call.

(3) On the hearing of the summons, the Court may authorize the making of the call, and may order the payment by the contributories of the amounts due in respect of the call within a time to be named in the order.

### 93. Notice of call.

(1) Where the liquidator is authorized by resolution or order to make a call on the contributories, he shall file with the Registrar a document in Form 51 with such variation as circumstances require.

(2) Where a call has been made by the liquidator, he shall, without delay, serve on each of the contributories included in the call a copy of the resolution of the committee of inspection or order of the Court authorizing the call, together with a notice specifying the amount or the balance due from the contributory in respect of the call.

### 94. Enforcement of call.

The payment of the amount due from any contributory on a call may be enforced by order of the Court made in chambers on summons by the liquidator.

## PART XIII.—FIXING TIME WITHIN WHICH DEBTS, CLAIMS AND LIABILITIES MUST BE PROVED.

### 95. Notice as to date by which debts to be proved.

(1) The liquidator may fix a certain day, not less than 14 days after the date of the notices referred to in Subsection (2), on or before which the creditors of the company shall—

- (a) prove their debts or claims or the liabilities of the company to them; and
- (b) establish any title that they have to priority under Section 310 of the Act,

or be excluded from the benefit of any distribution made before the debts, claims or liabilities are proved, or, as the case may be, from objecting to the distribution.

(2) The liquidator shall give notice of the day fixed under Subsection (1) by advertisement, and shall also give written notice of the day to—

- (a) every person mentioned in the statement of affairs as a creditor and who has not proved his debt or claim, or the liability of the company to him; and
- (b) every person mentioned in the statement of affairs as a preferential creditor whose claim to be a preferential creditor has not been established and is not admitted.

(3) The succeeding provisions of this Part as to admissions and rejections of proofs apply, with the necessary variations, to any such claim to priority.

**96. Time for dealing with proofs by liquidator.**

(1) Subject to Subsection (2), the liquidator shall, within 21 days after receiving a proof that has not previously been dealt with, in writing admit it or reject it, wholly or in part, or require further evidence in support of it.

(2) Where the liquidator has given notice of his intention to declare a dividend he shall, within 14 days after the date mentioned in the notice as the latest date up to which proofs must be lodged, examine and in writing admit or reject, or require further evidence in support of, every proof that has not already been dealt with, and shall give notice in writing of his decision rejecting a proof wholly or in part to the creditor affected by it.

(3) If the liquidator rejects a proof wholly or in part, he shall state in writing to the creditor the ground of his rejection.

(4) Where a creditor's proof has been admitted, the notice of dividend is sufficient notification of the admission.

**97. Proof admitted improperly.**

If the liquidator is of opinion that a proof has been improperly admitted, the Registrar may, on application by the liquidator after notice to the creditor, expunge the proof or reduce its amount.

**98. Expunging of proof on application by creditor or contributory.**

The Court may expunge or reduce a proof on the application of a creditor or contributory if the liquidator declines to interfere in the matter.

**99. Administration of oaths, etc.**

For the purpose of his duties in relation to proofs, the liquidator may administer oaths and affirmations and take affidavits.

**100. Monthly list of proofs.**

(1) A liquidator in a winding-up by the Court shall, on the first day of every month, file with the Registrar a certified list of all proofs received by him during the preceding month distinguishing in the list the proofs admitted, those rejected, and those that stand over for further consideration.

(2) In the case of proofs admitted or rejected, the liquidator shall cause the proofs to be filed with the Registrar.

**101. Procedure where creditor appeals.**

The liquidator shall, within three days after receiving notice from a creditor of his intention to appeal against a decision rejecting a proof, file the proof with the Registrar with a memorandum setting out the grounds of his rejection.

**102. Costs of appeal.**

Unless the Court or the Registrar otherwise orders, a liquidator is not personally liable for costs in relation to an appeal from his decision rejecting any proof wholly or in part.



## PART XIV.—RELEASE AND RESIGNATION OF LIQUIDATOR.

**103. Notice of liquidator's intention to apply for release.**

Before making application for his release, a liquidator shall—

- (a) give notice of his intention to do so to all the creditors who have proved their debts and to all the contributories; and
- (b) send with the notice a summary of all receipts and payments in the winding-up.

**104. Meeting of creditors and contributories to consider resignation of liquidator.**

(1) A liquidator who desires to resign his office shall summon separate meetings of the creditors and contributories of the company to decide whether or not the resignation shall be accepted.

(2) If the creditors and contributories agree, by ordinary resolutions, to accept the resignation of the liquidator, the liquidator shall file with the Registrar, and lodge with the Registrar of Companies, a memorandum of his resignation, and thereupon the resignation takes effect.

(3) In any other case, the liquidator shall report to the Court the result of the meetings and thereupon the Court may, on the application of the liquidator—

- (a) determine whether or not his resignation is accepted; and
- (b) give such directions and make such orders as in its opinion are necessary.

(4) Where the Court determines that a resignation is accepted, the liquidator shall immediately lodge notice of the acceptance with the Registrar of Companies.

(5) The Court or a Judge may dispense with all or any of the requirements of this section and Section 103.

## PART XV.—TRANSFERS OF ACTIONS AND PROCEEDINGS.

**105. Orders for transfer of proceedings.**

(1) Where an order has been made for the winding-up of a company, the Judge making the order may, without further consent, order the transfer to him of any action, cause or matter pending brought or continued by or against the company.

(2) Where an action brought by or against a company against which a winding-up order has been made is transferred under Subsection (1), the Court may determine and deal with any application, matter or proceeding that, if the action had not been transferred, would have been determined in chambers.

## PART XVI.—COSTS.

**106. Submission of bill of costs by employees to liquidator for taxation.**

(1) On request by the liquidator made a sufficient time before the declaration of a dividend, a lawyer, manager, accountant, auctioneer, broker or other person employed by a liquidator in a winding-up by the Court shall deliver his bill of costs, charges or expenses to the liquidator for the purpose of taxation, and if he fails to do so within the time stated in the request, or within such extended time as the Registrar allows, the liquidator shall declare and distribute the dividend without regard to his claim, and subject to any order of the Registrar the claim is forfeited.

(2) The bill of costs, charges or expenses shall be lodged with the liquidator.

(3) The liquidator shall lodge the bill of costs, charges or expenses with the taxing officer of the Court.

**107. Notice of appointment to tax.**

Where a bill of costs, charges or expenses in a winding-up has been lodged with the taxing officer of the Court, he shall give notice of an appointment to tax to the liquidator and to the person to or by whom the bill is to be paid.

**108. Supply of copy of bill of costs to liquidator.**

(1) On application by the liquidator, a person whose bill of costs, charges or expenses in a winding-up by the Court is or are to be taxed shall furnish to the liquidator a copy of his bill to be taxed on payment at the rate of 14t per folio, which payment shall be charged on the assets of the company.

(2) The liquidator may attend or be represented on the taxation.

**109. Issue of allowance or certificate of taxation.**

(1) On the completion of the taxation of a bill of costs, charges or expenses, the taxing officer shall issue to the person presenting the bill for taxation his allowance or certificate of taxation.

(2) The taxing officer shall keep a Register of Taxations.

**110. Liquidator's certificate as to special terms of remuneration to employee.**

Where the bill of costs, charges or expenses of a lawyer, manager, accountant, auctioneer, broker or other person employed by a liquidator is payable out of the assets of the company, a written certificate, signed by the liquidator and setting out any special terms as to remuneration that have been agreed to, shall be produced to the taxing officer on the taxation.

**111. Allowances for performance by other persons of liquidators' and special managers' duties.**

(1) Where a liquidator or special manager in a winding-up by the Court receives remuneration for his services as such, no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties that are required by the Act or these Rules to be performed by the liquidator or special manager.

(2) Where a liquidator is a lawyer, he may contract with the company that the remuneration for his services as liquidator include all professional services.

**112. Application for costs after proceedings concluded.**

Where a party to, or a person affected by, any proceedings wishes to make application for an order that he be allowed his costs incident to the proceedings, or any part of those costs, and the application is not made at the time of the proceedings—

(a) he shall serve notice of his intended application on the company, or if the company is in liquidation on the liquidator; and

(b) the company or the liquidator, as the case requires, may appear on the application and object to it; and

(c) no costs of or incident to the application shall be allowed to the applicant unless the Court is satisfied that the application could not have been made at the time of the proceedings.

## 113. Dispensing with taxation of small bills.

In the case of any bill of costs, charges or expenses that does not exceed K100.00 the liquidator may, if he thinks fit, dispense with the requirements of these Rules in relation to taxation.

## SCHEDULES.

## SCHEDULE 1.

Rules, Sec. 13.

## LIST OF FORMS.

Provision of Rules.	Description of Form.	Number of Form.
3	Title of proceedings	1
14	Petition	2
16	Affidavit verifying petition	3
18	Affidavit of service of petition on company	4
20	Notice of intention to appear on petition	5
21	List of persons attending the hearing of a petition	6
25	Order on summons for directions in relation to a petition to confirm a reduction of capital	7
27	Affidavit verifying list of creditors	8
29	Advertisement of petition and list of creditors	9
29	Notice to creditors	10
31	Affidavit as to claims	11
32	Notice to creditors to come in and prove	12
38	Advertisement of hearing of petition	13
43	Advertisement of petition	14
46	Order for winding-up by the Court	15
46	Notice of winding-up order	16
47	Order appointing provisional liquidator after presentation of petition and before winding-up order	17
47	Notification to provisional liquidator of order appointing him provisional liquidator before winding-up order	18
47	Notice of appointment of provisional liquidator	19
50	Form of summons (general)	20
61	Order directing a public examination	21
61	Order appointing a time for public examination	22
61	Notice to attend public examination	23
61	Order to attend at chambers to be examined	24
64	Application for appointment of shorthand writer to take down notes of public examination, etc.	25
64	Declaration by shorthand writer	26
65	Notes of public examination taken in shorthand or recorded by mechanical means	27

Provision of Rules.	Description of Form.	Number of Form.
65	Notes of public examination not taken in shorthand or recorded by mechanical means	28
66	Warrant against person who fails to attend examination	29
80	Statutory declaration by special manager verifying account	30
81	Certificate that special manager has given security	31
83	Provisional list of contributories to be made out by liquidator	32
84	Notice to contributories of appointment to settle list of contributories	33
84	Affidavit of postage of notices of appointment to settle list of contributories	34
85	Certificate of liquidator of settlement of list of contributories	35
87	Notice to contributory of final settlement of list of contributories and of inclusion of his name	36
87	Certificate of liquidator of settlement of supplemental list of contributories	37
87	Provisional supplemental list of contributories	38
87	Notice to contributory of variation or addition to list of contributories	39
87	Affidavit of service of notice to contributory	40
87	Order on application to vary list of contributories	41
90	Notice by liquidator requiring payment of money or delivery of books, etc., to liquidator	42
91	Notice to members of committee of inspection of meeting for sanction to proposed call	43
91	Advertisement of meeting of committee of inspection to sanction proposed call	44
91	Resolution of committee of inspection sanctioning call	45
92	Summons for leave to make a call	46
92	Affidavit of liquidator in support of proposal for call	47
92	Advertisement of intended call	48
92	Order giving leave to make a call	49
93	Document making call	50
93	Notice of call sanctioned by committee of inspection to be sent to contributory	51
93	Notice to be served with the order sanctioning a call	52
94	Affidavit in support of application for order for payment of call	53
94	Affidavit for service of order for payment of call	54
94	Order for payment of call due from contributory	55
100	List of proofs to be filed under Section 100	56
103	Notice to creditors and contributories of intention to apply for release	57
103	Application by liquidator to Court for release	58
103	Statement to accompany notice of application for release	59
106	Request to deliver bill for taxation	60
109	Certificate of taxation	61
109	Register to be kept by taxing officer	62

SCHEDULE 2.

FORMS.

Rules, Sec. 3.

Form 1.

TITLE OF PROCEEDINGS.

In the National Court of Papua New Guinea.

19

No.

In the matter of the *Companies Act*,

and

in the matter of

*(insert full name of Company)*

Rules, Sec. 14.

(Title).

Form 2.

PETITION.

The humble petition of *(insert full name, title, etc., and postal address of petitioner)* showeth as follows :—

1. The \_\_\_\_\_ Company Limited (in this petition called "the company") was on 19 \_\_\_\_\_ incorporated under the *Companies Act*.
2. The registered office of the company is at \_\_\_\_\_ *(state the full address of the registered office)*
3. The nominal capital of the company is K \_\_\_\_\_, divided into \_\_\_\_\_ shares of K \_\_\_\_\_ each. The amount of the capital paid up or credited as paid up is K \_\_\_\_\_.
4. The objects for which the company was established are as follows :—  
To \_\_\_\_\_ and other objects set out in the memorandum of association of the company.  
*(Here set out in paragraphs the facts on which the petitioner relies to support his petition and conclude as follows) :—*

Your petitioner therefore humbly prays—

- (1) That the \_\_\_\_\_ may be wound up by the Court under the provisions of the *Companies Act* *(or as the case may be)*.
- (2) Or that such other order may be made in the premises as shall be just.

\*NOTE.—It is intended to serve this petition on

\*This note is unnecessary if the company is the petitioner.

AFFIDAVIT VERIFYING PETITION.

If the Petition is by an Individual or Firm.

(Title).

I, \_\_\_\_\_, of \_\_\_\_\_, make oath and say, that such of the statements in the petition now produced and shown to me, and marked with the letter "A", as relate to my own acts and deeds are true, and such of the statements as relate to the acts and deeds of any other person or persons I believe to be true.

Sworn, etc.,

If the Petition is by a Limited Company.

(Title).

I, \_\_\_\_\_, of \_\_\_\_\_, make oath and say as follows :—

(1) I am (a Director or the Secretary) of \_\_\_\_\_ the Petitioner in the above matter, a company duly incorporated under the Companies Act, and am duly authorized by the Petitioner to make this affidavit on its behalf.

(2) Such of the statements in the Petition now produced and shown to me marked with the letter "A" as relate to the acts and deeds of the Petitioner are true, and such of the statements as relate to the acts and deeds of any other person or persons I believe to be true.

Sworn, etc.,

AFFIDAVIT OF SERVICE OF PETITION ON COMPANY.

(Title).

In the matter of a petition dated \_\_\_\_\_

I, \_\_\_\_\_, of \_\_\_\_\_, make oath and say :—

1. In the case of service under the provisions of Section 394 of the Companies Act.

That I did on \_\_\_\_\_ 19 \_\_\_\_\_ serve the abovenamed company with the abovenamed petition by leaving it at (or sending it by post to as the case may be) the registered office of the company.

2. In the case of service of petition on a member, officer or servant, if no registered office at the principal or last known principal place of business of the company.

That I did on \_\_\_\_\_ 19 \_\_\_\_\_ serve the company with the petition by delivering to and leaving with (name and description) a member (or officer or servant) of the company a copy of the petition, duly sealed with the seal of the Court at (place of business), before \_\_\_\_\_ a.m./p.m.

3. In the case of no member, officer or servant of the company being found at the place of business.

That I did on \_\_\_\_\_ 19 \_\_\_\_\_, having failed to find any member, officer or servant of the company at (state place of business), leave there a copy of the petition, duly sealed with the seal of the Court, before \_\_\_\_\_ a.m./p.m. (add with whom such sealed copy was left or where, e.g., "affixed to door of office", or "placed in-letterbox", or otherwise).

4. In the case of directions by the Court as to the member or members of the company to be served.

That I did on \_\_\_\_\_ 19 \_\_\_\_\_ serve (name or names and description) with a copy of the petition, duly sealed with the seal of the Court, by delivering it personally to the said \_\_\_\_\_, at (place), before \_\_\_\_\_ a.m./p.m.

5. The petition is now produced and shown to me, marked "A".

Sworn, etc.,

*Companies*

Ch. No. 146

Rules, Sec. 20.

Form 5.

NOTICE OF INTENTION TO APPEAR ON PETITION.

(Title).

Notice is given that (state full name, or if a firm, the name of the firm) a creditor for K (or a contributory) of the abovenamed company intends to appear on the hearing of the petition advertised to be heard on 19 and to object to the petition.

(Signature of person or his lawyer.)

of (address).

Rules, Sec. 21.

Form 6.

LIST OF PERSONS ATTENDING THE HEARING OF A PETITION.

(Title).

The following are the names of those who have given notice of intention to attend the hearing of the petition in this matter on 19 .

Name.	Address.	Name and Address of Lawyer and Town Agent.	Creditors— Amount of Debt.	Contributors— Number of Shares.	Opposing.	Supporting.

Dated 19 .

Lawyer for the Petitioner.

Rules, Sec. 25.

Form 7.

ORDER ON SUMMONS FOR DIRECTIONS IN RELATION TO A PETITION TO CONFIRM A REDUCTION OF CAPITAL.

(Title).

On the application of the petitioner and on hearing the lawyer for the petitioner, and on reading the petition presented to the National Court, the affidavit of (in support of the petition) the affidavit of (service of notices convening meetings), and the exhibits respectively referred to in those affidavits; and it appearing that the special resolution for the reduction of the capital of the company referred to in the petition has been duly passed:

It is ordered that Section 66(2) of the Companies Act does not apply to (set out class of creditors to whom Section 66(2) is not to apply) and it is ordered that an inquiry be made as to what are the debts, claims and liabilities of or affecting the company on 19 (other than debts, claims or liabilities in respect of (set out any debts, claims or liabilities that have been excluded from the provisions of Section 66(2) by the earlier part of the order) and that (set out any other orders or directions that are made or given)).

Dated 19 .

Registrar.

AFFIDAVIT VERIFYING LIST OF CREDITORS.

(Title).

I, \_\_\_\_\_ of \_\_\_\_\_, make oath and say as follows :—

1. I am the (secretary or as the case may be) of the petitioner.

2. The writing now produced and shown to me, and marked with the letter "A", contains a list of the creditors of and persons having claims on the Company (or a list of the creditors of and persons having claims on the Company) except those of the following class or classes (set out class or classes) on 19 \_\_\_\_ (the date fixed by the Court), together with their respective addresses, and the nature and amount of their respective debts or claims, and the list is, to the best of my knowledge, information and belief, a true and accurate list of the creditors and persons having claims on that day, and of the nature and amount or estimated value of their debts or claims.

3. To the best of my knowledge and belief there was not, at that date, any such debt or claim that, if the date were the commencement of the winding-up of the Company, would be admissible in proof against the Company except the debts and claims set out in the list. I am enabled to make this statement from facts within my knowledge as the \_\_\_\_\_ of the Company, and from information derived on investigation of the affairs and the books, documents and papers of the Company.

Sworn, etc.,

A

This list of creditors marked "A" was produced and shown to \_\_\_\_\_ and is the same list of creditors as is referred to in his affidavit sworn before me on 19 \_\_\_\_.

A Justice of the Peace  
(or as the case may be).

Names, Addresses and Descriptions of the Creditors.	Nature of Debt or Claim.	Amount or Estimated Value of Debt or Claim.

ADVERTISEMENT OF PETITION AND LIST OF CREDITORS.

(Title).

Notice is given that a petition has been presented to the National Court for confirming a resolution of the abovenamed Company for reducing its capital from K \_\_\_\_\_ to K \_\_\_\_\_. A list of the persons admitted to have been creditors of the Company on 19 \_\_\_\_ may be inspected at the offices of the Company at \_\_\_\_\_ or at the office of \_\_\_\_\_ at any time during usual business hours, on the payment of the charge of 20t.

Any person who claims to have been on the last-mentioned day and still to be a creditor of the Company, except such as belong to the following class or classes (set out class or classes), and who is not entered on the list and claims to be so entered, must on or before 19 \_\_\_\_ send in his name and address, and the particulars of his claim and the name and address of his lawyer (if any), to me at \_\_\_\_\_, or in default he will be precluded from objecting to the proposed reduction of capital.

Every creditor who does not consent to the reduction of capital is entitled to object.



Any creditor who has not received notice that his name is entered in the list of creditors must send to me particulars of his name and address.

Dated 19 .

\_\_\_\_\_  
Lawyer for the Company.

Rules, Sec. 29.

Form 10.

NOTICE TO CREDITORS.

(Title).

To

You are requested to take notice that a petition has been presented to the National Court, to confirm a special resolution of the abovenamed Company for reducing its capital from K to K and that in the list of persons admitted by the Company to have been on 19 creditors of the Company (*insert when necessary other than, etc., as may have been directed*) your name is entered as a creditor (*state the nature and amount or estimated value of the debt or claim*).

If you claim to have been on the last-mentioned day a creditor to a larger amount than is stated above, you must on or before 19 send the particulars of your claim, your name and address and the name and address of your lawyer (if any) to me at . In default of your so doing, entry in the list of creditors will be treated as correct in all the proceedings under the above application to reduce the capital of the Company.

Dated 19 .

\_\_\_\_\_  
Lawyer for the Company.

Rules, Sec. 31.

Form 11.

AFFIDAVIT AS TO CLAIMS.

(Title).

We, C.D., of (the secretary of the Company), E.F., of (the lawyer for the Company), and A.B., of (the managing director of the Company), do severally make oath and say as follows:—

I, C.D., say as follows:—

1. I did, on 19 , in the manner below-mentioned, serve a true copy of the notice now produced and shown to me and marked "B" on each of the persons whose names, addresses and descriptions appear in the first column of the list of creditors, marked "A", referred to in the affidavit of filed on 19 .

2. I served the copies of the notice by putting them, duly addressed to those persons according to their respective names and addresses appearing in the list (being the last known addresses or places of abode of such persons), and with the proper postage stamps affixed as prepaid letters, into the post office at , at a.m./p.m. on 19 .

AND I, E.F., for myself say as follows:—

3. A true copy of the notice now produced and shown to me and marked "C" has appeared in the of 19 , the of 19 , etc.

4. I have, in the writing now produced and shown to me and marked "D", set out a list of all claims, the particulars of which have been sent in to me in accordance with notice "B", now produced and shown to me, by persons claiming to be creditors of the Company for larger amounts than are stated in the list of creditors marked "A", referred to in the affidavit of filed on 19 (*or no person has sent in to me, in accordance with notice "B", a claim to be entered in the list for a larger sum than that in respect of which he is entered in the list "A"*).

5. I have, in the writing now produced and shown to me, marked "E", set out a list of all claims, the particulars of which have been sent in to me, in accordance with the notice referred to in Paragraph 3 of this affidavit, by persons claiming to be creditors of the Company on 19 not appearing on the list of creditors marked "A", and who claimed to be entered on it (*or no claims have been sent in to me, in accordance with the notice referred to in Paragraph 3 of this affidavit, by persons not entered on the list "A" and claiming to be entered on it*).

And we, C.D., and A.B., for ourselves say as follows :—

6. We have, in the first part of the writing marked "D" (now produced and shown to us), and also in the first part of the writing marked "E" (also produced and shown to us), respectively set out such of the debts and claims as are admitted by the Company to be due wholly or in part, and how much is admitted to be due in respect of such of the debts and claims respectively as are not wholly admitted, and such of the debts and claims as the Company contends are wholly or as to any (and if so what) part of the debts and claims not included in the inquiry in this matter.

7. We have, in the second part of each of the writings marked "D" and "E", set out such of the debts and claims as are wholly disputed by the Company and such of the debts and claims as the Company contends would, even if admitted, be (*wholly or as to what part of them*) not be included in the inquiry in this matter.

And I, C.D. further say—

8. All rents, rates, taxes, salaries and wages and other incidental expenses current on the said 19 and since become due have been paid and discharged by the Company.

Sworn, etc.,

D.

(*Title*)

LIST OF DEBTS AND CLAIMS of which the particulars have been sent in to by persons claiming to be creditors of the Company for larger amounts than are stated in the list of creditors made out by the Company.

This writing, marked "D", was produced and shown to C.D., E.F. and A.B., respectively, and is the same as is referred to in their affidavit sworn before me on 19 .

A Justice of the Peace

(*or as the case may be.*)

FIRST PART.

Debts and Claims wholly or partly admitted by the Company.

Names and Addresses and Descriptions of Creditors.	Particulars of Debt or Claim.	Amount Claimed.	Amount admitted by the Company to be owing to Creditor.	Amounts admitted by the Company to be owing but which it is contended are not within Inquiry.
--	-------------------------------	-----------------	---	---

SECOND PART.

Debts and Claims wholly disputed by the Company.

Names and Addresses and Descriptions of Claimants.	Particulars of Debt or Claim.	Amount Claimed.	Amounts which, even if admitted, it is contended would not be within Inquiry.
--	-------------------------------	-----------------	---

Companies

Ch. No. 146

E.

(Title)

LIST OF DEBTS AND CLAIMS of which the particulars have been sent in to by persons claiming to be creditors of the Company and to be entered on the list of the creditors made out by the Company.

This writing, marked "E", was produced and shown to C.D., E.F. and A.B., respectively and is the same as is referred to in their affidavit sworn before me on 19 .

A Justice of the Peace

(or as the case may be).

FIRST PART.

(Same as in "D").

SECOND PART.

(Same as in "D").

NOTE.—The names are to be inserted alphabetically.

Rules, Sec. 32.

Form 12.

NOTICE TO CREDITORS TO COME IN AND PROVE.

(Title).

To

You are required to come in and prove the debt claimed by you against the abovenamed Company, by filing your affidavit and giving notice of its filing to the lawyer for the Company, on or before 19 , and you are to attend personally or by your lawyer at the office of the Registrar of the National Court at on 19 , at a.m./p.m., being the time appointed for hearing and adjudicating on the claim, and produce any securities or documents relating to your claim.

In default of your complying with these directions, you will be precluded from objecting to the proposed reduction of the capital of the Company (or in all proceedings relative to the proposed reduction of the capital of the Company be treated as a creditor for such amount only as is set against your name in the list of creditors).

Dated 19 .

Lawyer for the Company.

Rules, Sec. 38.

Form 13.

ADVERTISEMENT OF HEARING OF PETITION.

(Title).

Notice is given that a petition presented to the National Court on 19 for confirming a resolution reducing the capital of the above Company from K to K , is directed to be heard before the Honourable Mr. Justice at a.m./p.m. on 19 .

Any creditor appearing to be such on the Registrar's certificate filed in the Registry of the National Court, unless his debt or claim is shown as one the full amount of which the Company is willing to appropriate, may on giving two clear days' notice to the lawyer for the Company of his intention to do so appear at the hearing of the petition and oppose the application, provided that his debt or claim has not then been discharged or determined and he has not consented to the proposed reduction of capital.

Dated 19 .

Lawyer for the Company.

## ADVERTISEMENT OF PETITION.

(Title).

Notice is given that a petition for the winding-up of the above-named Company by the National Court was, on 19 , presented by the Company (or as the case may be); and that the petition is directed to be heard before the Court sitting at at a.m./p.m. on 19 ; and any creditor or contributory of the Company desiring to support or oppose the making of an order on the petition may appear at the time of hearing by himself or his lawyer for that purpose; and a copy of the petition will be furnished by me to any creditor or contributory of the Company requiring it on payment of the prescribed charge.

The Petitioner's address is

The Petitioner's lawyer is , of , whose town agent is , of

Signed (to be signed by the lawyer to the Petitioner, or by the Petitioner if he has no lawyer).

NOTE.—Any person who intends to appear on the hearing of the petition must serve on or send by post to the abovenamed (lawyer or petitioner as the case may be) notice in writing of his intention to do so. The notice must state the name and address of the person, or if a firm the name and address of the firm, and must be signed by the person or firm, or his or its lawyer (if any), and must be served, or, if posted, must be sent by post in sufficient time to reach the abovenamed, not later than 4 p.m. on 19 (the day before the day appointed for the hearing of the Petition or the Friday preceding the day appointed for the hearing of the Petition if that day is a Monday or a Tuesday following a public holiday).

## ORDER FOR WINDING-UP BY THE COURT.

(Title).

Before the Honourable Mr. Justice

19 .

On the petition of the abovenamed Company (or A.B. of , etc. (a creditor or contributory) of the abovenamed Company) on 19 , to the Court, and on hearing for the petitioner, and for , and on reading the petition, an affidavit of filed, etc., verifying the petition, an affidavit of L.M., filed on 19 , the National Gazette No. of 19 , the newspaper of 19 (enter any other papers), each containing an advertisement of the petition, (enter any other evidence), this Court orders—

- (1) That the Company be wound up by the Court under the *Companies Act*.
- (2) That A.B. be appointed Liquidator for the purposes of the winding-up.
- (3) That the Bank in which the Liquidator is to open a Trust Account is

Dated 19 .

Judge.

NOTE.—It will be the duty of such of the persons who are liable to make out or concur in making out a statement of affairs as the Liquidator may require to attend at such time and place as he may appoint and to give him all information he may require.

Rules, Sec. 46.

Form 16.

NOTICE OF WINDING-UP ORDER.

(Title).

In the matter of \_\_\_\_\_ Limited.  
 Winding-up Order made \_\_\_\_\_ 19 .  
 Name and address of Liquidator.

Petitioner or his Lawyer.

Rules, Sec. 47.

Form 17.

ORDER APPOINTING PROVISIONAL LIQUIDATOR AFTER PRESENTATION OF  
 PETITION AND BEFORE WINDING-UP ORDER.

(Title).

On the application, etc., and on reading, etc., the Court appoints A.B. an official liquidator to be Provisional Liquidator of the abovenamed Company until the making of a winding-up order or until further order. The duties to be performed by the Provisional Liquidator are as follows :—

The nature and description of the property of which the Provisional Liquidator is to take possession is as follows :—

Dated \_\_\_\_\_ 19 .  
 \_\_\_\_\_ Judge.

Rules, Sec. 47.

Form 18.

NOTIFICATION TO PROVISIONAL LIQUIDATOR OF ORDER APPOINTING HIM  
 PROVISIONAL LIQUIDATOR BEFORE WINDING-UP ORDER.

(Title).

To the Provisional Liquidator  
 (address)

Order pronounced this day by the Honourable Mr. Justice \_\_\_\_\_ for the appointment of an Official Liquidator as Provisional Liquidator before the making of any Winding-up Order.

Name of Company.	Registered Office of Company.	Petitioner's Lawyer.	Date of Presentation of Petition.

Dated \_\_\_\_\_ 19 .

\_\_\_\_\_ Judge.

Rules, Sec. 47.

Form 19.

NOTICE OF APPOINTMENT OF PROVISIONAL LIQUIDATOR.

(Title).

In the matter of \_\_\_\_\_ Limited.  
 Order for appointment of an Official Liquidator as Provisional Liquidator made on \_\_\_\_\_ 19 .  
 Name and address of Provisional Liquidator.

Petitioner or his Lawyer.

Ch. No. 146

**Companies**

Rules, Sec. 50.

Form 20.

**FORM OF SUMMONS (GENERAL).**

(Title).

To

Let (name of respondent) attend at \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ a.m./p.m., on the hearing of an application of (name and description of applicant) for an order that (state object of application).

Dated \_\_\_\_\_ 19\_\_\_\_.

This summons was taken out by \_\_\_\_\_ of \_\_\_\_\_ Lawyer for \_\_\_\_\_

By the Court,  
Registrar.

NOTE.—If you do not attend, either in person or by your lawyer, at the time and place abovementioned such order will be made, and proceedings taken, as the Judge or Registrar thinks just and expedient.

Rules, Sec. 61.

Form 21.

**ORDER DIRECTING A PUBLIC EXAMINATION.**

(Title).

On reading the reports of the Liquidator in this matter, dated respectively \_\_\_\_\_ 19\_\_\_\_, \_\_\_\_\_ 19\_\_\_\_ and \_\_\_\_\_ 19\_\_\_\_ :

It is ordered that the persons whose names and addresses are set out in the Schedule attend before the Court on a day and at a place to be named for the purpose, and be publicly examined as to the promotion or formation of the Company, and as to the conduct of the business of the Company, and as to their conduct and dealings as directors or officers of the Company.

**SCHEDULE.**

Name.	Address.	Connexion with the Company.

Dated \_\_\_\_\_ 19\_\_\_\_.

Judge.

Rules, Sec. 61.

Form 22.

**ORDER APPOINTING A TIME FOR PUBLIC EXAMINATION.**

(Title).

On the application of the Liquidator in this matter, it is ordered that the public examination of \_\_\_\_\_ who, by the order of the Court dated \_\_\_\_\_ 19\_\_\_\_, was directed to attend before \_\_\_\_\_ to be publicly examined be held at \_\_\_\_\_ (insert the place for the examination) on \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ a.m./p.m.

And it is ordered that the abovenamed \_\_\_\_\_ attend at that place and time.

Dated \_\_\_\_\_ 19\_\_\_\_.

Registrar.

Rules, Sec. 61.

Form 23.

NOTICE TO ATTEND PUBLIC EXAMINATION.

(Title).

To

Whereas by an order of this Court, made on 19 , it was ordered that you, , should attend before the Court on a day and at a place to be named for the purpose, and be publicly examined as to the promotion or formation of the Company and as to the conduct of the business of the Company, and as to your conduct and dealings as (director or officer, as the case may be):

And whereas 19 , at a.m./p.m., before the sitting at has been appointed as the time and place for holding the examination:

Notice is given that you are required to attend at the said time and place, and at any adjournments of the examination that may be ordered, and to bring with you and produce all books, papers and writings and other documents in your custody or power in any way relating to the Company.

And take notice that if you fail, without reasonable excuse, to attend at that time and place, and at any adjournments of the public examination that are ordered, you will be liable to be committed to prison without further notice.

Dated 19 .

Liquidator.

Rules, Sec. 61.

Form 24.

ORDER TO ATTEND AT CHAMBERS TO BE EXAMINED.

(Title).

of and of are each ordered to attend at (state place of examination) on 19 , at a.m./p.m., to be examined on the part of the Liquidator for the purpose of proceedings directed by the Court to be taken in the above matter (and is required to bring with him and produce, at that time and place, the documents mentioned in the Schedule, and all other books, papers, deeds, writings and other documents in his custody or power in any way relating to the abovenamed Company).

Dated 19 .

This order was made on the application of

Lawyer for

SCHEDULE.

Dated 19 .

Registrar.

Ch. No. 146

**Companies**

Rules, Sec. 64.

Form 25.

**APPLICATION FOR APPOINTMENT OF SHORTHAND WRITER TO TAKE DOWN NOTES OF PUBLIC EXAMINATION, ETC.**

(Title).

I, \_\_\_\_\_, the Liquidator in this matter, apply to the Court for an order for the appointment of \_\_\_\_\_ to take down in shorthand or record by mechanical means the notes of examination of \_\_\_\_\_ at their public examination.

Dated \_\_\_\_\_ 19 .

Liquidator.

On the application of the Liquidator the Court appoints \_\_\_\_\_ of \_\_\_\_\_ to take down in shorthand or record by mechanical means the notes of examination of the persons mentioned in the above application at their public examination or at any adjournment.

Dated \_\_\_\_\_ 19 .

Judge.

Rules, Sec. 64.

Form 26.

**DECLARATION BY SHORTHAND WRITER.**

(Title).

I, \_\_\_\_\_, of \_\_\_\_\_, the person appointed by this Court to take down in shorthand (or to record by mechanical means) the examination of \_\_\_\_\_, do solemnly and sincerely declare that I will truly and faithfully take down (or record) the questions and answers put to and given by \_\_\_\_\_ in this matter, and will deliver true and faithful transcripts of them as this Court directs.

Dated \_\_\_\_\_ 19 .

Declared before me on \_\_\_\_\_ 19 .

Rules, Sec. 65.

Form 27.

**NOTES OF PUBLIC EXAMINATION TAKEN IN SHORTHAND OR RECORDED BY MECHANICAL MEANS.**

(Title).

Public examination of \_\_\_\_\_, an officer (or as the case may be) of the abovenamed Company, before \_\_\_\_\_ at the National Court on \_\_\_\_\_ 19 .

\_\_\_\_\_ being sworn and examined at the time and place abovementioned, on the following questions being put to him gave the following answers :—

These are the notes of the public examination referred to in the memorandum of public examination of \_\_\_\_\_, taken before me on \_\_\_\_\_ 19 .

Rules, Sec. 65.

Form 28.

**NOTES OF PUBLIC EXAMINATION NOT TAKEN IN SHORTHAND OR RECORDED BY MECHANICAL MEANS.**

(Title).

Public examination of \_\_\_\_\_, an officer (or as the case may be) of the abovenamed Company, before \_\_\_\_\_ at the National Court on \_\_\_\_\_ 19 .

\_\_\_\_\_ being sworn and examined at the time and place abovementioned, on his oath says as follows :—

These are the notes of the public examination referred to in the memorandum of public examination of \_\_\_\_\_, taken before me on \_\_\_\_\_ 19 .



Rules, Sec. 66.

Form 29.

WARRANT AGAINST PERSON WHO FAILS TO ATTEND EXAMINATION.

(Title).

To \_\_\_\_\_, the officer of this Court, and all members of the Police Force and to the officer in charge of the \_\_\_\_\_ Corrective Institution:

Whereas by evidence taken by oath it has been made to appear to the satisfaction of the Court that by order of the Court, dated \_\_\_\_\_ 19\_\_\_\_, directed to (name of person required to attend) he was directed to attend personally at the (place of examination), and to be examined before (name or title of person before whom examination was directed to be held) which order was afterwards, as has been proved on oath, duly served on (name of person required to attend) (or that there is probable reason to suspect and believe that (name of person required to attend) has absconded and gone abroad or quitted his place of residence or is about to go abroad or quit his place of residence with a view to avoiding examination under the Companies Act).

And whereas (name of person required to attend) failed without good cause to attend on \_\_\_\_\_ 19\_\_\_\_ for the purpose of being examined, according to the requirements of the order of this Court made on \_\_\_\_\_ 19\_\_\_\_ directing him to attend.

You are therefore required to arrest (name of person required to attend) and deliver him to the officer in charge of the abovenamed Corrective Institution and you the officer in charge of the Corrective Institution to receive (name of person required to attend) and to keep him safely in the Corrective Institution until this Court orders.

Dated \_\_\_\_\_ 19\_\_\_\_

(Signature)

Rules, Sec. 80.

Form 30.

STATUTORY DECLARATION BY SPECIAL MANAGER VERIFYING ACCOUNT.

(Title).

I, \_\_\_\_\_, of \_\_\_\_\_, do solemnly and sincerely declare :—

1. The account annexed marked with the letter "A", produced and shown to me at the time of the making of this declaration, and purporting to be my account as special manager of the estate or business of the abovenamed Company, contains a true account of all sums of money received by me or by any other person or persons by my order or to my knowledge or belief for my use on account or in respect of that estate or business.

2. The sums of money mentioned in the account verified by this declaration as having been paid or allowed have been actually and truly paid and allowed for the purposes mentioned in the account.

3. The account is just and true in all the items and particulars in it, according to the best of my knowledge and belief.

And I make this solemn declaration, etc.

Declared at, etc.

Rules, Sec. 81.

Form 31.

CERTIFICATE THAT SPECIAL MANAGER HAS GIVEN SECURITY.

(Title).

This is to certify that \_\_\_\_\_ of \_\_\_\_\_, who was on \_\_\_\_\_ 19\_\_\_\_ appointed Special Manager of the abovenamed Company, has duly given security to my satisfaction.

Dated \_\_\_\_\_ 19\_\_\_\_

Registrar.

PROVISIONAL LIST OF CONTRIBUTORIES TO BE MADE OUT BY LIQUIDATOR.

(Title).

The following is a list of members of the Company liable to be placed on the list of contributories of the Company, made out by me from the books and papers of the Company, together with their respective addresses and the number of shares (or extent of interest) to be attributed to each and the amount called up and the amount paid up in respect of those shares (or that interest) so far as I have been able to make out or ascertain them. In the first part of the list, the persons who are contributories in their own right are distinguished. In the second part of the list, the persons who are contributories as being representatives of, or being liable to the debts of, others are distinguished.

FIRST PART.—CONTRIBUTORIES IN THEIR OWN RIGHT.

Serial Number.	Name.	Address.	Description.	Number of Shares (or Extent of Interest).	Amount called up at Date of Commencement of Winding-up.	Amount paid at Date of Commencement of Winding-up.
----------------	-------	----------	--------------	---	---	--

SECOND PART.—CONTRIBUTORIES AS BEING REPRESENTATIVES OF, OR LIABLE TO THE DEBTS OF, OTHERS.

Serial Number.	Name.	Address.	Description.	In what Character included.	Number of Shares (or Extent of Interest).	Amount called up at Date of Commencement of Winding-up.	Amount paid up at Date of Commencement of Winding-up.
----------------	-------	----------	--------------	-----------------------------	---	---	---

Dated

19

(Signature)

NOTICE TO CONTRIBUTORIES OF APPOINTMENT TO SETTLE LIST OF CONTRIBUTORIES.

(Title).

To (and , his lawyer).

Notice is given that I, , the Liquidator of the abovenamed Company, have appointed 19 , at a.m./p.m., at (insert place of appointment), to settle the list of contributories of the Company made out by me under the Companies Act and the Companies Rules, and that you are included in that list in the character and for the number of shares (or extent of interest) stated below; and if no sufficient cause is shown by you to the contrary at the above time and place, the list will be settled, including you in it.

Dated 19 .

Liquidator.

No. on List.	Name.	Address.	Description.	In what Character included.	Number of Shares (or Extent of Interest).	Amount called up on Shares (or Interest).	Amount paid up on Shares (or Interest).

AFFIDAVIT OF POSTAGE OF NOTICES OF APPOINTMENT TO SETTLE LIST OF CONTRIBUTORIES.

(Title).

I, , (state full description of the deponent), make oath and say as follows :-

1. That I did on 19 send to each contributory mentioned in the list of contributories made out by the Liquidator on 19 , and now on the file of proceedings of the abovenamed Company, at the address appearing in the list, a notice of the time and place of the appointment to settle the list of contributories in the form annexed to this affidavit and marked "A" except that in the tabular form at the foot of each copy of the notice I inserted the respective number, name, address, description and the number of shares (or extent of interest) of the persons on whom the copy of the notice was served and the character in which each was included.

2. That I sent the notices by putting them prepaid into the post office at before the hour of a.m./p.m. on that day.

Sworn, etc.

## CERTIFICATE OF LIQUIDATOR OF SETTLEMENT OF LIST OF CONTRIBUTORIES.

(Title).

Under the *Companies Act* and the *Companies Rules I*, \_\_\_\_\_, the Liquidator of the abovenamed Company, certify that the result of the settlement of the list of contributories of the Company is as follows :—

1. The persons whose names are set out in the second column of Schedule 1 have been included in the list of contributories as contributories of the Company, in respect of the (number of shares or extent of interest) set out opposite their respective names in that Schedule.

I have, in the first part of that Schedule, distinguished such of the persons included in the list as are contributories in their own right.

I have, in the second part of that Schedule, distinguished such of the persons included in the list as are contributories as being representatives of, or being liable to the debts of, others.

2. The persons whose names are set out in the second column of Schedule 2, and who were included in the provisional list of contributories, have been excluded from the list of contributories.

3. I have, in the sixth column of the first part of Schedule 1, and in the seventh column of the second part of Schedule 1, and in the seventh column of Schedule 2, set out opposite the name of each of the persons the date on which he was included in or excluded from the list of contributories.

4. I have, in the seventh column of the first part of Schedule 1, and in the eighth column of the second part of Schedule 1, and in the eighth column of Schedule 2, set out opposite the name of each of the persons the amount called up on his shares or interest.

5. I have, in the eighth column of the first part of Schedule 1, and in the ninth column of the second part of Schedule 1, and in the ninth column of Schedule 2, set out opposite the name of each of the persons the amount paid up on his shares or interest.

6. Before settling the list, I was satisfied by the affidavit of \_\_\_\_\_, duly filed with the proceedings in this matter, that notice was duly sent by post to each of the persons mentioned in the list, informing him that he was included in the list in the character and for the number of shares (or extent of interest) stated in it, and of the day appointed for finally settling the list.

Dated 19 .

Liquidator.

## SCHEDULE 1.

## FIRST PART.—CONTRIBUTORIES IN THEIR OWN RIGHT.

Serial No. in List.	Name.	Address.	Description.	No. of Shares (or Extent of Interest).	Date when included in List.	Amount called up on Shares (or Interest).	Amount paid up on Shares (or Interest).

SECOND PART.—CONTRIBUTORIES AS BEING REPRESENTATIVES OF, OR LIABLE TO THE DEBTS OF, OTHERS.

Serial No. in List.	Name. Address. Description.	In what Character included.	No. of Shares (or Extent of Interest).	Date when included in List.	Amount called up on Shares (or Interest).	Amount paid up on Shares (or Interest).
---------------------	-----------------------------	-----------------------------	--	-----------------------------	---	---

SCHEDULE 2.

Serial No. in List.	Name. Address. Description.	In what Character Proposed to be Included.	No. of Shares (or Extent of Interest).	Date when excluded from List.	Amount called up on Shares (or Interest).	Amount paid up on Shares (or Interest).
---------------------	-----------------------------	--	--	-------------------------------	---	---

Rules, Sec. 87.

Form 36.

NOTICE TO CONTRIBUTORY OF FINAL SETTLEMENT OF LIST OF CONTRIBUTORIES AND OF INCLUSION OF HIS NAME.

(Title).

To \_\_\_\_\_ (and \_\_\_\_\_, his lawyer).

Notice is given that I, \_\_\_\_\_, the Liquidator of the abovenamed Company, have, by certificate under my hand dated \_\_\_\_\_ 19\_\_\_\_, finally settled the lists of contributories of the Company, and that you are included in the list. The character and the number of shares (or extent of interest) in and for which you are included, and the amount called up and the amount paid up in respect of those shares (or the interest), are stated below.

Any application by you to vary the list of contributories, or that your name may be excluded from it, must be made by you to the Court within 21 days after the service on you of this notice, or it will not be entertained.

The list may be inspected by you at the office of the Liquidator at (state address) on any day between the hours of \_\_\_\_\_ and \_\_\_\_\_

Dated \_\_\_\_\_ 19\_\_\_\_.

Liquidator.

No. in List.	Name. Address. Description.	In what Character included.	No. of Shares (or Extent of Interest).	Amount called up on Shares (or Interest).	Amount paid up on Shares (or Interest).
--------------	-----------------------------	-----------------------------	--	---	---

CERTIFICATE OF LIQUIDATOR OF SETTLEMENT OF SUPPLEMENTARY LIST OF CONTRIBUTORIES.

(Title).

Under the Companies Act and the Companies Rules, I, \_\_\_\_\_, the Liquidator of the above-mentioned Company, certify that the result of the settlement of the provisional supplementary list of contributories of the abovenamed Company made out by me on \_\_\_\_\_ 19\_\_ is as follows :—

(Continue the Certificate and Schedule as in Form 35.)

PROVISIONAL SUPPLEMENTARY LIST OF CONTRIBUTORIES.

(Title).

1. The following is a list of persons who, since making out the list of contributories in this matter dated \_\_\_\_\_ 19\_\_, I have ascertained are, or have been, holders of shares in (or members of) the abovenamed Company, and to the best of my judgement are contributories of the Company.

2. The supplementary list contains the names of the persons, together with their addresses and the number of shares (or extent of interest) and the amount called up and the amount paid up in respect of those shares (or interests) to be attributed to each.

3. In the first part of the list such of the persons as are contributories in their own right are distinguished.

4. In the second part of the list such of the persons as are contributories as being representatives of, or being liable to the debts of, others are distinguished.

Dated \_\_\_\_\_ 19\_\_ .

(Signature.)

(The supplementary list is to be made out in the same form as the original list—Form 32).

NOTICE TO CONTRIBUTORY OF VARIATION OR ADDITION TO LIST OF CONTRIBUTORIES.

(Title).

To \_\_\_\_\_ (and \_\_\_\_\_, his lawyer).

Notice is given that I, \_\_\_\_\_, the Liquidator of the abovenamed Company, have made the following variations or additions to the list of contributories as finally settled by me by certificate dated \_\_\_\_\_ 19\_\_ .

Any application by you to vary the list of contributories as so varied or added to, or that your name may be excluded from it, because of any variation or addition made by the Liquidator, must be made by you to the Court within 21 days after the service on you of this notice, or it will not be entertained.

The list may be inspected by you at the office of the Liquidator at (state address) on any day between the hours of \_\_\_\_\_ and \_\_\_\_\_

Dated \_\_\_\_\_ 19\_\_ .

Liquidator.

No. in List.	Name.	Address.	Description.	In what Character included.	No. of Shares (or Extent of Interest).	Amount called up on Shares (or Interest).	Amount paid up on Shares (or Interest).
--------------	-------	----------	--------------	-----------------------------	--	---	---

Companies

Ch. No. 146

Rules, Sec. 87.

Form 40.

AFFIDAVIT OF SERVICE OF NOTICE TO CONTRIBUTORY.

(Title).

I, (state full description of the deponent), of \_\_\_\_\_, make oath and say as follows:—

1. I did on \_\_\_\_\_ 19\_\_\_\_, in the manner mentioned below, serve a true copy of the notice now produced and shown to me and marked "A", on each of the persons whose names, addresses and descriptions appear in the second, third and fourth columns of Schedule 1 to the list of contributories of the Company made out by the Liquidator of the Company on \_\_\_\_\_ 19\_\_\_\_, and now on the file of proceedings of the Company. In the table at the foot of the copies I inserted the number on list, name, address, description and number of shares (or extent of interest) and the amount called up and amount paid up in respect of the shares (or interest) of the person on whom the copy of the notice was served, and the character in which he was included, in the same words and figures as those in which the same particulars are set out in that Schedule.

2. I served the copies of the notice by putting the copies respectively in an envelope, duly addressed to those persons, according to their respective names and addresses appearing in that Schedule, and by placing them prepaid in the post office at \_\_\_\_\_ before \_\_\_\_\_ a.m./p.m. on \_\_\_\_\_ 19\_\_\_\_.

Sworn, etc.

Rules, Sec. 87.

Form 41.

ORDER ON APPLICATION TO VARY LIST OF CONTRIBUTORIES.

(Title).

On the application of W.M., by summons dated \_\_\_\_\_ 19\_\_\_\_, for an order that the list of contributories of the abovenamed Company and the Liquidator's certificate finally settling the list (or the list of contributories of the Company as added to or varied by the Liquidator in his certificate dated \_\_\_\_\_ 19\_\_\_\_, as the case may be) be varied by excluding the name of the applicant from it (or as the case may be), and on hearing, etc., and on reading, etc., it is ordered that the list of contributories of the Company and the Liquidator's certificate finally settling the list be varied by excluding the name of W.M. from the list of contributories (or by including the name of W.M. as a contributory in the list for \_\_\_\_\_ shares, or as the case may be, or the Court does not think fit to make any order on the application except that W.M. pay to the Liquidator of the Company his costs of this application, to be taxed in case the parties differ).

Dated \_\_\_\_\_ 19\_\_\_\_.

(Signature).

Rules, Sec. 90.

Form 42.

NOTICE BY LIQUIDATOR REQUIRING PAYMENT OF MONEY OR DELIVERY OF BOOKS, ETC., TO LIQUIDATOR.

(Title).

To (name of person to whom notice is addressed) \_\_\_\_\_ of (address) \_\_\_\_\_.

Notice is given that I, (name of Liquidator), have been appointed Liquidator of the abovenamed Company, and that you, (name of person to whom notice is addressed), are required, within \_\_\_\_\_ days after service of this notice, to pay to me (or deliver, convey, surrender or transfer to or into my hand) as Liquidator of the Company at my office, situated at (address of Liquidator's office), the sum of K \_\_\_\_\_, being the amount of the debt appearing to be due from you on your account with the Company (or any sum or balance, books, papers, estate or effects, or specifically describe the property) now in your hands, and to which the Company is entitled (or otherwise as the case may be).

Dated \_\_\_\_\_ 19\_\_\_\_.

Liquidator.

NOTICE TO EACH MEMBER OF COMMITTEE OF INSPECTION OF MEETING FOR SANCTION TO PROPOSED CALL.

(Title).

To (name of person to whom notice is addressed) of (address).

Notice is given that a meeting of the Committee of Inspection of the above-named Company will be held at on 19 (to be a date not less than seven days from the date when the notice will in the ordinary course of post reach the person to whom it is addressed), at a.m./p.m., for the purpose of considering and obtaining the sanction of the Committee to a call of K per share proposed to be made by the Liquidator on the contributories.

Annexed is a statement showing the necessity for the proposed call and the amount required.

Dated 19 .

Liquidator.

STATEMENT.

- 1. The amount due in respect of proofs admitted against the Company, and the estimated amount of the costs, charges and expenses of the winding-up, form in the aggregate the sum of K or thereabouts.
2. The assets of the Company are estimated to realize the sum of K. There are no other assets, except the amounts due from certain of the contributories to the Company, and in my opinion it will not be possible to realize in respect of those amounts more than K
3. The list of contributories has been duly settled, and persons have been settled on the list in respect of the total number of shares.
4. For the purpose of satisfying the debts and liabilities of the Company, and of paying the costs, charges and expenses of the winding-up, I estimate that a sum of K will be required in addition to the amount of the Company's assets mentioned above.
5. In order to provide the sum of K it is necessary to make a call on the contributories, and, having regard to the probability that some of them will partly or wholly fail to pay the amount of the call, I estimate that for the purpose of realizing the amount required it is necessary that a call of K per share should be made.

(Annex tabular statement showing amounts of debts, costs, etc., and of assets).

ADVERTISEMENT OF MEETING OF COMMITTEE OF INSPECTION TO SANCTION PROPOSED CALL.

(Title).

Notice is given that I, the Liquidator of the abovenamed Company, propose that a call be made on all the contributories of the Company (or as the case may be) of K per share and that I have summoned a meeting of the Committee of Inspection of the Company, to be held at on 19 at a.m./p.m., to obtain its sanction to the proposed call.

Each contributory may attend the meeting and be heard or make any communication in writing to me or the members of the Committee of Inspection in reference to the intended call.

A statement showing the necessity of the proposed call and the purpose for which it is intended may be obtained on application to me at my office at (insert address).

Dated 19 .

Liquidator.



Rules, Sec. 91.

Form 45.

RESOLUTION OF COMMITTEE OF INSPECTION SANCTIONING CALL.

(Title).

RESOLVED, that a call of K per share be made by the Liquidator on all the contributories of the Company (or as the case may be).

Dated 19 .

Members of the Committee of Inspection.

Rules, Sec. 92.

Form 46.

SUMMONS FOR LEAVE TO MAKE A CALL.

(Title).

Let the persons whose names and addresses are set out in the second column of the Schedule, being contributories of the abovenamed Company, as shown in the third column of the Schedule, attend at on 19 , at a.m./p.m., on the hearing of an application on the part of the Liquidator of the Company for an order that he may be at liberty to make a call to the amount of K per share on all the contributories (or as the case may be) of the Company.

SCHEDULE.

Number on List.	Name and Address.	In what Character Included.
Dated	19 .	By the Court, Registrar.

This summons was taken out by of , lawyer for the Liquidator.  
NOTE.—If you do not attend either in person or by your lawyer, at the time and place abovementioned, such order will be made and proceedings taken as the Judge may think just and expedient.

Rules, Sec. 92.

Form 47.

AFFIDAVIT OF LIQUIDATOR IN SUPPORT OF PROPOSAL FOR CALL.

(Title).

I, of , the Liquidator of the abovenamed Company, make oath and say as follows :—

1. In the Schedule now produced and shown to me, and marked with the letter "A", I have set out a statement showing the amount due in respect of the debts proved and admitted against the Company, and the estimated amount of the costs, charges and expenses of and incidental to winding-up the affairs of the Company, which amounts form in the aggregate the sum of K or thereabouts.
2. I have also set out in that Schedule a statement of the assets in hand belonging to the Company, amounting to the sum of K and no more. There are no other assets belonging to the Company, except the amounts due from certain of the contributories of the Company, and to the best of my information and belief it will be impossible to realize in respect of those amounts more than the sum of K or thereabouts.
3. persons have been settled by me in the list of contributories of the Company in respect of the total number of shares.
4. For the purpose of satisfying the several debts and liabilities of the Company and of paying the costs, charges and expenses of and incidental to winding up the affairs of the Company, I believe the sum of K will be required in addition to the amount of the assets of the Company mentioned in that Schedule and the sum of K
5. In order to provide the sum of K , it is necessary to make a call on the persons who have been settled on the list of contributories, and, having regard to the probability that some of the contributories will partly or wholly fail to pay the amount of the call, I believe that, for the purpose of realizing the amount required as mentioned above, it is necessary that a call of K per share should be made.

Sworn, etc.

Ch. No. 146

**Companies**

Rules, Sec. 92.

Form 48.

**ADVERTISEMENT OF INTENDED CALL.**

(Title).

Notice is given that the National Court has appointed \_\_\_\_\_ 19 at \_\_\_\_\_ a.m./p.m. at (state place of appointment) to sanction a call on all the contributories of the Company (or as the case may be) and that the Liquidator of the Company proposes that such call be for K \_\_\_\_\_ per share. All persons interested are entitled to attend at that day, hour and place, to offer objections to the call.

Dated \_\_\_\_\_ 19 .

Liquidator.

Rules, Sec. 92.

Form 49.

**ORDER GIVING LEAVE TO MAKE A CALL.**

(Title).

19 .

On the application of the Liquidator of the abovenamed Company and on reading the affidavit of the Liquidator filed \_\_\_\_\_ 19 and the exhibit marked "A" referred to in that affidavit, and an affidavit of \_\_\_\_\_ filed \_\_\_\_\_ 19 .

It is ordered that leave be given to the Liquidator to make a call of K \_\_\_\_\_ per share on all the contributories of the Company (or as the case may be).

And it is ordered that on or before the \_\_\_\_\_ 19 , each such contributory pay to the Liquidator of the Company the amount that will be due from him or her in respect of the call.

Rules, Sec. 93.

Form 50.

**DOCUMENT MAKING A CALL.**

(Title).

I, \_\_\_\_\_, the Liquidator of the abovenamed Company, in pursuance of an order of the Court (or a resolution of the Committee of Inspection) made (or passed) \_\_\_\_\_ 19 , make a call of K \_\_\_\_\_ per share on all the contributories of the Company, which sum is to be paid at my office (state address) on \_\_\_\_\_ 19 .

Dated \_\_\_\_\_ 19 .

Liquidator.

Rules, Sec. 93.

Form 51.

**NOTICE OF CALL SANCTIONED BY COMMITTEE OF INSPECTION TO BE SENT TO CONTRIBUTORY.**

(Title).

To A.B.

Notice is given that the Committee of Inspection in the winding-up of the above-named Company has passed a resolution as follows :—

(Set out resolution.)

The amount due from you in respect of the call is the sum of K \_\_\_\_\_ . This sum should be paid by you direct to me at my office (state address) on or before \_\_\_\_\_ 19 .

Dated \_\_\_\_\_ 19 .

Liquidator.

NOTE.—If you do not pay the sum due from you by the date mentioned, interest will be claimed on such sum at the rate of 4% per annum from that date until payment.

*Companies*

Ch. No. 146

Rules, Sec. 93.

Form 52.

NOTICE TO BE SERVED WITH THE ORDER SANCTIONING A CALL.

(Title).

To A.B.

The amount due from you, A.B., in respect of the call made in pursuance of leave given by the above (or within) order is the sum of K , which sum is to be paid by you to me as the Liquidator of the Company at my office (state address).

Dated 19 .

Liquidator.

NOTE.—If you do not pay the sum due from you by the date mentioned interest will be claimed on such sum at the rate of 4% per annum from the said date until payment.

Rules, Sec. 94.

Form 53.

AFFIDAVIT IN SUPPORT OF APPLICATION FOR ORDER FOR PAYMENT OF CALL.

(Title).

I, , of , the Liquidator of the abovenamed Company, make oath and say as follows :—

1. The contributories of the Company whose names are set out in the Schedule annexed marked "A" have not paid or caused to be paid the sums set opposite their names in that Schedule, which sums are the amounts now due from them respectively under the call of K per share, duly made under the Companies Act, dated 19 .

2. The respective amounts or sums set opposite the names of the contributories in that Schedule are the true amounts due and owing by the contributories respectively in respect of the call.

A.

SCHEDULE.

No. on List.	Name.	Address.	Description.	In what Character included.	Amount due.
--------------	-------	----------	--------------	-----------------------------	-------------

Sworn, etc.,

NOTE.—In addition to the above affidavit, an affidavit of the service of the application for the call will be required in cases in which the Committee of Inspection or the Court has authorized a call to be made.

Rules, Sec. 94.

Form 54.

AFFIDAVIT OF SERVICE OF ORDER FOR PAYMENT OF CALL.

(Title).

I, of , make oath and say as follows :—

1. I did on 19 personally serve of , with an order made in this matter by this Court, dated 19 , by which it was ordered (set out the order) by delivering to and leaving with , at , a true copy of the order, and at the same time producing and showing to him the original order.

2. There was endorsed on the copy when so served the following words :—

"If you, , neglect to obey this order by the time mentioned in it, you will be liable to process of execution for the purpose of compelling you to obey it."

Sworn, etc.

ORDER FOR PAYMENT OF CALL DUE FROM CONTRIBUTORY.

(Title).

19 .

On the application of the Liquidator of the abovenamed Company, and on reading an affidavit of , filed on 19 , and an affidavit of the Liquidator filed on 19 , it is ordered that , of (or of , etc., the legal personal representative of late of etc., deceased), one of the contributories of the Company (or if against more than one contributory, the persons named in the second column of the Schedule to this Order, who are contributories of the Company), do, on or before 19 , or within four days after service of this Order, pay to the Liquidator of the Company at his office (state address) the sum of K (if against a legal personal representative add, out of the assets of the deceased, in his hands as the legal personal representative of to be administered, in due course of administration, if has in his hands so much to be administered, or if against several contributories, the sums of money set opposite to their names in the sixth column of the Schedule), such sum (or sums) being the amount (or amounts) due from (or or those persons respectively) in respect of the call of K per share duly made, dated 19 .

And it is ordered that those persons do within that period and at that place pay to the Liquidator interest at the rate of 4% per annum on the amounts specified in the sixth column of the Schedule from 19 to the date of payment.

And it is ordered that those persons do within that period and at that place pay to the Liquidator the sums set opposite their names in the seventh column of the Schedule, the respective sums being the shares of the applicant's costs of the application payable by those persons respectively.

(Add appropriate paragraphs as to amounts payable by legal personal representatives (if any)).

SCHEDULE.

No. on List.	Name.	Address.	Description.	In what Character included.	Amount due.	Share of Costs.	Total amount payable exclusive of Interest.
--------------	-------	----------	--------------	-----------------------------	-------------	-----------------	---

NOTE.—The copy for service of the above Order shall be endorsed as follows :—

"If you, , neglect to obey this Order by the time mentioned in it you will be liable to process of execution, for the purpose of compelling you to obey it."

By the Court,  
Registrar.

LIST OF PROOFS TO BE FILED UNDER SECTION 100.

(Title).

I certify that the following is a correct list of all proofs tendered to me in the above matter during the past month:

Dated 19 .

Liquidator.

Name of Creditor.	Proofs Tendered.		
	Amount of Proof.	Whether admitted, rejected or standing over for further consideration.	If admitted, Amount.

NOTICE TO CREDITORS AND CONTRIBUTORIES OF INTENTION TO APPLY FOR RELEASE.

(Title).

To

Notice is given that I, , the Liquidator of the abovenamed Company, intend to apply to the Judge in chambers at the National Court at at a.m./p.m. on 19 for my release, and further take notice that any objection you may have to the granting of my release should be notified to the Registrar of the National Court and to me within 21 days after the date of this notice.

A summary of my receipts and payments as Liquidator is annexed.

Dated this 19 .

Liquidator.

NOTE.—Section 257(4) of the Companies Act provides that :—

“An order of the Court releasing the liquidator discharges him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of a material fact.”.

APPLICATION BY LIQUIDATOR TO COURT FOR RELEASE.

(Title).

I, \_\_\_\_\_, the Liquidator of the abovenamed Company, report to the Court—

1. That the whole of the property of the Company has been realized for the benefit of the creditors and contributories (and a dividend to the amount of \_\_\_\_\_ toea in the kina has been paid, as shown by the statement annexed, and a return of \_\_\_\_\_ per share has been made to the contributories of the Company).

(Or That so much of the property of the Company as can, according to the joint opinion of myself and the Committee of Inspection, annexed in writing under our hands, be realized, without needlessly protracting the liquidation, as shown by the statement annexed, has been realized, and a dividend to the amount of K \_\_\_\_\_ has been paid as shown with a return of K \_\_\_\_\_ per share to the contributories of the Company).

(Add if necessary That the rights of the contributories between themselves have been adjusted).

2. I have given or caused to be given to all creditors and contributories the notice required to be given by Section 103 of the *Companies Rules*.

3. I therefore request the Court to cause a report on my accounts to be prepared, and to grant me a certificate of release.

Dated 19 .

Liquidator.

STATEMENT TO ACCOMPANY NOTICE OF APPLICATION FOR RELEASE.

(Title).

Statement showing position of the Company at date of application for release.

Dr.	Cr.
Estimated Receipts— to produce per Company's Statement	Payments
K      K	K
To total receipts from date of winding-up order— (State particulars under the headings specified in the Statement of Affairs.) Receipts per trading account ..... Other receipts ..... Total _____	By fees (including stationery, printing and postage in respect of contributories and creditors, and for debtors, and fee for audit) .....  Law costs of petition ..... Law costs of lawyer to Liquidator ..... Other law costs .....
K	K
Less: Payments to redeem securities ..... Costs of execution Payments per trading account .....	Liquidator's remuneration, percent. on K  Assets realized per cent. on K Assets distributed in dividend .....

Companies

Ch. No. 146

Dr.	Cr.
	Shorthand writer's charges Special manager's charges Person appointed to assist in prep- aration of State- ment of Affairs .... Auctioneer's charges as taxed .....
Net realizations .....	Other taxed costs Costs of possession and maintenance of estate .....
K	Cost of notices in National Gazette and other papers
Amounts received from calls on con- tributories made by the Liquidator	Incidental outlay Total cost and charges .....
	K
	Creditors, viz :— (a) Preferential (b) Unsecured: Dividend of in the K on K .....
	The estimate of the amount expected to rank for dividend was K Amount returned to contributories .....
	Balance .....
K	K

Assets not yet realized, including calls, estimated to produce K

(Add any special remarks the Liquidator thinks desirable).

Creditors can obtain any further information by inquiry at the office of the Liquidator.

Dated 19 .

(Signature of Liquidator or his lawyer).

(Address).

Ch. No. 146

**Companies**

Rules, Sec. 106.

Form 60.

**REQUEST TO DELIVER BILL FOR TAXATION.**

(Title).

I request that you will, within \_\_\_\_\_ days of this date, or such further time as the National Court allows, deliver to me for taxation by the proper officer your bill of costs (or charges or expenses) as a (state nature of employment) failing which, I shall, in pursuance of the Companies Act and the Companies Rules, proceed to declare and distribute a dividend without regard to any claim which you may have against the assets of the Company, and your claim against the assets of the Company will be liable to be forfeited.

Dated \_\_\_\_\_ 19 .

Liquidator.

Rules, Sec. 109.

Form 61.

**CERTIFICATE OF TAXATION.**

(Title).

I certify that I have taxed the bill of costs (or charges or expenses) of \_\_\_\_\_ (state capacity in which employed or engaged; where necessary add in pursuance of an order of the National Court dated \_\_\_\_\_ 19 ), and have allowed it at the sum of K \_\_\_\_\_ (where necessary add which sum is to be paid to \_\_\_\_\_ by \_\_\_\_\_ as directed by the order).

Dated \_\_\_\_\_ 19 .

Taxing Officer.

\_\_\_\_\_  
K  
\_\_\_\_\_



REGISTER TO BE KEPT BY TAXING OFFICER.

*Companies Rules.*

Companies

Ch. No. 146

Name of Company.	Lawyer's Bills.			Auctioneers' Bills.			Bailiffs' Bills.			Accountants' Bills.			Brokers' or other Persons' Bills.		
	Gross amt. of Bill.	Amt. taxed off.	Net amt. allwd.	Gross amt. of Bill.	Amt. taxed off.	Net amt. allwd.	Gross amt. of Bill.	Amt. taxed off.	Net amt. allwd.	Gross amt. of Bill.	Amt. taxed off.	Net amt. allwd.	Gross amt. of Bill.	Amt. taxed off.	Net amt. allwd.



INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 146.

*Companies.*

---

SUBSIDIARY LEGISLATION.

---

Act, Section 5(4)—Form of seal of office of Registrar of Companies.

The seal shall be circular in form, with the National Emblem in the centre and the words "Registrar of Companies Papua New Guinea" around the circumference.

Act, Section 16(3)—Professions or callings that are not customarily carried on in Papua New Guinea by corporations.

The profession or calling of Accountancy.

Act, Section 87(1)—Proclaimed States for purposes of Division V.5.

All States and Territories of Australia.

Act, Section 360(5)(b)—Corporations the same, or substantially the same, as exempt proprietary companies.

All corporations incorporated under the law of a State or Territory of Australia relating to companies that have under that law exemptions and privileges similar to those provided for in the Act in relation to exempt proprietary companies.

---



\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 146.

*Companies.*

APPENDIXES.

APPENDIX 1.

SOURCE OF THE COMPANIES ACT.

Previous Legislation.

*Companies Act*  
as amended by—  
*Companies (Amendment Act 1985 (No. 8 of 1985)).*

ies

ices.—*continued.*

ion, etc., evised ion.	Prev. Refe ion.
rm 51	For
rm 52	For
rm 53	For
rm 54	For
rm 55	For
rm 56	For
rm 57	For
rm 58	For
rm 59	For
rm 60	For
rm 61	For
rm 62	For
rm 63	For
rm 64	For
rm 65	For
rm 66	For
rm 67	For
rm 68	For
rm 69	For
rm 70	For
rm 71	For
rm 72	For
rm 73	For
rm 74	For
rm 75	For
rm 76	For
rm 77	For
rm 78	For
rm 79	For
rm 80	For
rm 81	For
rm 82	For
rm 83	For
rm 84	For
rm 85	For
rm 86	Fc
rm 87	Fc
rm 88	Fc
rm 89	Fc
rm 90	Fc
rm 91	Fc
rm 92	Fc
rm 93	Fc
rm 94	Fc
rm 95	Fc
rm 96	Fc
rm 97	Fc
rm 98	Fc
rm 99	Fc
rm 100	Fc
rm 101	Fc
rm 102	Fc
rm 103	Fc
rm 104	Fc
rm 105	Fc
rm 106	Fc
rm 107	Fc

APPENDIX 3.

SOURCE OF THE COMPANIES RULES.

Part A.—Previous Legislation.

*Companies Rules 1969* (Statutory Instrument No. 47 of 1969).<sup>1</sup>

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference. <sup>2</sup>	Section, etc., in Revised Edition.	Previous Reference. <sup>2</sup>
1	4	43	48
2	5	44	49
3	6	45	50
4	7	46	51
5	8	47	52
6	9	48	53
7	10	49	54
8	11	50	55
9	12	51	56
10	13	52	57
11	14	53	58
12	15	54	59
13	16	55	60
14	19	56	61
15	20	57	62
16	21	58	63
17	22	59	64
18	23	60	65
19	24	61	66
20	25	62	67
21	26	63	68
22	27	64	69
23	28	65	70
24	29	66	71
25	30	67	72
26	31	68	73
27	32	69	74
28	33	70	75
29	34	71	76
30	35	72	77
31	36	73	78
32	37	74	79
33	38	75	80
34	39	76	81
35	40	77	82
36	41	78	83
37	42	79	84
38	43	80	85
39	44	81	86
40	45	82	87
41	46	83	88
42	47	84	89

ON.

18 of 1964)

7 Instrument No.14

Previous  
Reference.<sup>1</sup>

42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
72A  
*Companies Auditors B  
Regulations 1964, S.2*  
73

<sup>1</sup> Note that these Rules were made under the *Papua and New Guinea Act 1949-1968* of Australia—see Section 62A of that Act.  
<sup>2</sup> Unless otherwise indicated, references are to the rules set out in Part A.

Companies

Ch. No. 146

Part B.—Cross References.—*continued.*

Section, etc., in Revised Edition.	Previous Reference.	Section, etc., in Revised Edition.	Previous Reference.
85	90	Form 16	Form 16
86	91	Form 17	Form 17
87	92	Form 18	Form 18
88	93	Form 19	Form 19
89	94	Form 20	Form 20
90	95	Form 21	Form 21
91	96	Form 22	Form 22
92	97	Form 23	Form 23
93	98	Form 24	Form 24
94	99	Form 25	Form 25
95	100	Form 26	Form 26
96	101	Form 27	Form 27
97	102	Form 28	Form 28
98	103	Form 29	Form 29
99	104	Form 30	Form 30
100	105	Form 31	Form 31
101	106	Form 32	Form 32
102	107	Form 33	Form 33
103	108	Form 34	Form 34
104	109	Form 35	Form 35
105	110	Form 36	Form 36
106	111	Form 37	Form 37
107	112	Form 38	Form 38
108	113	Form 39	Form 39
109	114	Form 40	Form 40
110	115	Form 41	Form 41
111	116	Form 42	Form 42
112	117	Form 43	Form 43
113	118	Form 44	Form 44
Schedules—	Schedules—	Form 45	Form 45
Schedule 1	Schedule 1	Form 46	Form 46
Schedule 2—	Schedule 2—	Form 47	Form 47
Form 1	Form 1	Form 48	Form 48
Form 2	Form 2	Form 49	Form 49
Form 3	Form 3	Form 50	Form 50
Form 4	Form 4	Form 51	Form 51
Form 5	Form 5	Form 52	Form 52
Form 6	Form 6	Form 53	Form 53
Form 7	Form 7	Form 54	Form 54
Form 8	Form 8	Form 55	Form 55
Form 9	Form 9	Form 56	Form 56
Form 10	Form 10	Form 57	Form 57
Form 11	Form 11	Form 58	Form 58
Form 12	Form 12	Form 59	Form 59
Form 13	Form 13	Form 60	Form 60
Form 14	Form 14	Form 61	Form 61
Form 15	Form 15	Form 62	Form 62

